



PRESS STATEMENT

THE LEGAL IMPLICATIONS OF OPERATION *MURAMBATSVINA* AND OPERATION RESTORE ORDER

- 1. Operation *Murambatsvina* and Operation Restore Order (“the Operations”) were initiated by the Chairperson of the Harare Commission, which is currently running the affairs of the City of Harare.**

This Commission is an organ which has not been democratically elected by the people of Harare as is required by the Constitution, the Urban Councils Act, and various international and regional human rights treaties to which Zimbabwe is a State Party. Instead it was unilaterally appointed by the Minister of Local Government, Public Works and Urban Development. The appointment of the Harare Commission has been legally challenged in a pending application in the High Court. As such, ZLHR is of the considered view that any actions taken by and on behalf of the Commission, including the Operations, are subject to scrutiny and challenge.

- 2. Notice of the Operations was published in the state-run *Herald* newspaper on 24 May 2005, some five (5) days after the evictions and demolitions were already underway. The Notice called on all “owners, occupiers and users” of stands/properties considered to be illegally erected or illegally utilised to cease using the structures, or apply for regularisation, or demolish the said structures.**

The legality and adequacy of this Notice has been challenged, on the grounds that the notice given was vague (in that the affected persons were not clearly identified, and the action required to be taken by each category was not clearly stipulated), inadequate (many affected people were never aware of the publication of the Notice, or that it pertained to their structures and activities) and unprocedural (in terms of the Regional, Town and Country Planning Act, the Urban Councils Act, and the Housing Standards Act, inter alia). This challenge has still not been considered by the High Court. Until such time as it is, we are of the considered view that all action by the Harare Commission and all those acting through it, and countrywide, should have been suspended and is illegal.

- 3. In any event, the said Notice clearly advised that all “affected persons” were to be given until 20 June 2005 to regularise their affairs and/or take action to remedy any alleged violations.**

This period of notice has been blatantly ignored and in fact that the unlawful actions continued unabated and were well underway as at 20 June 2005.

- 4. The legislation in terms of which the authorities are purporting to act is legislation promulgated by the repressive, racist minority Smith regime prior to the Independence of Zimbabwe. It was then used to effect unlawful forced evictions akin to the forced removals that occurred in this country as well as apartheid South Africa.**

We are of the considered view that the legislation is subject to constitutional challenge and in fact such challenge is currently being finalised for filing in the Constitutional Court of Zimbabwe.

5. The authorities have attempted to package this humanitarian disaster as necessary action against “criminals” and other illegal activities, and the affected property as “illegal” infrastructure.

This is not the case. As the litigation clearly indicates, many people with valid leases, proper planning permission and compliance with laws have been unlawfully victimised and have suffered extensive damage and suffering.

Further, regardless of whether the people and/or properties were “illegal”, this does not excuse or legitimise the government’s failure to adhere to the principles of natural justice and proper administrative remedies, more so where the government has failed to provide adequate notice and/or alternative accommodation and attendant facilities to mitigate the impacts of its action on the affected people.

It should also be noted that it is the responsibility of the police, and not the local authorities, to deal with criminal activities. The local authorities therefore acted illegally and unprocedurally in instructing the police, on their behalf, to demolish homes and stalls in order to put a stop to alleged criminal enterprises.

6. When taking action all administrative authorities (which would include the City Council and the police force) are obliged to act lawfully and reasonably. This is provided for in s 3(1) of the Administrative Justice Act [Chapter 10:28].

The action taken was not reasonable. It was precipitate, indiscriminate, manifestly excessive and disproportionate. If people had been given adequate notice of the action, they would have had time to dismantle structures, salvage whatever materials they could from their structures, and move property to store it elsewhere. As little or no warning was given to people, people were not able to do so. It is a general principle of administrative law that when administrative authorities are exercising powers, they should do so in a manner that will minimise loss. This principle has not been adhered to during the Operations.

7. The Constitution of Zimbabwe, in the Declaration of Rights, provides for the protection of the basic human rights of the people of Zimbabwe.

ZLHR is of the considered view that the authorities have violated several of the key protective provisions. These are:

- *the right to life (section 12);*
- *the right to protection against torture, inhuman or degrading treatment or punishment (section 15);*
- *protection from deprivation of property (section 16);*
- *protection from arbitrary search or entry (section 17);*
- *right to the secure protection of the law (section 18);*
- *protection of freedom of assembly and association (section 21);*
- *protection of freedom of movement (section 22)*

These rights and freedoms are also protected by way of regional and international human rights instruments, to which Zimbabwe is a State Party, and thus the State, through its actions, has also acted in violation of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on All Forms of Elimination of Discrimination Against Women, the Convention on the Rights of the Child, the African Charter on Human and Peoples’ Rights and the African Charter on the Rights and Welfare of the African Child.

Further rights enshrined in these human rights instruments which have been violated by the authorities include:

- *the protection of the family by society and state;*
- *the right to work;*
- *the right to education;*
- *the right to the highest attainable standard of physical and mental health;*
- *the right to an adequate standard of living including adequate food, clothing and housing and to the continuous improvement of living conditions*
- *the right to a general satisfactory environment favourable to the development of the people*

The State, under the African Charter on Human and Peoples' Rights, has an obligation to ensure the right of the people to their economic, social and cultural development. Under the African Charter on the Rights and Welfare of the Child, a duty is also imposed on the State to ensure the survival, protection and development of the child, to protect and support the establishment and development of the family as the natural unit and basis of society, and to provide material assistance and support programmes for the nutrition, health, education, clothing and housing of the child. It is clear that, rather than complying with such obligations, the State has acted in a manner which violates the very spirit of the Charters and their contents.

8. The courts of Zimbabwe have a duty to uphold the rule of law and the administration of justice, and to act as the protectors of the rights of all people of Zimbabwe in an independent, efficient and non-partisan manner.

In the High Court the manner of disposal of urgent challenges of the Operations has been unduly prolonged and this is of great concern, especially when the very lives of affected people depend on swift, impartial and professional service and subsequent enforcement of orders. Regrettably judges have shown an unwillingness to deal firmly and decisively with perpetrators of human rights violations, which in turn has led to people losing faith in the ability of the judicial process to offer them protection or other satisfactory remedies.

The cases ZLHR has filed in the Magistrates' Court seeking urgent relief have, however, been dealt with on an urgent basis and relief has been granted, albeit that the authorities have chosen to ignore court orders and continue with activities which have been held to be unlawful. The most recent example occurred yesterday on Porta Farm. Local authorities and police acted in blatant contempt of two existing High Court orders barring them from removing people from the property, assaulting them or destroying their property. ZLHR obtained a third interdict against them in the Norton Magistrates' Court late yesterday. This has been served on the relevant parties, but the evictions and destruction of property and livelihoods is continuing today.

9. Whilst the forced evictions are ongoing, the government has announced a new phase of the operation, a reconstruction programme for urban centres.

ZLHR is of the considered view that such a programme would have been achieved more beneficially through an orderly process of research, verification, consultation and subsequent action, including the regularisation of any purported illegal structures rather than their demolition. Attempts by the Government now to appear as the benefactors of a development programme, which is long overdue, and could have been more effectively achieved through proper planning and implementation and without the concomitant destruction and serious human rights violations, are frankly misconstrued and dishonest. Government has not provided information on how the exercise will be funded and who the beneficiaries of the new developments will be. Those displaced and thrown back to rural areas or even open spaces will not be able to register for, or access, such developments as they are currently occupied in fighting for their very survival. In addition, they have not been provided with restitution, compensation and guarantees of non-repetition from the State despite the extensive damage done. In any event, to suggest that the joint Operations are over, when Porta Farm and other areas are being devastated as we sit in this room, is a blatant untruth, shows utter contempt of the presence of the Special Envoy of the UN Secretary-General in the country, and indicates that the Government is not interested in even providing a veneer of legality, whoever may be observing.

The actions taken by the authorities are illegal and have contravened key provisions of domestic and international law. The Operations have caused massive human rights violations and a serious humanitarian crisis, and must be condemned in the strongest of terms. These are issues of extreme severity and need to be fully investigated in order to place the forced evictions into their proper perspective. The actions of the Ministries, the local authorities and the law enforcement agencies have led to severe loss of life, livelihoods, and property, and have impacted and continue to impact on the basic economic, social, cultural, civil and political rights of hundreds of thousands of affected people in Zimbabwe.

As a member of the United Nations Commission on Human Rights, Zimbabwe should be advocating for the respect and implementation of key Resolutions on forced evictions passed in 1993 (Resolution 1993/77), 1998 (Resolution 1998/9), and 2004 (Resolution 2004/28), instead of perpetrating the very violations the Resolutions intended to prevent.

ZLHR therefore calls upon the Special Envoy of the United Nations Secretary-General to:

- A. Condemn the ongoing forced evictions, destruction of property and loss of livelihoods;**
- B. Call on the government of Zimbabwe, the local authorities and the law enforcement agencies to immediately end their unlawful action and restore the rule of law in Zimbabwe;**
- C. Call on the government to allow affected people to return to their properties or be provided with suitable and adequate alternative accommodation with attendant facilities conducive to the promotion of their basic needs and human rights;**
- D. Call on the government to publicly commit itself to providing restitution, compensation and guarantees of non-repetition to all affected people and do so in a transparent and speedy manner;**
- E. Call on the Judiciary to deliver speedy justice in an independent, impartial and professional manner conducive to the administration of justice and the protection of the rights of all people of Zimbabwe without fear or favour;**
- F. Institute a special investigation into the Judiciary, its independence in terms of international standards and norms, and whether conditions exist to allow it to act impartially and professionally in protecting the human rights of all people of Zimbabwe;**
- G. Call on the law enforcement agencies to abide by court decisions and enforce orders without fear or favour;**
- H. Call on the authorities to revisit relevant legislation, passed during an era of repressive and illegal rule, and ensure that it is repealed or amended to conform with minimum domestic and international human rights standards and norms;**
- I. Call on the government to reaffirm its commitment to upholding the Constitution of Zimbabwe and its obligations under international law.**