



FILE REF : ZHRC/CI/0000/18

CHIMBANGU & OTHERS

COMPLAINANTS

And

MAKONI RURAL DISTRICT COUNCIL

RESPONDENT

REPORT

Key Issues

- *Freedom from arbitrary eviction – Section 74*
- *Right to administrative justice – Section 68*
- *Right to dignity – Section 51*
- *Right to shelter – Section 28*

THE COMPLAINT

1. A complaint of alleged unlawful eviction was lodged by settlers at Yorkshire Farm in Headlands.
2. The violations were alleged to have been committed in November 2017 by the Zimbabwe Republic Police (ZRP/Police) Officers, as well as Makoni Rural District Council.
3. The Zimbabwe Human Rights Commission (ZHRC/Commission) began its investigations into the matter in November 2017. The relevant respondents were afforded the chance to state their side of the story. Witnesses for the complainants and respondents were also interviewed.

COMPLAINANTS' ACCOUNT

1. Complainants alleged as follows:
 - 1.1 Sometime in 2003, they settled on Yorkshire Farm, Headlands in Manicaland Province.
 - 1.2 The complainants were former farm workers who came from neighbouring farms. This was due to the fact that farms previously owned by former white farmers were now owned by black farmers who could not accommodate them on the farms.
 - 1.3 Sometime in 2007, the Respondent directed the complainants to vacate the farms since they were illegal settlers. However, the complainants did not heed this call, neither did Respondent follow up on its directive.
 - 1.4 Further, sometime in September 2016, some flyers and posters were distributed in Headlands by Respondent's officials, advising complainants to vacate the farm. Again, the complainants ignored this advice.

1.5 On or around the 1st of November 2017, Makoni Rural District Council officials went to Yorkshire Farm and destroyed complainants' homesteads without giving them any notice. They highlighted that most households were out in the open with no shelter.

RESPONDENTS' ACCOUNTS

2. The ZHRC, in investigating the issues raised by the complainants, interviewed the following:

2.1 Provincial Lands Officer (PLO) – the ZHRC spoke to the Provincial Lands Officer who denied the allegations raised by the complainants and stated as follows:

2.1.1 That the complainants were not former farm workers but were illegal squatters who had left their homes to illegally settle on the farm;

2.1.2 That sometime in September 2016, notices were issued advising all illegal settlers to vacate the farms. However, the evictions were not executed due to political and economic reasons. The evictions were then executed in November 2017 after proper verbal reminders to vacate were given to the complainants;

2.1.3 That there is a National Taskforce with Cabinet Authority to deal specifically with the issue of illegal settlers around the country. The Task force was responsible for distributing notices and advising complainants to vacate the farms sometime in October 2017;

2.1.4 He further advised that former farm workers were being dealt with differently. That is, they were being given 1 hectare each and offer letters.

2.1.5 He indicated that the issue of illegal settlers had to be dealt with as failure to do so would result in commercial farms being turned into communal farms as they would be filled by the illegal settlers, who have homes to go to. Such a scenario would therefore be prejudicial to food security in the country.

2.2 **CEO OFFICER Makoni RDC** – the ZHRC also managed to interview, the Chief Executive Officer for Makoni Rural District Council who stated as follows;

2.2.1 He confirmed what the PLO had said about complainants getting notices sometime in September 2016 as well as in 2017.

2.2.2 He indicated that there was a meeting which was held sometime in October 2017 between the then Minister of Local Government and all local authorities. The agenda of the meeting was ‘Operation Restore Order’ and the Minister gave a directive that all illegal settlers should be evicted from farms;

2.2.3 After the meeting, a Joint Operations Command (JOC) was formed and this comprised of the District Administrator, the CEO for Makoni RDC, the Officer Commanding Police for Rusape, representatives from Prisons and Correctional Services, President’s office and 32 Battalion Army Barracks. Members of the Joint Operation Command (JOC) were responsible for the execution of the Operation Restore Order directive as given in the October 2017 meeting.

2.2.4 Be that as it may, the CEO also highlighted the fact that sometime in 2011, Respondent had successfully applied for an eviction order against the complainants. Therefore, the complaint that they were not given adequate notice to vacate falls away given the abovementioned facts. A copy of the judgement is attached to the report as **Annexure 1**.

HUMAN RIGHTS INVOLVED

3. The following human rights were allegedly violated:

3.1 The right to shelter and adequate housing – Section 28

3.2 The right to administrative justice – Section 68

3.3 Freedom from arbitrary eviction – Section 74

3.4 Right to dignity – Section 51

ANALYSIS OF THE COMPLAINT

4. **Whether or not freedom from arbitrary eviction was violated**

4.1 Section 74 of the Constitution provides that: *'No person may be evicted from their home or have their home demolished without an order of court made after considering all the relevant circumstances.'* In the present case, a court order was obtained before the evictions and the complainants were advised of the eviction. In that light, the complainants' freedom from arbitrary eviction was not violated.

4.2 However, it has been argued, rightly so, by the Office of the High Commissioner for Human Rights (OHCHR) that *'even if a national court has ruled in favour of an eviction or if the eviction is carried out in conformity with national legislation, the situation may still constitute a forced eviction if it does not comply with international human rights standards and State-related obligations.'*¹ This argument is in line with the definition of forced eviction as given by the Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing: forced evictions: Forced eviction is "the permanent or temporary *removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection*".

4.3 The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, which Zimbabwe ratified, in article 3(1) (a) states parties to *"refrain from, prohibit and prevent arbitrary displacement of populations."* The principles of human rights are clear that before displacement of people, there is need to have established alternative accommodation for them. In this case, no alternative accommodation was established prior to the eviction order, thus violating the basic principles of human rights on displacements.

¹ OHCHR. Forced evictions. Fact Sheet No. 25. Available at www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf, (accessed on 30 July 2017).

4.4 Further, the United Nations Basic Principles and Guidelines on Development Based Evictions and Displacement² (UN Guidelines) place an obligation on States to ensure that evictions only occur in exceptional circumstances. According to the UN Guidelines, evictions require, ‘full justification given their adverse impact on a wide range of internationally recognized human rights’. Any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law.³

4.5 The relevance of the UN Guidelines has been pointed out by different scholars. For instance, Olivier De Schutter has argued about the protective nature of the requirement in the UN Guidelines to ensure ‘**security of tenure**’ for peasants as a safeguard against being removed from the lands on which their livelihood depends.⁴ Similarly, Elizabeth Gorman (2014) has argued that the UN Guidelines are one of the, ‘*International Provisions (that) Call for Vindication of Small Landholders’ Human Rights’ based on ‘solid international law*’.⁵ This relevance cannot be overemphasized in the present case. The complainants have to be protected against being evicted from land on which their livelihood depends.

² Annexure of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living A/HRC/4/18.

³ See Miloon Kothari and Patricia Vasquez ‘The UN Guidelines on Forced Evictions: A Useful Soft-Law Instrument? Available at <https://poldev.revues.org/2188>, (Accessed 31 July 2017). See also the Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing reinforces the point of protection regardless of the type of tenure by providing that ‘Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.’

⁴ De Schutter, O. (2011) ‘The Green Rush: The Global Race for Farmland and the Rights of Land Users’, *Harvard International Law Journal*, 52(2), pp. 504–559.

⁵ Gorman, E. (2014) ‘When the Poor Have Nothing Left to Eat: United States’ Obligation to Regulate American Investment in the African Land Grab’, *Ohio State Law Journal*, 75(1), pp. 200–235.

5. Whether or not the right to adequate shelter was violated

5.1 Section 28 of the Constitution states that: “*The State and all institutions and agencies of government at every level must take reasonable legislative and other measures, within the limits of the resources available to them, to enable every person to have access to adequate shelter.*” This implies taking measures to provide alternative shelter to evictees. Failure to take such measures constitutes a violation of the right to adequate shelter.

5.2 Removing people, forcibly or not, from places they call homes is an apparent interruption in the flow of their day-to-day livelihoods activities like farming. It is also taking them from their shelter. In the case under consideration, the complainants face eviction which will inevitably disrupt their livelihoods and also leave them homeless. This is therefore a violation of their right to adequate shelter.

6. Whether or not the right to administrative justice was violated

Administrative justice in terms of Section 68 of the Constitution requires that any administrative action be fair, reasonable and procedurally fair. Procedural fairness includes, in this present case, giving complainants adequate notice before demolitions. From the investigations conducted, the ZHRC established that the complainants were indeed given adequate notice prior to the demolitions of their homes but no suitable and alternative shelter and land was provided so the right to administrative justice was violated.

7. Whether or not the right to dignity was violated

Section 51 of the Constitution provides that: ‘*Every person has inherent dignity in their private and public life and the right to have the dignity respected and protected.*’ The prospects of being evicted; or being evicted and thrown into the open exposes the complainants to indignity of being at the mercy of the dangerous agents of the weather. Homelessness is one of the highest forms of indignity.

8. CONCLUSION

Evictions of illegal settlers continue unabated in Zimbabwe. This is largely due to the fact that Zimbabwe does not have rules and regulations on the eviction procedure of both former farm workers and illegal settlers on agricultural land (former white commercial farms). Therefore, in the present case, although the complainants were illegal settlers and could not hold or have right of title to the farms (through possession of Offer Letters), their eviction from farms without any alternative land being offered is a violation of their right to adequate shelter and their freedom from arbitrary eviction without considering all the relevant circumstances. It is also a cause for concern that the Joint Operation Command of the security sector as represented by the ZRP, ZPCS, OPC and the ZNA implements decisions on land issues without due consideration of principles of administrative justice and human rights of the affected parties. Further, the allocation of one hectare plots to former farm workers yet other applicants were allocated more hectares amounts to discrimination on the basis of social or economic status which is prohibited by Section 56 of the Constitution.

9. RECOMMENDATIONS

In light of the above findings and conclusion, the ZHRC makes the following recommendations:

PARLIAMENT OF ZIMBABWE

- 11.1. To ensure a law is enacted that curb illegal grabbing and invasion of farms;
- 11.2. To enact laws that specifically deal with the eviction of illegal settlers from farms;
- 11.3. To enact laws that protect the rights of former farm workers.

MINISTRY OF LANDS, AGRICULTURE AND RURAL RESETTLEMENT

- 11.4. To find a way of finalising and ensuring that the Land Reform comes to an end.