

An Assessment of Law and Practice of the Right to Water: Evidence from Zimbabwe

Jephias Mapuva | ORCID: 0000-0002-7949-5629

Department of Sustainable Development, Faculty of Social Sciences,
Midlands State University, Zvishavane Campus, Zvishavane,
0100, Zimbabwe
mapuva@gmail.com

Received 7 July 2023 | Accepted 19 November 2023 |

Published online 23 January 2024 | Published in issue 5 March 2025

Abstract

This paper seeks to present legal and policy frameworks that govern and promote the right to water. Two case law studies are presented to show legal provisions and associated challenges to the realisation of the right to water. In Zimbabwe, successive Ministries superintending over the provision of water in the country have not been clear on free water. Perennial economic challenges and a general lack of political will to promote the right to water have been debilitating aspects to the right to water. Attempts at privatisation of the provision of water through ZINWA, has culminated in a total failure as the parastatal was bedevilled with a myriad of challenges. The privatisation of water has made it less accessible to the rural and poor urban communities. The constitutionalisation of the right to water has transformed access to water in Zimbabwe, though economic challenges have continued to hamstring local authorities' and government's capacity to realise this right. The Mazibuko and SERAC case laws have been given as ground-breaking legal challenges mounted by residents of communities in South Africa and Nigeria respectively as affected citizens have challenged authorities on the need for the realisation of the right to water to the public.

Keywords

legal obligation – Mazibuko case – privatisation – right to water – Zimbabwe – ZINWA

1 Introduction

Water is a natural resource which every person should have access to without limitation. As such it cannot be restricted in any way thereby making water an undeniable right. However, events common to many communities in Zimbabwe have suggested that water as a commodity has been accessible mainly to the privileged few. International, regional and local legislative and policy frameworks have provided that water should be made available free of charge and in abundance. Basically, the well-being of humanity revolves around the availability, quality and accessibility to safe drinking water that meet WHO standards, including water for other domestic uses. Zimbabwe has been one country whose economic and political dynamics have undermined various human rights, including the right to water. Human rights are those entitlements bestowed upon people by virtue of their being human. In politics, it is obligatory for citizens to enjoy human rights in their varieties—namely civil and political rights on the one hand and socio-economic and cultural rights on the other. Unlike civil and political rights which should be realized progressively, economic, social and cultural rights are of immediate realization. As such States parties are obligated to ensure that people enjoy these rights. Economic, social and cultural rights include the right to education, social security, food, water, health and other rights that enable people to live a dignified life. While there are several rights that are provided in different international and regional instruments such as the Universal Declaration of Human and People's Rights (UDHR) and the International Convention on Economic, Social and Cultural Rights (ICESCR), this paper deals with economic, social and cultural rights (ESCRs). The African Charter explicitly provides for three ESCRs which are the right to work,¹ the right to health² and the right to education.³ Case laws of the Mazibuko (Phiri case) and SERAC cases are incorporated in this paper.

1 Article 16, African Charter on Human and Peoples Rights.

2 Article 16, African Charter on Human and Peoples Rights.

3 Article 17, African Charter on Human and Peoples Rights.

2 Selected International Instruments Providing for the Right to Water

Several international instruments have been provided to highlight that access to adequate water for drinking and domestic use is not a luxury but a basic human right which State parties should strive to realize for their citizens. There are several legally binding international human right conventions that allude to the right to water. Among these are the 1966 Conventions which include the International Covenant on Civil and Political Rights (ICCPR) ¹⁴ as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR) ¹⁵. These conventions implicitly recognize the right to water, especially more so in the ICESCR.

3 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Rural women have been singled out by virtue of the fact that they constitute the poorest category of people, especially in Africa. The CEDAW has credited rural women for most socio-economic development in most rural areas. By that token, Article 14 (1) has exhorted that

States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

Article 14 (1), African Charter on Human and Peoples Rights

It has been noted that the right to water has been recognized in a wide range of international treaties, declarations and in a number of national constitutions. For instance, Article 14(2) of the Convention on the Elimination of All Forms of Discrimination Against Women and the constitution of South Africa. Pertaining to rural women, the CEDAW has provided that this group of people should

enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication.

Article 14(2), CEDAW

4 **Socio-Economic Rights in the African Charter and the Maastricht Guidelines**

One of the principal instruments that govern the dispensing of human rights on the African continent is the African Charter and the Maastricht Guidelines. Both the African Charter and the Maastricht Guidelines prescribe what State parties should do to realize the different socio-economic rights. Although the African Charter does not expressly include the right to water, the guidance is grounded in the regional treaties' protection of economic, social, and cultural development, health, access to natural resources, the environment, and food (International Justice Resource Center). The Charter, provides a generic view of entitlements whose prerequisite require access to water, notably health, life and housing. The Maastricht exhorts State parties to exhaust all means in an effort to provide for the socio-economic needs to people, including the realization of the minimum core obligations. In the African Charter, the right to water is enveloped in other associated and attendant provisions. For example, in Article 16 which provides for the right to health, the right to water is implicit in that one cannot talk of good health without involving water as a constituency of a healthy environment. Article 16 (1) provides that

Every individual shall have the right to enjoy the best attainable state of physical and mental health.

Article 16 (1), African Charter

In all instances, the enjoyment of the best attainable state of physical and mental health would not be achieved without the utilization and availability of water. For example, extended lack of water in one's body would result in dehydration, which in itself is a danger to health. Additionally, the absence of clean water for drinking and domestic use would culminate in disease outbreaks.

Article 16 (2) which states that

States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 16 (2), African Charter

The Charter exhorts State parties to take the necessary measures to ensure that in the event of a disease outbreak, remedial measures are taken to sustain health. These African Charter provisions are both implicit and generic and may not in some cases exclusively make explicit reference to water.

In addition to Article 16 of the African Charter, there are other additional provisions in the same documents, which are similarly generic and implicit, notably Articles 4 and 5. Article 4 states that

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Articles 4 and 5, African Charter

This article suggests that the realization of basic socio-economic rights by State parties brings about *respect*, *dignity* and *integrity* to human beings.

The Maastricht is very strong on its exhortation of State parties to dispense the cited socio-economic rights. In its guidelines it obligates state parties to respect, protect and fulfil all rights and entitlements to its citizens. It also recognises the minimum core obligation which entitles citizens to enjoy a free quota of services rendered by the State. In South Africa, there is a free water allocation of 6,000 litres of safe water per household per month under the country's Free Basic Water Policy of the Department of Water Affairs.⁴ It should however be noted that minimum core obligations are mandatory irrespective of the availability of resources in the country concerned as well as any other factors and difficulties the country might be encountering. According to the Maastricht Guidelines,⁵ failure to realise this obligation constitutes a violation of such rights.⁶ The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the failure of States to provide essential water and sanitary conditions to those in need amounts to a violation.

The Maastricht also provides for the obligations of conduct and of result. In the case of the right to water, the obligation of conduct requires action reasonably calculated to realize that clean drinking water is made available to those in need and involves the adoption and implementation of a plan of action to reduce non-availability of clean drinking water and the subsequent outbreak of communicable diseases.⁷ Under the obligation of result, the State parties

4 Department of Water Affairs: Free Basic Water Implementation Guidelines for local authorities.

5 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22–26, 1997.

6 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22–26, 1997.

7 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22–26, 1997.

would ensure that adequate availability of water would culminate in limited water-borne diseases and healthy communities. This justifies South Africa's Free Basic Water Policy as a fulfilment of the Maastricht Guidelines.

Furthermore, State policies should take into consideration the obligations that State parties are supposed to fulfil and the avoidance of violations of obligations. The Guidelines provides that

a violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result.

Maastricht Guidelines (1997)

5 Case Laws on the Right to Water

This article deliberates on two major cases that speak to the right to water, namely the Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria (commonly known as the SERAC case); as well as the South Africa's Constitutional Court in *Mazibuko vs City of Johannesburg* (also known as "the Phiri case") decided on 8 October 2009, the country's first test case on the right to water.

6 Summary of the Mazibuko Case

The nature of the Mazibuko Case is such that there are allegations of violation of the South African Constitution in terms of the right to the progressive realization of the right to water within maximum available resources. The case further raises the question of the scope of the right to access to sufficient water. The legal issue further brings into question the legality of the installation and existence of pre-paid water meters in the affected jurisdictional area. The summary of the facts of the case are such that five residents of Phiri in Soweto brought a case against the water provider, Johannesburg Water which is a company jointly owned by The City of Johannesburg and the Ministry of Water Affairs and Forestry. Arising from this legal challenge by the residents of Phiri was the legality of the City's policy in relation to the supply of free basic water of 6,000 liters to every account holder. The residents further questioned whether this practice was in conflict with the Water Services Act. In the same breath, the residents were questioning the constitutionality of the City's

Water policy on the access to sufficient water as set out in Section 27 of the Constitution of South Africa. In addition to the above questions, the residents also challenged the legality of the installation of water meters in Phiri, which were used to facilitate the charging of consumers for the use of water in excess of the free basic water allowance.⁸

In its verdict, The South Gauteng High Court found that the installation of pre-paid water meters in Phiri was both unlawful and unfair. The court further held that the city's Free Basic Water Policy was unreasonable in terms of Section 27(2) of the Constitution and therefore unlawful. It eventually ruled that the city should provide the Phiri residents with 50 liters of free basic water daily as well as to other people who were under the jurisdiction of the city of Johannesburg. However, on appeal, the Supreme Court of Appeal varied this order, and reduced its initial ruling of 50 milliliters daily to 42 liters, regarding such an amount as sufficient. The Court of Appeal further directed the city to reformulate its policy accordingly to align with this ruling. In its judgement, the Supreme Court of Appeal castigated the installation of the pre-paid water meters which it viewed as unlawful, especially given that the city's by-laws did not have such a provision. Eventually, the Supreme Court of Appeal expressed the view that the cut-off in water supply that occurs when the free basic water limit was exhausted constituted an unlawful discontinuation of the water supply, and therefore unconstitutional.

Although the court suspended its order for two years but held that, pending the reformulation of the water policy, it demanded that any accountholder in Phiri who is registered as an 'indigent' must be supplied with 42 liters of free water per day per member of his or her household. This gave the city enough grace period to regularize their policy framework on water provision and the modalities around the installation of water meters and cut-off of non-payment while also preparing residents for such eventuality.

Upon further appeal to the Constitutional Court, the latter court overturned the Appeals Court decision and held that the right of access to sufficient water does not require the state to provide, upon demand, every person with sufficient water. The court left the responsibility of water provision to the State to take reasonable legislative and other measures progressively to realize the right of access to sufficient water, within available resources. On the residents' challenge on the legality and constitutionality of the water case in Phiri, the Constitutional Court rejected the applicants' request for the adoption of a prescribed quantity of daily water ration as a standard. The Constitutional Court eventually left the interpretation and implementation of the relevant

8 *Mazibuko vs City of Johannesburg*.

legislation and policies to government to ensure the progressive realization of the right to water. The court found that government had taken the right direction taking steps to realize and ensure the achievement of access to water, the. The court also commended the government for having appropriate policy framework to facilitate the provision of water to residents of Phiri which policy is in consonant with the obligation of progressive realization and achievement of the right to water. The court also concurred that the city's Free Basic Water Policy fell within the boundaries of reasonableness and was not in conflict with either Section 27 of the Constitution or national legislation regulating water services. The Court was not critical of the installation of water meters. The court also concurred that cut-off of water supply was not a violation of their right to water per se put a stop-gap measure to persuade residents to pay for services rendered. In addition, the decision of the superior court was received with mixed feelings with activists expressing dismay, but expressing that progress and sanity should prevail.

The significance of this case was that it was a ground-breaking legal challenge on the right to water in South Africa as it provided a precedence for similar cases in other jurisdictions elsewhere and did not contravene Section 27 (2) of the South Africa Constitution.⁹

7 Summary of the SERAC Case

The SERAC case communication alleges a determined violation of a wide range of rights guaranteed under the African Charter, most of them having a bearing on the right to water. Before embarking on an inquiry whether the Government of Nigeria has violated various rights as alleged in the complaint, it would be prudent and proper to establish what is generally expected of governments under the [African] Charter and more specifically *vis-à-vis* the rights themselves. The summary of facts of the SERAC case revolves around the allegations that the military government in Nigeria was directly involved in oil production through a state oil company, the Nigerian National Petroleum Company (NNPC). The bone of contestation arose from the operations at the NNPC which ostensibly caused environmental degradation and health problems emanating from contamination of drinking water of the Ogoni people.

9 Section 27 (2) of the South Africa Constitution says that the State must respect, protect, promote and fulfil the rights in the Bill of Rights, but does not have to necessarily fulfil most socio-economic rights immediately, though it must take reasonable legislative and other measures within its available resources, to achieve the progressive realization of the rights to water.

The Ogoni community alleged that the oil consortium exploited oil reserves in Ogoniland with no due regard for health or the environment of the local people, with specific reference to the disposal of toxic waste into the local communities' waterways, in violation of applicable national, regional and international health standards. Despite continued complaints by the affected communities, the oil consortium failed to take reasonable measures to avoid oil spillages into the local communities' waterways, which in itself jeopardised the health of the Ogoni people. This culminated in long-term health problems which mostly revolved around the drinking of contaminated water. The allegations further noted that health problems encountered included skin infections, gastrointestinal and respiratory ailments as well as increased risk of cancers and neurological and reproductive challenges to the affected communities.¹⁰

Due to its affinity with the military, the Nigerian government became an accomplice to this heinous human rights violation act in that they placed the military to guard the oil company's equipment at the oil fields. This helped to facilitate the continuous violation of the rights of the Ogoni people to clean and uncontaminated drinking water. The government liability and blameworthy was further exacerbated by the fact that it neither monitored operations of the oil companies nor required safety measures. This negligence culminated in unrestrained contamination of waterways in Ogoniland communities. This violation of human rights was further exacerbated by the calling by the Rivers State Internal Security Task Force, for "ruthless military operations"¹¹ against local communities who were opposed to the operations of the oil consortium. Of note was the allegation levelled against the Nigerian Government military that supported irresponsible oil development, resulting in the poisoning of much of the soil and water on which the people of Ogoni farming and fishing communities had depended over the years. The terror caused by the security forces had created so much terror and insecurity, that it became impossible for the Ogoni people to engage in farming and fishing activities and to herd their livestock, leading to malnutrition and starvation.

8 Critical Analysis of the Case Laws in Relation to the Right to Water

Drawing from the SERAC and Mazibuko cases, there was deliberate violation of the right to water as evidenced by the content of judgements by the

¹⁰ *SERAC vs Nigeria* (n 33) para 3.

¹¹ United Nations Environmental Programme: https://leap.unep.org/sites/default/files/court-case/achpr30_155_96_eng.pdf.

respective courts. With close reference to the content and context of the two cases, the right of water transcends its availability and revolves around several key considerations, which encompass its availability, quality and accessibility. The 'term' availability denotes whether the supply of water is sufficient and continuous, especially for personal and domestic use. Ordinarily, domestic use would incorporate drinking, personal sanitation as well as attendant uses such as washing of clothes, food preparation and the general household cleanliness.

Consequently, availability and accessibility are some of the components that constitute a complete the cycle of the right to water. Water quality, availability and accessibility are significant determinants of the right to water. It is commonplace that these components including water quality for domestic use must be safe, meeting WHO standards of cleanliness, and free from micro-organisms that would translate to contamination are significant. The quality of water should be free from chemicals with no outstanding stench to constitute a health hazard. Colored water is indicative of contamination and such water quality would not be safe for drinking or domestic use.

There has to be available water facilities that are accessible to all people, without discrimination. Zuniga et al. (2013) identifies four overlapping dimensions to accessibility which are accessible without discrimination; physically accessible; economically accessible (i.e., affordable); and accessible health-related information.

Consequently, this argument presents water as a vital component to good health (Zuniga et al., 2013). These are some of the components that are used to determine the right to water in Zimbabwe overtime. As has been highlighted elsewhere in this paper, physical and economic accessibility to water are some of the major impediments that hinder the progressive realization of the right to water in Zimbabwe.

9 Privatization of a Public Good

The right to water in Zimbabwe has courted controversy with the privatization of water through the creation of the Zimbabwe National Water Authority (ZINWA). The Water Act of 1976 portrayed the colonial mentality of treating indigenous groups as not worthy of basic human rights and entitlements, including the right to water. The post-colonial dispensation made an attempt to amend the Water Act of 1976 by promulgating the Water Act of 1998 which expanded the provision of water without making it a human right. The Water Act of 1998 was further re-worked, culminating in the Zimbabwe National Water Authority (ZINWA) of 1998, which privatized the provision of water, further making economic accessibility to water difficult for many citizens. The

situation was further worsened by the cabinet directive to the city of Harare in 2005 to hand over its water and sewer infrastructure to ZINWA. This made water expensive and beyond the reach of many. Further political developments led to the promulgation of a new constitution in 2013, incorporating a bill of rights, including the right to water.

It is one of the most edifying issues that the right to water has been enshrined in Zimbabwe's constitution, which in all senses is a significant development, given that over the years, Zimbabwe did not have a bill of rights where basic and fundamental human right would be enshrined. Given that Zimbabwe is party to the Committee on Economic Social and Cultural Rights, is became incumbent upon the country to constitutionalize the right to water. The right to water is a justifiable right to which the State has an obligation to fulfill, in accordance with Article 11 (1) of ICESCR which among other rights, guarantees the right to food, clothing and housing.¹² Similarly, CEDAW has also assimilated the right to water in Article 24 (2) and states that

States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to ... water supply”.

Article 24 (2), CEDAW

Additionally, Article 24 (2) of the Convention on the Rights of the Child exhorts State parties to provide a conducive environment for the combat disease and malnutrition by providing

adequate nutritious foods and clean drinking water.

Article 24 (2) of the Convention on the Rights of the Child

As has been indicated in the Mazibuko (Phiri Water) case, it was found that the right to water contains both freedoms and entitlements. Among the freedoms manifested in the Mazibuko Case and to some extent in the SERAC case, include the right to maintain access to existing water supplies necessary for access to water and free from interference, such as the arbitrary disconnections or contamination of water supplies (The Crisis in Zimbabwe Coalition, 2010).

¹² Article 11 (1), ICESCR.

10 Towards Privatization of Water Provision in Zimbabwe

The origins of privatization of public entities have been the ESAP adopted by the Government of Zimbabwe in 1990 as one of the conditions for balance of payment support from the Bretton Woods institutions. Since then, privatization has been an enigma applied in wrong places. One of the most prevalent violation of the right to water in post-independent Zimbabwe has been through the transfer of water provision from the Ministry of Water to the Zimbabwe National Water Authority (ZINWA) and later back to the Ministry of Water, a move which was evident of a lack of a strong water policy. The right to water was superseded by a desire by government to make profit at the expense, thereby exposing a crop of uncaring politicians whose brazen focus deviated from the provisions of international instruments on the right to water, a socio-economic right which State parties are exhorted by the international community to comply with.

Kamete (2009) has pointed out that privatization of water and sanitation provision has been an illegal venture by government. One of the most authoritative international instruments that bestow provide clean drinking water as well as appropriate sanitary conditions is the International Covenant on Economic, Social and Cultural Rights, as read with General Assembly resolution 2200A (XXI) of 16 December 1966. Additionally, Resolution 8/2 of 18 June 2008 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, further places an obligation on the state to ensure the provision of safe drinking water and to ensure that sharing of information with other states on how best to provide socio-economic rights to their citizens is promoted. In Zimbabwe, the provision of water has been the preserve of the state and local authorities, with water having been highly subsidized and a public utility.

However, the privatization of water through the establishment of ZINWA made water expensive and beyond the reach of many. However, the inclusion of the provision of water in the new Zimbabwean Constitution (2013) heralded a new dawn where the right to water became an entitlement for all citizens as enshrined under Sec 77 (a), with Sec 77 (b) which obligates the State to

take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.

Sec 77 (a) (b), Constitution of Zimbabwe 2013

11 The ZINWA Debacle

The most outstanding aspect of The Water Act (1998: Ch. 20:25) sought to reform the water sector by ensuring a more equitable distribution of water. The reform process culminated in more stakeholder involvement in the management of water resources, including ownership of water and water sources. Government established the Zimbabwe National Water Authority to ensure equitable distribution of water. The Mission of ZINWA states that they strive

(t)o sustainably deliver quality water to all our communities (rural and urban) whilst making strategic water infrastructure investments that facilitate human and economic development.

The new policy dispensation meant that water supply and water permits would come under the ambit of ZINWA and the water right system eliminated. The policy provision also recognized that water is an economic good and the pollution of water and water sources be criminalized with the “polluter pays” principle applying. In its existence, ZINWA sought to plan and manage water resources on a catchment basis. This is in addition to the management of the water permit system, operationalization of water pricing, operating and maintaining existing infrastructure and executing development projects (Kamete, 2009). Most importantly, ZINWA took the responsibility for the supply and management of domestic water in urban areas, where tapped water is the major source, unlike in rural areas where there are numerous alternative sources of water.

With the spirit of commercialization, the establishment of ZINWA sought to operate on a commercial and self-financing basis. This meant that it provided services at a significant fee to generate the revenue for its needs to finance administrative and water supply functions. This is despite the fact that it was government venture which should be focused on offering public goods for free to citizens. However, the increasing demand for water, mostly in urban areas due to rural-urban migration also saw an equally increased demand for water, which in most cases surpassed the capacity of ZINWA to provide water to citizens. This was on the backdrop of economic challenges that saw ZINWA failing to cope with the demand for clean drinking water, culminating in serious challenges such as disbursing dirty, discolored water, resulting in disease outbreaks, notably cholera in some parts of Zimbabwe. As a result of privatization of water supply, water rates have continued to soar and becoming unaffordable for most citizens. This desperate situation was further compounded

by the failure of most local authorities to provide clean drinking water to their residents due to economic challenges that saw most councils failing to procure water-treating chemicals.

The origination of the cholera outbreak in Budiriro and Glen View in 2018 are evident of ZINWA's failure to provide adequate clean drinking water to citizens. The situation has further been exacerbated by lack of political will to provide water for citizens. This is evident in the failure by government of Zimbabwe to complete the Zambezi Water Project that has been on the cards since the 1980s. Additionally, most residential areas in Bulawayo continue to endure perennial water shortages despite the fact that the Umzingwane Dam is a water body that has the potential to supply water to the city of Bulawayo. As a result, there has been numerous complaints against failure of ZINWA to fulfill its mandate of delivering water to citizens of Zimbabwe. that the major cause for ZINWA's challenges is that the parastatal inherited a sophisticated, yet defunct network of urban water supply infrastructure from local authorities. Most local authorities had been notorious for failure to repair the water supply infrastructure, leading to perennial water and sewer bursts.

Another of the challenges that culminated in its demise was the lack of prior planning in the establishment of the parastatal. The infrastructure inherited by ZINWA required effective maintenance and management and on its own, ZINWA, being a new parastatal hastily established, lacked the necessary human, technical and financial resources to institute the required repairs and upgrades, resulting in infrastructure further falling into a state of disrepair, leading to. constant leakages as evidenced by sewage flows in high-density streets. This explains why disease outbreaks have been a common feature in most poor and densely populated suburbs in the country.

What has further exacerbated ZINWA's demise has been lack of adequate expertise to attend to the old and dysfunctional infrastructure, especially at a time when ZINWA lacked the financial resource to manage the supply of safe water to residents. This was further compounded by the scarcity of foreign currency which could only be accessed through the Reserve Bank of Zimbabwe (RBZ). This is in view of the fact that in order to procure water treatment chemicals, ZINWA depended on RBZ to finance its core activities. Consequently, the general shortage of foreign currency in the country has led to ZINWA failing to carry out its core mandate of water provision and meeting other operational costs, an undeniable contributory fact that led to water shortages and the disbursement of dirty water to citizens. Failure by ZINWA on its mandate of water provision has resulted in the sprouting of boreholes in most homesteads Despite the fact that it is the function of government to ensure that citizens get

clean drinking water as cited in the Mazibuko case as well as by various international legal instruments on socio-economic rights, which make the right to water mandatory and justifiable.

12 Limitation of the Right to Water in Zimbabwe

The right to water in the Zimbabwean Constitution, is subject to certain limitations, notably the prevailing economic conditions at any given time for the state to be able to provide water. Zimbabwe has had its fair share of economic challenges over the last 4 decades with no solution in sight. Even the constitution, under Section 77, exonerates the state from this obligation by implying that the state must take measures to implement the right to water, but only “within the limits of the resources available to it”. In South Africa, where legal court challenges on the right to water have been mounted through the local courts of law and where the constitution has a similar provision, the courts in different cases laws, such as the Mazibuko case, have interpreted this as follows: In determining the reasonableness of a government programs for implementing a socio-economic right, it is noteworthy that a court should decide reasonableness on a case-by-case basis. The State is not required to do more than what its resources permit it to do, but it has a duty to ensure the provision of minimum amount of water, despite prevailing economic circumstances. The right to water is subject to prevailing legislative and constitutional provisions that obligate the state to realize this right. Furthermore, the state should also be in a position to prove that it is incapacitated to realize the right to water. Consequently, due to the vital significance of the right to water, it would be difficult for the state to prove that it is unable to provide water. The establishment of ZINWA in Zimbabwe is testimony of acceptance by government to provide water.

13 Conclusion

The perennial socio-economic challenges and lack of political will have been stumbling blocks in the realization of the right to water in Zimbabwe. This has been happening on the backdrop of high levels of corruption. While a plethora of legislative and policy frameworks have been proffered to obligate and guide State parties towards the realization of the right to water, not much has been realized. The establishment of ZINWA was evident of Government’s commitment to provide adequate, clean drinking water to citizens, but challenges cited

above have inhibited the realization of the right to water. Natural calamities such as those emanating from climate change may have claimed a fair share of the challenges encountered in the provision of clean drinking water. The way forward would be increased investment in water bodies and the completion of existing projects.

References

- Kamete, Y. A. (2009). *Governing the Poor in Harare, Zimbabwe: Shifting Perceptions and Changing Responses*. Research Report No. 122, Nordiska Afrikainstitutet, Uppsala.
- The Crisis in Zimbabwe Coalition. (2010). *Zimbabwe and the right to water*. Retrieved January 20, 2018, from http://archive.kubatana.net/docs/watsan/ciz_right_to_water_091027.pdf.
- Zuniga, J. M., Marks, S. P. & Gostin, L. (Eds.) (2013). *Advancing the human right to health*. Oxford University Press.