

In the matter between:

FUNGAI MURENGWA

COMPLAINANTS

AND

**COUNCILLOR WARD 3, KADOMA
ZIMBABWE REPUBLIC POLICE- CHAKARI
DEPARTMENT OF SOCIAL WELFARE
DISTRICT ADMINISTRATOR KADOMA**

**1st RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT**

INVESTIGATION REPORT

Key Human Rights Issues (As Enshrined in the Constitution of Zimbabwe, 2013)

- *Right to equality and non-discrimination -Section 56*
- *Freedom from arbitrary eviction – Section 74*
- *Right to administrative justice – Section 68*

1. THE COMPLAINT

1.1 The ZHRC received a complaint from Fungai Murengwa who was representing other residents of Chakari, Ward 3, Kadoma.

1.1.1 It was reported that in Ward 3 Chakari, there was discrimination and inequality when receiving food aid and agricultural inputs based on political affiliation.

1.1.2 Complainant alleged that known opposition party members are discriminated against from occupying positions of authority in development projects in the School Development Committee and as Village Health Workers.

1.1.3 There were also allegations of arbitrary evictions targeting members of the opposition who were resident at Dalny Mine, Chakari which had since been bought by Rio Zim. The complainant stated that they received eviction letters which seemed to target opposition party members only. Those purportedly carrying out the inspections in preparation for eviction were ZANU PF members.

1.1.4 It was reported that despite making reports, the Zimbabwe Republic Police (ZRP) had been non-responsive. Furthermore, some of the ZRP members providing security at food distribution would watch and standby as opposition party members were discriminated against.

1.2 The ZHRC undertook an investigative visit in March 2018. The relevant respondents were afforded the chance to respond to the complaints raised. Witnesses for the complainants and respondents were also questioned.

2 Mandate of the Commission

- 2.1** The ZHRC is established as an Independent Commission in terms of Section 242 of the Constitution of Zimbabwe.¹ The functions of the ZHRC are set out in terms of Section 243 (1) (a) –(k) which include among others: to promote awareness of and respect for human rights and freedoms at all levels of society; to promote the protection, development and attainment of human rights and freedoms; to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate, and 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. Furthermore, the ZHRC can recommend the prosecution of offenders, where human rights or freedoms have been violated.
- 2.2** The Zimbabwe Human Rights Commission Act [Chapter 10:30] in Section 9, empowers the ZHRC to conduct investigations into allegations of human rights violations.

3. Detailed Background of the Complaint

Complainants' Account

The ZHRC interviewed the complainant together with a group of 30 victims of the alleged human rights violations. The complainants alleged the following:

3.1 That the Councillor of the area discriminated against residents who were not from her political party in the distribution of food aid, agricultural inputs as well as the occupation of positions of authority in developmental projects such as the School Development Committees and Village Health Work.

3.2 That the Councillor was working with Rio Zim to effect eviction of former Falcon Gold Mine workers from company houses.

¹ Constitution of Zimbabwe Amendment (No 20) Act 2013 herein referred to as the "Constitution"

3.3 That the Councillor and other ruling party officials excluded the complainants from participation in ward meetings by announcing the meetings at ZANU PF meetings where the opposition political party members could not attend.

3.4 That the Councillor influenced the selection of casual laborers at Rio Zim in order to exclude opposition party supporters.

3.5 That ZRP Chakari, despite receiving reports on the conduct of the Councillor had not been responsive. It was alleged that the Councillor verbally abused some of the complainants and that during distribution of food aid, members of the opposition were harassed in the presence of police officers and yet they did nothing. It was alleged that at one-time, food aid was grabbed from an opposition political party member as she was told that she should get aid from her own father Morgan Tsvangirai as the aid she had taken was for ZANU PF supporters. It was also alleged that the Officer-In-Charge of Chakari Police Station was sometimes seen wearing ZANU PF regalia and this was a matter of concern from the public particularly from opposition parties.

4. Methodology

In carrying out the investigation the ZHRC managed to conduct key informant interviews with the District Administrator Kadoma, the Officer-In-Charge Chakari Police Station, the Councilor Ward 3 Chakari, the Human Resources Officer of Rio Zim, the Department of Social Welfare, Kadoma and the Sister-In-Charge Dalny Mine Clinic.

A focus group discussion was held with 30 thirty people (with approximately 8 males and 15 middle-aged women and about 4 elderly women) who were complainants and witnesses in the complaint.

5. Desk Research

5.1 The ZHRC conducted extensive research into the legal framework governing human rights locally, regionally, and internationally.

6. Legal Framework

Sections 68, 56 and 74 of the Constitution of Zimbabwe.

7. FINDINGS

7.1 RESPONSE FROM THE DISTRICT ADMINSTRATOR (D.A)

7.1.1. The District Administrator neither denied nor acknowledged the politicisation of food aid or agricultural inputs in Ward 3 Chakari as he stated that anything was possible at the grassroots level.

7.1.2. He stated that procedurally there was a social welfare distribution committee (which excluded the Councillor) which oversaw the selection of beneficiaries. Statistics from the ZIMSTATS and ZIMVAC results were taken into account in determining the number of vulnerable households to benefit from food aid. The District Administrator stated that selection of beneficiaries was done by the Department of Social Welfare in consultation with the Village Development Committee at a public meeting and excluded the participation of any politician. After selection of beneficiaries the list was presented to the D.A and distribution was effected when aid was available. On the distribution day the beneficiary or a relative with the beneficiary's ID received the food aid or agricultural inputs.

7.1.3. The D.A stated that according to his knowledge the Councillor of Ward 3 did not get involved in distributions of either food aid or agricultural inputs but her presence at these events was to provide a help desk. He, however, acknowledged that because the Councillor was from the ruling party, she also selected a ruling party committee to assist her and this posed challenges with opposition party members who found such a committee domineering.

7.1.4. The District Administrator acknowledged that he was aware of the impending evictions of residents of Dalny Mine from Rio Zim. He stated that Dalny Mine was bought by Rio Zim from Falcon Gold Mine in 2016 and the new owners called a stakeholder meeting where they indicated that they needed to take over their company houses to accommodate its workers, who were currently being ferried daily from Kadoma to the plant. Rio Zim was previously mining in Eiffel Flats and so they also brought workforce from that plant. The District Administrator engaged Rio Zim and asked them to first repossess houses which were being leased out to third parties by former Falcon Gold Mine workers. He stated that he made this plea in order to let vulnerable people be spared from these evictions.

7.1.5. To counter the evictions, the DA and other stakeholders proposed the identification of alternative land for resettlement and they identified Turquoise and Delsea Farms. The identified farms were being earmarked for allocations of two and half (2 ½) hectares per family but for now due to a change of Government the process had been delayed due to some administrative processes which were being put in place.

7.2 RESPONSE FROM THE OFFICER-IN-CHARGE CHAKARI POLICE STATION

The Officer-in-Charge stated that as the police they provided security at food and inputs distributions. He acknowledged having received complaints regarding discrimination of beneficiaries on political affiliation, but he always referred them to the District Administrator who oversaw the distributions in the district.

The complaints that were reported to them included the collection of BVR slips by some political parties, however, on this complaint an informant had reported it but no one came forward as a victim and he had personally investigated the matter and found nothing. Incidents of verbal abuse and uttering slogans during developmental meetings were also reported to him and he had cautioned the alleged perpetrators of these complaints reported of and it had since stopped. On an assault case reported, the case was finalised and a fine was paid. The Officer in Charge denied wearing political party regalia although the complainants insisted that he is at times seen wearing such.

7.3 RESPONSE FROM THE COUNCILLOR

7.3.1. The Councillor of Ward 3 Chakari explained that there were three kinds of aid in the form of Presidential, Command and Social Welfare schemes. She stated that she worked with committees established and selected by the community as well as Government in the form of the Department of Social Welfare and the Ministry of Women and Youth Affairs. The Department of Social Welfare conducted assessments and generated lists of beneficiaries through public meetings and worked with the Community Child Care Workers as well as committees of elected representatives when conducting distributions. The Councillor explained that she was not involved in aid distributions but

always had a help desk to attend to complaints. She stated that there was no discrimination in all aid distributions, but some opposition members excluded themselves from all meetings because of pride and lack of tolerance since they openly said they did not want to be ruled by ZANU PF people, of which the Councillor was one. She also stated that some opposition members assumed that because she was ZANU PF, then she was not open to serving community members from other parties, which was not the case.

7.3.2. With regards to election of residents into positions of authority, the Councillor stated that she officiated at elections and whoever was chosen by the people through majority of votes assumed the position. The Councillor stated that the fact that Dalny Mine 1 Primary School had an MDC chosen Chairperson was evidence of tolerance and dismissed claims that she did not allow members of the opposition into positions of authority. The Councillor reported that she was not involved in the selection of Village Health Workers as these were volunteers whose coordination was handled by the Clinic.

7.3.3. With regards to the Command agricultural inputs the Councillor stated that the Department of Agritex carried out assessments and generated lists to which the Councillor was not part of.

7.3.4. The Councillor acknowledged that Falcon Gold Mine sold Dalny Mine to Rio Zim. It was a known fact which was communicated to stakeholders that Rio Zim sought to repossess houses which belonged to the company. She reiterated that she engaged Rio Zim together with the D.A and other stakeholders so that they could consider vulnerable people who had stayed in the company houses for a very long period. A committee consisting of the District Administrator, Kadoma City Council, the Zimbabwe Republic Police, Rio Zim and the Councillor's Committee was then assigned to identify houses which were occupied by third parties for the initial repossession. Third parties were those who had no connection to the old or new company as employees but just renting the houses. The Committee found out that 638 houses were occupied by third parties, 533 occupied by ex-Falcon Gold Mine workers, 75 civil servants and 214 occupied by employees. She stated that Turquoise and Delsea Farms

had been earmarked as alternative land for relocation and this had been communicated in meetings where some of the complainants did not attend due to political differences.

The Councillor stated that she received complaints on various issues some of which were alleged by the complainants but she usually told them to reduce them to writing as some needed attachment of names but the complainants did not comply.

7.4 RESPONSE FROM DALNY MINE CLINIC

The ZHRC managed to interview the Acting Sister-In-Charge regarding the recruitment of Village Health Workers. It was stated that the Village Health Workers were volunteers who were selected in communities with the help of the Environmental Health Technicians and other groups that worked around promoting health and cleanliness. She stated that Village Health Workers got incentives at least once every three months and were trained to attend to baby clinics and do village follow-ups on treatments and medication. The Acting Sister In-Charge stated that Village Health Workers were a link between the Clinic and the Community and there was no discrimination as to who was involved since it was voluntary work open to all.

7.5 RESPONSE FROM RIO ZIM

The ZHRC interviewed a Rio Zim official based at Dalny Mine. He indicated that Falcon Gold Mine sold the mine to Rio Zim which acquired the mine and the houses in 2017. He explained that Rio Zim already had skilled workforce at their Eiffel Flats Plant in Kadoma and they intended to utilise the company houses for these workers' accommodation. He indicated that some of the former Falcon Gold workers were renting out the company houses to third parties who had no connection to Falcon Gold Mine or the new company Rio Zim. It was reported that a public meeting which included all stakeholders was called to communicate Rio Zim's position and the company indicated that they were initially targeting repossessing houses with electricity and closer to the mine. Notices of eviction were delivered to the affected former Falcon Gold Workers and the evictions were also being carried out by an Estate Agent. The Human

Resources Officer however, indicated that as clear as the process might have been, some politicians might have decided to misinform people on the objectives of the exercise but that was not the position of the Company. It was confirmed that a committee composed of Rio Zim, the DAs Office, Kadoma City Council, the Zimbabwe Republic Police and officials from the Councillor was established to assist with the identification of houses targeted for initial repossession.

7.6 RESPONSE FROM THE DEPARTMENT OF SOCIAL WELFARE

The Department of Social Welfare Kadoma stated that they did assessments and registration of beneficiaries for food aid without any influence from the political leaders or any public official. They acknowledged the existence of complaints regarding food distributions but stated that it was mainly due to the scarcity of food aid as compared to the huge number of people who expected to be receiving aid. The Department of Social Welfare indicated that the distribution of food aid was targeted at vulnerable populations from across the political divide and meetings were public and any interested person was free to participate. It was reported that complaints were tackled by the District Administrator's office because his office coordinated the processes. The officials acknowledged that in their absence, politicians could manipulate processes to advance political part agendas and to score political mileage, but they always advised against politicisation of food aid and encouraged equality.

8. Analysis of human rights violations

The following rights were allegedly violated:

- *Right to equality and non-discrimination -Section 56*
- *Freedom from arbitrary eviction – Section 74*
- *Right to administrative justice – Section 68*

8.1 Whether the right to equality and non-discrimination was violated

8.1.1. Section 56 of the Constitution of Zimbabwe provides for the right to equality and non –discrimination. Section 56 (3) states that 'Every person has the right not to be treated in an unfair and discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language,

class, religious belief, political affiliation, opinion, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock.

- 8.1.2. From the investigation, it was noted that there was no harmony between the Councillor and members of opposition political parties because of political differences. Political differences had tainted objectivity from both parties such that it was affecting even attendance at developmental meetings and this made the absent parties especially opposition political supporters lose out on benefits meant for all residents. There was no apparent evidence of discrimination on the basis of political grounds in accessing food aid and inputs because the procedures were presided over by the Department of Social Welfare whose criteria was standard. Opposition party members who felt discriminated may have been excluded from meetings called by the Councillor who was ZANUPF but there was no evidence to buttress this allegation.
- 8.1.3. The ZHRC noted that there was no equality between members of the ruling party and the opposition in terms of access to information and participation in developmental meetings. Political differences in Chakari, Kadoma were deep seated and were a drawback to development of the community.
- 8.1.4. It was noted that access to holding positions of authority was open to all as evidenced by the occupation of the Chairmanship of Dalny 1 Primary School by an MDC member. Positions were fiercely contested along party lines and there might even be animosity, but the results were not manipulated for the benefit of one party.
- 8.1.5. The investigation noted that Village Health Worker positions were voluntary and were a process which was not interfered with from the politicians as they were a volunteer community chosen representatives who worked in line with the Environmental Health Technicians and the Clinic.

8.2 Whether freedom from arbitrary eviction was violated.

The investigation noted that the acquisition of Dalny Mine by Rio Zim included the acquisition of the company houses where complainants who were former Falcon Gold Mines were housed. The intention to repossess the houses was communicated through all-stakeholder meetings and a committee assisting in the identification of the initial houses to be repossessed was constituted and it

had several stakeholders. Rio Zim communicated that it had an open-door policy to explain to residents how they were conducting the process. Letters of notice of eviction were delivered to residents who were going to be affected. The ZHRC did not find any violation of freedom from arbitrary eviction. The houses complained about were company houses whose occupation was conditional upon one being an employee of the owner of the Mine. The complainants were being offered alternative land in Turquoise and Delsea Farms as a Government initiative to cushion them from homelessness. The fact that Rio Zim was engaging and gave notices through working with all stakeholders demonstrated the company's intention to respect human dignity in its processes. The investigation did not find any evidence of arbitrary eviction.

8.3 Whether the right to administrative justice was violated

Speaking to all those in authority, at all relevant times, it appeared engagements were done and information was relayed to the complainants. However, the political environment and differences in the community were the cause of misinterpretation of any action that was done or brought to the community. For example, complainants were aware of the evictions, and the acquisition of the mine but they were just not happy with the process of evictions. There was no substantiated claim that the initial process of serving notices of evictions was done unreasonably, impartially, or in a substantively and procedurally unfair manner.

9. RECOMMENDATIONS

It is recommended that the COMPLAINANTS should

- 9.1. Exercise political tolerance and not exclude themselves from development programs that come to the area.
- 9.2. Continue speaking out for their rights and report cases of human rights violations.
- 9.3. Those affected by evictions to take up the offers and register their names for alternative land being offered by the Government through the District Administrators Office.

9.4. Register their names in food aid and agricultural inputs programs that come to the area and utilise complaints mechanisms available to them.

TO THE COUNCILLOR

9.5. It is recommended that the Councillor and committees and structures formed through her office and aimed for development embrace political diversity in order to accommodate members of other political parties.

9.6. It is encouraged that developmental meetings be advertised widely through various mediums such as posters and even church meetings in order to include people from across the political divide who allege that such meetings were advertised at ZANU PF meetings.

TO THE DISTRICT ADMINISTRATOR

9.7. The District Administrator to continue assisting the community in the resolution of complaints of pending evictions and investigate complaints of discrimination.

TO THE DEPARTMENT OF SOCIAL WELFARE

9.8 Diligently verify cases deserving of social assistance and make known their criteria and complaints mechanism.

TO THE ZIMBABWE REPUBLIC POLICE

9.9 To investigate all cases reported to them without bias, fear or favour.