



FILE REF ZHRC/CHI/1022/17

In the matter between:

SMART CHITSA

1ST COMPLAINANT

And

AMOS KALIATI

2ND COMPLAINANT

And

CHITUNGWIZA WARD 23 ZANU PF YOUTHS

RESPONDENTS

REPORT

1. Mandate of the ZHRC

- 1.1. The ZHRC was established as an Independent Commission in terms of Section 242 of the Constitution of Zimbabwe Amendment (No. 20) Act 2013.

The functions of the ZHRC are set out in terms of Section 243 (1) (a) – (k) which include, among others, to investigate the conduct of any authority or person, where it is alleged that any of the human rights and freedoms set out in the Declaration of Rights has been violated by that authority or person and to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate. Furthermore, the ZHRC can recommend the prosecution of offenders, where human rights or freedoms have been violated.

- 1.2. The Zimbabwe Human Rights Commission Act [Chapter 10:30] in **Section 9**, empowers the ZHRC to conduct investigations into allegations of human rights violations.

2. Background

- 2.1. This report contains the findings of the Zimbabwe Human Rights Commission (ZHRC/Commission), pursuant to an investigation undertaken into complaints alleging violations of human rights, in particular political rights, and the right to personal security and freedom from torture or cruel, inhuman or degrading treatment or punishment.
- 2.2. 1st and 2nd Complainants, who are members of the Youth league of the MDC-T Political Party from Ward 23 in Chitungwiza (Unit N) lodged complaints of allegations of assaults and vandalism of property by ZANU PF youths from the same Ward. The complaints were referred to the ZHRC to investigate in terms of **Section 243 (1) (f) of the Constitution** by a civil society organisation known as the Counselling Services Unit.
- 2.3. In determining its role in this matter, the ZHRC considered the facts of the allegations in light of **the violation of human rights in** accordance with Chapter 4 of the Declaration of Rights in the Constitution of Zimbabwe, in particular, political rights which cover the right to join and to participate in the activities of a political party or organisation of their choice, the right to campaign freely and peacefully for a political party or cause, to participate in peaceful political activity as well as the right to participate individually, or

collectively in gatherings or groups or in any other manner, in peaceful activities to influence, challenge or support the policies of the Government or any political or whatever cause as enshrined in **section 67** of the **Constitution**.

3. Detailed Background of the Complaint

On the 24th of October 2017, the ZHRC received complaints from the complainants against ZANU PF Political Party youth league members from Ward 23 in Chitungwiza in respect of violation of their political rights and the right to personal security.

The complaints arose as follows:

3.1. Political violence: ZANU PF Youths versus MDC-T Youths

- 3.1.2. Complainants reside in Ward 23 of Chitungwiza (Unit N) and are members of the MDC-T youth league.
- 3.1.3. Complainants allege that they were assaulted by ZANU PF Youths who came to their respective homes, intimidated them and their families, broke windows and furniture and then force marched them to an open space close to Seke Eleven Primary School where they were assaulted all over their bodies until they sustained bodily injuries. One of the complainants, Amos Kaliati was admitted at Chitungwiza Central Hospital where he received medical attention.
- 3.1.4. Reports were made at Chitungwiza Police Station and arrests of some of the ZANU PF youths were made. The Police availed names and reference numbers.
- 3.1.5. According to the Zimbabwe Republic Police, upon arrest members of the ZANU PF Youth league also made counter-accusations alleging that MDC –T Youths were the ones who initiated the violence.
- 3.1.6. It was alleged that ZANU PF Youths were gathered at the residence of the Ward Councillor, Mrs. Betty Jaison Dokora where rehearsals for a beauty pageant were taking place. During the course of the rehearsals MDC-T Youths stormed the house and began insulting the Councillor and the former President of Zimbabwe. It was said that they went on to beat up

some of the ZANU PF youths who were present and also damaged the durawall and roof of the house as well as window panes.

3.1.7. After these attacks by the MDC-T youths, it was alleged that ZANU PF Youths were incensed by the behavior of the former, so they decided to retaliate by going after their assailants and also assaulting them and damaging their houses and household goods.

3.1.8. Reports were made at Chitungwiza Police and arrests of MDC-T youths were made. The Police availed names of the arrested culprits and reference numbers.

4. Methodology

In carrying out its investigations, ZHRC employed a number of methods which included desk top research and interviews with complainants and key informants such as the Zimbabwe Republic Police and other independent witnesses. The Respondents could not be interviewed due to lack of cooperation. The Ward Councillor who was a key witness on the part of the Respondents initially agreed to be interviewed but on the day of the interview she did not turn up. Further efforts to reach her on her mobile phone were futile since she was no longer answering her phone. A letter which was written to ZANU PF Headquarters was not responded to.

4.1. Desk top Research

The ZHRC conducted extensive legal research into the local, regional, and international legal framework governing human rights. This was done in order to identify and assess the human rights that were allegedly violated on the 24th of October 2017 by ZANU PF youths.

4.2. Interviews

4.2.1. The ZHRC interviewed some of the key informants, including the Zimbabwe Republic Police and independent witnesses in order to make a balanced assessment of the situation. Eye witnesses were interviewed at the residences of the complainants. An interview guide was developed to facilitate interviews. This tool was used to extract qualitative data. Individual meetings were organised in

recognition of the quality of data expected from this interaction as well as to maximise on the meeting with interviewees' knowledge on the investigation at hand.

4.2.2. Individual interviews were conducted with the complainants at the ZHRC Offices and the Counselling Services Unit where they were seeking medical treatment since they had run away from their homes fearing attacks by the respondents. These interviews were done in order to more fully understand how the incidents leading to the alleged human rights violations occurred and how the complainants were affected.

5. Participant observation

This was used to gain intimate familiarity with the community and their activities through involvement with people in their environment. Using observations gave the Commission an understanding of the geographical location, community relations and the political atmosphere in the area.

6. Applicable law

6.1. Constitutional Rights

At the core of the complaints before the ZHRC are allegations of violations of the human rights of the complainants. It is alleged that ZANU PF Youths violated the complainants' right to political rights and the right to security of person. **Section 67 (2) of the Constitution**, which is at the centre of the present complaint provides for political rights and Section 52 (a) provides for the right to security of person.

Section 67 (2) provides as follows:

Subject to this Constitution, every Zimbabwean citizen has the right-

(a) To form, to join and to participate in the activities of a political party or organisation of their choice;

(b) To campaign freely and peacefully for a political party or cause;

(c) To participate in peaceful political activity; and

(d) To participate, individually or collectively, in gatherings or groups or in any other manner, in peaceful activities to influence,

challenge or support the policies of the Government or any political cause.

Section 52 (a) provides as follows:

Every person has the right to bodily and psychological integrity which includes the right

(a) to freedom from all forms of violence from public or private sources

7. International Law

Zimbabwe is a State party to a number of international and regional human rights instruments which create obligations for it to respect, protect and promote the human rights enshrined therein, which render these instruments also relevant.

7.1. Universal Declaration of Human Rights (UDHR)

Article 1 of the UDHR provides that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 3 of the UDHR provides that everyone has the right to life, liberty and security of person.

7.2. International Covenant on Civil and Political Rights (ICCPR)

7.2.1 **Article 7**, provides that

“Everyone has the right to liberty and security of person”.

7.3. African (Banjul) Charter on Human and People’s Rights

Article 6 provides as follows;

*“Everyone has the right to liberty and to the **security of his person**”*

Article 28 provides that;

“Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.”

7.4. Convention on the Rights of the Child

Article 3 (1) provides as follows;

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Article 28 (1) states the following;

“States Parties recognize the right of the child to education.....”

7.5. **African Charter on the Rights and Welfare of the Child**

Article 4 (1) states the following;

“In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.”

Article 11 states as follows:

“Every child has the right to an education.....”

8. Analytical framework

Conflict management analytical framework

- 8.1. Conflict is present when two or more parties perceive their interests as incompatible, express hostile attitudes, or pursue their interests through actions that damage the other parties. These parties may be individuals, small or large groups, and countries” (Lukman et al, 2001)
- 8.2. This definition of conflict presented above aptly sums up the situation that prevailed in Ward 23 of Chitungwiza. Members of the youth leagues for ZANU PF and MDC-T perceived their interests to be incompatible, they expressed hostile attitudes towards each other and furthermore pursued their interests through actions that damaged the other party through infliction of bodily harm and damage to property.

- 8.3. In order to get to the bottom of the cause of action of the complaint, conflict mapping was carried out. The purpose of the conflict mapping was to provide a quick profile of the conflict situation after eliciting snapshots of the conflict from the actors. This process provided a clearer understanding of the origins, nature, dynamics, and possibilities for the resolution of the conflict. The ultimate goal was to provide sustainable interventions for managing the conflict (Wehr, 1979). The conflict mapping process explored the following issues by posing the questions presented below:
- i. **Profile:** What is the political, economic and socio-cultural context? What are the emergent issues? What conflict affected areas can be situated within the context? Is there a history of conflict?
 - ii. **Causes:** What are the structural causes of conflict? What can be considered proximate causes of conflict? What triggers could have contributed to the outbreak, escalation or prolonging of the conflict? What factors can contribute to peace?
 - iii. **Actors:** Who are the main actors? What are their interests, goals, positions, capacities and relationships? What capacities for peace can be identified? What actors can be identified as spoilers and why?
 - iv. **Dynamics:** What are the current conflict trends? What are the windows of opportunity? What scenarios can be developed from the analysis of the conflict profile, causes and actors?

Conflict profile

- 8.4. A macro level analysis of the political conflicts between ZANU PF and MDC-T political parties indicated that hostilities between the two parties date back to 2008 when extensive political violence escalated throughout the country causing fear, alarm, despondency, physical harm, fatalities, acrimonious social relationships as well as damage to property.
- 8.5. A micro level analysis of the political conflicts in Chitungwiza, Ward 23 showed that Chitungwiza being the District Headquarters of the MDC-T is a highly politically volatile area. The MDC-T is the dominant political party in the area where it has seats in all the other constituencies except

Chitungwiza South where Ward 23 is located. MDC-T seems to be making efforts to gain control of the only Constituency which eluded it while ZANU PF on the other hand is safeguarding its territory. Violence has been adopted by both parties to safeguard their interests.

Causes of the conflict

- 8.6. Desk research, interviews with the actors and participant observations showed that the causes of political conflict and violence in Ward 23 of Chitungwiza are as follows:
- i. Provocation by either of the actors
 - ii. Political intolerance by both parties
 - iii. Instigation by political leaders from both parties
 - iv. Drug abuse by some of the youths from both parties

Actors

- 8.7. The mapping exercise revealed that the actors are youths and political leaders from ZANU PF and MDC-T political parties. The Zimbabwe Republic Police is also an actor in as far as its law enforcement role in the conflict area is concerned.

Dynamics

- 8.8. It is notable that arrest of the perpetrators of political violence from both parties as well as engagement of political leaders of the two political leaders by the Zimbabwe Republic Police at District level seems to have quelled the situation which has been calm since the 25th of October 2017. However, of concern, is the setting in of negative peace, which is the absence of visible and direct violence (Galtung, 1964). Negative peace is evidenced by the stoppage of further direct attacks on each other by the parties but there is still underlying fear for personal security, suspicion, and hatred against each other. Failure to deal with the triggers and root causes of the violence will undermine positive peace which is characterised by improved human

understanding through communication as well as psychological and social harmony. Without facilitation of positive peace, chances of the political violence recurring are very high.

9. Findings

After a critical analysis of the facts, human rights situation and conflict mapping the following findings were made:

i. Reciprocal instigation of violence by both parties

Accounts of the incident by the parties shows that there was reciprocal provocation by both parties. They insulted each other's leaders, and this degenerated into the violence that occurred. The MDC- Youths said the following about the former First Secretary of ZANU PF, "Muri kutora maslips ekuregister kuvoter kuti kamudhara kenyu kahwine..." meaning that they were collecting voter registration slips so that the old man (former President Mugabe) could win the coming elections.

ii. Self-administration of justice by both parties

Instead of seeking the services of law enforcement officers to quell violence, both parties took the law into their own hands and attacked each other.

iii. Creation of potentially volatile environments by political leaders

The Councillor for Ward 23 held an unsanctioned political gathering at her house. This is the gathering where violence emanated from between youths from ZANU PF and MDC-T.

iv. Emergence of internally displaced persons

Complainants continued to be threatened by Respondents days after the violent attacks, so they were forced by fear of further harm to leave their homes and seek refuge with relatives. The 1st Complainant's children were relocated to their rural home where they had to start a new life which they were not used to without a home of their own.

10. Analysis of Violations of Human Rights and Application to Findings

10.1 Political rights

Section 67 (2) of the Constitution guarantees each person the right to join and to participate in the activities of a political party or organisation of their choice and also to campaign freely and peacefully for a political party or cause. From the facts and findings there was reciprocal violation of political rights by both complainants and respondents. They felt threatened by the political activities of the other hence the use of violence as a tool for intimidation.

10.2 Equality and non-discrimination

Section 56 (1) of the Constitution provides for equality before the law and the right to equal protection and benefit of the law. When reports were made to the Police about the inter-party violence, the law enforcement agency conducted its investigations and made arrests on both sides without consideration of the political party they belonged to.

10.3 Rights of internally displaced persons (IDPs)

According to the Guiding Principles on Internal Displacement, internally displaced persons (also known as "IDPs") are "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border."

The Guiding Principles on Rights of Internally Displaced Persons note that arbitrary displacement in the first instance is prohibited (Principles 5-7). Once persons have been displaced, they retain a broad range of economic, social, cultural, civil and political rights, including the right to basic humanitarian assistance (such as food, medicine, shelter), the right to be protected from physical violence, the right to education, freedom of movement and residence, political rights such as the right to participate in public affairs and the right to participate in economic activities (Principles 10-23). Displaced persons also have the right to assistance from competent authorities in voluntary, dignified and safe return,

resettlement or local integration, including help in recovering lost property and possessions. When restitution is not possible, the Guiding Principles call for compensation or just reparation (Principles 28-30).

1st Complainant had to relocate to another town and settle his wife and children at the rural areas due to fear for their personal security. Since he was self-employed and conducting his entrepreneurial work from Chitungwiza, his relocation also meant that he lost his means of survival. His children had to drop out of school during the course of the school term since their home was under surveillance and attack.

10.3 Children's rights

Section 81 (1) (f) of the Constitution provides that every child has the right to education, health care services, nutrition and shelter. Situations of conflict and displacement deprive children of the enjoyment of the mentioned rights. 1st Complainant's children dropped out of school and relocated to their rural home meaning that they lost out on learning for half a school term. Due to limited financial means since their father no longer had any source of income, their rights to health care, nutrition and shelter were also compromised.

11. Recommendations

In light of the findings from this investigation, the following recommendations are hereby made:

MINISTRY OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS

11.1. That there be a regulatory framework which provides for imputation of vicarious liability on political parties for violence caused by their supporters in the same manner that soccer teams are sanctioned for violence perpetrated by their supporters. This means that the parties will have to be fined for the misconduct of their members and also ordered to pay compensation to victims of violence which was caused by their members. This will ensure that political parties reign in their supporters knowing that any unruly or rowdy behaviour could cost the political party financially. Furthermore, the political parties would find it imperative to

discipline unruly members so that their violent tendencies will not be considered as having been performed or sanctioned by the party.

NATIONAL PEACE AND RECONCILIATION COMMISSION (NPRC)

11.2. In line with its Constitutional mandate, the NPRC must come up with strategies for prevention of conflict in communities through early detection of potential conflicts, programmes for promoting peace as well as facilitation of a conciliatory approach to disputes. The NPRC should also ensure that persons subjected to political violence receive rehabilitative treatment and support.

THE GENERAL PUBLIC OF ZIMBABWE

11.3. That in as much as Section 67 of the Constitution guarantees political rights, these rights must be exercised peacefully without endangering the public at large. Citizens of Zimbabwe are reminded to exercise their rights in a manner that is consistent with the Constitution as every right comes with responsibility.

COUNCILLORS AND OTHER ELECTED OFFICIALS

11.4. Councillors and elected officials should at all times desist from inciting violence and making inflammatory statements.

Councillors and other elected officials should act in an exemplary manner and in compliance with the law by desisting from convening unsanctioned meetings in violation of the Public Order and Security Act [Chapter 11:17 since these can be triggers of violence.

ZANU-PF and MDC-T

11.5. Political parties should enforce their codes of conduct and take disciplinary action against its members who perpetrate violence during both intra- party and inter-party conflicts.