

FEATURE

Socio-Economic Rights in Post-Mugabe Zimbabwe

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From 1980 to 2017, Robert Mugabe ruled Zimbabwe through a regime that posed as 'democratic' but which for all intents and purposes was a dictatorship. The power of the government stemmed not from the will of the people but its control of the armed forces and intelligence operatives. As a result, human rights abuses were commonplace. Poor governance, coupled with sanctions, led to the collapse of social systems. Poverty and hunger were the order of the day, and many basic socio-economic rights (SERs) could not be realised. In 2017, the military intervened and succeeded in pressurising Mugabe into resigning. His former vice president, Emmerson Mnangagwa, took over as president, promising a raft of changes, including respect for human rights. Against this backdrop, we look at developments in human rights, in particular SERs, since Mugabe's exit.

A chequered past

As Mugabe admitted in an interview with ITV News after he was forced to resign, his government had made some 'errors' with regard to the respect and promotion of human rights. He said, 'I agree we offended with regard to that area in relation to how we handled the opposition, the violence' (News24 2018). He noted, however, that Zimbabwe's record of non-compliance with human rights was still relatively better than that of other countries. In this spirit, it is important to re-examine some of the violations of SERs that occurred in Zimbabwe prior to the 'new dispensation'. For illustrative purposes, two examples will suffice.

The first is the violation of the freedom from arbitrary eviction, a freedom grounded in section 76 of the Constitution. In March 2017, the government sent an estimated 100 police officers to a farm to evict residents it claimed had settled there illegally. Residents were bundled onto trucks and left to find their way from a drop-off point 40 kilometres away. Court orders were subsequently issued to bar the evictions, but these were ignored.

This was not the first time the government undertook mass evictions. In 2005, before SERs had been constitutionally enshrined in 2013, it launched a campaign known as Operation Murambatsvina ('move the rubbish'). The objective was to eliminate slums across the country and clamp down on illegal housing and commercial activities. By the end of the operation, about 700,000 people had been directly affected and another 2.4 million indirectly affected (Tibaijuka 2005: 67). Operation Murambatsvina also had downstream effects on other rights, such as freedom of movement, the right to property, and the right to personal security.

While the operation could have been defended legitimately in terms of domestic laws such as the Regional Town and Country Planning Act 1976 (Chapter 29: 12), the Housing Standards Control Act 1972 (Chapter 29: 8), the Urban Councils Act (Chapter 29: 15, 1995), and several other municipal by-laws, the International Covenant on Economic, Social and Cultural Rights (ICESCR) stipulates that forced evictions are permissible only in exceptional circumstances – and according to the United Nations, the circumstances in this operation did not qualify as such.

A second example is that the government has been in dereliction of its duty to give effect to the right to food and water contained in section 77 of the Constitution. In 2013, a survey by UNICEF (2016: 4) revealed that, on average, a rural household is located at least a kilometre from a main drinking source. In towns, people also have to cart water over considerable distances, which has given rise to a black market in which water is sold for as much as 1 USD per 20 litres.

The reason for this state of affairs is that the government has not prioritised an expansion of its water storage and distribution infrastructure and has failed to monitor the provisioning of clean water by municipalities. Much of the country's water infrastructure is now in disrepair, creating the risk of the spread of water-borne diseases such as cholera and typhoid. In January 2018, four people died of cholera in the town of Chegutu. At the same time, the capital, Harare, battled with a typhoid outbreak, with at least 200 reported cases. Nor are these outbreaks the first of their kind. In 2008, a nationwide cholera outbreak devastated communities, and its peak, about 8,500 cases were being reported weekly. These crises highlight the collapse of governance under the previous administration and the latter's failure to respect SERs.

Socio-economic rights in an 'unfolding democracy'

Robert Mugabe's exit has been cause for celebration. Although some lament the fall of a struggle stalwart and African intellectual giant, many more are overjoyed at the removal of a dictator who had long suffocated democracy. Looking to the future, though, what does his exit entail for the protection, promotion and realisation of SERs in Zimbabwe – an area in need of a lot of attention?

To delve into this question, we review some of the developments that have taken place on the SER front since Mugabe's departure. Much of the answer depends on the government's commitment to meeting its wider state obligations over and above those specifically to do with SERs. Of note has been the crafting of the new government's mandate to

develop the economy and emancipate the people of Zimbabwe. This is crucial, given that the realisation of SERs does not occur in a vacuum: SERs require the mobilisation of resources, which are generally only available when an economy is functioning. In other words, there is a vital nexus between economic development and the realisation of SERs.

It could thus be said that current measures to grow the economy are key in indirectly protecting and realising SERs in Zimbabwe; by contrast, the Mugabe regime failed to protect SERs because the government had no resources as a result of a haemorrhaging economy. Importantly, the government has begun to re-engage with the international community, forming partnerships that will contribute to advancing SERs. Thanks to these reopened channels of communication, the United States, United Kingdom and United Nations have provided support for social services such as health, sanitation and education (Human Rights Watch 2018).

More directly, the new government has made a commitment to respect human rights and the rule of law. In connection with SERs, it has made sweeping commitments to ensure the provision of key social services such as health, shelter, clean water and education. However, most of these commitments are yet to be spelt out in detail, and to date only two measures have been actioned.

The first action was taken with regard to the realisation of the right to health care enshrined in section 76 of the Constitution. To this end, health care has been made freely available to vulnerable members of society. Accordingly, the Health Levy is being used to provide free health care for the elderly and infants; there is also free maternal care. The Health Levy is raised from a 50 per cent allocation of the 10 per cent deduction made on every dollar of cellular airtime that is purchased.

The subsidisation of health care for the vulnerable is particularly important, given that most of the elderly cannot afford to pay hospital fees. Further to this, in terms of maternal mortality, there are about 614 deaths per 100,000 live births. In the same vein, the government has increased the health budget by 73 per cent, the significance of which is that many of the challenges in the health sector are due to a lack of



The Zimbabwe Human Rights Commission has been unable to fulfil its mandate.

resources. The increased budget falls short, however, of the Abuja Declaration's target of 15 per cent of the annual budget (Abuja Declaration 2001, article 26).

The second action taken by the new government pertains to the promotion of right to education contained in section 75 of the Constitution. The government has increased the budget for secondary education by 16 per cent. Furthermore, it has proposed allocating 21 million USD for the operationalisation of three new state universities. A further 6.3 million USD was allocated for the construction and rehabilitation of schools in areas where people have recently been resettled. While much more is still needed to ensure the right to education, these are certainly steps in the right direction.

The missing debates

Many of the government's promises on human rights concern civil and political rights (CPRs), and to this end, it has fleshed out how it intends to realise them. Proposed measures include the observance of equity and freedom as well as commitment to free and fair elections and a movement towards further democratisation. Yet while it is paramount to realise CPRs, it is equally important to give attention to SERs. Human rights are indivisible and interconnected; accordingly, the government ought to lay out more plans for realising SERs.

The government has also failed to harmonise existing laws with the new Constitution and Zimbabwe's regional and international human rights obligations. This process requires it to amend, repeal or enact new pieces of legislation. Most notably, and in connection with SERs, Zimbabwe is yet to domesticate the African Charter on Human and Peoples Rights (African Charter) and the ICESCR (Kondo 2017: 173). Similarly, the country is yet to become a state party to the ICESCR optional protocol. In terms of enforcement, Zimbabwe is yet to accept the jurisdiction of the African Court on Human and Peoples' Rights (African Court).

Moreover, the government has not set out a plan for assisting institutions that support democracy and which are key to the enforcement of SERs. Notably, there are no measures on the functioning of the Zimbabwe Human Rights Commission (ZHRC). Section 243 of the Constitution gives the ZHRC the mandate to promote awareness of and respect for human rights, but the ZHRC has been unable to fulfil its mandate due to budgetary constraints. Furthermore, there has been controversy over the appointment of individuals who are seen as undermining its effectiveness and independence (Chiduzo 2015: 174).

This highlights the ZHRC's lack of ability to be proactive in the SER space. Its actions are unlike those of its counterpart in South Africa, the South African Human Rights Commission (SAHRC), which has published numerous reports promoting and interpreting SERs. When matters are viewed through this prism, it becomes critical for the government to enhance the ZHRC's effectiveness as an organ providing parliamentary oversight, as required by section 235(1)(c) of the Constitution. By engaging in action of this kind, the government can put deed to word in seeking to ensure that SER are realised in practice.

Another debate that has tended to slip through the cracks is the one about re-establishing an independent judiciary. Under the previous dispensation, a culture of patronage took root in all spheres of life, and the judiciary was no exception. The core of the problem lay in the appointment process of the judiciary. Section 180 of the Constitution provides that the Chief Justice, the Deputy Chief Justice, the Judge President of the High Court and all other judges are appointed by the President. Importantly, when such appointment takes place, the Judicial Services Commission (JSC) must advertise the position, invite the President and the public to make nominations, conduct public interviews of prospective candidates, and prepare a list for submission to the President of three qualified persons. The President should then

appoint the officer from the submitted list or require the JSC to submit a further list of three persons if not satisfied.

This procedure provided for checks and balances in the appointment process of the judiciary, limiting the power of the President in exercising executive appointments. For precisely this reason, it was deemed too restrictive under the previous regime. As a result, the contents of section 180 of the Constitution became the subject of debate in the process to replace former Chief Justice Chidyausiku in 2017. President Mnangagwa, in his previous capacity as Minister of Justice, Parliamentary and Legal Affairs, moved to amend the procedure under the Constitution of Zimbabwe Amendment (No. 1) Bill 2016. Under the proposed scheme, it was envisaged that the President, in appointing the Chief Justice, the Deputy Chief Justice, and the Judge President of the High Court, would be mandated to consult with the JSC but not compelled, however, to follow its recommendations. This proposal was accepted and passed as part of the Constitution of Zimbabwe Amendment (No. 1) Act 2017.

As it stands, section 180 weakens the judiciary. The independence of the judiciary is crucial because judicial enforcement of SERs is crucial to their realisation. Judges have to make key decisions on the state's allocation of resources and its ability to govern, decisions that cannot be made effectively when the judiciary is compromised. The new government thus needs to reverse the amendment of section 180 of the Constitution, otherwise the realisation of SERs will remain a pipe dream.

Conclusion

A new government in Zimbabwe has got the winds of change blowing in the human rights space. The government has made firm commitments to be governed by the rule of law and respect for human rights. In terms of SERs, it has made broad proposals with regard to health, shelter, water, education and other key social services. However, the government has made practical changes in connection with only two rights: the right to education and the right to health care. These changes are supported by broader measures which have an effect on the realisation of SERs. For this, the government is to be commended.

Nevertheless, there are still gaping holes in the government's plans – and a corresponding need

to reinforce and widen measures to ensure the realisation of SERs. The government should articulate a clear plan on how it intends to realise SERs. It should also adopt supporting measures such as re-establishing judicial independence, strengthening the ZHRC, and aligning domestic laws to the Constitution and to regional and international laws.

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