



Report on the Mission Visit to Tsholotsho to Assess the Human Rights Situation of Flood Affected Communities

Foreword

The Tsholotsho flood report presents the findings and recommendations of a comprehensive report conducted by the Zimbabwe Human Rights Commission, into the events associated with the mission visit to the floods victims in Tsholotsho found in Matabeleland North of Zimbabwe. Our terms of reference took cognisance of the flooding in some wards which included ward eight, six and that occurred downstream of the Gariya Dam. The report also provide commentary on the flooding victims, and the cumulative effects this had at various locations. The report to capture, analyse and model relevant data to assist us to make a rage of findings and recommendations.

The report was instigated as a commitment by the Zimbabwe Human Rights Commission in line with its mandate of protecting, promoting and enforcing human rights to those affected by flooding. The report has considered the actions of those entities that share disaster management responsibilities in the context of this event and has made recommendations designed to enhance the safety and well-being of the affected communities in future.

The report has highlighted the complexities of disaster management and for the need for thorough and proper planning, preparation and practising of those arrangements. The report takes cognisance of the systematic difficulties particular in relation to warnings and education. Matters relating to flood monitoring and predicting capabilities are achieved. However, this require coordinated effort and the support a number of entities, hence, the approach needs to include open and frank discussion with and disclosure to current communities about risks faced.

I have been privileged through this report to be invited into homes, Focus Group Discussions (FGDs) and schools when they are suffering and desperately trying to recover and have been privy to people's raw emotions. I have been told heart breaking stories such as loss of the entire expected harvest, food in stock, property and homes.

This report has sought to answer as many questions as possible surrounding the flooding of affected communities in Tsholotsho. In doing so, we have been faithful to our commitment to determine and report on the facts. My hope and belief is that the recommendations will ease future risk through better understanding, improved disaster management response, planning and access to information.

I must commend those entities from whom we sought information in particular the District Administrator for Tsholotsho, Schools and the affected communities. Their free, willingly and enthusiastically assisted realising the gravity of the matter.

The Zimbabwe Human Rights Commission has received valuable assistance on the visit to Tsholotsho. On behalf of the Commission and on my own behalf, I wish to express our sincere gratitude to the United Nations Development Programme (UNDP) who provided financial and technical support. I also thank and acknowledge all the Commissioners' and staff of my office, in particular those who worked directly on the report.

COMMISSIONER E.H. MUGWADI

CHAIRPERSON OF THE ZIMBABWE HUMAN RIGHTS COMMISSION

Harare, 2015

Acknowledgements

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1. Introduction

The Zimbabwe Human Rights Commission (ZHRC) represented by two (2) Commissioners, the Chief Human Rights Officer for Complaints Handling & Investigations and three (3) Human Rights Officers conducted a mission visit to the district of Tsholotsho situated in Matabeleland North Province from the 11th to the 12th of November 2014. The district was affected by floods during the 2013/2014 rainy season which resulted in displacement of some of the community members. The objective of the mission was to assess the human rights situation for all the affected communities including the determination of the scope and extent of the emergency in the displaced communities from Butabubili, Gariya, Sandawana, Sasedza, and Kalave in Ward 8. The Commission delegation was also on a mission to assess the humanitarian needs and the social impact of the floods on the affected population and the adequacy of the Government's arrangements in realising Human Rights and freedoms for the internally displaced persons (IDPs)



Figure 1, A destroyed homestead in Butabubili, the structures were completely destroyed with the forth one collapsing on one side. The donated tent was gutted down by fire on the 7th of November 2014.

2. Background

Between the months of November 2013 up to March 2014, approximately 200 households were affected by floods in Tsholotsho, Matabeleland North Province as a result of incessant rainfalls. Tsholotsho is found in a low-lying flat region hence

susceptible to perennial flooding. The communities have not relocated from the flood zones because they do not want to abandon ancestral origins/graves. A majority of them belong to the San community that do not build permanent structures with strong foundations, hence their vulnerability. The affected households who were obliged/forced to flee their homes or places of habitual residence constructed temporary/permanent structures a few metres from the destroyed shelters, thus remaining exposed to perennial floods. The worst hit areas included Butabubili, Gariya, Dzokotsi, Mtshina, Sandawana, Sasedza, Kalave in Ward eight and Mahlaba, Mapili, Mahlosi, Mbanyana, Matupula, Mbamba and Jimila in Ward six. Ward eight dominated by the San community was affected by flooding caused by the spilling Gariya Dam while in ward six flooding was impacted by two overflowing rivers, Gwayi and Zumbani.

Pre-site visit engagements/preparations

The ZHRC delegation made an official visit to the Minister of State for the Province of Matabeleland North, Honourable Cain Matema as part of its pre-site visit preparations. The objective of the meeting was largely to gather information about situation of the Internally Displaced Persons (IDPs) soon after the floods *vis-a-vis* their *status quo* and what measures the State and other stakeholders took to achieve sustainable solutions in respect of the IDPs. The Honourable Minister highlighted that the response had been over whelming as assistance to the affected people still continued to come almost after a year the floods occurred. He reiterated his delight with the response to the floods and the collaboration between the State and other stakeholders but he however highlighted that they should not be seen re-acting to floods but be pro-active. Further, the Honourable Minister informed the ZHRC delegation that the floods had destroyed houses and prevented children from attending school and that one life was lost due to the floods. Cattle were not affected.

The dialogue between the ZHRC delegation and the Honourable Minister revealed that a regular and intelligible pattern had been observed that almost every 5 years

they are devastating floods in Tsholotsho. It was the Honourable Minister's view that it is a well-known fact that Tsholotsho is a generally low-lying area and therefore vulnerable to floods, but the villagers were not keen on moving from flood affected areas leaving behind the graves of their ancestors. They also like the good soils and grazing available in the area and there is no alternate suitable land in the vicinity, Therefore he recommended that there was a need to do away with the traditional structures and build more permanent structures with strong foundations that cannot be washed away by floods.

The ZHRC delegation also held a meeting with the District Administrator for Tsholotsho District, Ms Nosizi Dube and selected members of the Civil Protection Unit. The DA mentioned that no one was displaced (apart from temporary relocation whilst waiting for the water to subside), only shelter was destroyed and those affected were given tents to settle in their homesteads where they were able to attend to the protection of their cattle and other livestock. She expressed her utmost gratitude to the State and other stakeholders for reacting swiftly during the floods, hence preventing the situation from being dire. She stated that one life was lost and those who were injured were treated and discharged on site. The life lost was that of a child who had drowned, after failing to realise that the water was rising.

In the Sipepa area, Zimbabwe Defence Forces (ZDF) helicopters were used to air lift the marooned villagers as the roads were inaccessible. The DA recommended that there was need to build stronger structures in place of the weaker and temporary ones which the villagers built. The weaker structures were built with dagga and poles. Further she reiterated the Honourable Provincial Affairs Minister's sentiments that there was a need to have a disaster risk management plan at all levels (including ward and village level). She however expressed her concern that in as much there was a swift and positive reaction some stakeholders' intervention was motivated more by the need to gain mileage for their organisation than the best interest of the communities hence their insistence on visibility and control over the modalities of assistance despite the CPU's capacity to coordinate and properly distribute such assistance.

3. Methodology

The ZHRC used 4 tools in carrying out its 2 day assessment: key informant interviews; focus group discussions; household questionnaires; and participant observations. The use of 4 tools is useful for the triangulation of data at the analysis stage. It becomes an alternative to traditional criteria like reliability and validity, with the view of overcoming, the weakness or intrinsic biases and the problems that are associated with the use of a single method. The Commission adopted the qualitative approach as it wanted to capture not only the facts, but also the feelings and views of different interviewees. Below is an explanation of the specific tools employed to gather information.

a. Focus Group Discussions (FGDs)

The FGDs were intended to capture the perceptions, opinions, beliefs, and attitudes of respondents towards human rights issues. The FGD was particularly important to explore the meanings of findings that could not be explained statistically. Questions were asked in an interactive group setting where participants were free to talk with other group members. The FGD was used in this rapid research to gather information from men, women, children and key informants. The group of participants was guided by a group facilitator who created a permissive and nurturing environment that encouraged different perceptions and points of view as the interviewer/moderator introduced topics for discussion. The participants were able to agree or disagree with each other to provide insight to the moderator/interviewer on how particular issues affected them. This also created a platform to identify opinions and ideas that exist within the Tsholotsho community in terms of beliefs, experiences, practices, norms and values.

b. House hold Questionnaires

Questionnaires were administered in order to capture the past and present situation of the Tsholotsho community. These were administered to 12 households randomly

selected throughout the 25km radius from Butabubili Primary School. The tool was comprised of open – ended and closed questions to collect both qualitative and quantitative data. The administration of the questionnaires by ZHRC (as opposed to distribution for self-completion by the selected respondents) enabled ZHRC to explain the meaning of questions to respondents and probe for more information.

Though the team intended to administer questionnaires to gender-balanced household respondents, 70% of the randomly selected respondents were women. This was because most men were reported to be away from their homes as they were working in order to fend for their families in South Africa. In most cases women and the elderly stayed at home doing household chores and taking care of the children, and the sick. However this was an advantage to the ZHRC team which captured the views of women and elderly who are often excluded in consultations on issues affecting them.

c. Key Informant Interviews

Key Informant Interviews were conducted with multi-sectoral members of the community and organizations in the area. The purpose of key informant interviews was to collect in-depth information about the community from a wide range of stakeholders (traditional leaders, teachers, villagers with first-hand knowledge about the community).

d. Participant Observations

Participant observations were used to gain deep understanding and familiarity with the community and their activities through intensive involvement with people in their environment. Using observations gave the team an understanding of the geographical location, land size, types of housing, water supply and sanitation, health and education facilities in the area.



Figure 2 ZHRC Commissioners observing a homestead which was affected by floods in Butabubili. The family was using one hut and the two makeshift structures, the donated tent and plastic structure as their bedrooms.

4. Limitations

During the Tsholotsho visit the ZHRC team was supplied with different accounts and views surrounding the disaster. This was coupled by the deficiency of reliable sources of material to verify statistics and facts on lost property and affected people. In most instances, government/local authorities' employees were sceptical about revealing information about the disaster.

Furthermore, the community was now tired of just being interviewed, they had an expectation to be assisted since some visitors had promised to render assistance that has not materialised to date.



Figure 3 A ZHRC Officer interviewing flood victims at Butabubili Primary School. The two widows cite relocation no longer holds water to them as they will be detached from their spouses' graves.

5. Legal Framework

a. Constitutional, Legislative and Policy Framework

The Constitution of Zimbabwe Amendment (No.20) Act 2013 is the supreme guideline within the national legislative framework in as far as assessment of the situation in Tsholotsho is concerned. The following sections of the Constitution and policies are relevant:

- Section 71 which provides for property rights
- Section 73 which provides for environmental rights
- Section 75 which guarantees the right to education
- Section 76 which guarantees the right to health care
- Section 77 which provides for the right to food and water
- Section 80 which provides for the rights of women
- Section 81 which provides for the rights of children
- Section 82 which guarantees rights of the elderly
- Section 292 which provides for security of tenure for occupiers of agricultural land

b. Regional and International Legal Framework

State Parties have the responsibilities to respect, protect and fulfil their obligations under regional and international law, so as to prevent and avoid natural catastrophes. This entails that States should seek the cooperation of international organizations or humanitarian agencies, civil society organizations and other relevant actors to work together during displacements.¹

The main two instruments governing IDPs are the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (“Kampala Convention”) of 2009 and the UN Guiding Principles on Internal Displacement of 1998. These two instruments provide for the obligations and responsibilities of State Parties with respect to the prevention of internal displacement and protection of and assistance to IDPs. Some of the relevant provisions of these two instruments are as follows:

- Articles 4,5,6, and 9 of the Kampala Convention
- Principle 5, 9, 16(3), 18, 19(2) of the UN Guiding Principles.

6. Findings

a. Key Achievements

I. Emergence Rescue and Evacuation

ZHRC gathered that floods impacts differed from household to household. The different households where affected in the following ways:

- (a) Some households had their homes and crops at tussling level completely destroyed by floods;
- (b) Some households were living in temporary structures (tents) ;
- (c) Some households were living in the open with blankets only ;
- (d) A few households whose homes had heavy wall cracks and were in potential danger of collapsing during future floods.
- (e) Households whose homes were not in any danger from the floods.

¹ Article 4: African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Declaration).

The State is commended for averting the loss of lives when disaster was imminent through rescue efforts that were conducted by use of helicopters from the Zimbabwe Defence Forces. Provincial and District authorities went on to co-ordinate a multi-sectoral response to the disaster which was timely. Different Government line Ministries, the District Civil Protection Unit, Civic Society Organizations (CSOs), and Faith Based Organisations, private entities and individuals pooled resources to assist the disaster victims. This is in line with Article 5(6) of the Kampala Convention which states that States shall provide sufficient protection and assistance to IDPs and where available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organizations and humanitarian agencies, civil society organizations and other relevant actors.

II. Relief Aid

The ZHRC notes that the State enabled the provision of food to the affected communities through food aid some of which was coordinated by the District Civil Protection Unit, CSOs, Faith Based Organisations and individuals had contributed towards providing the affected communities with temporary shelter, building materials and basic needs, in particular blankets and clothes. Food aid was provided on a monthly basis depending on the vulnerability ranking of the households.



Figure 4 Donated tents to affected villagers in Butabubili, the structure accommodates four peoples and their belongings.

III. Administrative Services

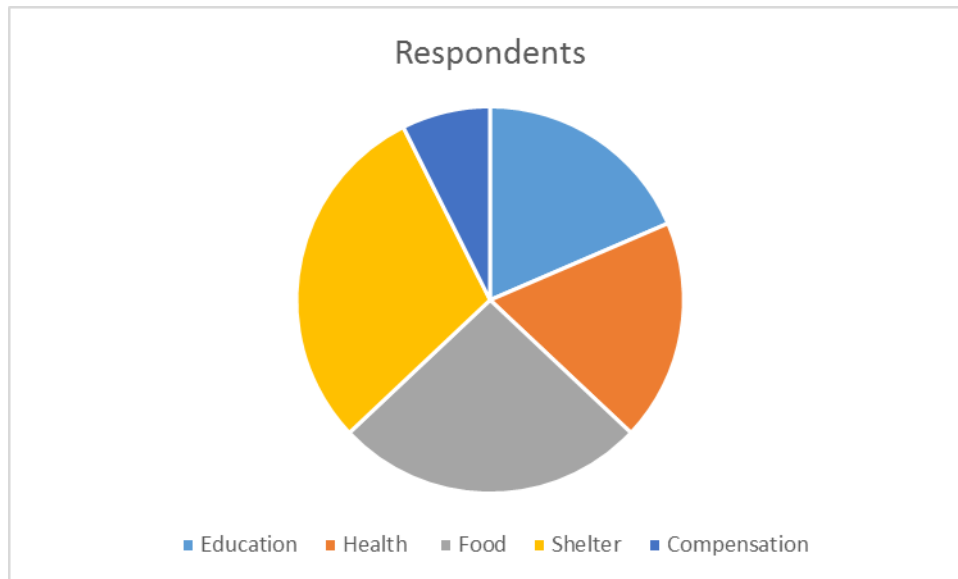
The presence of local government and other key service departments, including security departments, jointly referred to as the District Civil Protection Unit (CPU) in Tsholotsho district was also commendable. This helped in the rapid coordination and delivery of basic goods and services including relief aid.

a. Key Issues of Concern

The UN Guiding Principle 18² states that, at the minimum and regardless of the circumstances, States shall provide IDPs with essential food and potable water, basic shelter and housing, essential medical services and sanitation. Although the Government of Zimbabwe tried to ensure that the basic human rights of the affected communities were met, the ZHRC notes with concern the shortcomings on the part of the State in fulfilling these rights. Some rights that have not been fulfilled include the right to basic shelter, essential medical services and sanitation. The chart below highlights the rights concerned and some of the inadequacies as revealed by the field research. However, it should be noted that some of the inadequacies highlighted existed prior to the flooding although that does not detract from the Government's duty to fulfil the rights in issue.

Figure 5: Issues of Priority for the flood victims

² UN Guidelines on IDPs.



As shown in the figure 5 above most interviewed Tsholotsho communities indicated that food and shelter were their major concern, followed by education and health. These communities lost immovable property, small livestock's, crops due to effects of floods. Compensation was the least of their priorities. The communities highlighted that compensation in the form of small livestock, farming inputs and stronger building materials was necessary to alleviate their perennial problems. Most of the interviewees cited that the provision of boreholes, and support to start income generating projects and secure basics needs such as food, health and education. None of the interviewed displaced communities showed an interest to be relocated to land on higher ground.

In the Gariya area, the dam's banks busted resulting in the flooding of homes leading to their collapse. Small livestock was swept away. Ideally, the Government should have devised early warning systems in that area and implemented Disaster Risk Reduction Strategies in line with Article 4(2) of the Kampala Convention.

The Right to Adequate and Decent Shelter

Table 1: Family Sizes of the 12 Interviewed Households

Household Size	No. of Households interviewed
3 or less	2
3 to 5	4
6 to 10	6
10 or more	0
Total	12

Table 1 shows the average family size of the interviewed respondents which is five (5) people per household. On the other hand fifty per cent (50%) of the respondent's households exceeded six (6). The ZHRC notes with concern that the majority of the communities were allocated one tent per household regardless of the family size. In some cases the households did not receive a tent, leading to harsh environmental conditions. In some households father's in-laws were sharing the same tent with daughter's in-law a situation which is taboo in the African culture. In some cases boys also shared tents with women and girls hence putting the vulnerable at high risk of abuse.

At the time of the visit a few households had managed to construct some pole and dagga houses. Although figure 6 below, indicates that most of the interviewed people were married, a considerable number of them are women who did not live with their husbands who had migrated to the neighbouring South Africa in search for greener pastures. Other households were headed by elderly, the disabled persons, who could hardly make economic contribution to their families. These labour constrained households faced difficulties in constructing new homes and securing a livelihood for their families.

Figure 6: Marital Status of Interviewed victims

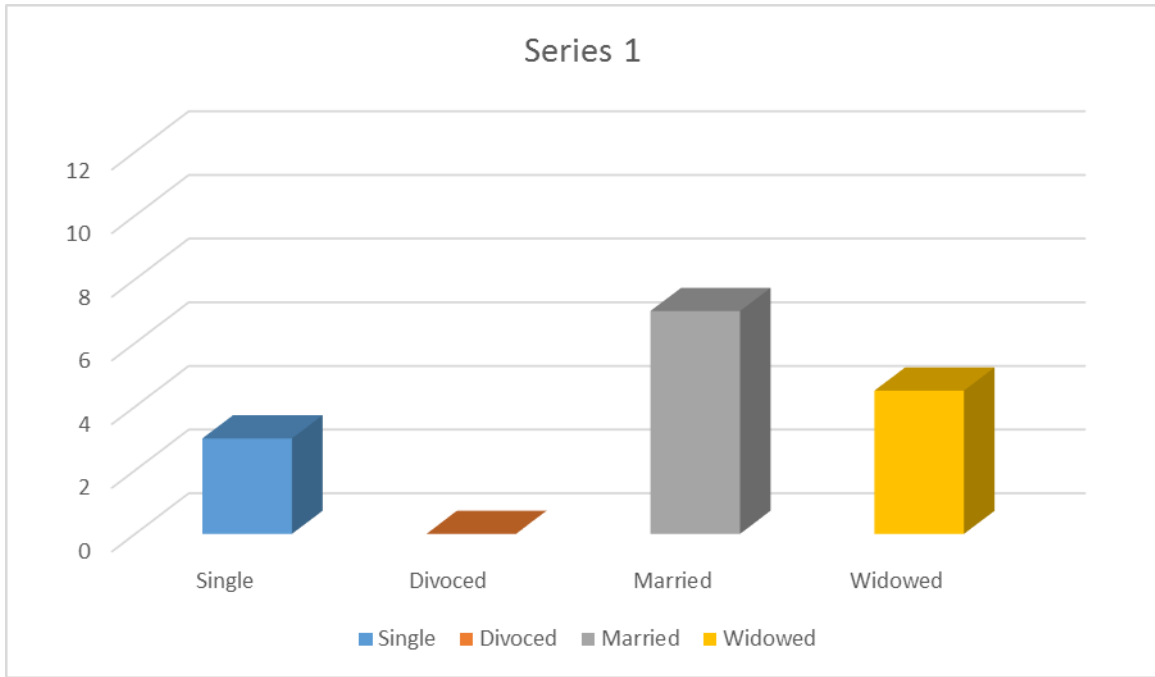


Figure 7 Above is one of the shelters that one villager managed to build after his house was destroyed by the flood. The structures is divided by a blanket as the structure accommodates both males and females.

i. The Right to Food

Section 77 (b) of the Constitution provides for the right to sufficient food. Efforts have been made by the State through the Civil Protection Unit, Faith Based Organisations

and CSOs to provide food to the residents but the supply has not been sufficient to enable full realisation of the right for the affected communities. The state and humanitarian agencies were providing the following food items, mealie meal, cooking oil and beans. ZHRC notes with concern the lack of a clear strategy that will ensure sustainable food security for the affected communities. This is particularly important as there were limited livelihood opportunities in Tsholotsho.

ii. The Rights to Water and Sanitation

ZHRC notes with great concern the unavailability of safe and clean water and reasonable sanitation facilities. Section 77 (a) of the Constitution provides that every person has the right to safe, clean and potable water. Water was reported to be inadequate. Some of the boreholes have a very low water yield hence resulting in communities walking close to 5km to the nearest water source there-by leaving women at risk as the region has vast forests. At the time of the visit most of the households did not have ablution facilities and in most cases people resorted to relieving themselves in the open which poses, a health hazard to the communities.

iii. The Right to Health Care

The Constitution in Section 76 provides for the right to have access to basic health care services including reproductive health care services. Although there is a clinic in Butabubili, it serves communities stretching to about 30 km radius. This has made it difficult for the disabled, the aged and the sick who have limited mobility to access it. There were indications that most villagers had to work for those with mobility resources (which comprise of donkey pulled carts) in order to have their family members taken to hospital as some areas are inaccessible during rain seasons due to water logging. Generally the roads were in bad state.

iv. The Right to Employment

It was discovered that the majority of the communities in Tsholotsho were not employed due to lack of opportunities for sustainable livelihoods. Although the community relies on farming, Tsholotsho is generally a region with erratic rainfall

pattern save for seasons with floods and therefore agricultural activities, other than livestock rearing, are not of much economic value. A few people were employed as cattle herd men and most women were self-employed clearing shrubs (*ukutshaya inenje*) in isiNdebele.

v. Environmental Rights

Section 73 of the Constitution guarantees the right to a safe and clean environment and also to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures. Environmental rights of people in Tsholotsho are not being fully realised. As mentioned above, the communities were facing challenges with regards to sanitation and were relieving themselves in the bushes. There is unmonitored cutting down of trees for fencing homesteads/fields, firewood and hut and kraal building that was evident during the visit and if no timely interventions are made, the environmental degradation in Tsholotsho district will be massive in the not so distant future.

vi. The Right to Protection of Vulnerable Groups

The ZHRC found that there are various vulnerable groups in Tsholotsho. Women and children were considered to be the most vulnerable groups. This was because they were burdened by practical gender roles and also because of limited access to economic opportunities. In particular women were walking long distances to access health related facilities for their children and the elderly, fetching water as well as rebuilding their destroyed homes. The children were also facing the same challenges in terms of walking long distances to school posing further abuse risks particularly for the girl child. Butabubili primary school is poorly equipped (Refer to Figure 8 below). The elderly, sick and disabled also had difficulties in accessing health related facilities especially for those who were chronically ill, as well as attending meetings thereby excluding them from developmental discourse and relief aid opportunities. The youth were mostly affected by idleness with the lack of employment and recreational activities hence resulting in high rate of pregnancy and HIV and AIDS prevalence.



Figure 8. Schools are poorly equipped. Pupils at Butabulili Primary School were seen writing end of term exams on the floor because of a shortage of furniture.

7. Conclusion

From the above observations, the Commission applauds the State for working together with other stakeholders in responding to the Tsholotsho disaster through the provision of swift response in evacuation of people that had been affected at the critical periods, provision of basic needs and shelter. However, the Commission recognises that there is need for the State to adopt a human rights based approach which puts the human being at the centre in addressing IDP related emergencies and prioritising this in the budgets.

8. Recommendations

- a. Government through the Civil Protection Unit headed by the District Administrator for Tsholotsho should promote community initiated mitigation measures through the setting up of ward committees. This promotes community resilience in the long term and community based floods early warning systems should be developed. For example Tsholotsho is a low

lying area with few rivers and dams such that when it rains heavily there is no drainage for the excess rain water. Systems should be put in place to divert the excess rain water into small man-made rivers.

- b. Ministry of Local Government, Physical, Rural and National Housing and the Metrological Department should be at the forefront of a multi-sectorial approach to flood mitigation as opposed to single sector. This should be promoted as there are inter-linkages in terms of flood impact on various aspects of society.
- c. The Commission recommends that the Civil Protection Unit headed by District Administrator should ensure that IDPs have access to decent, permanent shelter. The CPU has the responsibility first and foremost to take care of victims of natural disasters/emergencies and to provide humanitarian assistance (Principle 18 of the UN Guiding Principles on Internal Displacement). The CPU should be responsible for the coordination of all efforts aimed at protecting and searching for durable solutions for IDPs, initiation, organisation, coordination, implementation of humanitarian assistance under the current living environment where communities do not have any other livelihood activities and are likely to require food assistance for the foreseeable future. ZHRC recommends that the CPU maintains and strengthens its relations with humanitarian agencies to alleviate the Tsholotsho residents' situation guided by Article 9 (3) of the Kampala Convention.
- d. ZHRC recognises that the realisation of socio-economic and cultural rights is imperative. On a progressive basis, more schools need to be built and well equipped in Tsholotsho by the Ministry of Primary and Secondary Education, with sound support from the national fiscus. The Government of Zimbabwe expressed its commitment to the objective when it became party to the African Charter on the Rights and Welfare of Children, the Convention on the Rights of the Child and at the World Summit for Children. Therefore the construction of up to standard and appropriate schools with adequate furniture and

stationery to enhance the quality of primary and secondary education according to section 75 of the Constitution is one of its duties. Furthermore there is need to create early childhood educational facilities that are accessible in terms of cost and distance especially for the tender age group.

- e. ZHRC recommends that in accordance with article 9(2) (c) of the Kampala Convention, The Ministry of Health and Child Welfare should enact domestic law that protects IDPs' right to health. In particular, such legislation should comply with the Minimum Essential Element by incorporating abilities and needs, and the UN Guiding Principles in providing for the protection of the rights of vulnerable groups within the IDP community, including the sexual health of displaced women and psycho- social support for individuals subject to the increased threat of gender-based violence and sexual assault as a result of their displacement. Such law should obligate the ministry to provide IDPs with access to treatment rather than placing the onus on IDPs to source their own treatment. Also the ministry should include in the mandate of the IDP focal institution, the responsibility for ensuring that health services available to the general population are provided to IDPs in cases where IDPs cannot easily access such services, and the particular health vulnerabilities that accompany displacement are addressed by the national health legislation and policy.

- f. Section 77(a) of the Constitution provides that every person (including IDPs) has a right to safe, clean and potable water. ZHRC recommends that the policy makers should enact legislation with specific section on IDPs within communities to ensure they have access to water supplies allocated that area by public or private authorities. Also the Ministry of Water and Environment through Zimbabwe National Water Authority (ZINWA) at most minimum and regardless of the circumstances and without discrimination provide and ensure safe access to potable water, and sanitation in accordance with Principle 18(a) and (d) of the UN Guiding Principles.

- g. The Commission recommends that the State should expeditiously domesticate the Kampala Convention into national legislation in a way that establishes a national framework addressing internal displacement in a comprehensive manner.

- h. The Commission recommends that the State seeks cooperation with international organisations, humanitarian agencies, civil society organisations and other stakeholders to come up with measures to achieve a durable solution to the problem of destruction of homes and livelihoods (and displacement) due to flooding and/or other natural disasters.