



Investing in people for Social and Economic Justice

CITIZENS COLLECTIVE VOICE
FOR SOCIAL CHANGE
CCVSC



National Vendors Union Zimbabwe
Uplifting standards of living

SOCIAL, ECONOMIC AND CULTURAL RIGHTS

Awareness & Advocacy Training Manual

Based on The Constitution of Zimbabwe, 2013



Social, Economic and Cultural Rights Awareness & Advocacy Training Manual for

The Zimbabwe Coalition on Debt and Development (ZIMCODD),
Citizens' Collective Voice For A Social Change (CCVSC)
National Vendors Union of Zimbabwe (NAVUZ)

Based on The Constitution of Zimbabwe, 2013

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ABOUT THE PARTNERS



Investing in people for Social and Economic Justice

ZIMBABWE COALITION ON DEBT AND DEVELOPMENT (ZIMCODD)

ZIMCODD is a non profit Social and Economic Justice coalition established in February 2000 to facilitate citizens involvement in making public policy and practice pro people and sustainable.

ZIMCODD views indebtedness, the unfair local and global trade regime, tax injustices, unsustainable natural resource exploitation and lack of democratic, people-centered social economic and political governance as root causes of the socio-economic crises in Zimbabwe and the world at large. Drawing from community-based livelihood experiences of its membership, ZIMCODD implements programmes aimed at delivering the following objectives;

- To raise the level of economic literacy among ZIMCODD members and citizens to include views and participation of grassroots and marginalised communities.
- To facilitate research, lobbying and advocacy in order to raise the level of economic literacy of citizens.
- To formulate credible and sustainable economic and social policy alternatives
- To develop a national coalition and facilitate the building of a vibrant movement for social and economic justice.

OUR VISION

Sustainable socio-economic justice in Zimbabwe through a vibrant people based movement

MISSION

To take action in redressing the Debt burden, Social and Economic Injustices through formulation and promotion of alternative policies to the neo-liberal agenda.

Zimbabwe Coalition On Debt And Development (ZIMCODD)

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CITIZENS' COLLECTIVE VOICE FOR A SOCIAL CHANGE (CCVSC)

CCVSC is a social movement founded in January 2014 by individuals and Community based organisations interested in improving people's livelihoods and holding their government to account. It is the coordinating nerve centre for the emerging social base encompassing both individuals and CBOs.

The movement was born out of the realisation that if the new constitution is fully implemented then there could be substantive progressive actualisation and realisation of social and economic rights and human development. The movement recognises the use of action through community organising and mobilisation as a means towards holding the state to account to its people. It premises its struggles around non-violent direct confrontation and engagement as approaches towards pushing the state to act on its responsibilities as a means towards improving people's lives. Currently CCVSC has both institutional and individual membership in Chinhoyi, Zvishavane, Buhera, Masvingo, Harare, Bulawayo and Gweru. The membership is drawn from CBOs, churches, students, youths, women, artisanal miners, new farmers, people living with HIV/AIDS, environment activists, labour, vendors, cooperatives, burial societies, transport operators etc. It hopes to cover the breadth and length of the country within with particular focus on growth points, marginalised communities and strategic towns.

Citizens' Collective Voice for Social Change (CCVSC)

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National Vendors Union Zimbabwe
Uplifting standards of living

NATIONAL VENDORS UNION OF ZIMBABWE (NAVUZ)

NAVUZ is registered as a Trust under Trust Deed MA0960/14. The organization functions as a solidarity centre for vendors and also engages in lobby and advocacy initiatives currently with a national membership of just above 57000 members following a membership recruitment drive that began in November 2013.

NAVUZ Vision is to see a just Zimbabwe where vendors trade freely protected by the law and national constitution and its Mission is to coordinate lobby and advocacy efforts targeted at the central legislation of vending, creation of public social safety nets for vendors and the national acceptance of vendors as workers

Responding to the operational environment obtaining in the vending enterprise, the National Vendors Union Zimbabwe's objectives are:

- To coordinate vending lobby and advocacy initiatives
- To provide legal and social safety nets for vendors
- To develop and strengthen trade capacities among vendors
- To promote and enhance vendors participation in national policy, legislative and economic processes.

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1. INTRODUCTION

The Zimbabwe Coalition on Debt and Development (ZIMCODD), Citizens Collective Voice For A Social Change (CCVSC) and the Nation Vendors Union of Zimbabwe (NAVUZ) are implementing a project titled “*Citizen First Forum (CFFO): An Initiative to build a demand driven citizenry for the fulfilment of Social and Economic Rights in Zimbabwe*”. Through this project, the three organisations aim to raise community awareness on constitutionalism and socio-economic rights in Zimbabwe. The following are the specific objectives for this project:

- Create citizenship awareness of fundamental ESC rights guaranteed under the new Constitution.
- Mobilise citizens to advocate for constitutionalism in Zimbabwe.
- Empower citizens to demand accountable governance from both national and local government authorities.

Pursuant to these objectives, ZIMCODD, CCVSC and NAVUZ will conduct education workshops for community members, in order to increase community awareness of the idea of constitutionalism and ESC rights guaranteed under the Constitution of Zimbabwe. This manual will be used to facilitate these workshops. Written in simple language, this manual comprises of four parts which focus on relevant aspects of the Constitution.

2. UNDERSTANDING CONSTITUTIONALISM

AIM: To improve participants' knowledge on Constitutionalism in Zimbabwe

Methods of Delivery: Facilitator's presentation and probing responses from individual participants

Group Exercise: Question 1

Relevant Constitutional Provisions: Sections 2 and 46

2.1 What is a Constitution?

A constitution is a set of fundamental values, principles and rules which regulates how the State shall be governed. A Constitution creates organs of State such as the Executive, Legislature, Judiciary, Commissions, Prosecuting authorities etc, and it ascribes power to such institutions and often prescribes how such power must be exercised.

2.2 The Relationship Between The Constitution And Other Laws

First, it is important to acknowledge that a Constitution is law. Therefore everything that is set under the Constitution is binding law. However, there are other forms of law and these include legislation, customary law and Common law. Customary law is the unwritten African indigenous rules of society while in Zimbabwe Common law is made up of the unwritten principles of English and Roman Dutch law.

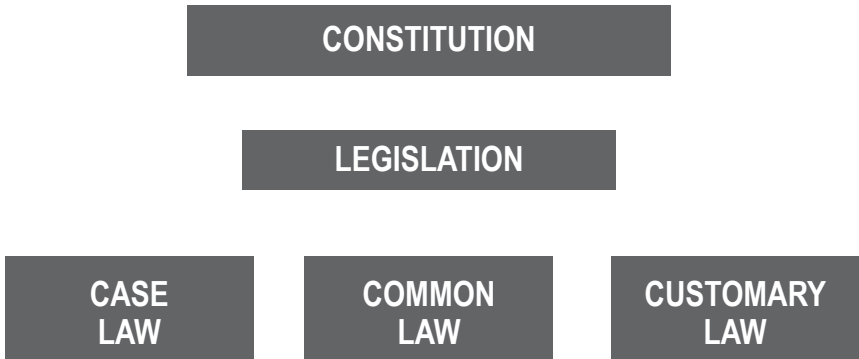
- *Constitution is Law.*

- *Everything under the constitution is binding Law.*

In Zimbabwe, the Constitution is the supreme law in the sense that, it ranks above every other law. All other laws must conform to what is set under the Constitution. This is the principle which is often referred to as "Constitutional supremacy". Why is this principle important?

- In Zimbabwe the Constitution is the Supreme Law, it ranks above every other law.

Hierarchy of Sources of Law in Zimbabwe



More often, the Constitution is a broad set of rules, values and principles, which must be implemented through legislation and State policies. Constitutional supremacy therefore helps to ensure that Government actually gives effect to those values and principles that have been set under the Constitution. Second, constitutional supremacy protects the values and principles set under the Constitution by requiring that when Government makes decisions and legislation, it must conform to the Constitution. Therefore constitutional supremacy protects the Constitutional values from being manipulated by the Government of the day.

Constitutional Supremacy:

- Helps to ensure that Government actually gives effect to those values and principles that have been set under the constitution.*
- Protects Constitutional values and principles from being manipulated by the Government.*

2.3 Constitutionalism

Constitutionalism is a principle that is recognised under the Constitution of Zimbabwe because the Constitution is supreme law. What then is Constitutionalism?

Constitutionalism is the practice of governance whereby the Constitution is recognised as supreme law and all other laws enacted and decisions made by Government actually conform and give effect to the values, principles and rules set under the Constitution. Therefore Constitutionalism is not the mere principle that the Constitution is supreme law but it is the practice of the principle.

Constitutionalism:

- It is the practice of the principle that Constitution is Supreme Law

There are therefore two important parts to the principle of Constitutionalism and these are:

- a. When Government enact laws and makes decisions which do not contradict anything set under the Constitution [*The negative obligation to refrain from contradicting the Constitution*]
- b. When State institutions and every person in Zimbabwe perform their duties in order to give effect to the values, principles and rules set under the Constitution. [*The positive obligation to implement the Constitution*]

2.4 Relationship Between The Constitution & Government Decisions

As mentioned above, the Constitution in Zimbabwe is supreme law. Everyone in Zimbabwe is under the Constitution. The President and every organ of Government is under the Constitution. All policy decisions or any other decisions to be made by Government must conform to the principles, values

and rules set under the Constitution. If Government makes decisions that violate any of the principles, values and rules set under the Constitution, such a decision will be unconstitutional and therefore invalid.

For Government decisions and policies that are unconstitutional to be declared invalid, such decisions or policies must be challenged in courts of law, and the courts must declare those decisions and policies invalid. Otherwise, where such decisions or policies are not challenged in court, they will always be presumed to be valid and will be operationalised.

This is one of the key challenges confronting constitutionalism in Zimbabwe. There are a lot of decisions and policies that are being implemented by Government yet, they are unconstitutional. However, these decisions have not been challenged and they remain in place. For example, the decision by Government in December 2015 to unilaterally postpone pay dates and bonus for civil servants violates the concerned workers' right to fair labour practice [section 65(1) of the Constitution]. This decision will be operationalised until it is declared unconstitutional.

3. UNDERSTANDING THE CONSTITUTION OF ZIMBABWE

AIM: To improve participants' awareness on the content and structure of the Constitution of Zimbabwe

Methods of Delivery: Facilitator's presentation

Group Exercise: Sections 1, 3, 46, Chapter 2 and Chapter 4

The Constitution of Zimbabwe came into force in May 2013. Amongst other things, the Constitution provides for the following

- a. Founding Values:** These are provided for under section 3 of the Constitution. Founding values are the most important values which Zimbabweans have decided as the '*values which underpin their society*'. These are the values which should define how people in Zimbabwe relate with each other and with Government. They also determine how the Constitution and other laws must be interpreted. What are some of these values? These are supremacy of the Constitution, respect for the rule of law, respect for fundamental human rights, human dignity, good governance, cultural diversity and recognition of the ideals of the liberation struggle.
- b. National Objectives:** These are provided for under Chapter 2 of the Constitution. These are the objectives which must guide how Government develops and implements its policies. Government policy priorities and policy objectives must seek to achieve these national objectives set under Chapter 2. **Ask participants to mention some of these objectives.**
- c. Declaration of Rights:** This is provided for under Chapter 4 of the Constitution. This is a list of fundamental human rights which are entrenched under the Constitution. Most of the discussions under this workshop will focus on the contents of the Declaration of Rights.
- d. Principles of Public Administration and Leadership:** These are provided for under Chapter 9 of the Constitution. In particular, section

194 (1) provides for a list of principles according to which public administration in Zimbabwe must be conducted. Some of these principles include that, there must be *'efficient and economical use of resources'*. This is a very important aspect of this Constitution given that, most of the ESC rights are provided for as progressive rights whose realisation depends on the resources available to the State. In most cases, Governments justify their failure to achieve ESC rights for their people on account of limited resources. It is a positive element that this Constitution enjoins the State to use resources efficiently. Citizens in Zimbabwe can enforce this constitutional duty as a means to fight corruption and maladministration which undermines the realisation of ESC rights.

4. UNDERSTANDING SOCIAL, ECONOMIC AND CULTURAL RIGHTS

AIM: To develop participants' awareness on ESC Rights, their meaning and basic interpretation in Zimbabwe

Methods of Delivery: Facilitator's presentation

Group Exercise: Questions 2 - 4

Key Constitutional Provisions: Sections 45, 5, 44 and Chapter 4

4.1 Defining Fundamental Rights

Earlier, we discussed that the Constitution provides for a 'Declaration of Rights' under Chapter 4. We also discussed that one of the foundational values under the Constitution is the 'respect for fundamental human rights'. **What are fundamental human rights?**

Human rights are entitlements that are due to human beings because they are human beings. **Ask participants to explain what is the source of human rights?**

There are various schools of thoughts on the sources of human rights but there is consensus around the idea that, the source of human rights is *human dignity*. Every human being is entitled to fundamental rights because of the recognition that every human being is born inherent with dignity. Human rights are fundamentally there to protect the inherent dignity of human beings. **What are some of the examples of human rights that you know?** All these rights are there to protect the dignity of the human person.

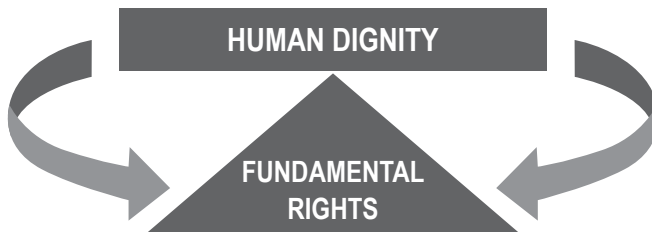
Human rights are classified into two broad categories namely civil rights and socio-economic rights, which are referred to as ESC rights. Civil rights guarantee certain civil liberties to the human person as a way of securing or protecting the dignity of the human person. Ask participants to name some of these rights provided for under the Constitution. These include the right to life, freedom of speech, right to vote etc.

ESC Rights are those rights which seek to protect certain social and economic needs of the human person. The debate on the need to guarantee ESC rights in constitutions gained momentum following the realisation that, human dignity cannot be fully protected without securing access to certain social and economic livelihoods of a human being as part of the package of fundamental rights. For example, a person cannot be expected to enjoy dignity if he or she lives without adequate food, water or shelter. Therefore ESC rights are primarily purposed to ensure that the human person has access to certain socio economic livelihoods that are necessary for the full protection of human dignity.

ESC Rights:

- They ensure that the human person has access to certain socio-economic livelihoods that are necessary for the full protection of human dignity.

Relationship between Human Dignity and Human Rights



4.2 ESC Rights in Zimbabwe

The Constitution of Zimbabwe provides individuals in Zimbabwe with Socio economic rights. These are provided for under the Declaration of Rights and they include the following:

- a. Right to be protected from arbitrary evictions
- b. Right to education
- c. Right to fair labour practices

- d. Right to healthcare
- e. Right to water
- f. Right to social security
- g. Right to shelter for children
- h. Right to freedom of profession, trade and occupation
- i. Right to language and culture

It is important to note that the above list does not necessary constitute All the ESC rights provided for under the Constitution. It is only but some of the ESC rights which are specifically provided for under the Constitution. It can be argued that, some of the ESC rights such as the right to adequate housing can be said to be implied under certain rights such as the right to human dignity and the right to life. Therefore the question of how many and which ESC rights are guaranteed under the Constitution may end up being a matter of how one interprets the scope and content of those rights which are specifically entrenched under the Declaration of Rights.

Fundamental rights are indivisible and they are interdependent. Although this manual is about ESC rights in Zimbabwe, there is need to understand that, it is impossible to enjoy some of these ESC rights, without civil and political rights and the reverse is true as well. Thus, all rights are mutually reinforcing and indivisible. For example, how is one expected to enjoy the right to human dignity (a civil and political right) when they do not have access to shelter?

4.3 Application of International Human Rights Law standards in Zimbabwe

When determining the constitutional ESC rights that are provided for in Zimbabwe, one has to deal with the question of the application of international law human rights standards in Zimbabwe, especially given that Zimbabwe is a signatory to a number of international human rights conventions. For instance, Zimbabwe is party to the International Covenant on Economic Social and Cultural Rights (ICESCR) as well as the International Covenant on Civil and Political Rights (ICCPR). The ICESCR is the main international convention, providing for ESC Rights. However it is important to note that, the rights

provided for under international conventions are not directly enforceable in Zimbabwe unless when those rights have been incorporated into an Act of Parliament, such as legislation or when those rights have been incorporated into the Constitution. In effect, the rights provided for under the ICESCR are unenforceable as constitutional rights in Zimbabwe unless where those rights have been entrenched under the Constitution. [See section 327 of the Constitution]

International Human Rights:

- Rights provided for under international conventions are not directly enforceable in Zimbabwe unless incorporated into an Act of Parliament or the Constitution.*
- Courts obliged to interpret constitutional rights in line with International human rights standards*

However, international conventions (to which Zimbabwe is party) may be referred to when interpreting the scope and content of the rights provided for under the Constitution. In that regard, international human rights standards such as those provided for under the ICESCR, may be referred to when determining the meaning of similar ESC Rights enshrined under the Constitution of Zimbabwe.[See section 46 (1)(c) of the Constitution]. For example, reference to Article 11 (1) of the ICESCR may be made when determining the State duties arising from the right to be protected from arbitrary evictions, provided for under section 74 of the Constitution. But the fact remains that, International law does not give individuals in Zimbabwe rights until the relevant provisions of such international law have been domesticated into legislation or the Constitution.

4.4 Who Are The Right Bearers?

In human rights, we talk of rights bearers when referring to the persons who are legally entitled to claim the rights. Generally every person in Zimbabwe is

entitled to enjoy all the rights enshrined under the Declaration of Rights, including the ESC Rights.

However, certain rights can only be claimed by certain categories of persons. For example, the right to basic State funded education [guaranteed under section 75(1) (a)] can only be claimed by persons who have Zimbabwean citizenship or who have permanent residence status in Zimbabwe. Other rights such as the right to water and food [guaranteed under section 77] can be claimed by every person in Zimbabwe regardless of their status.

4.5 Who Are The Duty Bearers?

Again, in human rights discourse, we talk of duty bearers when referring to the persons who have the legal obligation to respect, protect, promote and fulfil the rights guaranteed under the law. There are two categories of duty bearers and these are the State and the private persons. Let's discuss more about the State as a duty bearer.

4.5.1 The State

In Zimbabwe, the State or Government refers to all institutions of Government at all levels, which include the national government, provincial government and the local authorities. All the rights enshrined under the Constitution, including the ESC Rights are binding upon these institutions. In particular, these institutions have the following duties:

Duty to respect: This means the duty to refrain from unlawfully interfering with the existing enjoyment of a right. For example where A is already going to school and receiving education, the State is obliged to refrain from acting in any way that undermine A's existing access to education. That may mean the Minister of Education (for example) may not close down a school. Another example is, where B is already enjoying access to water, the City council may not unlawfully disconnect the water supply because the City council has a duty to

respect B's right to access water.

Duty to protect: This entails the duty of the State to safeguard or secure the enjoyment of rights by individuals, where such enjoyment may be threatened or is already being violated. For example, where a Local Authority decides to unlawfully evict people from their homes, the Minister of Local Government has the duty to protect the affected families from the arbitrary evictions. Or where a private person B decides to unfairly dismiss his employees C and D from their jobs, the State has the duty to intervene and protect C and D from unfair labour practice. Or where B's field is constantly under attack from animals which escape from Hwange National Park, the relevant State institutions have the duty to protect B's right to food which is being undermined by the animals.

Duty to promote: This entails the duty to undertake pro-active measures targeted at promoting the enjoyment of fundamental rights. For example, the duty to undertake civic education on human rights is part of the State's obligation to promote fundamental rights.

Duty to fulfil: This entails the duty of the State to implement certain positive steps aimed at fulfilling certain obligations which arise under specific rights. For example, the State has the duty to allocate funding for the building of schools in order for children in a certain geographical location to enjoy their right to access basic state funded education.

4.6 Progressive Realisation of ESC Rights

Most of the ESC rights entrenched under the Constitution of Zimbabwe are subject to what is called '*progressive realisation*'. Essentially this means that, these rights may not be realised immediately after the adoption of the Constitution but the State must implement measures which result in *the continuous, incremental enjoyment* of these rights by the persons who are entitled to them. This means the State may not undertake retrogressive measures. Retrogressive measures are steps which undermine the progress

achieved towards the realisation of the rights. For example, a Government decision to increase school fees beyond what the majority can afford, can be classified as a retrogressive measure, which result in many children dropping out of school and thereby undermining the progress towards ensuring that everyone accesses education. You can probe participants to give you more examples of retrogressive measures relating to different ESC Rights.

Progressive Realisation of Rights:

- *This means that rights may not be realised immediately after the adoption of the Constitution but the State must implement reasonable measures which result in the progressive realisation of these rights.*
- *progressive realisation means the State cannot implement retrogressive measures*
- *Progressive realisation means incremental and timeous progress towards achieving universal access to the goods and services needed for the enjoyment of the right*

In order to ensure the progressive, full realisation of these rights, the State must undertake the following kind of measures:

4.7 Legislative

This entails the duty to enact legislation which is necessary to enable more and more people to realise their ESC rights. In most cases, this may mean the duty to realign certain legislation with the ESC rights enshrined under the Constitution.

4.8 Other Measures

Most of the ESC rights enshrined under the Constitution oblige the State to undertake legislative and 'other' measures to achieve the progressive full realisation of these rights. This means, it is not enough for the State to enact

laws only but there is an obligation to undertake ‘other’ measures. The term ‘other’ is used in order to allow the State the discretion to develop and implement measures as dictated by the situation. **Probe participants to give example some of these measures.** They include building hospitals, training medical staff [Right to health care]; providing text books and stationery as part of Government subsidies in primary and secondary schools [Right to education], giving people access to productive land for agriculture purposes [Right to food]

4.9 Subject To The Resources Available To The State

Whilst undertaking legislative measures is not necessarily subject to the resource availability, the adoption and implementation of ‘other’ measures is subject to resources available to the State. The nature and extent of these measures taken by the State to achieve the progressive realisation of these rights depends on the amount of resources available to the State. This therefore means the amount of progress achieved over a period of time must be proportional to the amount of resources available to the State. However this does not mean that the mere shortage of resources justifies lack of progress. Where resources are scarce, the State has the obligation to ‘do all it can to find the necessary resources’. Legally, this means the State must appeal to international cooperative agencies through the United Nations to marshal the required resources. It also means the State must use the national resources efficiently in order to achieve the realisation of these rights.

5. ADVOCACY AND ENFORCEMENT OF ESC RIGHTS IN ZIMBABWE

AIM: To develop awareness amongst participants, on the available opportunities for ESC Rights enforcement

Methods of Delivery: Facilitator's presentation

Group Exercise: Questions 5

5.1 ESC Rights Monitoring

Since most of the ESC rights are subject to progressive realisation, it is therefore important to monitor and report on the progress being achieved towards the full realisation of these rights. Without effective monitoring, it is impractical to establish whether or not there has been any progress towards the full realisation of these rights. Who is supposed to do the monitoring?

The State has the responsibility to monitor and report on the progress being made towards the full realisation of each ESC right. However individuals, under the ambit of CSOs, must also make an effort to monitor and assess progress for purposes of their advocacy. In order to monitor progress, one needs to develop a tracking system which established the steps taken by the State to fulfil the right and the results of such measures. Fundamentally, CSOs must monitor the State budgeting process to establish the amount of resources committed towards the fulfilment of certain ESC rights, and whether those resources have been efficiently utilised.

This is a huge exercise which requires more time and it must be done continuously. However, to start such a process, it is necessary to educate communities on what they should expect Government to do as part of fulfilling its duties under the ESC rights provided for under the Constitution. Below are some of the indicators which may be tracked over a period of 5 years- which is the length of tenure of a Government in Zimbabwe. CSOs may track these indicators based on each local community such as a ward or constituency.

Right	Some Indicators Towards Progressive Realisation
Right to Water	<p>Amount of resources allocated in the State annual budgets, towards improving access to water</p> <p>Availability of clean and portable water</p> <p>Number of boreholes or taps established for drawing water for domestic purposes.</p> <p>Any legislative or other measures implemented by Government to improve access to water in your locality</p>
Right to education	<p>Total State budget allocation towards improving access to education</p> <p>Number of learners dropping from school per year per school.</p> <p>Number of new schools established by government over a 5 year period, in areas where there have not been schools</p> <p>Whether the number of students sharing a textbook is increasing or decreasing over a period of 5 years.</p> <p>Increase or decrease in the number of economically disadvantaged learners who are benefiting from Government education assistance programs.</p>
Right to health care	<p>Total State budget allocation towards improving access to health care</p> <p>Number of new health care facilities (such as clinics and hospitals) established in areas where there is a shortage</p> <p>Increase or decrease in the number of medical doctors and other staffers serving patients in every health institution.</p> <p>Changes in the availability of basic medication and necessary equipment</p> <p>Changes in the availability of medication and equipment for treating chronic illness such as HIV/AIDS, Cancer, diabetes etc</p> <p>Number of people who are denied treatment per month, for failing to pay hospital fees.</p> <p>Changes in the hospital fees</p>
Right to food	<p>What are the challenges which you face to obtain food for your families and what has Government done to address those challenges?</p> <p>Total state budget allocation towards improving national food security and improving access to food.</p>
Labour	<p>Number of people retrenched from their jobs, per month</p> <p>Changes in the number of people earning a salary above the poverty datum line</p> <p>Legislative measures taken to improve job security</p>

Right	Some Indicators Towards Progressive Realisation
Right to be protected from arbitrary evictions	Number of people living in informal settlements without security of tenure Threats of evictions being conducted without court authorisation Number of people or families evicted from their homes without court authorisation Any other legislative or other measures undertaken by Government to protect persons from being evicted unlawfully from their homes.
Right to shelter for children	Number of homeless persons who are under the age of 18 Number of previously homeless persons (under the age of 18) who benefited from Government support to provide shelter for children. Any legislative or other measures undertaken by Government to provide homeless children with shelter.
Right to social security for elderly persons	Number of persons above the age of 70, who are receiving social grants from Government Any legislative or other measures undertaken by Government to provide needy elderly persons with access to social security grants.

5.2 Enforcement Mechanisms

The Constitution of Zimbabwe provide for a number of mechanism through which ESC Rights may be enforced. These mechanisms include the following;

5.2.1 Courts

All ESC Rights provided for under the Constitution may be enforced through litigation in courts. You may approach the court to enforce your ESC rights in any of the following circumstances

- i. When there is a threat of a violation. You do not have to wait until your rights are violated. Whenever you sense that your right is likely to be violated, you are allowed to approach the court for an order to stop the threat.
- ii. When your right is already being violated. When the violation is already underway, you can approach the court and seek an urgent hearing, in which you ask the court to issue an order to stop the violation.

- iii. When your right has already been violated. They are instances where the right has already been violated. In that case, you can still approach the court to seek remedies such as damages to restore your violated rights or to redress the impact of the violation.

5.2.2 Some Tips on Navigating Hurdles Involved in Accessing Courts

Litigation is usually a complicated and expensive process. However, you may seek help from various NGOs which provide communities with legal aid on matters of social justice and human rights. These NGOs include the Zimbabwe Lawyers for Human Rights, Law Society of Zimbabwe, Zimbabwe Women's Lawyers Association, Legal Resources Foundation, Zimbabwe Human Rights Association, Residents Associations, Zimbabwe Human Rights NGO Forum among others. These NGOs may make individual applications to court or they make a class action in which they will be representing a group of litigants. Communities must also consider joining to be members of community based organisations such as Residents Associations. If you are a member of these community groups, it is legally possible for the community organisation to approach the courts to enforce ESC rights on behalf of its members.

5.3 Constitutional Commissions

When your rights are threatened or are violated, you can also approach certain Commissions which have been established in terms of the Constitution of Zimbabwe. Community members must take an interest in participating in the activities of these Commissions. These Commissions include;

5.3.1 The Zimbabwe Human Rights Commission:

This Commission has the mandate to monitor, investigate and report on human rights violations in Zimbabwe. It also has a wide mandate to undertake necessary remedial measures in order to protect human rights.

5.3.2 Zimbabwe Gender Commission:

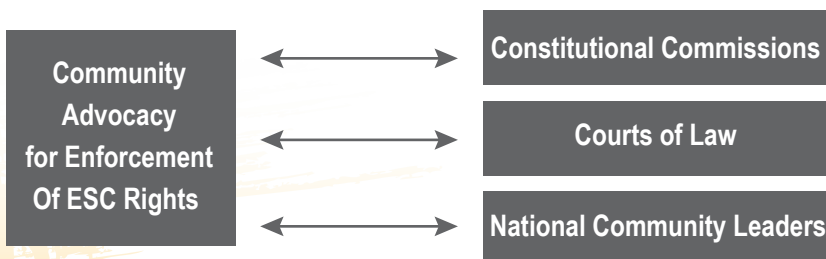
This Commission is primarily established to protect and promote fundamental human rights associated with gender. The mandate of this Commission extends to dealing with a wide range of ESC rights as well. For instance, this Commission can monitor, investigate and undertake necessary remedial measures to address discrimination in the enjoyment of ESC rights, especially where the discrimination is based on gender.

5.4 Engagements with Community Leaders

Members of Parliament, Municipal councillors and Traditional leaders are some of the key community leaders in Zimbabwe. These leaders are bound to fulfil their duties under the Constitution. One of these duties is to respect and sometimes to protect and fulfil certain fundamental rights that are enshrined under the Constitution. Community members must engage with these leaders to establish what role they can play in order to promote the enforcement of ESC rights in the local communities.

Communities must also consider joining to be members of community based organisations such as Residents Associations. If you are a member of these community groups, it is legally possible for the community organisation to approach the courts to enforce ESC rights on behalf of its members.

Channels of advocacy for Implementation of ESC Rights as well as Constitutionalism in Zimbabwe



6. GROUP PRACTICAL QUESTIONS

The Moyo village is a community of peasant farmers who live in the Western region of the Republic of Zangaroo. The Republic has a new Constitution which reads similarly to the Constitution of Zimbabwe, 2013. They survive sorely on farming, producing such crops as maize and round nuts in their small fields which are located close to a huge and internationally famous game reserve. During the 2014-15 farming season, the majority of the community members lost their crops because their fields were ravaged by elephants which escaped from the game reserve. Despite numerous attempts to lobby the local authorities to help resolve this problem, the elephants kept on escaping and destroying their fields. On one occasion, their local councillor told them that there is nothing that could be done because the issue of elephants ravaging their fields was just but a natural disaster, which no one could be held accountable for. At the end of the farming season, most of the members of this community did not harvest enough crops to feed them until the following season. When the 2015-16 farming season began, there was not enough rains as the area was hit by a severe drought. As a result, this community is living in a famine which has left most of the households starving as there is not enough food to feed their families. Due to lack of food, many children are dropping out of school as they cannot manage to go to school because of hunger. Some of the families have had to withdraw their children from school to go and do vending in the nearby mining town, hoping to raise income to buy food for the families.

Part 1

1. A group of elders from this community approach you for advice. They would like to know whether they were legally entitled to any help from Government to address the issue of elephants which ravaged their crops. They also want to know if they are legally entitled to receive any help to mitigate the effects of the drought which they are going through. Your answer must pay particular attention to, which constitutional right (s) have been violated and what form of help (if any) are they entitled to receive from Government. Also refer to the

three types of duties I.e. The duty of the State to respect, protect and fulfil the constitutional rights. **Response guidelines:** The Constitution provides for the right to food under section 77 and it is the duty of the State to protect the community members' right to food from being undermined by the elephants. Using the relevant State institutions (such as the Parks Authorities), the State has an immediate duty to implement measures to address the issue of elephants. Further, the State has an immediate obligation to source and provide food to the community members as a means of mitigating the attendant drought. The Government has a duty to implement long term drought mitigation strategies such as building dams and developing irrigation schemes.

Part 2

2. Apart from the right to food, which other right (s) are being violated under the current famine in Moyo community?
3. Name the duty bearers involved in this case? **Response guidelines:** Right to education, Right of children not to be subjected to economic or any form of abuse (section 81 (1) (e), right to life and right to human dignity. This shows how human rights are interrelated and closely connected, particularly the ESC rights; to the extent that, a violation of one right results in several other terrible violations even of Civil and Political Rights. Also note that the violation of each of these rights is an ultimate violation of human dignity.)

Part 3

4. The Community elders also want advice on how they can protect their rights from being violated. What advice would you give to them? State which institutions they can approach and how those institutions can help them. **Response guideline:** Courts and the Human Rights commission and Gender Commission.

7. TRAINING EVALUATION

Use the standard pre and post training monitoring and evaluation tools to assess the workshop, this helps to identify gaps. To allow for a more thorough assessment process the assessments forms should be completed by individuals separately, the pre training form is given at the beginning of the training whilst the post training is completed after all sessions have been covered.



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