

, It is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be disassociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.'

Zimbabwe and the right to water

The Crisis in Zimbabwe Coalition (hereinafter referred to as the Coalition) is advocating for the inclusion of economic social and cultural rights as justiciable rights in the proposed constitution. It has thus taken this initiative to comment on a number of rights such as the right to work, food, health, water and so on to give input into such discussions and to show the importance of why such rights need to be guaranteed and protected in the constitution. As it stands it is not easy to have these rights operationalised in Zimbabwe as they are not contained in the current constitution.

The President recently in his address to the opening of the Second Session of the 7th Parliament of Zimbabwe referred to the problem of water. It is unfortunate to note that the President failed to touch and zero in on the most critical areas around the provision of water and its link to the right to life, health, food and other rights protected in the International Bill of Rights.

This paper and others to follow seek to give direction and input to discussions around the inclusion of economic, social and cultural rights in the new constitution. Furthermore, these discussions should be able to add value to the smooth running in the provision of such services and rights to Zimbabweans, as it gives the minimum demands on what obligations the State has and what people are entitled to.

NB: This contribution does not purport to discuss fully the right to water in as far as it pertains to other areas and services such as irrigation, farming and other uses of water. It only tries to discuss areas around sanitation, safe drinking water, personal hygiene and the provision of water in urban and rural areas.

Zimbabwe's water woes

It is almost a year since Zimbabwe witnessed the worst cholera outbreak ever in the country. According to statistics from the World Health Organization almost 5, 000 out of close to 83, 631 people who were affected including children died as a result of the disease. The outbreak was obviously imminent following serious problems with water provision in most urban and rural areas.

The outbreak of cholera in Zimbabwe was inevitable following long periods of most urban and rural homesteads going without clean and safe drinking water and inadequate treatment of

¹ African Charter, Preamble II paragraph 8.

sewage. Other areas such as Mabvuku and Tafara in Harare have gone for years without running water.

The prevention of diseases such as cholera and sanitation are some of the reasons why the provision of water is essential for human beings. Water is also essential for other things such as producing food, maintaining hygiene, and even securing livelihoods (right to gain a living by work). The human right to water is indispensable for leading a life in human dignity. The right to water entitles every citizen sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

A rights - based approach to issues around water provision

The Committee on Economic Social and Cultural Rights, which monitors the implementation of the International Covenant on Economic Social and Cultural Rights (ICESCR) to which Zimbabwe is a party to has previously recognized that water is a human right contained in Article 11 (ICESCR), 1, which guarantees among other rights – the right to food, clothing and housing. The right has also been recognized in other international treaties such as the Convention on the Elimination of all Forms of Discrimination against Women which stipulates that States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to... water supply”. Article 24, Paragraph 2, of the Convention on the Rights of the Child requires States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking water”.

The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water. Moreover, the elements of the right to water must be adequate for human dignity, life and health. However, the adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantities and technologies.

Key issues and considerations in the provision of water

- a) **Availability.** The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.
- b) **Quality.** The water required for each personal or domestic use must be safe, therefore free from micro organisms and chemical substances that constitute a threat to a person's health. Furthermore, water should be of an acceptable color, odor and taste for each personal or domestic use.
- c) **Accessibility.** Water and water facilities and services have to be accessible to everyone without discrimination. Accessibility has four overlapping dimensions:

- (i) **Physical accessibility:** water, and adequate water facilities and services must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace.
- (ii) **Economic accessibility:** Water and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other human rights. To ensure that water is affordable, States parties must adopt the necessary measures that may include, inter alia: a) use of a range of appropriate low cost techniques and technologies: b) appropriate pricing policies such as free or low cost water and c) income supplements. ***Even in times of severe resource constraints, the vulnerable must be protected by the adoption of relatively low – cost targeted programmes.***
- (iii) **Non discrimination:** Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds. Inappropriate resource allocation can lead to discrimination that may not be overt. States must also make sure that women are not excluded from decision making processes concerning water resources and entitlements. The disproportionate burden women bear in the collection of water should be alleviated. Provision of adequate water to educational institutions currently without adequate drinking water should be addressed as a matter of urgency.

The impact of the lack of water on women and children in Zimbabwe

The shortage of water facilities and portable clean water in most communities around Zimbabwe has caused untold suffering for most Zimbabwean women and children. It is not news that women wake up at 4am in most high density areas in Harare such as Budiriro, Glen Norah, Tafara and Mabvuku to fetch water from boreholes. This water is obviously for men and children who will be going to work and school. Long queues can be seen as early as 4am for the water and it takes almost 30 minutes for a 20 liter bucket to be full. The whole process which is then repeated around lunchtime and in the evening up to at times around midnight is cumbersome and equally exhausting because of the energy needed to pump the water from the borehole.

It is unfortunate that women who could have spent their time studying, conducting other businesses or any activities of their choice have to then spend the whole day fetching water. This is detrimental in terms of development, as it leads to unproductive work and in the long run will also reflect itself by way of uneducated and jobless womenfolk who

are only capable of fetching water from the boreholes. The situation cannot continue unabated and must be changed forthwith.

- (iv) **Information accessibility:** accessibility includes the right to seek, receive and impart information concerning water issues.

Zimbabwe's Legal Obligations in respect to the right to water

The right to water, like any human right, imposes three types of obligations on States parties: obligations to respect, protect and fulfill.

- a) **Obligations to respect:** States are obliged not to interfere directly or indirectly with the enjoyment of the right to water. The obligation includes among other things refraining from engaging in activities that limit equal access to water and unlawfully diminishing or polluting water.
- b) **Obligations to protect:** States parties are required by law to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups and corporations. States must be able to carry out this duty by adopting the necessary legislation and other measures to restrain for example, third parties from denying equal access to adequate water, compromising equal, affordable, and physical access to safe, sufficient and acceptable water. To prevent such abuses an effective regulatory system must be established, which includes independent monitoring, genuine public participation and imposition of penalties for non compliance.
- c) **Obligations to fulfill:** The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right. Among other issues, this includes the state's duty to ensure appropriate education, concerning the hygienic use of water, protection of water sources and methods to minimize water wastage.

Government of Zimbabwe Policies in relation to the provision of water

The Water Act [Chapter 20:25] (1998) reformed the water sector to ensure a more equitable distribution of water and stakeholder involvement in the management of [water resources](#). This means that water can no longer be privately owned in Zimbabwe. The "priority date water right system" has been replaced by water permits of limited duration which will be allocated by Catchment Councils. Furthermore, water is now treated as an economic good and the "user pays principle" applies. Pollution of water is now an offence and the "polluter pays" principle applies.

In terms of the body that is set up to deal with the provision of water, the Zimbabwe National Water Authority Act [Chapter 20:25] (1998) led to the establishment of ZINWA, a parastatal agency responsible for water planning and bulk supply. ZINWA plans and manages [water resources](#) on a catchment basis. Other responsibilities include the management of the water permit system, operationalization of water pricing, operating and maintaining existing infrastructure and executing development projects. In short, ZINWA is responsible for the supply and management of domestic water in urban areas. ZINWA also operates on a commercial and self-financing basis, whereby it provides its services at a significant fee to generate the revenue it needs to finance its administrative and water supply functions.

There have been serious challenges with regard to the provision of water such as the fact that most cities continue to receive dirty, discolored water from their taps, people continue to experience stomach problems arising from the use and drinking of contaminated water and generally that the water rates are high and unaffordable for most citizens and that the water authority has failed to provide water services in most areas in Zimbabwe where it is mandated to do so. Areas such as Budiriro, Msasa Park, Tafara, Mabvuku, St. Marys Greendale and Epworth come to mind when issues of water provision arise. Moreover, some low and high density areas in Bulawayo which include Mahatshula, Romney park, Belmont, Magwegwe and Amakokoba continue facing perennial water shortages despite the fact that the Umzingwane Dam is almost 90 percent full.

It is a fact and there have been numerous complaints that ZINWA as a body mandated to carry out such activities failed to deliver water to Zimbabweans. ZINWA inherited a sophisticated, but old, network of urban water supply infrastructure from local authorities. The infrastructure required effective maintenance and management, ranging from repair of broken-down pipes to wastewater treatment. ZINWA, however, lacked the human, technical and financial resources to undertake these tasks, with the result that infrastructure fell into disrepair, leaks were not repaired and sewage flowed in the streets of poorer and densely populated suburbs, such as Budiriro.

Secondly, ZINWA did not have the financial resources to manage and supply safe water to residents. ZINWA has had to depend on the central bank to finance its core activities. In short, lack of money also meant that ZINWA could not afford to finance its core activities, including the purchasing of water treatment chemicals.

In terms of Government prioritization of resources, a lot still needs to be done. It is evident from the digging up that the country's roads and landscape has seen in the past few months that Government is trying to alleviate the situation. In terms of prioritization, it is not clear how Government can allocate a meager USD17 million for the refurbishment of equipment and purchase of water chemicals, the amount falls far below the amount of USD250 million required by the Ministry of Water Resources and Infrastructural Development. The Minister of Water

Resources and Infrastructural Development, Honorable Sam Sipepa Nkomo noted that lack of adequate resources explains the reasons behind continued water woes in Zimbabwe.

President Mugabe in his speech to Parliament noted thus:

“Reliance on middlemen in the procurement of water treatment chemicals has been a major cost driver in the provision of water. To obviate this challenge, Government will centralize the procurement of water treatment chemicals. Furthermore, programmes to develop and boost availability of the country’s water resources through the rehabilitation and upgrading of urban and rural water supply will continue. A Statutory Instrument will be put in place to render it mandatory for borehole drillers to register and operate on the basis of permits so as to ensure compliance with minimum standards”.

This speech is most welcome considering the levels of corruption that have been alleged with regards to the procurement of such chemicals at ZINWA. However, it is hoped that the centralization of such procurement will not mean creating more cronyism by creating avenues to siphon money meant for the water. There is need for clarity on what body will be sourcing such materials and who they will be accountable to. Moreover, it is necessary for the whole country to know what amounts are spent on such chemicals. It is also a very welcome development that the water reticulation system is being upgraded in both rural and urban areas, however, the Government now needs to be clear on time frames and deadlines and Zimbabweans have a right to access such information from the authorities. Zimbabweans pay tax and contribute to their own welfare through such taxes, part of the money which is being used to fund such projects and therefore deserve to know how their money is being spent.

Mentioned in a normal setting, the idea around the control of borehole drillers would not be problematic. However, the current situation in Zimbabwe where every citizen who has had problems with water supply or dreads using water from the tap ends up looking to drill a borehole points to and exposes the Government. Thus before the President and Government propose controlling such actors which is one of the state’s obligations anyway, the Government needs to address the root cause of the problem, which is basically that it has failed to provide potable water to millions of Zimbabweans and thus must rectify the situation. If the Government puts its house in order and provides safe, reliable, clean and potable water, sprouting of borehole drillers and boreholes in most homesteads will decrease.

Recommendations

- The inclusive government must have a clear policy on water, water facilities and resources.
- Issues around accessibility, affordability, and acceptability of water services and facilities must clearly be spelt out in programmes that are meant and set to deal with the water situation in the country
- Government must put more resources into activities around water provision
- Water that is used for domestic purposes must not be charged at commercial rates.

- The Government and any relevant authority charged with managing water resources and facilities must try to find other ways of raising revenue without using water as a source of revenue.
- Citizens who fall ill due to disease caused by the lack of clean water such as diarrhoea, cholera and other such related diseases must be attended to free of charge in state owned medical facilities.
- Water facilities that are gender sensitive and take care of women's needs must be introduced in areas that are prone to water cuts and water shortages.
- Government must take progressive steps towards realizing the need for portable clean water in educational institutions, homes and business facilities across the whole country.
- Domestic water must not be disconnected arbitrarily especially for reasons of failing to pay the rates.
- Those tasked with managing water supply and sewer reticulation must be made accountable to citizens, Government and Parliament and must operate efficiently.