



**PROTECTION OF RURAL CHILDREN'S RIGHT TO
EDUCATION IN A STATE OF COVID-19 HEALTH EMERGENCY
IN ZIMBABWE**

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Dedication

This research is dedicated to Canon Collins Educational and Legal Assistance Trust for generously funding my studies. I am forever indebted to the organisation.

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Words fail me to express my gratitude to God for His adamant love and enduring faithfulness. I have come this far because His grip on me is always steadfast through it all.

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Acronyms

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ARTUZ	Amalgamated Rural Teachers Union of Zimbabwe
BEAM	Basic Education Assistance Module
ECOSOC	Economic and Social Council
ECW	Education Can't Wait
GPE	Global Partnership for Education
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communication Technology
LP	Learning Passport
MoPSE	Ministry of Primary and Secondary Education
PTUZ	Progressive Teachers Union of Zimbabwe
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UNCRC	United Nations Convention on the Rights of the Child
UNESCO	United Nations Education, Scientific and Cultural Organisation
UNICEF	United Nations Children's Fund
ZIMSEC	Zimbabwe School Examinations Council

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1. Introduction

1.1 Background

Since the outbreak of the COVID-19 pandemic at the beginning of 2020, schools have been, either partially open or fully closed in Zimbabwe as a measure of minimising the spread of the virus.¹ Although scientific studies have revealed that children are least likely to succumb to the COVID-19 virus compared to other age groups, it cannot be ignored that they have the potential of being ‘asymptomatic carriers’ with the capability of infecting their teachers and family members, therefore, their self-isolation was vital.² Self-isolation and the closure of schools as pandemic containment measures were regulated under article 4 of the Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order.³ Zimbabwe is bound by various treaties which make provision for children’s right to education. These include the United Nations Convention on the Rights of the Child (UNCRC), International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter on Human and People’s Rights (African Charter) and the African Charter on the Rights and Welfare of the Child (African Children’s Charter).⁴ The cited international and regional treaties played a key role in the country’s adoption of the Education Act of 2006, section 75 of the Zimbabwean 2013 Constitution and Education Amendment Act of 2019 which are the fundamental instruments protecting children’s right to education at the domestic level.⁵

In line with its human rights law obligations entrenched in the above cited human rights instruments and legislation (which is to ensure that primary education is available and secondary education is accessible), the Zimbabwe Ministry of Primary and Secondary Education (MoPSE) adopted digital and online learning alternatives as a means of guaranteeing the continuation of education after school closures. The Zimbabwe Learning Passport (LP) and Ruzivo online learning were the officially adopted virtual teaching and learning platforms

¹ S Chibango & C Silumba ‘Online education in promoting continued education during coronavirus outbreak in Zimbabwe: challenges and solutions’ (2020) 3 *Asian Journal of Interdisciplinary Research* 74-88.

² The Harvard Gazette ‘Children’s role in spread of virus bigger than thought’ 20 August <https://news.harvard.edu/gazette/story/2020/08/looking-at-children-as-the-silent-spreaders-of-sars-cov-2/> (accessed 24 August 2021). See also E Mupfumira ‘Zimbabwe’s children return to school after COVID-19 third wave disruptions’ 8 September <https://www.unicef.org/zimbabwe/stories/zimbabwes-children-return-school-after-covid-19-third-wave-disruptions> (accessed 21 October 2021).

³ See article 4(e) of the Public Health (COVID-19 Prevention, Containment and Treatment) National Lockdown) Order, 2020 (Statutory Instrument 83 of 2020).

⁴ UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: State Party Report: Zimbabwe*, 12 September <https://www.refworld.org/docid/3ae6af88c.html> (accessed 21 October 2021). T Mude ‘The history of international human rights law in Zimbabwe’ *Journal of Social Welfare and human rights* 2 (2014) 73. See also ACERWC ‘Ratification Table’ 29 October <https://www.acerwc.africa/ratifications-table/> (accessed 21 October 2021). See the African Commission on Human and People’s Rights ‘Report on the African Commission on Human and People’s Rights on the situation of human rights defenders in Zimbabwe’ <https://www.achpr.org/sessions/ngostatment?id=18> (accessed 21 October 2021).

⁵ See section 75 of the Zimbabwe Constitution, 2013 and the Education Amendment Act No. 2 of 2006.

which were supplemented by radio and television lessons.⁶ The Learning Passport (LP) is a free e-learning platform owned and managed by the Zimbabwe Ministry of Primary and Secondary Education, providing free access to quality educational content.⁷ However, since online education depends on the accessibility of digital devices, availability and affordability of electricity, stability and affordability of internet connection, as well as a conducive learning environment; the unavailability of Information Communication Technology (ICT) infrastructure in rural areas, lack of gadgets and exorbitant data charges became a hindrance for most rural children to benefit from the official online and digital learning sites.⁸ There was a need for a holistic assessment of the country's technological infrastructure if contextually relevant alternative learning measures were to yield results.⁹

Article 11(3) of the African Children's Charter reads:¹⁰

States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:

- (a) provide free and compulsory basic education:
- (b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;...

This research seeks to assess the extent to which Zimbabwe took 'all appropriate measures for the 'full realisation of...' children's right to education in the rural parts of the country since the outbreak of the COVID-19 in 2020 to present.

1.2 Problem statement

As a measure to contain the spread of the COVID-19 virus, the government of Zimbabwe took the resolution to close schools from March 2020.¹¹ As a result, physical classes were replaced by digitalised methods of teaching and learning in both rural and urban areas.¹² As much as the impacts of a traditional classroom set-up transition to distance learning was countrywide, evidence reveals that the effects were more severe on rural learners as compared to learners in urban areas.¹³ Presently, Zimbabwean rural infrastructural conditions are inefficient to enhance

⁶ N Abrishamian & M Feki 'Zimbabwe's learning passport case study' 14 June <https://www.learningpassport.org/stories/zimbabwes-learning-passport-case-study> (accessed 30 August 2021).

⁷ Abrishamian (n 6 above).

⁸ N Bouah & JS Nielsen 'Towards comprehensive guidance for states in the African region to respond to children's rights in emergencies, disasters and pandemics' (2021) 450 *The International Journal of Children's Rights* (2021) 447-474

⁹ N Bouah & JS Nielsen (n 8 above) 447-474. See also T Dzinamarira & G Musuka 'The paradox of re-opening schools in Zimbabwe in the COVID-19 era' (2021) 1.

¹⁰ See article 11(3) (a) & (b) of the African Children's Charter.

¹¹ Section 4(1) (e) of the Statutory Instrument 83 of 2020.

¹² See L Zinyemba 'COVID-19 induced online learning: the Zimbabwean experience' (2021) 11 *African Journal of Social Work* 224-228.

¹³ B Hove & B Dube 'COVID-19 and the entrenchment of a virtual elite private school: Rethinking education policies in Zimbabwe' (2021) 4 *Journal of Culture and Values in Education* 88.

access to online learning.¹⁴ For instance, for television and radio lessons to be accessible to a learner, there is need for frequency boosters and receivers and this form of infrastructure cannot be found in most rural parts of the country.¹⁵ The use of online learning platforms proposed by the MoPSE also depended on digital devices like smartphones and computers, data bundles, stable internet connection, electricity and or solar power supply, however, most of these online learning prerequisites are out of reach to a greater percentage of rural children.¹⁶ Consequently, most rural children had to wait until lockdown restriction measures were fully lifted to continue learning. It is argued that the government's failure to ensure that the required infrastructural means to facilitate online learning during lockdown are available both in rural and urban areas deprived a greater percentage of rural children of their right to access education.

1.3 Objectives

The research seeks to advocate for the amendment and implementation of the country's 2015 ICT policy to give digital education concrete content. It further lobbies for the allocation of educational resources to provide significant digital infrastructures in underdeveloped rural parts of the country by the government. It also advocates for the maintenance of a high standard physical and digital learning blend during the COVID-19 pandemic and beyond, for benefit of both rural and urban children in Zimbabwe.

1.4 Research questions

- I. What were the prevailing conditions in Zimbabwe's rural education system before the outbreak of the COVID-19 pandemic?
- II. How impactful was the closure of schools on rural children and their access to education?
- III. How effective were digital learning methods in ensuring that rural children's right to education is respected, promoted and protected during lockdown?
- IV. To what extent can the right to education be limited in emergencies?
- V. How can Zimbabwe's education system be 'built back better'?

1.5 Methodology

This study is qualitative research informed by desktop review. Relevant primary legal sources like international and regional human rights law instruments, legislation were reviewed together with secondary law sources such as journal articles, textbooks, papers and online publications.

¹⁴ See Zimbabwe National Policy for Information and Communication Technology (ICT) (2015) para 3.1. See also B Hove & B Dube (n 13 above) 85.

¹⁵ B Hove & B Dube (n 14 above) 87.

¹⁶ Initial report of the government of the Republic of Zimbabwe under the African Charter on the Rights and Welfare of the Child (2013) 2. See also L Zinyemba et al 'COVID-19 induced online learning: the Zimbabwean experience' (2021) 11 *Journal of Social Work* 226.

A methodical assessment of the listed sources was done to give an overview of the protection of rural children's right to education during the COVID-19 pandemic in Zimbabwe.

1.6 Limitations of the research

The research is limited to the protection of Zimbabwean rural children's right to education since the outbreak of the COVID-19 pandemic in 2020 to 2021. Comparisons with the conditions in urban areas will be made where necessary. Focusing on rural children has been motivated by the fact that the Zimbabwean population is mainly rural (68%)¹⁷ and rural children were the most affected by the closure of schools and they are presently not benefiting from the blended physical and online learning methodologies due to lack of essential infrastructure, gadgets and skills which are essential in online and digital learning. The study is mainly a desktop review and an assessment of readily available literature.

1.7 Literature review

1.7.1 Impacts of COVID-19 health emergency on education

Breu highlights the universal devastations of the COVID-19 crisis on children's right to education.¹⁸ The author pinpoints that the methods imposed to fight the pandemic are to a certain extent violating the provisions of the Universal Declaration of Human Rights (UDHR), United Nations Convention on the Rights of the Child (UNCRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁹ The closure of schools as one of those measures brings immense academic loss to children who live in areas where there is no infrastructure and internet which are key components of effective digital learning.²⁰

Mukute et al conducted a series of interviews in several Southern African countries, including Zimbabwe, to determine the main educational challenges brought by the COVID-19 pandemic in the region.²¹ One of the chief challenges singled out in their published article is the online method of teaching and learning.²² According to the authors, digital and online learning has widened inequalities between rural and urban children, it has increased marginalisation of the rural poor and has made education inaccessible mostly to children with disabilities and those from rural backgrounds.²³ The research is in consensus with Breu above as it also highlights that the severity of the digital teaching and learning hurdles in rural

¹⁷ See the Executive Summary of the Zimbabwe National Statistics Agency 'Inter-Censal Demographic Survey' (2017).

¹⁸ S Breu 'The devastating impact of the COVID-19 crisis on children's rights to education' (2020) 1-4. See also article 26 of the UDHR, articles 28 & 29 of the UNCRC, articles 13 & 14 of the ICESCR.

¹⁹ Breu (n 18 above) 1.

²⁰ n 19 above, 3.

²¹ M Mukute et al 'Education in times of COVID-19: Looking for silver linings in the Southern Africa's educational responses' 36 *Southern African Journal of Environmental Education* (2020) 36.

²² Mukute et al (n 21 above) 1.

²³ n 22 above, 2.

communities is exacerbated by the dearth of financial resources, absence of internet and information and communication infrastructure.²⁴

Hove and Dube examine various challenges that pupils in Zimbabwean primary and secondary schools encountered during the COVID-19 pandemic.²⁵ The study also investigates the measures taken by the MoPSE and Non-Governmental Organisations (NGOs) in managing these challenges.²⁶ They argue that the adopted digital methods of teaching and learning were mostly accessible to children from privileged backgrounds and it excluded the urban and rural poor.²⁷ These challenges were adverse in rural areas where resources are highly limited.²⁸ They also state that load shedding, unstable internet connection and exorbitant data costs affected both rural and urban children to fully benefit from online learning during the pandemic.²⁹ The authors argue that digitisation has made the vision of Zimbabwe's educational vision of 'educating all' as adopted from the Dakar Framework for Action unattainable.³⁰ They stress the need for the government to invest in digital infrastructure if ever the goal of educating all is to be achieved.

The Zimbabwe Peace Project 2021 report establishes how socio-economic rights have been affected by COVID-19 in Zimbabwe.³¹ The authors stress that the closure of schools did not only compromise the quality of education, but it made education inaccessible to the greater part of the country's rural children.³² The statistics of the research reveal that only a quarter of rural children managed to access online learning.³³ These findings are consistent with Breu, Mukute et al and Hove and Dube cited above.

Zinyemba et al conducted a comparative study between government and private schools in Zimbabwe to determine the extent to which the adoption of online learning was feasible to both.³⁴ Their findings suggest that most government schools lack basic facilities to necessitate the uptake of online learning.³⁵ Private schools were more financially well-off to shift from physical to online learning set-up by making use of online paid platforms like Google Classroom, Zoom, Microsoft teams, and Google meet which enhanced teacher-student interaction as compared to those adopted in government schools.³⁶ The research pinpoints that government schools located in rural areas were the most affected compared to those in urban

²⁴ Mukute (n 23 above) 2.

²⁵ Hove & Dube (n 15 above) 85-88.

²⁶ n 25 above, 85.

²⁷ n 26 above, 88.

²⁸ n 27 above, 88.

²⁹ n 28 above, 89.

³⁰ n 29 above, 85-89.

³¹ N Chakanya & AR Chamunogwa 'The impact of COVID-19 on socio-economic rights in Zimbabwe' (2021) 1-33.

³² N Chakanya & AR Chamunogwa (n 31 above) 6.

³³ n 32 above, 7.

³⁴ Zinyemba et al (n 16 above) 224 – 228.

³⁵ (n 34 above) 224.

³⁶ n 35 above, 225.

areas.³⁷ The study found that there was a wide inequality between rural and urban learners, most rural learners were not receiving any form of education while their urban counterparts were learning.³⁸ In spite of these prevailing limitations in the access of digital learning in Zimbabwe, the author highlights that ICT creates versatile possibilities in children's everyday lives; it creates a platform for interaction, 'information sharing, and self-expression from a local to a global level'.³⁹ Children's active participation in the digital information society enhances their knowledge and skills crucial for their development and adaptation in a world that is largely growing more digitally oriented.⁴⁰

Villalobos' publication on the protection of human rights in emergency situations with particular reference to the right to education will reinforce this study.⁴¹ The author notes that protecting the right to education in a state of emergency can buttress the protection of other human rights, for instance, children will be shielded from various forms of abuses and exploitation.⁴² The research underpins that, emergency situations in themselves do not relieve the state from its human rights law obligations, but they call for the invention and adoption of intensified contextually relevant initiatives in protecting those most affected.⁴³

All the above publications are comprehensive in giving an overview of the impacts of COVI-19 on education and the limitations of digital learning but the authors are not extensively and explicitly linking their findings with children's rights. Mukute et al, the Zimbabwe Peace Project Report, Hove and Dube as well as Zinyemba et al simply pinpoints that rural children were the most affected, however, the studies do not measure the outcome of the adopted online methods of teaching and learning with regional and international human rights law standards. The purpose of this research is to analyse the extent to which COVID-19 impacted rural children's right to education as entrenched in the African Children's Charter and other human rights instruments to which Zimbabwe is a party to determine if the country complied with its obligations to protect children's right to education during lockdown.

1.7.2 International, regional and domestic legal framework for the protection of the children's right to education in emergencies

The main resolutions and treaty sources for the protection of the children's right to education at the international and regional level are the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations

³⁷ n 36 above, 225.

³⁸ n 37 above, 227.

³⁹ n 38 above, 225.

⁴⁰ n 39 above, 225.

⁴¹ VM Villalobos 'Protecting human rights in emergency situations: the example of the right to education' 5 October <https://lawexplores.com/protecting-human-rights-in-emergency-situations-the-example-of-the-right-to-education/> (accessed 2 September 2021).

⁴² Villalobos (n 41 above).

⁴³ Villalobos n 42 above.

Convention on the Rights of the Child, the African Charter on Human and People's Rights, the African Charter on the Rights and Welfare of the Child.⁴⁴

Article 26 of the Universal Declaration of Human Rights (UDHR) provides for the right to free and compulsory elementary education.⁴⁵ The scope of this right has been given more insightful meaning in article 13 of the International Covenant on Economic, Social and Cultural Rights (CESCR).⁴⁶ It states that education should be available to all who have not received or completed primary education and it obliges states to progressively make secondary education freely available.⁴⁷ The same core elements of primary and secondary education have been provided for in the United Nations Convention on the Rights of the Child (UNCRC).⁴⁸ Similarly, the right to education is also guaranteed in the African human rights law instruments. Article 11 of the African Charter on the Rights and Welfare of the Child, Article 17 of the African Charter on Human and People's Rights provides for the right to education.⁴⁹ Section 75 of the Constitution of Zimbabwe, the Education Act of 2006 and the Education Amendment Act of 2020 draw inspiration from the highlighted international and regional human rights instruments, and they also provide for the right of education to every Zimbabwean citizen and child.⁵⁰

Although the UDHR is not legally binding, it is the main pillar upon which domestic, regional and international human rights law standards are drawn, the fundamental human rights and freedoms which are found in constitutions and national legislation (including the one of Zimbabwe) emanated from the UDHR.⁵¹ Chapter III of the Zimbabwean 2013 Constitution entrenches the Declaration of Rights, and this chapter has been an indispensable aid for the protection and promotion of human rights in the country.⁵² Additionally, the UDHR has become part of international customary law, therefore, it is a basic source of the global protection of human rights law.⁵³ Zimbabwe ratified both the International Covenant on Economic, Social and Cultural Rights and the United Nations Convention on the Rights of the Child in 1991, it became a state party to the African Charter and the African Children's Charter in 1986 and

⁴⁴ See T Mude (n 4 above) 72 - 74.

⁴⁵ See art 26 of the Universal Declaration of Human Rights (UDHR).

⁴⁶ See arts 13 & 14 of the International Covenant on Economic, Social and Cultural Rights (CESCR).

⁴⁷ CESCR art 13(2) (a) & (b).

⁴⁸ United Nations Convention on the Rights of the Child (UNCRC) art 28.

⁴⁹ See African Charter on the Rights and Welfare of the Child (hereinafter African Children's Charter) art 11, art 17 of the African on Human and People's Rights (African Charter).

⁵⁰ Constitution of the Republic of Zimbabwe 2013.

⁵¹ Amnesty International 'Universal Declaration of Human Rights' <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/> (accessed 29 September 2021).

⁵² Mude (n 44 above) 63.

⁵³ See UJ Mavimbela 'Learner's right to education and the role of the public school in assisting learners to realise this right' Master's thesis, University of South Africa, 2001 11.

1995 respectively.⁵⁴ The binding obligations emanating from the UNCRC, ICESCR, the African Charter and the African Children's Charter call for Zimbabwe's compliance.

The national, regional and international human rights instruments cited above will aid in assessing the extent to which Zimbabwe complied with the law in guaranteeing the protection to rural children's right to education during lockdown. Inconsistencies will assist in the nature of recommendations to be provided.

1.8 Overview of chapters

The research is composed of a total of five chapters. Chapter 1 highlights the general structure of the entire discourse. It gives the background of the research, outlines the problem statement, objectives of this research, research questions, methodology and literature review. Chapter 2 is an overview of the condition of Zimbabwean rural schools before the outbreak of the COVID-19 pandemic as well as the legal framework for the protection of children's right to education. Chapter 3 examines the limitation of the right to education in emergencies and the approach taken by Zimbabwe, it further traces the process of the adoption of digital teaching and learning methods in Zimbabwe and benefits derived from these techniques. Chapter 4 is an assessment of the ramifications of the closure of schools on children as well as the limitations of the alternative teaching and learning tools. Chapter 5 gives recommendations on how the Zimbabwean education system can be 'built back better' and ultimately a conclusion will be provided.

⁵⁴ Mude (n 52 above) 73. See also the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) 'Ratification table' <https://www.acerwc.africa/ratifications-table/> (accessed 30 September 2021).

2. Protection of rural children's right to education before the pandemic

2.1 Introduction

As it has been highlighted in Chapter One, the measures imposed by the government to halt the spread of the COVID-19 pandemic compelled the education sector to take drastic measures in ensuring the safety of children and teachers whilst striving to make children's right to education realisable. Through alternative teaching and learning methods adopted by the state, the deep-seated challenges facing rural children in their access to education were revealed and amplified. If there are no solutions adopted to resolve the problem, the educational progress which has been achieved since independence in 1980 is bound to be reversed.⁵⁵ The right to education is considered as a basic human right and it should be accessible and enjoyed by every child, irrespective of their geographical location.

The chapter will first introduce basic human rights, analyse the fundamental components of the right to education as well as the extent to which the right to education of children in rural areas has been respected, promoted and protected in Zimbabwe before the outbreak of the pandemic.

2.2 Fundamental human rights

The emergence of rights is regarded as a development that did not exist during early civilisations.⁵⁶ Drawing from Aristotle's definition of the 'rights of man', citizens were considered as slaves who were not entitled to enjoy rights and freedoms.⁵⁷ With time, human rights evolved and were institutionalised. For instance, the United Nations has adopted legal instruments which are the main sources guaranteeing the protection human rights and fundamental freedoms. The Universal Declaration of Human Rights lists thirty basic or fundamental human rights and these rights have been classified into three.⁵⁸ The first generation of civil and political rights, the second generation of economic, social and cultural rights and the third generation of group rights.⁵⁹ Civil and political rights are guaranteed and protected under the International Covenant on Civil and Political Rights (ICCPR).⁶⁰ The right to life, right to freedom of expression, right not to be arbitrarily arrested, freedom of speech and conscience are all first-generation rights.⁶¹ Second-generation rights are enshrined under the International

⁵⁵ Hove & Dube (n 30 above) 4. See also E Ndhlovu & embo 'Gendered socio-economic implications of the COVID-19 pandemic in rural Zimbabwe' (2020) 31-32.

⁵⁶ AD Rentein 'The Concept of Human Rights' (1988) 83 *Anthropos* 347.

⁵⁷ JL Kunz 'The United Nations Declaration of Human Rights' (1949) 43 *American Journal of International Law* 316.

⁵⁸ See article 1 - 30 of the UDHR.

⁵⁹ Mavimbela (n 35 above) 9.

⁶⁰ See the ICCPR.

⁶¹ Mavimbela (n 59 above) 9. See Joseph S & Castan M 'International Covenant on Civil and Political Rights: Cases, materials and commentary' (Oxford University Press) 2013, 9 - 11.

Covenant of Economic, Social and Cultural Rights (ICESCR).⁶² The right to housing and healthcare form part of the second generation rights.⁶³ Third generation rights are considered to have emerged recently and they differ from the first and second-generation rights because of their communal nature.⁶⁴ The right to clean air and environment fall under the third generation of rights.⁶⁵ The right to education is the only (or one of the few) human right which resembles the components of all three human rights generations as it will be seen below.⁶⁶ UNICEF defines education as ‘the entire process of social life’ through which different social groups, as well as individuals, consciously acquire ‘personal capacities, attitudes, aptitudes and knowledge, which benefit communities at national and international level.’⁶⁷ Through the provision of quality education (which is a human right), other socio-economic, civil and political and well as environmental rights are equally guaranteed protection as elaborated below.

2.3 The inherent nature of the right to education

The power of the right to education was insightfully articulated by the late former South African President Nelson Mandela as follows:⁶⁸

Education is the great engine of personal development. It is through education that the daughter of a peasant can become a doctor, that a son of a mineworker can become the head of the mine; that a child of farm workers can become the president of a great nation...⁶⁹

The right to education is an ‘empowerment’, ‘multiplier’ as well as a ‘gate away’ right.⁷⁰ As an empowerment right, education ensures that children from disadvantaged backgrounds can be liberated from poverty and equipped to make a meaningful contribution

⁶² International Covenant on Economic, Social and Cultural Rights article 13.

⁶³ Centre on Democracy, Development and the Rule of Law ‘Second and third generation rights in Africa’ https://cddrl.fsi.stanford.edu/research/second_and_third_generation_rights_in_africa (accessed 28 October 2021).

⁶⁴ Centre on Democracy, Development and the Rule of Law (n 53 above).

⁶⁵ (n 64 above).

⁶⁶ See Mavimbela (n 59 above) 9. See also the Economic and Social Council ‘General Comment No 11 on art 14 para 2.

⁶⁷ United Nations International Children’s Emergency Fund (UNICEF) *Implementation handbook for the Convention on the Rights of the Child* (2007) 411.

⁶⁸ KD Beiter *The protection of the right to education by international law: Including a systematic analysis of Article 13 of the International Covenant on Economic, Social and Cultural rights* (Martinus Nijhoff: Boston 2005) 16 - 18.

⁶⁹ Committee on Economic, Social and Cultural Rights ‘Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 13’ (1999) para 6.

⁷⁰ S Kalantry et al ‘Enhancing enforcement of economic, social and cultural rights using indicators: A focus on the right to education in the ICESCR (2015) 260. See also J Spring *The universal right to education: Justification, definition and guidelines* Lawrence Erlbaum Associates (publishers), London (2000) 1. See also CESCR General Comment No.13: The right to education (Art.13) para 1. TN Khoza ‘The Sen-Nussbaum diagram of article 11(3) of the African Charter on the Rights and Welfare of the Child: Facilitating the relationship between access to education and development’ (2021) *African Human Rights Law Journal* 13-14. See also L Meda et al ‘Refugee children in South Africa: Access and challenges in accessing universal primary education’ (2013) 153. See S Kraljic ‘Implementation and protection of the child’s right to education’ 2. See the UN Committee on the Rights of the Child ‘The Right of the Child to education in emergency situations’ (2008) para 9, page 3.

to their societies.⁷¹ As a multiplier right, education enhances the promotion of other fundamental human rights and freedoms, and its denial is a violation of all interconnected rights.⁷² When a child has been denied an opportunity for education, the potential of that child's achievements in life gets diminished.⁷³ The right to education is a safety measure for children to be shielded from exploitative and hazardous labour, as well as sexual abuse and exploitation.⁷⁴ As a gateway right, it is the means through which economic, social, and political benefits accrue to an individual.⁷⁵

The aim of education must be to arm every child with the aptitudes essential for them to live a comprehensive life, relevant to their contextual settings.⁷⁶ The benefits derived from an all-encompassing, quality childhood education are lifelong.⁷⁷ If children are given equal opportunities in accessing quality education, the opportunities emanating from the acquired education become equal in spite of the child's background.⁷⁸ If the goal of achieving an Africa 'fit for children' is to be achieved, quality education must be guaranteed to all children and not only to the privileged few – at all times.⁷⁹

2.4 Key components of the right to education

The General Comment 13 of the International Covenant on Economic, Social and Cultural Rights (CESCR) identifies four key components of the right to education; availability, accessibility, acceptability and adaptability.⁸⁰ For education to be considered as 'available', well-developed educational institutions should be reachable within the state's jurisdiction.⁸¹ These institutions should be properly furnished with sanitation facilities, water, libraries and ICT infrastructure.⁸² This should be coupled with the presence of trained educators who receive market-competitive salaries.⁸³ With regard to the component of accessibility, Education must be available to everyone, with the inclusion of vulnerable groups. According to the Committee on Economic, Social and Cultural Rights, key factors are to be respected in order to promote access to education. Key components to accessibility of education include physical and

⁷¹ CESCR General Comment No. 13 (n 52 above) para 1. See also AC Onuora-Oguno *Development and the right to education in Africa* Springer International Publishing (2019) 5.

⁷² Kalantry (n 70 above) 260. See also General Assembly Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly 'A world fit for children' (2002) para 7. See also Khoza (n 70 above) 23.

⁷³ Kalantry (n 72 above) 260.

⁷⁴ CESCR General Comment No. 13 (n 53 above) para 7.

⁷⁵ Khoza (n 72 above) 13-14. See also Mavimbela (n 66 above) 10.

⁷⁶ Khoza (75 above) 770.

⁷⁷ Mavimbela (n 75 above) 11.

⁷⁸ n 77 above, 26.

⁷⁹ n 78 above, 27. See also Onuora-Oguno (n 71 above) 10.

⁸⁰ Committee on Economic, Social and Cultural Rights (CESCR) 'Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 13 (1999) para 6.

⁸¹ General Comment 13 (n 80 above) para 6(a).

⁸² (n 81 above) para 6(a).

⁸³ n 82 above, para 6(a).

economic accessibility as well as non-discrimination.⁸⁴ Physical accessibility implies that education has to be ‘within safe physical reach’, whereas economic accessibility denotes that primary education must be free and secondary education must be affordable.⁸⁵ Acceptability means that the form of education being provided by the government should be of standardised quality; values of tolerance should be embedded in it, and it should be ‘culturally relevant’.⁸⁶ Lastly, learning is an evolving process, therefore, methods of education should be flexible. They should be able to adjust to the ever changing societal and communal needs. All forms of education should take into consideration the needs of the students ‘within their diverse social and cultural settings’.⁸⁷

2.5 The historical state of education in Zimbabwean rural areas

The phrase ‘rural area(s)’ is often ascribed to a geographic, demographic, socio-economic and cultural setup which is normally characterised by underdevelopment and poverty, hunger, malnutrition and children who are out of school.⁸⁸ Some of these characteristics are a description of the rural areas of Zimbabwe, where the majority of the country’s population resides.⁸⁹ About 77% of rural households have been classified as poor, compared to 30% in urban areas.⁹⁰ These socioeconomic inequalities between urban and rural societies are noticeable even in the delivery of and access to children’s right to education.

The 2017 Annual Statistics Profile of the Ministry of Primary and Secondary Education (MoPSE) shows that 86% of primary schools and 80% of secondary schools in the country are located in rural areas.⁹¹ A shared characteristic of rural schools is the challenges they encounter in the provision of educational services.⁹² Rural schools achieve significantly poorly in public examinations compared to urban schools.⁹³ One of the most contributing factors to this has been identified as the quality of teachers that are deployed to rural areas.⁹⁴ Many rural schools find it increasingly difficult to employ and keep qualified teachers.⁹⁵ Highly qualified teachers opt for urban schools on account of underdevelopment and poor working conditions in rural areas.⁹⁶ Consequently, the knowledge gap between urban and rural schools is widening and rural

⁸⁴ n 83 above, para 6(b).

⁸⁵ n 84 above, para 6(b).

⁸⁶ n 85 above, para 6(b).

⁸⁷ (n 86 above) para 6(d).

⁸⁸ S Magudu ‘Configuring the key social justice concerns in rural education in Zimbabwe’ in AP Ndofirepi & A Masinire (eds) *Rurality, social justice and education in Sub-Saharan Africa* (2020) 68-69.

⁸⁹ S Magudu (n 88 above) 69.

⁹⁰ n 89 above, 70.

⁹¹ n 90 above, 69. See also K Matimire ‘Digital-shy Zimbabwe’s schools feel the brunt of COVID-19’ (2020) 4.

⁹² Magudu (n 91 above) 70.

⁹³ n 92 above, 70.

⁹⁴ S Mandina S ‘Quality rural secondary school education in Zimbabwe: Challenges and remedies’ (2012) 3 *Journal of emerging trends in educational research and policy studies* 768.

⁹⁵ Mandina (n 94 above) 769. See also Magudu (n 93 above) 75.

⁹⁶ Mandina (n 95 above) 768. Marist International Solidarity Foundation ‘Universal periodic review (UPR) of the Republic of Zimbabwe’ (2011) 4.

children are lagging behind their urban counterparts. It is crucial to highlight that alleviation of extreme poverty prevalent in rural areas can only be achieved through improving the quality of education and making it accessible to rural children in and out of emergencies.⁹⁷

The disparities in the quality of education between rural and urban areas can also be seen in the performance of rural and urban children in public examinations. To illustrate this, in 2017, 29 schools in Matabeleland North Province, a province that is largely rural, recorded a zero per cent pass rate in grade seven public examinations.⁹⁸ In 2020-2021, 88 schools recorded a zero per cent pass rate, with the majority of them being from rural areas.⁹⁹ The quality of education delivered in rural areas does not allow children in rural areas to compete with their urban counterparts as those in urban areas are more financially leveraged to pay for private tutors and do independent online research, an advantage that is out of reach to most rural children.¹⁰⁰ This has been intensified by the fact that Zimbabwe's education system has been underfunded for a while. The education budget has been set as low as 13% whereas the Dakar Declaration set it at 20%.¹⁰¹

The findings above are in line with the observations of the Economic and Social Council (ECOSOC) which stated that in developing countries, there are often remarkable inconsistencies between the education of rural and urban-based children making the realisation of Sustainable Development Goals (SDGs) unattainable.¹⁰²

In general, rural schools are often under-serviced.¹⁰³ Accessibility of quality education protects children against violence, it is a vital source for the dissemination of life-saving information relating to hygiene, prevention of diseases and sicknesses, and it also equips children with skills essential for their survival in emergencies.¹⁰⁴ It is the state's obligation to guarantee that education is equally available, accessible and adaptable at all times.¹⁰⁵ The COVID-19 pandemic can be utilised as an opportunity for 'building back better'.¹⁰⁶

⁹⁷ n 96 above, 769.

⁹⁸ Magudu (n 95 above, 76).

⁹⁹ The Zimbabwe News Live 'Zimbabwe parliament summons minister after 88 schools recorded a zero percent pass rate' 18 February <https://www.thezimbabwenewslive.com/zimbabwe-parliament-summons-minister-after-88-schools-recorded-a-zero-percent-pass-rate/> (accessed 15 September 2021).

¹⁰⁰ Magudu (n 98 above) 53.

¹⁰¹ M Bwanya 'Government to blame for dramatic fall in grade 7 pass rate, critics charge' 7 February <https://www.zimlive.com/2021/02/07/government-to-blame-for-dramatic-fall-in-grade-7-pass-rate-critics-charge/> (accessed 15 September 2021).

¹⁰² United Nations International Children's Emergency Fund (UNICEF) *Implementation handbook for the Convention on the Rights of the Child* (2007) 415-416.

¹⁰³ UNICEF (n 102 above) 415.

¹⁰⁴ UN Committee on the rights of the child 49th session 'The right of the child to education in emergency situations' (2008) para 42, 11.

¹⁰⁵ S Kraljic (n 70 above) 33.

¹⁰⁶ UN Committee (n 104 above) para 14, page 5. See also MJ Pigozzi 'Education in emergencies and for reconstruction: A developmental approach' (1999) 1-30.

2.6 The legal framework for the protection of the right to education

At the international and regional level, Zimbabwe is a state party to the UNCRC, ICESCR, African Charter and the African Children's charter as shown in the preceding chapter. These human rights law instruments provide for the protection of the right to education to everyone. At the national level, the Constitution and the Education Act of 1987 are the main sources for the protection of the children's right to education. What follows is an evaluation of the protective measures that domestic and international law provides in relation to children's right to education.

2.6.1 Domestic legislation

After the country attained its independence in 1980, massive educational legislative reforms and policies which are primarily in line with the universal goal of 'Education for All' have been enacted and implemented.¹⁰⁷ Post-independence right to education laws in Zimbabwe date back to the Education Act of 1987 which was later amended by the Education Amendment Act of 2006 as amended by the Education Amendment Act of 2019.¹⁰⁸ The right to education is further entrenched under section 75 of the Constitution which reads as follows:¹⁰⁹

- (1) Every citizen and permanent resident of Zimbabwe has a right to—
- (a) a basic State-funded education, including adult basic education; and
 - (b) further education, which the State, through reasonable legislative and other measures, must make progressively available and accessible.

The enactment of legislation regulating the right to education was coupled by the construction of learning institutions, training of educators as well as the provision of learning material countrywide.¹¹⁰ There are three main levels of education in Zimbabwe; primary, secondary (and high school) and tertiary education.¹¹¹ Primary education is free and compulsory although parents and guardians are required to pay specified types of school levies.¹¹² To enhance the accessibility of primary education, the government has set in place educational support grants like the Basic Education Assistance Module (BEAM) to sponsor children from disadvantaged backgrounds.¹¹³ Secondary education is available at a cost, however, government schools are fairly affordable compared to private schools.¹¹⁴

¹⁰⁷ See GY Kanyongo 'Zimbabwe's public education system reforms: successes and challenges' *International education journal* (2005) 65-66.

¹⁰⁸ See section 4(1) Education Act of 1987 & Education Amendment Act No. 2 of 2006. See also Education Amendment Act of 2019.

¹⁰⁹ See section 75(1) & (2) of the Constitution of the Republic of Zimbabwe, 2013.

¹¹⁰ GY Kanyongo (n 107 above) 66.

¹¹¹ Kanyongo (n 110 above) 66.

¹¹² (n 111 above) 66.

¹¹³ Marist International (n 96 above) 3-4.

¹¹⁴ Kanyongo (n 112 above) 66.

2.6.2 Regional human rights law instruments

The main regional human rights law instruments regulating the protection of the children's right to education which Zimbabwe is a state party to is the African Charter and the African Children's Charter.¹¹⁵ Zimbabwe became a state party to the African Charter in 1986 and it signed the African Children's Charter in 1995.¹¹⁶ It signed the African Children's Charter in 1995.¹¹⁷ Article 17 and article 11 of the African Charter and the African Children's Charter respectively provide for the right to education.¹¹⁸ Article 11(3) of the African Children's Charter obliges state parties to 'take all appropriate measures with a view of achieving the full realisation of the right...' to the education of every child.¹¹⁹

The African Children's Charter is not a duplication of the UNCRC as some scholars have argued, but it complements the provisions of UNCRC.¹²⁰ Article 11 of the African Children's Charter draws inspiration from the UNCRC, it consolidates the African Charter and goes further to include educational provisions that are peculiar to the needs of African children.¹²¹ Two unique provisions include an obligation placed upon state parties to take measures in relation to female, gifted and disadvantaged children, and also for children who become pregnant during their schooling years to resume when their education if conditions allow.¹²² It has been argued that the inclusion of these unique provisions was essential especially given the prevalence of poverty and child marriage in the African continent.¹²³ As provided for both under the UNCRC and the ICESCR, the African Children's Charter obliges states to take appropriate measures to provide free and compulsory basic education and ensure the progressive development of free and accessible secondary education as well as taking effective measures to reduce dropout rates.¹²⁴ As a state party, Zimbabwe is bound both by article 17 of the African Charter as well as article 11 of the African Children's Charter to make education available and accessible to all children, in spite of their geographical location.

¹¹⁵ See article 17 of the African Charter and article 11 of the African Children's Charter.

¹¹⁶ The African Commission on Human and People's Rights 'Report to the African Commission on Human and People's Rights on the situation of human rights defenders in Zimbabwe – 51st ordinary session of the African Commission on Human and People's Rights – 18 April – 2 May 2012'

<https://www.achpr.org/sessions/ngostatment?id=18> (accessed 27 September 2021). See B Bhaiseni 'Zimbabwe Children's Act alignment with international and domestic legal instruments: unraveling the gaps' (2016) *African Journal of Social 2*.

¹¹⁷ Bhaiseni (n 116 above) 2.

¹¹⁸ See article 17(1) of the African Charter & article 11(1) - (7) of the African Children's Charter.

¹¹⁹ See article 11(3) of the African Children's Charter.

¹²⁰ Bhaiseni (n 117 above) 9.

¹²¹ Khoza (n 76 above) 9.

¹²² See African Children's Charter arts 11(3) (e) & 11(6).

¹²³ Khoza (121 above) 9.

¹²⁴ (n 122 above) art 11(3)(a)-(d).

2.6.3 International human rights law instruments

The Universal Declaration of Human Rights (UDHR) and the UNCRC lay the foundation in the recognition of education as a fundamental human right.¹²⁵ The children's right to education entrenched under articles 28 and 29 of the UNCRC which must be realised based on an equal opportunity, was crafted with an understanding that disabled children, girls and children from marginalised societies normally face discrimination in the access to education.¹²⁶ Given that education is a fundamental human right as well as an engine for economic growth, UNCRC obliges states parties to take measures to reduce school dropout rates and it encourages international cooperation in striving to make the children's right to education realisable.¹²⁷ The International Covenant on Economic, Social and Cultural Rights (ICESCR) reinforces article 26(1) of the Universal Declaration of Human Rights as well as article 28 and 29 of the UNCRC in article 13 and 14.¹²⁸ Article 13 acknowledges that primary education shall be compulsory and be freely available to all, whilst secondary education must be generally available and accessible to all.¹²⁹ The ICESCR expands on article 26 of the UDHR by mandating states parties that have not secured compulsory, free primary education at their time of ratifying the treaty to develop a plan within two years and to implement it within a reasonable number of years after their ratification of the ICESCR.¹³⁰ Educational standards are to conform to the provisions of Article 13(1) of the ICESCR which is in line with the interpretation made at the World Declaration on Education for All in 1990 and the Plan of Action for the United Nations Decade for Human Rights Education.¹³¹

The compulsory element of primary education infused in the above-cited domestic, regional and international human rights law instruments serves to engrave that all of the child's support pillars in his/her acquisition of education, which are, the state, parents and or guardians are not to regard primary education as optional but mandatory.¹³² Free education means that primary education must be provided without a charge attached to it from the child, parents or guardians.¹³³ The imposition of fees and levies by the government, school or local authorities create hindrances to the enjoyment of the right and may put at risk its realisation.¹³⁴ It is the state's burden to ensure that primary education is of high quality, relevant to the child's needs and it must promote the realisation of other interconnected rights entitled to the child.¹³⁵ The

¹²⁵ (n 121 above) 12.

¹²⁶ UNICEF (n 103 above) 407.

¹²⁷ See UNCRC arts 28(1) (e) & 28(3).

¹²⁸ CESCR arts 13 and 14.

¹²⁹ CESCR arts 13(2) (a) & (b).

¹³⁰ CESCR art 14.

¹³¹ KD Beiter *The protection of the right to education by international law: Including a systematic analysis of Article 13 of the International Covenant on Economic, Social and Cultural rights* (Nijhoff Publishers, Boston 2005) 1-2.

¹³² Economic and Social Council (n 69 above) para 7.

¹³³ (n 132 above) para 7.

¹³⁴ n 133 above para 7.

¹³⁵ n 134 above) para 6.

expression ‘generally available’ implies, that secondary education is not reliant on a student’s ability or talent.¹³⁶ Availability of secondary education implies that the state should adopt diverse and advanced methodologies to the provision of secondary education relevant to different societal needs.¹³⁷ ‘Progressive introduction of free education’ was interpreted by the Committee to mean that although states must prioritise the delivery of free primary education, they are still under the obligation to take tangible steps towards realising free secondary education.¹³⁸

Zimbabwe incorporated a Declaration of Rights provision in its 2013 Constitution which has become a foundation upon which the protection and promotion of human rights in the country is anchored.¹³⁹ It ratified the UNCRC and the ICESCR in 1990 and 1991 respectively.¹⁴⁰ This implicitly means that the country is bound by the provisions of these international human rights instruments, and it is obliged to ensure that education in the country conforms to the stipulated standards.¹⁴¹ International human rights law applies at all times, although in situations of public emergencies, international law gives a leeway for state parties to derogate or limit the enjoyment of other rights to the extent strictly required by the threatening nature of the situation as it will be seen in the succeeding chapter.¹⁴²

2.7 Conclusion

Children’s right to education is far-reaching. Its promotion and protection lead to the protection and promotion of many other interconnected rights, and its denial is also a denial of numerous rights. Although the right to education for all children has been given legal protection under the UDHR, ICESCR, African Charter, the African Children’s Charter, the Education Act and the Constitution; rural children and schools have been neglected in Zimbabwe. This has been seen mostly in the above highlighted prevailing nature of rural schools and in the performance of rural children in public examinations. There is a need for the government to make special provisions for rural schools with the aim of stamping out prevailing inequalities between schools in rural and those in urban schools.

¹³⁶ n 135 above, para 14. See also UNICEF (n 126 above) 423.

¹³⁷ n 136 above, para 13.

¹³⁸ n 137 above, para 14.

¹³⁹ Chapter III of the Zimbabwean 2013 Constitution.

¹⁴⁰ Refworld ‘UN Committee on the Rights of the Child: State Party Report: Zimbabwe’ 12 September <https://www.refworld.org/docid/3ae6af88c.html> (accessed 23 October 2021). See also T Mude (n 36 above) 73.

¹⁴¹ CESCR General Comment (n 138 above) para 5. See also Kalantry (n 73 above) 261. See also KD Beiter (n 131 above) 2.

¹⁴² Mude (n 52 above) 72.

3. COVID-19 and rural children’s right to education

3.1 Introduction

The United Nations Committee on the Rights of the Child (CRC) defines emergency situations as diverse situations which can either be natural calamities or artificial events leading to an abrupt termination and impediment in the access to or interruption with the normal conditions of life such as children’s education.¹⁴³ Emergency situations range from wars, counterinsurgency and all types of natural disasters which can be floods, earthquakes, volcanic eruptions and pandemics.¹⁴⁴ All emergency situations negatively affect education systems by making its delivery strenuous.¹⁴⁵ There is an ongoing academic debate on whether the right to education can be subjected to a limitation in situations of emergencies since article 4 (limitation clause) of the ICESCR is not explicit.¹⁴⁶ This chapter is an analysis of the meaning of article 4 of the ICESCR in the context of the protection of children’s right to education in emergencies. This will be followed by an appraisal of the approach adopted by Zimbabwe in guaranteeing the protection of the right to education during the pandemic.

3.1.1 The role of education in emergencies

As already highlighted in the preceding chapter, the right to education is a *sui generis* human right. In situations of emergencies, the right to education restores a sense of ‘normality’ and it acts as a pillar of hope for the betterment of the future of affected children.¹⁴⁷ It serves as a source of emotional and psychological support especially to children who lost parents, guardians and family members to the crisis.¹⁴⁸ Education in a state of emergency equips children with coping and mental resilience skills against an emergency and in battling with future emergencies.¹⁴⁹ In spite of all these benefits derived from functional education systems in emergencies, education is normally the first service to be suspended and the last to be restored in emergencies.¹⁵⁰ The neglect of education emerges from the fallacy that education is not an immediate lifesaving social service in situations of emergency.¹⁵¹ Under-resourced schools and communities hardly cope in emergency situations, consequently, the quality of education

¹⁴³ Khoza (n 125 above) 11. See also the Committee on the Rights of the Child 49th Session ‘The right of the Child to education in emergency situations’ (2008) para 2.

¹⁴⁴ Khoza (n 143 above) 11.

¹⁴⁵ (n 144 above) 13. MJ Pigozzi (n 70 above) 1.

¹⁴⁶ See MJ Pigozzi (n 145 above) 2.

¹⁴⁷ M Sinclair ‘Education in emergencies’ (2007) 52. See also UN Committee (n 132 above) para 14, page 5. See also Pigozzi (146 above) 27-30.

¹⁴⁸ Sinclair (n 147 above) 52-53.

¹⁴⁹ The UN Refugee Agency ‘Education in emergencies’ 2. See also S Nicolai ‘Education in emergencies: A tool kit for starting and managing education in emergencies’ (2013) 6-8. See also A Anderson et al (n 41 above) 88.

¹⁵⁰ UNICEF ‘Education in emergencies’ <https://www.unicef.org/education/emergencies> (accessed 18 October 2021).

¹⁵¹ Right to Education ‘Education in emergencies’ <https://www.right-to-education.org/issue-page/education-emergencies> (accessed 18 October 2021).

provided in such areas is compromised and fail to meet children's fundamental needs.¹⁵² Sidelining education until the end of an emergency is tantamount to ensuring that children without alternative means of accessing learning might not attend school again, for the longer the time a child takes out of school, the less likely that they will return.¹⁵³

3.2 Limitation of the right to education in emergencies

The governments' obligation under the UNCRC, the ICESCR, the African Charter, the African Children's Charter and Zimbabwe's domestic laws to enhance the accessibility of free and compulsory primary education, as well as the availability of secondary education, might be a challenge in situations of emergencies; however, emergencies in themselves do not absolve state parties from these obligations.¹⁵⁴ Although the International Covenant on Civil and Political Rights (ICCPR) allows for a limitation of specified rights in situations of emergencies, the ICESCR does not explicitly limit the right to education.¹⁵⁵ The Committee on Economic, Social and Cultural Rights has not given guidance on how article 4 of the ICESCR, which is regarded as the limitation clause is to be interpreted. This has led to an ongoing debate among scholars on whether socio-economic rights can be subjected to a limitation in emergencies.¹⁵⁶ The general consensus is that education ought to be viewed as a precedence element of emergency aid.¹⁵⁷

Some scholars are of the view that socio-economic rights cannot be limited because of their strong connection with non-derogable right to life.¹⁵⁸ Limiting rights under the ICESCR should be considered as a measure of last resort, such a limitation must be determined by the law and compatible with the nature of the rights being limited with the goal of promoting the general welfare of the democratic society.¹⁵⁹ The Committee on Economic, Social and Cultural Rights' stance on the limitation of social, economic and cultural rights imprecise.¹⁶⁰ Other authors propose that in times of wars, natural disasters and other emergencies, state parties must be permitted to derogate or limit socio-economic rights in line with clearly set norms which will be applied without arbitrariness since the progressive realisation of these rights will be limited by the scarcity of resources.¹⁶¹

¹⁵² S Nicolai (n 149 above) 9.

¹⁵³ Nicolai (152 above) 9-10.

¹⁵⁴ (n 153 above) 6.

¹⁵⁵ See article 2(1) and article 4 of the CESC. See also van W Aardt 'COVID-19 school closures and the principles of proportionality and balancing' (2021) 6. See A Ponta 'Human rights law in the time of the Coronavirus' (2020) <https://www.asil.org/insights/volume/24/issue/5/human-rights-law-time-coronavirus> (accessed 17 October 2021).

¹⁵⁶ Nicolai (154 above) 6. See also Aardt (n 155 above) 6.

¹⁵⁷ Nicolai (n 156 above) 6.

¹⁵⁸ A Ponta (n 155 above)

¹⁵⁹ Ponta (n 158 above).

¹⁶⁰ A Muller 'Limitations to and derogations from Economic, Social and Cultural Rights' (2009) 258.

¹⁶¹ A Muller (n 160 above) 258.

It has always been an unchallenged norm for states to take scant measures when it comes to the provision of education or to invent substandard initiatives when children are stuck in emergencies; significant initiatives are normally taken by international organisations like UNICEF, UNESCO and other non-governmental organisations.¹⁶² However, the UN Committee on the Rights of the Child in its 49th ordinary session challenged that.¹⁶³ The Committee stated that there is no provision either under the UNCRC and the ICESCR which is a basis for introducing sub-standard educational measures in emergencies.¹⁶⁴ The access to children's right to basic education ought to be immediately, universally, freely and compulsorily fulfilled at the onset of an emergency.¹⁶⁵ This is in line with the World Conference on Education for All resolution that the educational necessities of children in emergency situations must not be left to be a developmental goal but rather be situated as a human rights agenda that must be fulfilled immediately and not at a later stage.¹⁶⁶ Although non-governmental and international organisations take charge in ensuring the provision of education in emergencies, it is still the primary responsibility of states parties to the UNCRC to ensure the accessibility of quality education to every child in situations of emergencies.¹⁶⁷ The European Court for Human Rights (ECtHR) stated that limitations imposed on the ICESCR should not be applied in a manner that absolutely limits or eliminate a right.¹⁶⁸

Any limitations to the right to education should align with the principle of proportionality and its substance (the substance of the right to education) should not be violated.¹⁶⁹ All imposed limitations must be foreseeable to those it is applicable and it must follow a reasonable purpose.¹⁷⁰ In the context of the COVID-19 pandemic, the benefits derived from the protection of the right to health should not outweigh the harm resulting from the adopted measures. Children's fundamental rights should be prioritised in the process.¹⁷¹ States are under an obligation to detect and respond to infectious diseases and at the same time balance the protection of public health with individual rights.¹⁷²

3.3 Zimbabwe's approach

Zimbabwe adopted a less stringent approach in its application of article 4 of the ICESCR. Soon after the declaration of COVID-19 pandemic as a national disaster in March 2020, the

¹⁶² Khoza (n 145 above) 8.

¹⁶³ (n 162 above) 8.

¹⁶⁴ Anderson (n 149 above) 97.

¹⁶⁵ (n 164 above) 98.

¹⁶⁶ UN Committee on the Rights of the Child (n above) para 4, page 7 & para 10.

¹⁶⁷ Sinclair (n 147 above) 53.

¹⁶⁸ Muller (n 161 above) 560-561.

¹⁶⁹ Kraljic (n 105 above) 35.

¹⁷⁰ (n 169 above) 35.

¹⁷¹ Aardt (n 155 above) 15-16.

¹⁷² (n 171 above) 7.

government of Zimbabwe enacted various laws which were to regulate the provision of services in the country for the containment of the virus.¹⁷³ Although article 4 of the ICESCR provides for the limitation of socio-economic rights in situations of emergencies, Zimbabwe exhibited a commendable level of resilience in respecting and protecting the right to education, which, of course, had its own imperfections. What follows is a discussion of laws that had a direct impact on the children's enjoyment of their right to education, while the next part will highlight the positive results derived from the adopted alternative learning methods.

3.3.1 Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order, 2020

Section 4 of the Public Health (COVID-19 Prevention, Containment and Treatment) National Lockdown) Order, 2020 (hereinafter Statutory Instrument 83 of 2020) mandated the closure of all educational institutions from primary to tertiary level.¹⁷⁴ The contravention of this provision amounted to a criminal offence which attached a fine and or imprisonment.¹⁷⁵ Following the coming into force of the Statutory Instrument 83 of 2020, schools had to close on 24 March until October 2020 as a measure of minimising the children's exposure to the virus as they are prone to vulnerability in situations of emergencies.¹⁷⁶ As already seen in chapter 1, different strategies were adopted by the Ministry of Primary and Secondary Education (MoPSE) for children to continue learning at home.

3.3.2 The continuation of learning during the pandemic

In response to the educational challenges brought by the COVID-19, the Ministry of Primary and Secondary Education (MoPSE) partnered with national, regional and international organisations to evade the replication of efforts and resources in mitigating the impacts of the pandemic on education.¹⁷⁷ In April 2020, the Southern African Development Community (SADC) and the United Nations Education, Scientific and Cultural Organisation (UNESCO) entered into an agreement under the theme 'Learning-Never-Stops'.¹⁷⁸ Through this partnership, SADC countries are to be assisted in their invention of distance learning solutions so as to accelerate the development of more open and flexible educational systems.¹⁷⁹ In line with the guidelines incorporated in the Learning Never Stops agreement, the Zimbabwe Education Cluster COVID-19 Preparedness and Response Strategy was developed and adopted

¹⁷³ M Dzobo 'COVID-19: a perspective for lifting lockdown in Zimbabwe' Pan African Medical Journal (2020) 2.

¹⁷⁴ See section 4(1) (e) of the Statutory Instrument 83 of 2020.

¹⁷⁵ See Statutory Instrument Act (n 174 above) section 4(4) (a).

¹⁷⁶ Bhaiseni (n 117 above) 5.

¹⁷⁷ Southern African Development Community News (SADC) <https://www.sadc.int/news-events/news/sadc-and-unesco-sign-agreement-ensure-learning-never-stops/> (accessed 13 September 2021).

¹⁷⁸ SADC News (n 177 above).

¹⁷⁹ (n 178 above).

by the Ministry of Primary and Secondary Education (MoPSE).¹⁸⁰ This strategy is centred on three pillars: ensuring the continuation of quality education; maintaining the well-being of children and teachers during the pandemic by providing support to school stakeholders in the prevention of coronavirus transmission and aiding the safe return of teachers and children at the end of the pandemic.¹⁸¹ This response strategy shaped the type of alternative learning inventions that Zimbabwe adopted. These included radio and television lessons, online learning and the provision of printed learning material.¹⁸²

3.3.3 The positive impacts of radio and television lessons

As much as the benefits derived from a physical classroom setup cannot be compared to virtual learning, radio and television lessons played a critical role in ensuring that children who could be reached are kept ‘abreast’ with their education, particularly during the phase when the country was on total lockdown.¹⁸³ As shown in the preceding chapters that the use of radio as a teaching and learning tool in Zimbabwe dates back to the 1980s although it underwent a transformation which brought it to a collapse since 2001.¹⁸⁴ Because of its affordability, the capability of reaching a greater audience and the minimised need for technical know-how from users, it is predicted that this method reached a greater audience compared to other alternatives that required an internet connection.¹⁸⁵ Primary subjects like English, Science and Technology, Heritage studies, Mathematics and English were daily disseminated on the national radio channel.¹⁸⁶ The MoPSE, in partnership with UNICEF, Education Cannot Wait (ECW) and Global Partnership for Education facilitated the creation of audios which were to be broadcast from June 2020.¹⁸⁷ Two hundred and fifty receivers had already been distributed in September 2020 under this initiative.¹⁸⁸ UNICEF, in collaboration with GPE and ECW, donated three thousand one hundred and sixty-seven radio sets in assisting children from marginalised areas to have access to education during the pandemic.¹⁸⁹ To cater for children from areas with poor or without radio signals, the donated radios were distributed with USBs to enable children to

¹⁸⁰ Education Cluster: Zimbabwe COVID-19 preparedness and response strategy (2020) 1-26. See also Mukute et al (n 24 above) 2.

¹⁸¹ Education Cluster (n 180 above) 3.

¹⁸² (n 181 above) 11.

¹⁸³ Global Partnership for Education ‘Zimbabwe: Radio lessons keeps children engaged in learning’ 29 March <https://www.globalpartnership.org/blog/zimbabwe-radio-lessons-keep-children-engaged-learning> (accessed 24 October 2021).

¹⁸⁴ J Mokwetsi ‘Radio lessons provide much needed continuity in learning amid the COVID-19 pandemic’ (3 September 2020) <https://www.unicef.org/zimbabwe/stories/radio-lessons-provide-needed-continuity-learning-amid-covid-19-pandemic> (accessed 24 October 2021). See also AS Chisaka ‘The rise and fall of educational radio in Zimbabwe: The forgotten medium and technology’ (2012) 1-3.

¹⁸⁵ Global Partnership for Education (n 183 above).

¹⁸⁶ Global Partnership for Education (n 185 above).

¹⁸⁷ J Mokwetsi (n 184 above).

¹⁸⁸ The Zimbabwe Mail ‘Zimbabwe receives 3000 radio sets for lessons’ (29 April 2021) <https://www.thezimbabwemail.com/education/zimbabwe-receives-3-000-radio-sets-for-lessons/> (accessed 24 October 2021).

¹⁸⁹ The Zimbabwe Mail (n 188 above).

listen and replay pre-recorded lessons.¹⁹⁰ The donated radios might have been relatively limited compared to Zimbabwe's rural population, however, the efforts taken by the MoPSE in collaboration with UNICEF and the named partnering organisations to meet its domestic, regional and international obligations on the protection of children's right to education at all times are creditable.

3.3.4 Internet platforms

The officially adopted free online learning platforms are Ruzivo and the Zimbabwe Learning Passport.¹⁹¹ Ruzivo is an online primary and secondary school free learning platform that was adopted in 2019 but its official recognition by the MoPSE occurred in 2020 after the outbreak of the pandemic with the aim of making quality educational material easily and freely accessible to rural and other technologically disadvantaged learners.¹⁹² The Learning Passport was originally designed by the United Nations International Children's Emergency Fund (UNICEF) in collaboration with Microsoft to provide education for displaced and refugee children.¹⁹³ The platform has been gaining recognition in many countries but it was only adopted by the Zimbabwe MoPSE in April 2021.¹⁹⁴ The Zimbabwe Learning Passport closely resembles Ruzivo platform as a freely accessible online library that contains primary, secondary and high school national curriculum learning material.¹⁹⁵ For children with gadgets, electricity and internet connection, these online learning platforms ensured that their education is not halted. The official use of Ruzivo platform has aided teachers' exposure to the online methods of teaching and enhanced their teaching skills.¹⁹⁶ The in-built structures of the platforms (LP and Ruzivo) promote independent learning, thereby, facilitating the intellectual development of children.¹⁹⁷ Statistics show that the platforms are gaining more recognition and acceptance outside the country's major cities, like in Gwanda and Binga.¹⁹⁸

¹⁹⁰ (n 189 above).

¹⁹¹ Education Cluster (n 182 above) 11.

¹⁹² R Nhongo & P Tshotsho 'The shortcomings of emerging emergency remote teaching in rural settings of Zimbabwe during COVID-19 school closures: lessons from China's experience' (2021) 5.

¹⁹³ Relief Web 'Zimbabwe launches an innovative learning platform for children and teachers' (2021) <https://reliefweb.int/report/zimbabwe/zimbabwe-launches-innovative-learning-platform-children-and-teachers> (accessed 11 September 2021).

¹⁹⁴ Relief Web (n 193 above).

¹⁹⁵ (n 194 above).

¹⁹⁶ P Maramba & SS Mazongonda 'Formative evaluation on acceptance and usage of 'e-learning' platforms in developing countries: A case study of Zimbabwe' *African Evaluation Journal* (2020) 8 <https://aejonline.org/index.php/aej/article/view/375/931> (accessed 25 October 2021).

¹⁹⁷ See Ministry of Primary and Secondary Education Zimbabwe's Learning Passport <https://mopsezv.learningpassport.unicef.org/> (accessed 25 October 2021). P Maramba & SS Mazongonda (n 196 above). See also Ruzivo <https://www.ruzivodigitallearning.co.zw/product/> (accessed 25 October 2021).

¹⁹⁸ Higherlife Foundation 'Ruzivo smart learning reinventing teaching in Zimbabwe: A teachers perspective' <http://oldsite.higherlife.foundation.com/ruzivo-smart-learning-reinventing-teaching-in-zimbabwe-a-teachers-perspective/> (accessed 25 October 2021).

3.3.5 Other alternative digital learning platforms

Zimbabwe's leading telecommunication companies like Econet Wireless facilitated the use of alternative platforms such as Cassava Smartech, Akello Digital Classroom and E-Library where primary and secondary school students could download educational content which is in line with the national curriculum and the systems were approved by the Zimbabwe School Examination Councils (ZIMSEC).¹⁹⁹ This method also played a greater role in providing a variety of options from which children with gadgets, electricity and internet connection can choose from in accessing learning material. Most tertiary colleges and universities were maximising the use of emails, Google Classroom, Zoom and Skype as recommended by UNESCO.²⁰⁰

3.4 Conclusion

Soon after the adoption and coming into force of Zimbabwe's Statutory Instrument Act 83 of 2020 which mandated the closure of schools as a measure of mitigating the spread of the COVID-19 virus, the MoPSE announced an instantaneous shift from a physical classroom setup to a virtual classroom. The primary and secondary curriculum content was made available through radio and television, free and paid online learning platforms like LP, Ruzivo and Zoom. These response measures were highly beneficial to children in urban areas where there is electricity, stable internet connection and more developed ICT infrastructure. Zimbabwe opted for a less stringent interpretation of article 4 of the ICESCR to ensure that both the right to health and the right to education is respected, promoted and protected from the onset of the pandemic. These alternative teaching and learning methods had their own limitations as it will be seen in the next chapter.

¹⁹⁹ K Matimire 'Digital-shy Zimbabwe's schools feel the brunt of COVID-19' 3.

²⁰⁰ K Matimire (n 199 above) 3.

4. Limitations of digital learning in rural areas of Zimbabwe

4.1 Introduction

The COVID-19 pandemic transformed the education sector from a physical set-up to online and digital teaching and learning platforms.²⁰¹ Regardless of the fact that digital learning has been partially in use in some tertiary institutions in the country for a long time; primary and secondary schools were not making use of it much until the outbreak of the pandemic.²⁰² As already highlighted in chapter 3 above, the commonly used teaching and learning platforms and tools during total lockdown (and that are presently in use) included Zoom, Google Meet, Google Classroom, email, Microsoft Teams, Ruzivo, the Learning Passport, radio and television.²⁰³ In principle, the alternative methods were commendable and highly beneficial to children from areas with more developed ICT infrastructure. It is argued, however, that in rural areas, this transition was initiated without a proper assessment of the country's technological infrastructural development. Poor technological infrastructure in most rural parts of the country, by default, threw most children out of the education system during lockdown and it deprives them of the ongoing blended learning approach.²⁰⁴ What follows is an assessment of the implications brought by the closure of schools and the factors which hindered the effectiveness of digital teaching and learning tools adopted by the MoPSE in necessitating countywide availability and accessibility of education during the lockdown.

4.2 Impacts of closing schools on children

When schools are open, children are shielded from early sexual activity, sexual abuse and exploitation, drug and alcohol use and abuse, child labour and hunger.²⁰⁵ Children's access to food and nutrition became a challenge after the closure of schools. Soon after the initiation of the land reform scheme in 2000, which was followed by economic decline, Zimbabwe has been facing acute food shortages.²⁰⁶ The land reform scheme reduced agricultural production and was later exacerbated by the unreasonable price regulation stance taken by the government compelling producers to sell food in 'black markets' at exorbitant prices.²⁰⁷ About a 4.3million people in rural areas have been declared to be food insecure and families are struggling to

²⁰¹ Hove & Dube (n 30 above) 2.

²⁰² n 201 above, 2-6.

²⁰³ (n 202 above) 2. See also L Sibanda & J Mathwasa 'Perceptions of teachers and learners on the impact of COVID-19 pandemic lockdown on rural secondary school female learners in Matobo District, Zimbabwe' (2020) 15 *Journal of Social Sciences Studies* 15.

²⁰⁴ Hove & Dube (n 203 above) 2.

²⁰⁵ Dzinamarira (n 9 above) 1. See also UN Refugee Agency 'Education in emergencies' 4. See also S Kraljic (n 105 above) 39.

²⁰⁶ S Tailor 'Examining the role that school feeding plays as a protective form of social protection in the nutrition of children and their households: A case study of Zimbabwe' (2010) 11.

²⁰⁷ S Tailor (n 206 above) 11.

provide for their children.²⁰⁸ At least 34 per cent of the country's population (in rural and areas) was considered to be acutely starving.²⁰⁹ The imposition of lockdown worsened the situation as many people lost their sources of income and food became more expensive, leading to food insecurity and nutritional deficiencies.²¹⁰ In Zimbabwe, the school feeding programme is considered to be a 'social protection net' for children from homes where there is food scarcity.²¹¹ When schools were closed, it meant that children could not access food. Research reveals that other children had to seek for forms of employment for them to gain means of accessing food.²¹² This starvation-child labour crisis was not only peculiar to Zimbabwe. Research also shows that in Kenya, children from low-income households had to engage in money-making activities to be in a position to acquire food and in the process, they were compelled to forfeit their education.²¹³ Although section 19, 81(e) and (f) of the Zimbabwean Constitution obliges the state to take legislative and other measures to protect children from exploitative labour that have the potential of harming their social development and education, the Vendors Initiative for Social and Economic Transformation in Zimbabwe statistics show that above 20 000 children who are between the age of 10 and 12 have become vendors since the outbreak of the pandemic to help support their families at the cost of their education.²¹⁴ When schools are open, such catastrophes are curtailed.

The closure of schools also aggravated children's vulnerability to sexual exploitation, early sexual activities, leading to unplanned pregnancies as well as early and or forced child marriages.²¹⁵ A study was conducted to determine the extent to which the COVID-19 pandemic lockdown measures impacted girls in rural secondary schools under Matobo Rural District.²¹⁶ It was revealed that there are adults in the community who requested sexual favours in exchange for data bundles and to be borrowed smartphones in order to attend lessons, others got engaged in prostitution for the same cause.²¹⁷ Lack of peer to peer interaction denied a safe space for abused children to share information relating to their sexual abuse.²¹⁸ The closure of schools confined girls from abusive families with their abusers and there was no information provided

²⁰⁸ DG Gwenzi 'More children in Zimbabwe are working to survive: what's needed' 11 November <https://theconversation.com/more-children-in-zimbabwe-are-working-to-survive-whats-needed-149033> (accessed 12 September 2021).

²⁰⁹ Tailor (n 207 above) 12.

²¹⁰ Committee on World Food Security 'Impacts of COVID-19 on food security and nutrition: developing effective policy responses to address the hunger and malnutrition pandemic' (2020) 1-2.

²¹¹ Tailor (n 1208 above) 32.

²¹² DG Gwenzi (n 208 above).

²¹³ C Jelimo 'Impact of Covid-19 on the right to education in Kenya' 1 September <https://www.right-to-education.org/blog/impact-covid-19-right-education-kenya> (accessed 24 October 2021).

²¹⁶ Sibanda (n 203 above) 17.

²¹⁷ n 216 above, 21.

²¹⁸ n 217 above, 29.

on how the victims of violence could seek solutions since movement was tightly regulated.²¹⁹ A significant number of girls were reported to have eloped to boyfriends, while others were reported to have been given to marriage early and without their consent.²²⁰ A similar situation was also reported in Kenya in that lack of means of accessing education led to early sexual activities among children which eventually contributed to loss and disruption of their learning.²²¹

4.3 Accessibility of technological gadgets in rural areas

Digital rights are entrenched as fundamental rights in the Constitution of Zimbabwe.²²² It has been asserted that all fundamental human rights require equal protection, there should be no distinction between the rights that are exercised online and those that are not.²²³ The protection afforded to offline rights should be equally exhibited in online rights.²²⁴ Children's right to online education was not equally accessible to children in rural areas mainly due to poorly developed Zimbabwean rural ICT infrastructure, high data costs and shortage of e-learning hardware like smartphones, tablets and computers.²²⁵ For instance, the cost of uncurbed monthly data bundles in Zimbabwe as of June 2020 was US\$50, the amount which was slightly above the monthly salary of civil servants in the country, making it out of reach for most rural children.²²⁶

Afrobarometer (a pan- African research network) conducted a series of interviews in all provinces of Zimbabwe between May 2017 and July 2018 to determine the level of the rural-urban digital divide.²²⁷ Their findings paint a picture of the level of accessibility and use of technology in both rural and urban areas. From their research; 51% of households in urban areas own computers compared to 7% in rural areas; the ownership of radios was prevalent in both rural and urban areas with only 27% in rural areas who indicated that they did not own a radio.²²⁸ Cellphone services were available in all urban areas which were under study while 15% in rural areas did not have cellphone service coverage, from 43% of interviewees in rural areas who had cellphones, only 28% had cellphones that could access the internet.²²⁹ Seventy-four per cent of rural households indicated that they do not own a television compared to 12% in urban

²¹⁹ E Ndhlovu & A Tembo 'Gendered socio-economic implications of the COVID-19 pandemic in rural Zimbabwe' (2020) 29.

²²⁰ Ndhlovu & Tembo (n 183 above) 31.

²²¹ (n 220 above) 26. See also Sibanda (n 216 above) 17.

²²² See section 3(c) of the Zimbabwe Constitution, 2013.

²²³ K Matimairé 'Digital-shy Zimbabwe's schools feel the brunt of COVID-19' 5.

²²⁴ Matimairé (n 223 above) 5.

²²⁵ (n 224 above) 4-5.

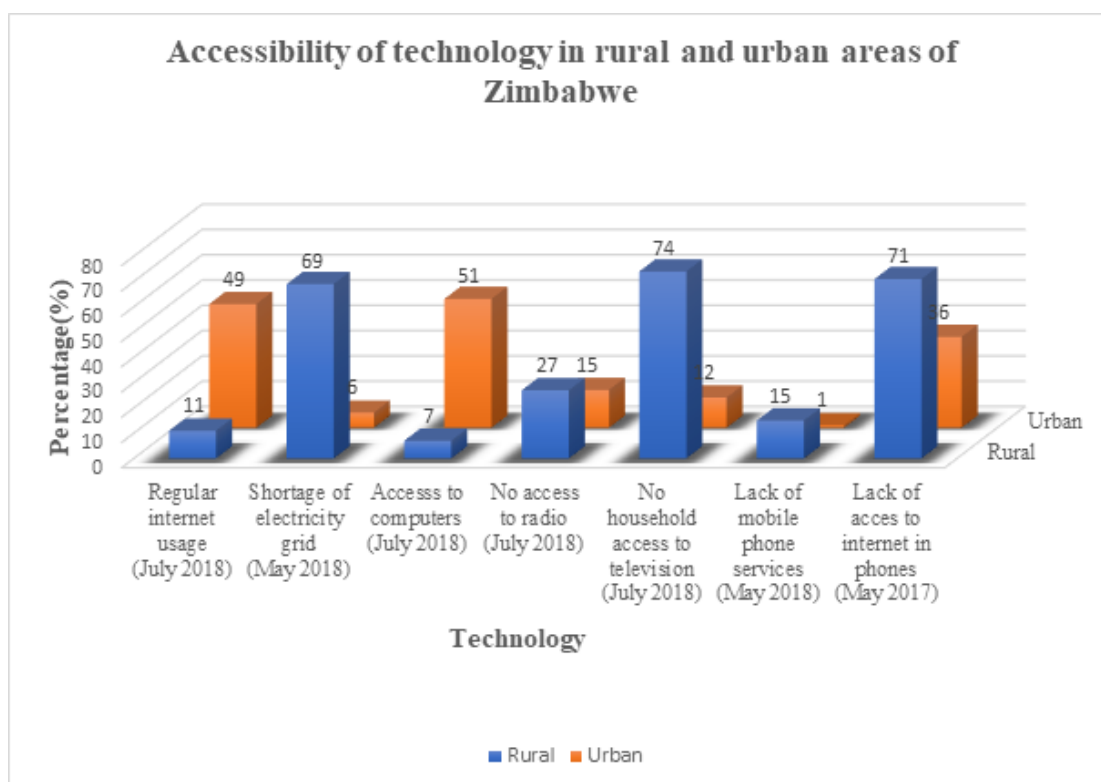
²²⁶ Matimairé (n 225 above) 5.

²²⁷ S Moyo-Nyende & S Ndoma 'Limited internet access in Zimbabwe a major hurdle for remote learning during pandemic' (2020) 1-11.

²²⁸ S Moyo-Nyende & S Ndoma (n 227 above) 2.

²²⁹ (n 228 above) 2.

areas.²³⁰ This research shows that, if effectively used, radios and cellphones as means of teaching and learning can reach a higher percentage of rural areas compared to the use of a television.²³¹ While 90% of Zimbabweans own cellphones, not all of their cellphones can access the internet. In urban areas, the level of internet access is 99% while a total of seven rural zones (15%) do not have mobile phone services.²³² Although the referenced statistics might have improved between 2017 and 2021, this information indicates that a large percentage of rural children were unable to access online education.²³³ Urban dwellers use the internet more often compared to rural areas where some of the respondents revealed that they only use the internet a few times weekly.²³⁴ There is a likelihood of exponential growth in the use of the internet in the African continent, but, Zimbabwean rural areas are still lagging behind.²³⁵ The limited availability of electricity connection in rural areas further amplify the challenge. Sixty-nine percent of respondents from largely rural provinces indicated that they did not have electricity connection.²³⁶ The following is a graphical representation of Afrobarometer’s findings:



²³⁰ n 229 above, 2.

²³¹ n 230 above, 4.

²³² n 231 above, 4.

²³³ n 232 above, 6.

²³⁴ n 233 above, 7.

²³⁵ n 234 above, 7.

²³⁶ n 235 above, 8.

4.3.1 ICT Infrastructure

Radio and television learning was adopted in the country in the early 1980s and were commonly referred to as the ‘schools broadcasts’.²³⁷ The pandemic intensified its use and made it an official platform where primary school subjects like indigenous studies, Heritage Studies, English, Mathematics and Science and Technology are being taught.²³⁸ Each province was given specified subjects to produce videos and audios which were later sent to the national level for broadcasting.²³⁹ The initiative was a commendable stride as it kept most children in urban areas abreast with their education. However, an objective assessment of the ICT infrastructure in rural areas by the MoPSE should have prompted inventions that are peculiar to rural setups. The MoPSE’s miscalculation brought a tremendous educational loss on rural children. For radio and television lessons to be accessible and available, there is a need for frequency boosters and receivers which, at present, are sparsely available in most rural parts of the country.²⁴⁰ In areas like Binga, Plumtree, Beitbridge and other rural outskirts, the radio and television boosters and receivers have never been received.²⁴¹ This impliedly means that children in the named areas were circumstantially and entirely discriminated against in the enjoyment of their right to education from March to October 2020 and during the first months of 2021, the period when the country was on total lockdown.

The Zimbabwe National Policy for Information and Communication Technology (ICT) of 2016 acknowledges that broadband coverage is well-off in urban areas compared to rural areas where it is still excessively low.²⁴² Consequently, the urban-rural digital divide in the country is wide.²⁴³ Although the policy’s vision was to create a ‘knowledge-based society with universal connectivity by 2020’, the COVID-19 outbreak unveiled that the policy has not been implemented in most targeted parts of the country. In rural areas, most government schools do not have electricity.²⁴⁴

4.3.2 Technical know-how

The Zimbabwean primary and secondary education curriculum did not include ICT until 2015.²⁴⁵ As a result, the level of digital literacy at the grassroots level is very low to stimulate service uptake and usage, especially in rural areas.²⁴⁶ Most researchers are in agreement that the lack of technical know-how from parents, children and teachers on the use of gadgets to

²³⁷ Moyo-Nyende & Ndoma (n 236 above) 10-11.

²³⁸ Matimairi (n 226 above) 11.

²³⁹ n 237 above, 10.

²⁴⁰ n 239 above) 4-5.

²⁴¹ n 240 above, 10.

²⁴² Zimbabwe National Policy for Information and Communication Technology (ICT) (2016) 14.

²⁴³ Zimbabwe ICT Policy (n 242 above) 14.

²⁴⁴ GY Kanyango (n 107 above) 73. See also L Zinyemba et al (n 40 above) 227.

²⁴⁵ Zimbabwe ICT Policy (n 243 above) 15. See also the preamble of the Zimbabwe Ministry of Primary and Secondary Education ‘Curriculum framework of primary and secondary education 2015-2022’.

²⁴⁶ Zimbabwe ICT Policy (n 2245 above) 15.

access online lessons has hampered the use of designed platforms like Ruzivo and the Learning Passport.²⁴⁷ It also emerged that parents have not fully embraced online learning as they believe that their children are vulnerable to online abuse.²⁴⁸ These parental fears on the safety of children online are justified by the fact that Zimbabwe has scant legislation designed to shield children from online abuse and exploitation.²⁴⁹ The blended teaching and learning approach will require the enactment and adoption of legislation to guarantee the online safety of children.²⁵⁰ Some children were in conflict with parents who felt that their children were evading household chores by spending more time on their phones when they were doing lessons online.²⁵¹ Parents and guardians are also in need of orientations to fully understand and embrace the dynamics of online learning so that they can give their children full support in their online and physical knowledge acquisition.

4.3.3 Limitation of resources

Poverty is one of the major hindrances in the accessibility of online education in rural areas. It is estimated that half of the people in the rural areas of Zimbabwe do not own digital devices.²⁵² It emerged that there are rural schools that were once beneficiaries of computer donations from the government, however, those computers have never been utilised because there were no further steps taken to train teachers on how to use them.²⁵³ From the study conducted in Matobo Rural District, parents and guardians who have smartphones revealed that they could not afford data bundles for online learning.²⁵⁴ These findings are justified by the fact that the cost of unlimited monthly data is approximately US\$50 across all networks or internet service providers.²⁵⁵ Rural families depend on peasant farming. Such exorbitant data bundles charges are beyond reach to them. From a study conducted by Zinyemba et al, teachers also highlighted that data was too expensive for them to present lessons even on less data consuming platforms like WhatsApp.²⁵⁶ Those in urban areas relied on Wi-Fi connection from their workplaces, while students depended on night surfer bundles.²⁵⁷ Consequently, learners who had gadgets had to miss midday lessons were they had a chance to interact with their teachers.²⁵⁸ The provision of supplementary learning material like readers, workbooks, Open and Distance

²⁴⁷ Sibanda (n 216 above) 23. See also Mukute et al (n 23 above) 2.

²⁴⁸ Sibanda (n 247 above) 29.

²⁴⁹ OM Sibanda 'Protection of children's rights to privacy and freedom from online exploitation and abuse in Southern Africa (a case study of South Africa and Zimbabwe), unpublished master's thesis, University of Pretoria, 2020, 9-15.

²⁵⁰ OM Sibanda (n 249 above) 13.

²⁵¹ Zinyemba et al (n 244 above) 227.

²⁵² OM Sibanda (n 250 above) 34.

²⁵³ L Zinyemba et al (n 251 above) 226.

²⁵⁴ Sibanda (n 240 above) 29.

²⁵⁵ Hove & Dube (n 301 above) 8.

²⁵⁶ Zinyemba et al (n 253 above) 227

²⁵⁷ (n 256 above) 227.

²⁵⁸ n 257 above, 227.

Learning Modules would have been relatively well-suited for the needs of rural children. Regrettably, teachers who were interviewed in Matebeleland South and North Provinces indicated that they have not heard of any school that has received the printed lessons although the Ministry had promised to send printed material to schools where there are no radio waves.²⁵⁹

4.3.4 Publicity

Research shows that rural teachers are not aware of the two officially adopted online learning platforms (Ruzivo and Learning Passport), and those who got to know about them could not navigate how they work.²⁶⁰ This is a sign that teachers have not been empowered to effectively shift to online learning. To further amplify the challenge, the radio broadcasts were meant to target a greater number of learners than online platforms, however, radio broadcasts excluded lessons for grade 4-6 pupils in 2020.²⁶¹ The effectiveness of these radio stations is also thwarted by the fact that the channels are not solely dedicated to broadcasting educational content, they are also used for news and entertainment.²⁶² This lack of consistency distracts learners' focus and thereby limits the possibilities of these methods in yielding positive results.

4.4 Lessons from the African Declaration on Internet Freedoms

The African Declaration on Internet Rights and Freedoms (the Declaration) is a source of a compass in member states' regulation of the internet and use of ICT.²⁶³ Principles 2 and 10 speak to the accessibility and affordability of the internet to all persons without discrimination, with the inclusion of marginalised groups.²⁶⁴ If Zimbabwe is to establish a human rights-based countrywide e-learning system, it must draw inspiration from this Declaration.²⁶⁵ Zimbabwe is falling short in three main areas in making internet rights a reality; technological infrastructure, technical know-how and financial resources for a fully functional e-learning system to be developed. The Declaration provides guidance on how to make internet rights and freedoms a reality in the country's education sector for the benefit of children in both rural and urban areas.

4.5 Conclusion

The COVID-19 pandemic exposed how acute social service provision schemes in rural areas had been dysfunctional over countless years. The uniformity of the adopted COVID-19 response strategies in ensuring continuity of education during the pandemic in Zimbabwe do not reckon with the prevailing circumstances in the rural parts of the country.

²⁵⁹ R Nhongo & P Tshotsho (n 192 above) 8.

²⁶⁰ n 259 above, 5.

²⁶¹ n 260 above, 7.

²⁶² n 261 above, 7.

²⁶³ African Declaration on Internet Rights and Freedoms.

²⁶⁴ See African Declaration on Internet Rights and Freedoms Principles 2 & 10.

²⁶⁵ K Matimaire (n 199 above) 4.

Underdevelopment of ICT infrastructure, lack of electricity, exorbitant data charges are the key factors that hampered the uptake and effectiveness of digital and online teaching and learning in rural areas. Subsequently, children with no access to online learning had to wait close to a year to return to school, and the longer the time a child takes out of school, the more difficult it is for them to go back to school. Children's right to quality education is not forfeited in emergencies since it acts as a tool for protecting children against emotional, mental, physical, psychological harm as well as the development of the child. Its core principles must be protected in and out of emergencies. As reiterated by the United Nations Committee on the Rights of the Child, in all stages of an emergency (emergency preparedness, reconstruction and post-emergency stage), states should provide for the right of every child to education without discrimination.

5. Recommendations and conclusion

5.1 Introduction

The strategies at the stage of building back in response to the devastation of a crisis should be founded on the likelihood that the crisis can be prolonged or re-occur.²⁶⁶ It has been proposed that an emergency situation should be viewed as an opportunity to positively transform education systems in line with the vision of the World Conference on Education for All.²⁶⁷ The initiatives adopted in realising this goal should not be a provisional measure that will come to an end at the end of the crisis, but it should be designed to extend beyond a crisis, the education system should be remodeled instead of resumed.²⁶⁸ The goal should not be the dissolution of schools, but the creation of a hybrid, flexible and resilient education system which will be a balance of both physical and online classes with the ability to fully function in and out of an emergency situation for the benefit of ‘all children’ in spite of their geographical location.²⁶⁹ The promise of ‘building back better’ should have the right to education as a central pillar, not as merely a good policy but a binding international human rights law obligation.²⁷⁰ The following recommendations are meant to be the foundation upon which the Zimbabwean government can shape its resilient, enduring and circumstantially relevant education system.

5.2 Recommendations

The role of digital teaching and learning techniques in enhancing the accessibility of education has not been extensively explored in the context of Zimbabwe. The following recommendations suggest ways in which balancing countrywide physical and digital education can address challenges faced by children in rural areas in the enjoyment of their right to education.

5.2.1 To the Ministry of Primary and Secondary Education

- I. The entrenchment of ICT in the 2015-2022 primary and secondary education curriculum should be seriously executed. Put differently, E-learning is not to be treated as a ‘luxury’. It should become a norm that is instilled to children and practised as a basic human right.²⁷¹ The MoPSE should embrace, spearhead and be infused in this vision if ever other sectors of the economy are to co-operate.

²⁶⁶ UN Refugee Agency ‘Education in emergencies’ 6.

²⁶⁷ MJ Pigozzi (n 145 above) 4.

²⁶⁸ (n 267 above) 4.

²⁶⁹ JR Khalidi & GL Wan Chi ‘Building back better from unprecedented changes in education’ (2021) 3. See also J Mokwetsi ‘Radio lessons provide much needed continuity in learning amid the COVID-19 pandemic’ (3 September 2020) <https://www.unicef.org/zimbabwe/stories/radio-lessons-provide-needed-continuity-learning-amid-covid-19-pandemic> (accessed 24 October 2021).

²⁷⁰ S Fredman ‘Human rights approach: The right to education in the time of COVID-19’ (2021) 3.

²⁷¹ M Jantjies (n 41 above).

- II. Without motivated teachers, any initiatives requiring their full participation will be a vain proposal. The MoPSE should restore the status and dignity of teachers in government schools. This can be achieved through the provision of market-competitive salaries and improve their terms of employment.²⁷² Considering that most teachers were trained prior to the incorporation of ICT in the school curriculum, there is a need for them to be equipped with digital and online teaching skills.²⁷³
- III. Resources must be allocated to meet the educational needs of rural children.²⁷⁴ Currently, the country's educational system is underfunded (the budget stands at 13%). There is a need for the budget to align with international regulations, which are, the Dakar Framework for Action. The Dakar Framework for Action set the budget at 20% and that is supposed to be the Ministry's budget if countrywide quality education is to be accessible and available to all children at all times.
- IV. Provinces and districts are the closest to the targeted population groups and they are better placed in identifying ways of making digital and e-learning a reality. For that reason, they should be used as key players in the adoption and implementation of e-learning policies.²⁷⁵
- V. There is a need for the engagement of non-governmental organisations (NGOs), international organisations, communities, parents and guardians as partners in inventing contextually relevant means of increasing the uptake of e-learning.²⁷⁶
- VI. The Ministry of Primary and Secondary Education should have a national education emergency fund budget that can always be accessed to focus on uplifting the quality of education rather than simply constructing schools.²⁷⁷
- VII. City and community halls together with school libraries should be supplied with computers and internet access.²⁷⁸
- VIII. Each and every rural school must have electricity and a computer lab where online research can be conducted and children are trained on how to use computers.
- IX. Communities are the specialists in understanding the needs of their children better, building back better will require their inclusion in all critical stages of designing and implementing solutions.²⁷⁹

²⁷² Marist International Solidarity Foundation (n 96 above) 4.

²⁷³ T Vandeyar (n 41 above) 3. See also Marist International Solidarity Foundation (n 256 above) 5.

²⁷⁴ M Sinclair (n 167 above) 54.

²⁷⁵ Vandeyar (n 273 above) 8.

²⁷⁶ S Nicolai (n 154 above) 11-12.

²⁷⁷ UN Committee on the rights of the child (n 41 above) para 17, page 6.

²⁷⁸ MISA Zimbabwe 'Internet access and affordability in Zimbabwe' 28 July <https://zimbabwe.misa.org/2021/07/28/internet-access-and-affordability-in-zimbabwe/> (accessed 26 October 2021).

²⁷⁹ S Nicolai (n 276 above) 14.

- X. There is need for the invention of catch-up classes in rural schools for children to return to school meaningfully and effectively.²⁸⁰
- XI. The rural-urban digital divide extends to the presentation of content in online learning platforms. Ruzivo and LP are mainly presented in English, which is the second if not third language to the majority of Zimbabwean citizens. There is a need for the localization of content in these learning platforms through translating them to local languages to facilitate comprehension.²⁸¹
- XII. Technical support services (ICT technicians) should be readily available in schools.
- XIII. Teachers need to be progressively trained to monitor children’s attendance and reduce drop-outs and also provide assistance to children who might have lost parents or guardians to the virus.²⁸²
- XIV. The ministry should co-operate and strengthen relations with Non-Governmental Organisations (NGOs) working on children’s right to education as well as international organisations with educational proficiency like UNICEF and UNESCO.²⁸³
- XV. Ensure the fair distribution of state resources in rebuilding the country's education system.²⁸⁴
- XVI. There is no need to make school uniforms compulsory in emergency situations. Clothes must suffice for a child to attend school. Local communities should be encouraged to donate clothes to children from most disadvantaged families and schools can liaise with donors to cater for such children.²⁸⁵
- XVII. Eliminate payment of levies in primary school to make education ‘freely accessible’ principally in rural areas.
- XVIII. Create a government-led emergency education committee to re-strengthen educational administration from national to the provincial and local level and to equip all national educational sectors with core equipment for ‘building back better’.²⁸⁶
- XIX. Provision of digital literacy lessons to teachers, children, parents, guardians.²⁸⁷
- XX. Syllabus material must be available and accessible both online and offline.
- XXI. Rural schools libraries should have access to the internet.²⁸⁸

²⁸⁰ UN Refugee Agency ‘Education in emergencies’ 3. See also JR Khalidi (n 41 above) ‘Building back better from unprecedented changes in education’ (2021) 5.

²⁸¹ South African Department of Education ‘Draft white paper on education: Transforming learning and teaching through ICT’ (2003) para 1.7.

²⁸² UN Committee on the rights of the child (n 106 above) para 47, page 12.

²⁸³ UN Refugee Agency ‘Education in emergencies’ (2016) 7.

²⁸⁴ S Fredman ‘Human rights approach: The right to education in the time of COVID-19’ (2021) 2.

²⁸⁵ M Sinclair (n 274 above) 53- 54.

²⁸⁶ (n 285 above) 54.

²⁸⁷ K Matimairé (n 238 above) 7.

²⁸⁸ MISA Zimbabwe ‘Internet access and affordability in Zimbabwe’ 28 July <https://zimbabwe.misa.org/2021/07/28/internet-access-and-affordability-in-zimbabwe/> (accessed 26 October 2021).

XXII. The Ministry distributing radios in community halls where learners can have access to information, important updates as well as educational lessons.²⁸⁹

XXIII. Information centers in communities need to be upgraded so as to accommodate educational eventualities such as those brought by the COVID-19 pandemic.²⁹⁰

5.2.2 To non-governmental and international organisations

I. Ensure that educational emergency rescue aid reaches the most vulnerable and marginalised communities (rural areas).

II. There is need for lobbying for children's right to education and addressing all issues leading to inequalities in the education sector.²⁹¹

5.2.3 To the national legislature

I. Online learning exposes children to various online threats which need to be securely guarded against. Closely aligned to this is the need to protect children from cyberbullying, child online exploitation which has become prevalent.²⁹²

II. There is a need for the enactment and adoption of legislation that protects children online.²⁹³

III. The Cybersecurity Bill must not violate the principles entrenched in the country's Constitution as well the African Declaration on Internet Rights and Freedoms.²⁹⁴

IV. Data prices must be legally regulated with the country's economic crisis in view.

V. Make use of the guidance provided under the African Declaration on Internet Rights and Freedoms in enacting digital rights laws.

5.2.4 To the Ministry of Transport and infrastructural Development

I. The dilapidation and underdevelopment of rural roads make the rural schools difficult to access by education managers.²⁹⁵ Rural main roads need to be upgraded for rural schools to be reachable.

5.2.5 To telecommunication companies

I. Subsidise data bundles to meet the requirements of the African Declaration on Internet Rights and Freedoms.

²⁸⁹ L Zinyemba (n 261 above) 228.

²⁹⁰ n 289 above, 228.

²⁹¹ n 290 above, 228.

²⁹² JR Khalidi & GL Wan Chi (n 269 above) 3.

²⁹³ (n 292 above) 5-6.

²⁹⁴ (n 293 above) 7.

²⁹⁵ M Sinclair 'Education in emergencies' (n 274 above) 52.

- II. Draw lessons from other internet service providers like MTN so as to balance the running of the businesses with the protection of human rights.²⁹⁶
- III. Invest in the provision of electricity grids in rural areas and improvement of internet connection coverage to enhance the accessibility of distance learning.²⁹⁷
- IV. Make effective use of the finance provided by the Postal and Telecommunication Regulatory Authority of Zimbabwe to advance the development of ICT.²⁹⁸
- V. Subsidise the prices of ICT gadgets like laptops, tablets, and smartphones.²⁹⁹

5.2.6 To the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)

- I. Issue directives on how states should assist children who forfeited more than a year of learning when member states were in total lockdown.

5.3 Conclusion

Zimbabwe as a state party to the African Charter, African Children’s Charter, UNCRC, and ICESCR has an obligation to protect children’s right to education irrespective of their geographical location in the country. The right for children to access free and compulsory primary education and access secondary education entrenched under the listed human rights law instruments is binding both in normal and emergency situations. Failure to comply with these obligations amounts to an infringement and violation of these human rights treaties. This violation and infringement can either be through an act of commission or omission. It is an act of commission when a state takes measures that directly infringe upon the instruments and an omission when a state fails to take positive steps necessary for the children’s enjoyment of their right to education. Zimbabwe’s omission to enhance the accessibility of education to rural children during the pandemic is a violation of article 11 of the African Children’s Charter, article 17 of the African Charter, article 28 and 29 of the UNCRC as well as article 13 of the ICESCR. The pandemic was a test of the resilience of the country’s education system. Since emergency situations are not new and have not ended, this should be the opportunity to ‘build back better’, an opportunity to make blended education a reality for both children in rural areas and those in urban areas.

²⁹⁶ MISA Zimbabwe ‘Internet access and affordability in Zimbabwe’ 28 July <https://zimbabwe.misa.org/2021/07/28/internet-access-and-affordability-in-zimbabwe/> (accessed 26 October 2021).

²⁹⁷ (n 296 above) 10.

²⁹⁸ (n 297 above) 7.

²⁹⁹ (n 298 above) 7.

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