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A human rights-based approach to implementing Target 11.6 of Sustainable Development Goal 11 in Zimbabwe

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Summary: *In its quest to deal with sustainability challenges continuously posed by rapid urbanisation, the international community reinvigorated the role of local governments as co-global actors in pursuance of the global sustainable development agenda by dedicating to cities Sustainable Development Goal 11 (SDG 11) of the United Nations 2030 Sustainable Development Agenda. SDG 11 is accompanied by ten time-bound targets directed towards making cities and human settlements across the world inclusive, safe, resilient and sustainable by 2030. Reports reveal that Zimbabwe, among other countries, is struggling to give effect to these targets, including Target 11.6 which requires local authorities to contribute towards reducing 'the adverse per capita environmental impact of cities'. Struggling with this target has implications for the enjoyment of environmental rights, among other fundamental rights. As such, using a human rights-based approach, this article explores how the right to a healthy environment entrenched in the 2013 Constitution of Zimbabwe can be used to pursue Target 11.6. Although the huge potential of the human rights-based approach*

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remains untapped in Zimbabwe, the article argues that its adoption in relation to Target 11.6 appears, in theory, to be the most appropriate means for the enjoyment of the right to a healthy environment as local authorities have a shared responsibility to adhere to human rights norms and standards. In light of the commendable precedents set by the judiciary in some cases, local authorities are recommended to consider the implication of legal provisions on the right to a healthy environment in the process of exercising their legislative or executive powers directed towards the realisation of Target 11.6.

Key words: *SDG 11; Target 11.6; local authorities; human rights-based approach; right to a healthy environment; Zimbabwe; Constitution of Zimbabwe*

1 Introduction

Cities¹ are considered powerhouses of economic growth, contributing approximately 60 per cent of global gross domestic product (GDP).² Their significance as drivers of the sustainable development agenda received its strongest recognition at the global level with the adoption in 2015 of, among others, the United Nations (UN) 2030 Agenda for Sustainable Development (UN 2030 Agenda).³ In terms of the UN 2030 Agenda, cities are expected to assist UN member states in the pursuit of the Sustainable Development Goals (SDGs), including SDG 11, which refers to the role of cities (as a metaphor for urban centres).⁴ Framed in broad terms, SDG 11 is accompanied by 10 time-bound targets principally geared towards making cities and human settlements across the world inclusive, safe, resilient and sustainable by 2030. Despite its global adoption, SDG 11 is enunciated in a 'soft law'⁵ document, which is incapable of imposing any binding legal obligations on UN member states that fail to meet it by 2030. However, only moral and political pressure can be brought to bear on UN member states to implement SDG 11.

1 From a legal perspective, cities are government units. They are micro-governments (municipalities or local authorities) overseen by state authorities. A du Plessis 'The readiness of South African law and policy for the global pursuit of the sustainable city' (2017) 21 *Law, Democracy and Development* 243.

2 UN *The Sustainable Development Goals progress report* (2019) 44.

3 UN *Transforming our World: The 2030 Agenda for Sustainable Development* A/RES/70/1 (2015); UN *Habitat III Declaration (New Urban Agenda)* 2016.

4 UN *Transforming our World: The 2030 Agenda for Sustainable Development* A/RES/70/1 (2015) (2030 Agenda).

5 For details on soft laws, see J Dugard *International law. A South African perspective* (2005) 36.

Although the UN member states, with the assistance of local authorities, are making relentless efforts towards the realisation of SDG 11, their progress has been sluggish.⁶ This is true in relation to all the targets, including Target 11.6, which is at the centre of this article, in terms of which local authorities are required to reduce ‘the adverse per capita environmental impact of cities, including by paying special attention to the quality of air and waste management’. Estimates show that cities account for about 60 per cent of global energy consumption and about 70 per cent of global carbon emissions.⁷ Ambient air pollution caused by traffic, industry, power generation, waste burning and residential fuel combustion, combined with household air pollution, poses a major threat to both human health and efforts to address climate change.⁸ It is estimated that more than 90 per cent of air pollution-related deaths occur in low and middle-income countries, mainly in Africa and Asia.⁹ In the same vein, estimates show that only 10 per cent of the municipal solid waste is collected in poor settlements in developing countries.¹⁰ Many municipal solid waste disposal facilities in these countries are open dump sites, which contribute to air, water and soil pollution.¹¹

The government of Zimbabwe is committed to realising SDG 11 and its subsidiary targets, including Target 11.6. Before this goal came into effect the government already understood the significance of a sub-national scale of intervention in environmental matters by local authorities. Through its regulatory powers, the national government enacted the Urban Councils Act,¹² as Zimbabwe’s local government framework legislation, in terms of which local authorities have legislative and executive powers over matters, such as air quality management, solid waste management, the provision of water, the provision of sanitation services, and the provision of drainage services.¹³ The national government fleshed out these powers in terms of the Environmental Management Act (Chapter 20:27) of 2002 (EMA), which is Zimbabwe’s framework environmental legislation.¹⁴ More importantly, section 73 of the 2013 Constitution serves as another source of the mandate of local authorities, in terms of which they have a shared responsibility to give effect to the right to a clean

6 UN *The Sustainable Development Goals progress report* (2020) 15-16.

7 UN (n 2) 44.

8 UN (n 2) 45.

9 As above.

10 UN-Habitat *Tracking progress towards inclusive, safe, resilient and sustainable cities and human settlements* (2018) 77.

11 UN (n 2) 45.

12 Urban Councils Act (Chapter 29.15) of 1996 (UCA).

13 Second and Third schedules to the UCA (n 12).

14 See part 4 below for details.

and healthy environment.¹⁵ Overall, it should be noted that the execution of the powers and mandate of local authorities emanating from Zimbabwe's legal framework happens in a multilevel system of government wherein the national government plays a supervisory role by way of regulating, monitoring, intervening and supporting local authorities.¹⁶

Despite the existence of this legal framework, it is regrettable to note that local authorities in Zimbabwe are struggling with environmental challenges such as environmental pollution, wetlands degradation, and climate change.¹⁷ The challenge of air pollution in cities is compounded by a lack of measurement devices; a lack of ambient air quality data to compare today and previous years; the inefficient use of energy in buildings; the use of biomass for cooking and heating; a lack of or inadequate resources to invest in green technology; and a lack of strong policies to deal with vehicles that do not meet the minimum prescribe emission standards that are environmental friendly.¹⁸ Apart from this, the disposal of solid waste in undesignated points is aggravated by the failure of local authorities to provide essential services to residents.¹⁹ In all of this, the right to a healthy environment entrenched in section 73 of the Declaration of Rights,²⁰ which local authorities have a co-responsibility to realise, has often been an afterthought. As such, using a human rights-based approach,²¹ it is necessary to examine the extent to which giving effect to the right to a healthy environment can contribute towards the reduction of the 'adverse per capita environmental impact of cities' as envisaged in terms of Target 11.6.

To achieve the objective of this article, the remainder of the article is divided as follows: The first part begins by exploring the meaning and vision of SDG 11, with specific emphasis on Target 11.6, to understand what is expected of urban local authorities by 2030. The second part explores the meaning and implications of a

15 See part 4 below for details.

16 For further details on supervision in Zimbabwe, see TC Chigwata & J de Visser 'Local government in the 2013 Constitution of Zimbabwe: Defining the boundaries of local autonomy' (2018) 10 *Hague Journal on the Rule of Law* 154-185; N Machingauta 'Supervision of local government' in J de Visser, N Steytler & N Machingauta (eds) *Local government in Zimbabwe: A policy dialogue* (2010) 139-150.

17 Government of Zimbabwe *National Development Strategy January 2021 – December 2025* (2020) para 812.

18 See generally Government of Zimbabwe *Zimbabwe Environment Outlook 2: A clean, safe and healthy environment: Zimbabwe's Fourth State of the Environment Report* (2019), <https://www.ema.co.zw/agency/state-of-the-environment-report> (accessed 3 May 2022).

19 As above.

20 Ch 4 of the Constitution of Zimbabwe, Amendment (No 20) Act 2013.

21 See part 3 below.

human rights-based approach in order to demonstrate how human rights norms and standards could guide local authorities towards the pursuit of SDG 11. The third part examines the extent to which the applicable legal framework obliges and enables urban local authorities in Zimbabwe to use environmental rights to contribute towards the realisation of Target 11.6. The article ends with a conclusion.

2 Vision and implications of SDG 11

SDG 11 is accompanied by ten time-bound targets directed towards making cities and human settlements across the world inclusive, safe, resilient and sustainable by 2030. Of these targets, the sixth target – Target 11.6 – encourages local governments, to ‘[r]educe the adverse per capita environmental impact of cities, including by paying special attention to the quality of air and waste management’. Progress towards this target is measured by two indicators. First, this target is measured by the ‘proportion of urban solid waste regularly collected and with adequate final discharge out of total urban solid waste generated by cities’.²² Measures directed towards sound waste management must go beyond the mere safe disposal or recovery of waste generated and should seek to address the root cause of the problem by attempting to change unsustainable patterns of production and consumption.²³ The framework for the necessary action should be based on a ‘hierarchy of objectives’ and focused on the following four major waste-related programme areas: minimising waste; maximising environmentally-sound waste reuse and recycling; promoting environmentally sound waste disposal and treatment; and extending the coverage of waste services.²⁴

Second, Target 11.6 is also measured by the ‘annual mean levels of fine particulate matter (eg PM2.5 and PM10) in cities (population weighted)’.²⁵ The ability of local authorities to meet this target depends on strategies directed towards regulating emission and quality standards. Emission standards set maximum levels on the permissible amount of specific air pollutants that can be emitted in discharges from specific sources over specific timeframes.²⁶ In the same vein, air quality standards are legal standards governing

²² SDG (n 4) 11.6.1.

²³ Para 74 of the New Urban Agenda; para 21.4 of *Agenda 21 UN Doc A/Conf151/26* (1992) (Agenda 21).

²⁴ Para 21.5 and also ch 21 of Agenda 21 for further details on these programme areas. See also D Czischke, C Moloney & C Turcu *Sustainable regeneration in urban areas* (2015) 8.

²⁵ SDG (n 4) 11.6.2.

²⁶ D Shelton & A Kiss *Judicial handbook on environmental law* (2005) 35; UN *Glossary of environmental statistics* (1997) 27.

concentrations of both outdoor and indoor pollutants without controlling emissions directly.²⁷ Local authorities can regulate air quality standards by prescribing to its residents minimum emission standards. Such prescription can be done through building regulations, municipal by-laws and strategic plans that are aligned to national and international levels of ambition.²⁸ Other strategies that must be promoted by local governments to deal with air pollution include greening or retrofitting existing infrastructure systems,²⁹ such as transport and energy networks, for example, to be more carbon efficient and less energy intensive.³⁰ In addition, constructing green urban spaces also potentially filters out harmful air pollutants, thus reducing levels of particulate matter and nitrogen dioxide.³¹ Overall, the above strategies need to be strengthened by increasing awareness and education, with the objective of enhancing the capacity of communities to prevent or mitigate the detrimental effects of air pollution.

As is the case with the other targets, Target 11.6 is expected in terms of SDG 11 to contribute towards 'inclusive', 'safe', 'resilient' and 'sustainable' cities in very specific ways. An inclusive city is one in which jurisdiction all residents, including the often marginalised segments of the society, have a representative voice in governance, and fair and equitable access to urban opportunities, infrastructure and resources that cultivate social integration and enable residents to enjoy and fully partake in urban life.³² Inclusion can be promoted in terms of Target 11.6 by giving urban dwellers the opportunity to provide informed, timely and meaningful input and influence decisions on general policies, strategies and plans on individual projects that have a bearing on the environment. Besides this, resilience as envisaged in terms of SDG 11 can broadly be defined as the capacity of a system, including a city, potentially exposed to natural disasters and human-induced crises, to resist or change in order to reach and maintain an acceptable level of functioning and

27 Shelton & Kiss (n 26) 80.

28 See generally World Health Organisation (WHO) *Air quality guidelines for particulate matter, ozone, nitrogen dioxide and sulphur dioxide* (2005).

29 SDG (n 4) 11.c The term 'retrofitting' may be defined as the installation of individual or multiple energy efficiency measures to an existing infrastructure. See, eg, VS Rawat, R Divahar & P Kulshrestha 'A review: Impact of retrofitting in term of sustainability development and green building' (2018) 6 *International Research Journal of Engineering and Technology* 813.

30 SDG (n 4) 11.2.

31 Target 11.7; M Giezen, S Balikci & R Arundel 'Using remote sensing to analyse net land-use change from conflicting sustainability policies: The case of Amsterdam' (2018) 7 *International Journal of Geo-Information* 382.

32 UN HABITAT *Habitat III Issue Paper 1: Inclusive cities* (2015) 1-10; F Schreiber & A Carius 'The inclusive city: Urban planning for diversity and social cohesion' in G Gardner, T Prugh & R Renner (eds) *State of the world: Can a city be sustainable?* (2016) 317-335.

structure.³³ Resilience of cities can be promoted in terms of Target 11.6 through air quality (pollution) management which serves as one of the strategies that can be used to mitigate the effects of climate change, for example. It is submitted that strategies directed towards promoting the resilience of cities simultaneously promote safety in cities. This is because safety may be understood as involving protecting residents from the risk and occurrence of human-induced or natural disasters and climate change.³⁴ While sustainability is a broad term, it is understood within the framework of SDG 11 as centred on issues such as housing, cultural and natural resource protection, disaster risk reduction, resilience, service delivery, resource efficiency, mobility and development planning. It is submitted that giving effect to Target 11.6 promotes local sustainability since it underscores the need for local authorities to exploit natural resources and deal with the above-mentioned issues while taking into consideration the need to protect the natural environment at the local level. It goes without saying that there is a direct and indirect relationship between this Target 11.6 and a vast array of other targets and indicators across the SDGs.³⁵ As such, the realisation of each SDG often depends wholly or in part upon the realisation of Target 11.6.

There is no doubt that the extent to which local authorities are able to give effect to Target 11.6 has a bearing on the enjoyment of environmental rights, among other fundamental rights. This is informed by the fact that a clean and healthy environment contributes to the fulfilment of fundamental rights and that the denial of a clean and healthy environment invariably impedes the enjoyment of other rights. Against this background, the following part examines the meaning and implications of a human rights-based approach in order to set the normative basis from which to explore how human rights norms and standards could guide local authorities towards the pursuit of Target 11.6 in Zimbabwe.

33 T Beatley & P Newman 'Biophilic cities are sustainable, resilient cities' in K Etingoff (ed) *Sustainable cities: Urban planning challenges and policy* (2017) 7.

34 See Targets 11.5 and 11.b. See also UN HABITAT *Habitat III Issue Paper 3: Safer Cities* (2015) 1-10.

35 Eg, indicator 2.2.2: Prevalence of Wasting; indicator 3.9.1: Population Exposed to Outdoor Air Pollution; indicator 6.3.2: Water Bodies with Good Ambient Water Quality; indicator 11.1.1: Slum Household; indicator 12.5.1: Solid Waste Recycling Share.

3 Human rights-based approach

3.1 Basis of a human rights-based approach

The human rights-based approach emerged during the 1990s as a viable development framework with the ability to address increasing global poverty.³⁶ Although there is no single definition of a human rights-based approach, it may be defined as ‘a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights’.³⁷ What this means is that development objectives are supposed to be rooted firmly in standards and principles of human rights, including environmental rights that are generally categorised into substantive environmental rights and procedural environmental rights. A substantive right to the environment for present purposes entails the promotion of a human right to environmental conditions of a specified quality.³⁸ It may mean a right to a safe, healthy, satisfactory, favourable, ecologically sound or unpolluted environment depending on the epithets used in the provision defining this right. This is true in relation to international soft law instruments of which the provisions recognise the substantive right,³⁹ and are believed by some scholars to have crystallised to attain the status of customary international law.⁴⁰ For example, the provisions of national constitutions enacted

36 A de Man ‘Critiques of the human rights framework as the foundation of a human rights-based approach to development’ (2018) 43 *Journal for Juridical Science* 84.

37 United Nations Office of the High Commissioner for Human Rights *Frequently asked questions on a human rights-based approach to development cooperation* (2006) 15.

38 LD Shelton ‘Developing substantive environmental rights’ (2010) 1 *Journal of Human Rights and the Environment* 90. The present study deliberately ignores one of the approaches that formulates substantive environmental rights as an entitlement implied in human rights instruments that do not expressly stipulate it. For details on this approach, see HB Weston & D Bollier *Regenerating the human right to a clean and healthy environment in the commons renaissance* (2011) 13. This is because an explicit free-standing right to a healthy environment exists in Zimbabwe’s legal framework. See part 4 of this study.

39 See Principle 1 to the 1972 Declaration of the United Nations Conference on the Human Environment which states that ‘[m]an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being’. Principle 1 of the 1992 Rio Declaration on Environment and Development stipulates that human beings ‘are entitled to a healthy and productive life in harmony with nature’. See also Principle 1 of annexure 1 to the 1987 report of the World Commission on Environment and Development which notes that ‘[a]ll human beings have the fundamental right to an environment adequate for their health and well-being’.

40 L Collins ‘Environmental rights on the wrong side of history: Revisiting Canada’s position on the human right to water’ (2010) 19 *Review of European, Comparative and International Environmental Law* 353; M Soveroski ‘Environment rights versus environmental wrongs: Forum over substance?’ (2007) 16 *Review of European, Comparative and International Environmental Law* 268.

pursuant to a perceived international legal obligation may constitute state practice giving rise to customary international law.

At the regional level, the African Charter on Human and Peoples' Rights (African Charter) was the first binding instrument to explicitly recognise the right to a healthy environment.⁴¹ Article 24 provides that 'all people shall have the right to a generally satisfactory environment favourable to their development'. Although this article has been criticised as vaguely formulated by some scholars,⁴² it was at the centre of the case of *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria*⁴³ (SERAC case), which marked a significant moment in regional environmental rights jurisprudence as it was the first time the African Commission on Human and Peoples' Rights (African Commission) expanded on the meaning, interpretation and scope of the right to a satisfactory environment provided in the African Charter.⁴⁴ Interpreting this article, the African Commission held that 'the state is required to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources'.⁴⁵ Although its decisions have no legal force,⁴⁶ the African Commission advanced several environmental principles of which the promotion has an effect on the realisation of the right to a healthy environment. First, the state is required to promote conservation and ensure the ecologically-sustainable development of its natural resources.⁴⁷ Second, states must take reasonable measures for the prevention of pollution and ecological degradation.⁴⁸

Since the substantive environmental rights discussed above are not self-executing, the African Commission advanced further principles that resonate with procedural environmental rights such as the right to environmental information, the right to participate in environmental decision-making, and the right of access to justice in environmental

41 The African Charter was adopted 1981 and ratified by Zimbabwe in 1986.

42 S Turner *A global environmental right* (2014) 26; AE Boyle 'The role of international human rights law in the protection of the environment' in AE Boyle & MR Anderson (eds) *Human rights approaches to environmental protection* (1996) 46.

43 (2001) AHRLR 60 (ACHPR 2001). For details of this case, see M van der Linde & L Louw 'Considering the interpretation and implementation of article 24 of the African Charter on Human and Peoples' Rights in light of the SERAC communication' (2003) 3 *African Human Rights Law Journal* 167-187.

44 KSA Ebeku 'The right to a satisfactory environment and the African Commission' (2003) 3 *African Human Rights Law Journal* 163.

45 SERAC (n 43) para 52.

46 DR Boyd *The environmental rights revolution: A global study of constitutions, human rights, and the environment* (2011) 104; Ebeku (n 44) 163.

47 SERAC (n 43) para 52.

48 As above.

matters.⁴⁹ The right to environmental information denotes the ability of citizens to have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities.⁵⁰ The right to participate in environmental decision making is defined as the opportunity for citizens to provide informed, timely and meaningful input and influence decisions on general policies, strategies and plans at various levels and on individual projects that have an environmental impact.⁵¹ Access to justice denotes the 'rights of individuals and groups to obtain quick, effective and fair responses to protect their rights, prevent or resolve disputes, and check abuse of power through a transparent and efficient process in which mechanisms are available, affordable and accountable'.⁵² Overall, these procedural environmental rights have the potential to assist in ensuring that those who are responsible for environmental damage violating or threatening human health or well-being are held accountable.

Apart from the above, the African Commission established positive and negative obligations related to the realisation of the right to a healthy environment. These obligations are at the crux of the human rights-based approach but generally are addressing national governments that stand as representatives of the states – and, therefore, the primary duty bearers – under international human rights law.⁵³ However, in a multilevel system of government, the national government is expected to play a supervisory role for sub-national levels of government to meaningfully contribute towards the realisation of human rights at the local level. In light of this, the following part examines the implications of these obligations on local authorities.

3.2 Implications of a human rights-based approach for local authorities

All levels of government – inclusive of local authorities – have the obligation to attend to the needs of right holders, which manifest, at least, at four levels, namely, the duty to respect, protect, promote, and

49 *SERAC* (n 43) para 53; Principle 10 of the Rio Declaration; LA Feris & D Tladi 'Environmental rights' in D Brand & C Heyns (eds) *Socio-economic rights in South Africa* (2005) 263; Boyd (n 46) 31-32.

50 *SERAC* (n 43) para 53; see also Principle 10 of the Rio Declaration.

51 As above. E Petkova (ed) *Closing the gap: Information, participation and justice in decision making for the environment* (2002) 15.

52 See Zimbabwe Human Rights NGO Forum *The State of Human Rights Report Zimbabwe – 2017* (2018) 52. See also principle 10 of the Rio Declaration.

53 Art 26 Vienna Convention on the Law of Treaties (1969).

fulfill the right to a healthy environment.⁵⁴ The obligation to respect human rights generally is considered as imposing a negative duty on local authorities to refrain from interfering directly or indirectly with the enjoyment of any of the human rights and freedoms.⁵⁵ For example, the obligation to respect environmental rights is violated if a local authority permits or fails to challenge developmental projects that adversely interfere with the ecological integrity of a wetland.

The obligation to protect human rights entails the adoption and implementation of positive measures by local authorities to prevent, stop or obtain redress or punishment for third party interference.⁵⁶ For example, local authorities can contribute towards the protection of environmental rights by regulating the conduct of private parties; inspecting and monitoring the compliance level of third parties with environmental standards; and enforcing administrative and judicial sanctions against third parties whose activities violate environmental standards.

The obligation to promote human rights requires local authorities to adopt measures that seek to enhance people's awareness of their rights, and to provide accessible information relating to programmes and institutions put in place to realise these.⁵⁷ Local authorities, for example, can promote environmental rights through environmental education and environmental awareness with the objective of enhancing the capacity of urban dwellers to address environmental issues and to engender values and skills consistent with environmental management.

While the obligation to fulfil human rights requires local authorities to take 'positive steps' or 'all appropriate means' to advance the realisation of human rights,⁵⁸ it is, however, contended that the exact scope and content of this obligation depends on the particular context and the resources available. This obligation suggests that local authorities should adopt appropriate legislative, administrative, educational, financial, social and other measures towards the enjoyment of rights by those who cannot afford it on their own.⁵⁹

54 SERAC (n 43) para 44; N Ndlovu *Protection of socio-economic rights in Zimbabwe. A critical assessment of the domestic framework under the 2013 Constitution of Zimbabwe* (2016) 13-17.

55 Ndlovu (n 54) 13-14; SERAC (n 43) para 45.

56 Ndlovu (n 54) 14-15; SERAC (n 43) para 46.

57 African Commission *Principles and guidelines on the implementation of economic, social and cultural rights* (2010) 11; Ndlovu (n 54) 16-17; A Moyo 'Socio-economic rights under the 2013 Zimbabwean Constitution' in A Moyo (ed) *Selected aspects of the 2013 Zimbabwean Constitution and the Declaration of Rights* (2019) 171.

58 African Commission (n 57) 12; para 2 of UN General Comment 3 (1990).

59 Moyo (n 57) 171.

When local authorities are discharging their obligations discussed above, they are required in terms of the human rights-based approach to promote the principles of universality and inalienability, indivisibility, interdependence and interrelatedness, non-discrimination and equality, participation and inclusion, and accountability.⁶⁰ With respect to the principle of universality and inalienability, all people everywhere in the world are entitled to human rights.⁶¹ Such rights cannot be taken away from anyone. The principle of interdependence and interrelatedness of human rights highlights the holistic promotion of all rights because the realisation of one right often depends wholly or in part upon the realisation of other rights.⁶² The principle of indivisibility of human rights underlines the fact that human rights, whether civil, economic, social, economic, cultural or environmental, are equal in importance and cannot be ranked in a hierarchical order.⁶³ The principle of equality and non-discrimination underscores the fact that all human beings are entitled to their human rights without discrimination of any kind. In terms of the principle of participation, duty bearers are required to ensure that the public is entitled to meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realised.⁶⁴ The principle of accountability require local authorities to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.⁶⁵ When all these principles are properly implemented in the context of the human rights-based approach, they potentially enable local authorities to obtain a holistic understanding of rights and understand how best to ensure the fulfilment of development objectives framed in terms of rights.

With the human rights-based approach in mind, the following part examines the extent to which the applicable legal framework in Zimbabwe obliges and enables urban local authorities to use

60 UN 'The human rights-based approach to development cooperation, Towards a common understanding among the United Nations agencies' (2003), https://undg.org/wp-content/uploads/2016/09/6959The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf (accessed 3 May 2022).

61 As above.

62 As above.

63 As above.

64 As above.

65 As above.

environmental rights to contribute towards the realisation of Target 11.6.

4 Environmental legal framework in Zimbabwe

4.1 Right to a healthy environment in the framework environmental law

Zimbabwe's first post-colonial Constitution, commonly referred to as the 1979 Lancaster House Constitution, did not explicitly provide for a free-standing right to a healthy environment.⁶⁶ Nonetheless, the Environmental Management Act (EMA), which is Zimbabwe's framework environmental legislation, provided for this right. Section 4 of EMA provides:

- (1) Every person shall have a right to –
 - (a) a clean environment that is not harmful to health; and
 - (b) access to environmental information, and protect the environment for the benefit of present and future generations and to participate in the implementation of the promulgation of reasonable legislative, policy and other measures that –
 - (i) prevent pollution and environmental degradation; and
 - (ii) secure ecologically sustainable management and use of natural resources while promoting justifiable economic and social development.

This provision is in tandem with the clarion call made at the international and regional levels for governments to take legislative measures directed towards protecting the right to a healthy environment.⁶⁷ It is couched in almost the same way as the environmental clause in section 73 of the 2013 Constitution. The inference, therefore, is that the meaning and implications of section 73 of the 2013 Constitution explored in part 4.2 below bears squarely on section 4(1) of EMA. However, what is important to note at this stage is that despite the existence of this right under the Lancaster House constitutional order, there was very limited effort at the institutional level to ensure that citizens actually exercised and enjoyed their right to a healthy environment.

This is true in relation to section 4(1)(b) of EMA, which acknowledges that the enforcement of the right to a healthy environment is dependent on access to information. To promote access to information, section 4(2)(d) of EMA goes on to emphasise

⁶⁶ The Declaration of Rights was found in secs 11 to 26.

⁶⁷ See part 3.

the need for environmental education, environmental awareness and the sharing of knowledge so as to increase the capacity of communities, including children, to address environmental issues, attitudes, skills and behaviour consistent with environmental management. However, on the ground it is noted that little was done during the Lancaster House constitutional order to educate citizens on the importance attaching to environmental rights through concerted efforts by the government to meet its positive obligation to ensure that everyone lived in a healthy environment.⁶⁸ As such, citizens did not regard violations of environmental rights as meriting the institution of legal action in the protection of their environmental rights. In addition, section 4(2)(c) of EMA underscores the significance of the participation of all interested and affected parties in environmental governance. It emphasises that the participation of all people must be promoted and that opportunities must be created for them to develop the understanding, skills and capacity necessary for achieving equitable, meaningful and effective participation. However, in practice it is noted that a lack of public participation in environmental decision-making processes during the Lancaster House constitutional order created a situation in which the government did not feel compelled to put in place measures to secure a clean environment for citizens.⁶⁹ Furthermore, little was done to put in place measures to financially assist litigants challenging environmentally-deleterious activities violating or threatening their right to a healthy environment.⁷⁰ With the above in mind, it should be noted that EMA remains operative in Zimbabwe but must be construed in conformity with the 2013 Constitution,⁷¹ which repealed the Lancaster House Constitution.

4.2 Constitutional framework on the right to a healthy environment

As noted above, in Zimbabwe has recently renewed its commitment to environmental protection through the inclusion of a free-standing environmental right in its 2013 Constitution. Section 73 of the Constitution states:

- (1) Every person has the right –
 - (a) to an environment that is not harmful to their health or well-being; and

68 T Madebwe 'A rights-based approach to environmental protection: The Zimbabwean experience' (2015) 15 *African Human Rights Law Journal* 122-123.

69 As above.

70 As above.

71 Para 4 of the Sixth Schedule to the Constitution.

- (b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that –
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting economic and social development.
- (2) The state must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of the rights set out in this Section.

It should be noted at the outset that the constitutionalisation of the right to a healthy environment was a bold step taken by Zimbabwe, bridging the historical divide between the so-called generations of rights. In other words, affording environmental rights the same status as other fundamental rights in the Declaration of Rights is a notable development to the extent that it serves as recognition of the potential that such rights have in the realisation of other rights. In this context, the Declaration of Rights echoes the concepts of the interrelatedness, interdependence and indivisibility of human rights.⁷²

Although the Declaration of Rights came into effect before the adoption of the SDGs, it imposes an obligation on all tiers of government – inclusive of local authorities – to respect, protect, promote and fulfil the right to a healthy environment, which resonates directly with Target 11.6. If the meaning and implications of this right are clarified, one would not only be able to ascertain the prospects and potential challenges to its enforcement, but also advance approaches directed towards optimising its effective enforcement in order to meet Target 11.6.

Local authorities have a shared responsibility, with the other tiers of government, to respect, protect, promote and fulfil the right to a healthy environment.⁷³ They have a further co-obligation to adopt and implement ‘reasonable legislative and other measures’ to ensure progressive realisation of the right to a healthy environment contained in section 73 of the Declaration of Rights.⁷⁴ However, such obligations cannot be met at all costs. This is because environmental rights, in a similar vein as other fundamental rights in the Constitution,

⁷² See part 3.

⁷³ Secs 44 & 45(1) of the Constitution.

⁷⁴ See sec 73(2) and also secs 75(4), 76(4) and 77(b) of the Constitution which contain the same qualification.

are not absolute and can be limited⁷⁵ in terms of the special or internal limitation clause and the general limitation clause.⁷⁶ A special limitation clause is one that is provided for under the sections that set out the specific rights.⁷⁷ For example, the right to a healthy environment in section 73 of the Constitution has a special limitation clause as it obliges the state to take reasonable legislative and other measures 'within the limits of resources available' to achieve its 'progressive realisation'.⁷⁸ Citing with approval the decision in the case of *Republic of South Africa & Others v Grootboom & Others*⁷⁹ the Supreme Court in *Zimbabwe Homeless People's Federation & Others v Minister of Local Government and National Housing & Others*⁸⁰ aptly stated that

the obligation to take the requisite measures is that the obligation does not require the state to do more than its available resources permit. This means that both the content of the obligation in relation to the rate at which it is achieved as well as the reasonableness of the measures employed to achieve the result are governed by the availability of resources.

There is a balance between goal and means. The measures must be calculated to attain the goal expeditiously and effectively but the availability of resources is an important factor in determining what is reasonable.

From this extract it immediately becomes apparent that, when local authorities are faced with a scarcity of resources, as is currently the case in Zimbabwe,⁸¹ they cannot be reasonably expected to instantly provide infrastructure necessary for the realisation of the right to a healthy environment. This speaks to the concept of 'progressive realisation', which entails that this right is not meant for instant realisation but can be realised over a period of time.⁸² As such, in the face of a scarcity of resources, a local authority remains under a continuing duty to move as expeditiously and effectively as possible, and it must take deliberate, concrete and targeted measures⁸³ towards the full realisation of the right to a

75 Secs 86 & 87 of the Constitution. However, sec 86(3) of the Constitution enlists the right to human dignity, freedom from slavery or servitude and right to a fair trial as some of the rights that cannot be limited by any law.

76 Secs 86 and 87 of the Constitution; JA Mavedzenge & DJ Coltart *A constitutional law guide towards understanding Zimbabwe's fundamental socio-economic and cultural human rights* (2014) 79.

77 Mavedzenge & Coltart (n 76) 81.

78 See sec 73(2). See also secs 75(4), 76(4) and 77(b) of the Constitution.

79 2001 (1) SA 46 (CC).

80 46-2018 6; *Zuze v Trustees of Mlambo & Another* SC 69-2019.

81 Government of Zimbabwe (n 17) para 567.

82 UN (n 60) para 9.

83 As above.

healthy environment. However, in order to deal with the scarcity of resources, local authorities can harness financial resources from the international community and the private sector⁸⁴ to complement those obtained from higher tiers of government.⁸⁵ Of course, even if local authorities obtain the financial resources required to deliver, if there is no accountability as envisaged in terms of the human rights-based approach, things will not work. This is because of the levels of corruption, irregular spending and maladministration that are aggravating the scarcity of resources in Zimbabwean local authorities.⁸⁶ To promote accountability,⁸⁷ elected and appointed local officials should take measures aimed at exposing, combating and eradicating all forms of corruption.⁸⁸

The responsibility of local authorities to adopt 'legislative and other measures' can be complied with by developing by-laws and strategic plans within the framework of national environmental standards.⁸⁹ Such by-laws and strategic plans should set strict goals and standards for local air quality, waste management, water pollution, noise, noxious smells, littering and radioactive wastes, for example.⁹⁰ They should seek to urge local companies to invest in more efficient and cleaner technologies such as the use of solar water geysers and the use of passive heating on all new housing developments, for example.⁹¹ In addition, through spatial plans, local authorities can introduce regulations that contribute in promoting the use of non-motorised transport to reduce carbon emissions and make provision for non-motorised transport on existing and new road networks.⁹² Spatial plans should be designed in a way that prioritises non-motorised transport networks (for example, cycling and pedestrian lanes); promotes walking; and includes an interconnected street

84 See SDG 11.3, 11.4 & 11.a.

85 The national government is required to support local authorities with financial resources in terms of secs 9(2), 264(2)(e), 298(1)(b)(ii) and 301(1) of the Constitution.

86 D Muchadenyika & Jj Williams 'Politics and the practice of planning: The case of Zimbabwean cities' (2017) 63 *Cities* 38; Auditor-General *Report for the Financial Year Ended December 31, 2018 on Local Authorities* (2019) v.

87 Secs 9 & 265(1)(a) Constitution.

88 Sec 9(1)(b) Constitution.

89 Some standards are set in terms of, among others, the Waste and Solid Waste Disposal Regulations, SI 6 of 2007; Environmental Management (Atmospheric Pollution Control) Regulations, 2009; Environmental Management (Prohibition and Control of Ozone Depleting Substances, Greenhouse Gases, Ozone Depleting Substances and Greenhouse Gases Dependent Equipment) Regulations, 2016; and Environmental Management (Environmental Impact Assessments and Ecosystems Protection) Regulations, SI 7 of 2007.

90 Sec 55-86 EMA.

91 Government of Zimbabwe *National Climate Change Response Strategy* (2014) (NCCRS) 112.

92 NCCRS (n 91) 115.

network. Local authorities can also introduce an effective mass public transport system that includes use of buses and rail transport.⁹³

The duty to ensure that ‘every person’ has an environment that is not harmful to their health or well-being seems to promote the human rights-based approach principle of universality and inalienability.⁹⁴ What this means is that local authorities should execute their powers and mandate in a manner that does not take away this right from any person. In this context, this principle resonates with the principle of equality and non-discrimination which is entrenched as a stand-alone right in terms of section 56 of the Constitution. A combined reading of sections 73 and 56 of the Constitution has the potential to promote the sustainable development principle of intra-generational equity which seeks to address the issue of inequity within one generation.⁹⁵ What this means is that the present-day agricultural, commercial, industrial, technological, social and scientific activities⁹⁶ in cities should be carried out in ways that seriously consider the rights and interests of the often marginalised segments of society, including women, children, the youth, older persons and persons with disabilities. By ensuring that everyone in the present generation, regardless of gender, age, disability, race, ethnicity or religion, enjoys the right to a healthy environment potentially promotes the inclusiveness of cities, as envisaged in SDG 11.

The duty to protect the environment for the benefit of future generations underscores the need for local authorities to promote the sustainable development principle of inter-generational equity,⁹⁷ which was emphasised in the case of *Augar Investments OU v Min of Environment & Another*.⁹⁸ The High Court stated that ‘it is hoped that the citizens of Zimbabwe will vigorously pursue and enforce their [environmental] rights ... lest we be judged and found wanting, by future generations, for failing to play our part in preserving and protecting the environment’. As such, local authorities need to adopt and implement laws, policies and plans directed towards ensuring that present-day activities in their respective areas of jurisdiction are not carried out in such a way that may disadvantage future

93 NCCRS 49.

94 See part 3.2.

95 For details on this principle, see para 2.1 of the New Delhi Declaration (2002).

96 Sec 13(1) of the 2013 Constitution requires the government, at every level, to facilitate rapid and equitable development. The government is further mandated to foster agricultural, commercial, industrial, technological and scientific development; and to foster the development of industrial and commercial enterprises in order to empower Zimbabweans.

97 R Fambasayi & M Addaney ‘Cascading impacts of climate change and the rights of children in Africa: A reflection on the principle of intergenerational equity’ (2021) 21 *African Human Rights Law Journal* 32-51.

98 HH-278-15.

generations.⁹⁹ In this context, the duty to protect the environment for the benefit of future generations is consistent with the principle of sustainable use of natural resources embedded in section 73(1)(b)(iii) of the Constitution. The principle of sustainable use underscores the responsibility of local authorities to determine the rate of use of natural resources, taking into account the needs of future generations.¹⁰⁰ In order to promote sustainable land use, local authorities can exercise their development control powers¹⁰¹ which enable them to permit, monitor and regulate¹⁰² the acquisition, disposal,¹⁰³ subdivision and consolidation of land.¹⁰⁴ Moreover, by exercising their development control powers, such as evictions and demolitions,¹⁰⁵ local authorities would be able to manage urban development and expansion in a manner that promotes sustainable patterns of consumption and avoids sprawl. Apart from this, local authorities can promote the sustainable use of natural resources by adopting, reviewing or enforcing by-laws and plans, and prohibiting projects that invade environmentally-sensitive areas such as wetlands.¹⁰⁶ By promoting the sustainable use of natural resources, local authorities would be able to contribute towards the reduction of the environmental impact of cities as expected in terms of SDG 11.

Apart from the above, local authorities have the responsibility to take reasonable legislative and other measures that seek to ensure that everyone has the right to an environment that is not harmful to their 'health'.¹⁰⁷ According to the World Health Organisation (WHO), 'health' refers to 'a state of complete physical, mental and social well-being'.¹⁰⁸ Seen from this perspective, it is submitted that section 73 of the Constitution seeks to ensure that the environment is maintained in ways that enable people to live and work under conditions that will not compromise their physical health (or cause physical harm, injury or disease), mental and social well-being. The impression conveyed by section 73 is that the environment of a person or the public would be harmful to health in cases such

99 Secs 13(1) & 73(1)(b) Constitution.

100 Para 1 of the New Delhi Declaration; Principle 8 of the Rio Declaration; P Sands *Principles of international environmental law* (2003) 260.

101 Part V of Regional Town and Country Planning Act (Chapter 29:12) 1976 as amended (RTCPA).

102 Secs 31-33 RTCPA (n 101).

103 Part VII RTCPA.

104 Part VI RTCPA.

105 For details on evictions and demolitions in Zimbabwe, see H Chitimira 'An analysis of socio-economic and cultural rights protection under the Zimbabwe Constitution of 2013' (2017) 61 *Journal of African Law* 178-179; Ndlovu (n 54) 3-4.

106 NCCRS (n 91) 49.

107 Sec 73(1)(a) Constitution.

108 Preamble to the Constitution of WHO (1978); AS Hornsby *Oxford advanced learner's dictionary* (2010) 693.

as exposure to air pollution or hazardous substances, and reliance on polluted water supplies for domestic use. In this context, the right to a healthy environment may be construed as inextricably linked to the provision of basic municipal services, which include the supply of clean potable water and sanitation services,¹⁰⁹ waste management,¹¹⁰ drainage¹¹¹ and roads.¹¹² What local authorities need to do is to adopt, implement and monitor waste management plans dealing with quantity, components, transportation and disposal of the waste.¹¹³ With respect to waste management, for example, local authorities can promote a healthy environment by prioritising the minimisation of the amount of waste that is generated, through resource recovery of reusable and recyclable waste and diversion of bio-degradable waste to energy generation and composting.¹¹⁴ Moreover, local authorities can also promote a healthy environment by enforcing the polluter-pays principle, which denotes that in cases of pollution or environmental degradation, the expenses incurred on remedial measures to prevent, control and minimise further pollution or environmental degradation can be recovered from such person.¹¹⁵ With the above in mind, it is suggested that the ability of local authorities to ensure that their environment (natural and built) as well as the services they provide do not pose a risk to residents' health, would potentially promote 'safe' cities envisioned by SDG 11.

In the same vein, local authorities have the responsibility in terms of section 73(1)(a) to take reasonable legislative and other measures that seek to ensure that everyone has the right to an environment that is not harmful to their 'well-being'.¹¹⁶ Although there is no an agreed-upon definition of the term 'well-being' in literature,¹¹⁷ it may refer to 'general health and happiness'.¹¹⁸ It is submitted that local authorities can promote the 'well-being' of their residents by performing their spatial planning and development control functions emanating from the Regional Town and Country Planning Act¹¹⁹ in a manner that does not adversely affect their 'general health and happiness'. In terms of these functions, local authorities are

109 Sec 77 Constitution.

110 Para 26 of the Second Schedule to the Urban Councils Act (Chapter 29.15) of 1996 (UCA).

111 Sec 161 UCA (n 111).

112 Sec 4 Roads Act (Chapter 13:18) of 2001.

113 Sec 12(2) Statutory Instrument 6 of 2007.

114 NCCRS (n 91) 124.

115 Sec 4(2)(g) EMA.

116 Sec 73(1)(a) Constitution.

117 A du Plessis 'South Africa's constitutional environmental right (generously) interpreted: What is in it for poverty?' (2011) 27 *South African Journal on Human Rights* 295-297.

118 Hornsby (n 108) 1690.

119 Development control powers enable local authorities to permit, monitor and regulate development on the use of land. Part V and secs 31-33 RTCPA (n 102).

expected take all necessary measures to repair, demolish or close buildings, including dwellings, of an unsatisfactory standard;¹²⁰ abate overcrowding of dwellings;¹²¹ and control the harmful use or occupation of premises, and control the undue interference with the rights of residents of a neighbourhood.¹²² There is no doubt that these and other relevant measures have the potential to promote people's 'sense of place' because they afford protection to the quality of the (urban) environment.

The environmental clause in section 73 of the Constitution is negatively couched in that it confers a right 'to an environment that is not harmful to ... health or well-being', instead of simply a right to a healthy environment. This negative formulation seems to acknowledge the unavailability of pollution in Zimbabwe since local authorities have a shared responsibility to facilitate rapid development – by taking measures to foster agricultural, commercial, industrial, technological and scientific development.¹²³ Accordingly, section 73 of the Constitution seems to permit a certain degree of pollution during development processes to the extent that such pollution is not harmful to one's health or well-being. What constitutes a 'harmful' environment needs to be informed by scientific knowledge on acceptable standards of harm and risks in the contamination of ground water or emission of hazardous substances, for example. In the case of *Cosmo Trust & Others v City of Harare & Others*¹²⁴ the Administrative Court considered the scientific evidence presented before it as insufficient to conclude that the massive construction work proposed on the Monvale wetland would not cause irreparable destruction of the bird habitat and disruption of the natural process of water cleansing. In reaching its decision, the Court invoked the precautionary principle of environmental law which underscores that where there are threats of serious or irreversible damage, a lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation.¹²⁵

Local authorities have a duty in terms of section 73 of the Constitution to take reasonable legislative and other measures 'that secure ecologically sustainable development and use of natural resources while promoting economic and social development'.¹²⁶

¹²⁰ Secs 16; 23(b); 88 and the First Schedule to the Housing Standards Control Act [Chapter 29:08] of 1972.

¹²¹ Secs 36; 43; 88 and the Second Schedule to the Housing Standards Control Act.

¹²² Secs 52 and 88 of the Housing Standards Control Act.

¹²³ Sec 13 of the Constitution.

¹²⁴ AC 3/19.

¹²⁵ Principle 15 of the Rio Declaration.

¹²⁶ See also secs 4(1)(ii) and 4(2)(e) of EMA.

This duty requires local authorities to promote the principle of horizontal integration¹²⁷ which requires coordination in policy making and implementation across different sectors/departments of a local authority in order to strike a balance between competing yet interrelated dimensions of sustainable development. In addition, local authorities can give effect to this duty by ensuring that environmental impact assessments (EIAs) precede projects such as housing developments, waste treatment and disposal, and other infrastructure developments¹²⁸ that are critical to the realisation of SDG 11. The EIA process provides an opportunity for local authorities to integrate development planning and decision-making processes with ecological considerations.¹²⁹ The significance of conducting EIAs was emphasised in the case of *Hillside Park Association v Glorious All Time Function (Private) Limited & Others*.¹³⁰ The High Court held that the development of a wetland without going through the EIA process is in violation of section 73 of the Constitution as well as section 77 which guarantees the right to food and potable water.

However, in cases where a local authority fails to adopt legislation and other measures that seek to ensure the realisation of environmental rights,¹³¹ the human rights-based approach necessitates the invocation of procedural environmental rights that could assist aggrieved and/or interested persons to compel the local authority to comply with its obligations. With respect to public participation, the Constitution confers on every Zimbabwean citizen, the right to 'participate, individually or collectively ... in peaceful activities to influence, challenge or support policies of government or any political or whatever cause'.¹³² Although local public officials may represent local communities and make municipal by-laws that govern these, there is an expectation that community participation should be an underlying principle in decision making, implementation and follow-up at the local level. What this means is that local public officials must explore ways that afford everyone an opportunity to meaningfully contribute to and influence the formulation and implementation of general plans, programmes and strategies on individual projects that have an effect on the environment. For example, local public officials may engage civil society organisations¹³³ since they have the

127 C Kanuri et al *Getting started with the SDGs in cities : A guide for stakeholders* (2016) 71.

128 Schedule 1 EMA.

129 Part Three of *Environmental Management Regulations* 7 of 2007 specifies how EIAs are conducted in Zimbabwe.

130 HH-349-2019; *Harare Wetlands Trust & Another v Life Covenant Church & Others* HH-819-19; *The Cosmo Trust & Others v City of Harare & Others* AC 3/2019.

131 See sec 73(2) of the Constitution.

132 Sec 67(2) Constitution.

133 Sec 7(c) Constitution.

potential to mobilise and represent the often marginalised sectors of society. From this perspective, public participation has the potential to promote an 'inclusive city' as envisaged in terms of SDG 11.

Access to information is another procedural right protected in the Constitution which seeks to promote public accountability and to facilitate the enforcement of other rights. First, in terms of section 62(1) of the Constitution, every citizen has the right of access to any information held by local authorities in so far as the information is required in the interests of public accountability. Second, section 62(2) confers on everyone the right to access to information held by any person, including the state, 'in so far as the information is required for the exercise or protection of a right'. Despite the fact that section 62 of the Constitution does not specifically refer to the environment, it impliedly guarantees the right of access to, for example, information about pollution levels, environmental health risks and disaster preparedness plans. Local authorities can give effect to this obligation by promoting environmental education, environmental awareness and sharing of knowledge with the objective of increasing the capacity of communities to address environmental issues and engender values, attitudes, skills and behaviour consistent with environmental management.¹³⁴ These activities have the potential to promote transparency and have the potential to empower urban dwellers to use human rights law to ascertain, claim and assert their rights to a healthy environment during developmental projects that have a bearing on the environment.

The other procedural right, which is at the crux of the Declaration of Rights, is access to justice.¹³⁵ Section 69(3) of the Constitution, which guarantees due process, lays the foundation for section 85 of the Constitution, which impliedly outlaws 'ouster clauses' by local authorities that deny or restrict access to courts to any person acting in their own interests; any person acting on behalf of another person who cannot act for themselves; any person acting as a member, or in the interests of a group or class of persons; any person acting in the public interest; and any association acting in the interests of its members. The right to access to justice is at the heart of the human rights-based approach and so far has enabled aggrieved and/or interested persons to hold local authorities and other duty bearers accountable, by affording them the opportunity to institute legal proceedings to protect their rights to a healthy environment when

¹³⁴ Sec 4(2)(d) EMA.

¹³⁵ Secs 69(3) & 85 Constitution.

they believed it had been infringed or threatened.¹³⁶ It therefore follows that, since SDG 11 has no legal force, a human rights-based approach enables urban dwellers to approach the courts if what is envisaged in terms of Target 11.6 has not been met in ways that affect the enjoyment of the right to a healthy environment.

5 Conclusion

As co-global actors in pursuance of the global sustainable development agenda, local authorities are expected in terms of SDG 11 to pursue ten time-bound targets primarily directed towards making cities and human settlements across the world inclusive, safe, resilient and sustainable by the year 2030. One of the targets with which Zimbabwe continues to grapple is Target 11.6, which requires local authorities to reduce the adverse per capita environmental impact of cities. The fact that Zimbabwe is lagging behind in terms of the progress towards the realisation of this target has implications for the right to a healthy environment in section 73 of the Constitution of Zimbabwe. As such, using the human rights-based approach, the thrust of this article was to critically interrogate how the right to a healthy environment in section 73 of the Constitution of Zimbabwe could be used by local authorities to give effect to Target 11.6.

It was noted that the constitutionalisation of the right to a healthy environment is a notable development as it affirms the country's acknowledgment of the significance of that right in any environmental regulatory framework. The article further established that affording this right the same status as other rights speaks to the principle of interrelatedness of human rights, and local authorities in Zimbabwe are encouraged not to pursue the right to a healthy environment in isolation in order to ensure effective redress of the environmental impact of cities as expected in terms of Target 11.6. Despite the existence of the right to a healthy environment, the study established that the huge potential of the human rights-based approach remains untapped in Zimbabwe due to practices by some local authorities that do not meet human rights norms and standards. Nonetheless, it was established that the use of a human rights-based approach in the context of Target 11.6 appears to be the most appropriate means for the enjoyment of the right to a healthy environment as

¹³⁶ See eg the case of *Cosmo Trust & Others v City of Harare & Others* AC 3/19; *Harare Wetlands Trust & Another v Life Covenant Church & Others* HH-819-19; *Augar Investments OU v Min of Environment & Another* HH-278-15; *Zimbabwe Environmental Law Association (ZELA) & Others v Anjin Inv (Pvt) Ltd & Others* HH 523/15, [2015] ZWHHC 523 (16 June 2015) (unreported); *Hillside Park Association v Glorious All Time Function (Private) Limited & Others* HH-349-19.

local authorities have a shared responsibility to adhere to human rights norms and standards. The human rights-based approach contributes in remedying some of the weaknesses associated with Target 11.6 in the areas of implementation, participation, monitoring, accountability and policy analysis. The potential of the human rights-based approach is enhanced by the fact that there are procedural rights that can assist aggrieved and/or interested persons to compel the local authority to comply with its obligations, in cases where a local authority fails to adopt legislative and other measures that seek to ensure the realisation of the right to a healthy environment, for example. The potential of the human rights-based approach is further optimised by the fact that it underscores the need to place more emphasis on the distribution and prioritisation of limited resources, considering the local circumstances. Considering that neither the right to a healthy environment and SDG 11 are the sole domain of local authorities, the same can complement their limited resources with those harnessed from stakeholders in and outside government. In light of the commendable precedents set by the judiciary in some cases, local authorities are recommended to consider the implication of legal provisions on the right to a healthy environment in the process of exercising their legislative or executive powers directed towards the realisation of Target 11.6.