



3RD SESSION- EIGHTH PARLIAMENT

REPORT OF THE THEMATIC COMMITTEE ON HUMAN RIGHTS

STATE OF THE HUMAN RIGHTS SITUATION IN ZIMBABWE

SC 20/2016

MADAM PRESIDENT'S ANNOUNCEMENT

On Thursday, 24th September 2015, Madam President announced that the Committee of Standing Rules and Orders had appointed Members to serve in the Thematic Committees.

The Human Rights Thematic Committee membership is as follows

1. Hon. Carter M
2. Hon. Buka F
3. Hon. Chifamba J
4. Hon. Chipanga T S
5. Hon. Chief Charumbira F
6. Hon. Chief Chisunga D
7. Hon. Chief Gampu IV A, S
8. Hon. Machingaifa T
9. Hon. Mabhugu E F
10. Hon. Makwarimba C
11. Hon. Maluleke O
12. Hon. Marava M
13. Hon. Mashavakure N
14. Hon. Mawire J
15. Hon. Chief Mtshane
16. Hon. Moeketsi V
17. Hon. Muchenje V
18. Hon. Muronzi M
19. Hon. Musaka B.M
20. Hon. Chief Nebiri W
21. Hon. Chief Ntabeni
22. Hon. Gen. Nyambuya M
23. Hon. Chief Nyangazonke
24. Hon. Chief Siansali
25. Hon. Sibanda A
26. Hon. Sibanda B
27. Hon. Sinampande H. M

Hon. Gen. Nyambuya M, R is the Chairperson.

1.0 INTRODUCTION

- 1.1 As part of its oversight role, the Thematic Committee on Human Rights conducted an inquiry into the state of human rights in Zimbabwe in order to have an in-depth appreciation of the subject matter.
- 1.2 The government of Zimbabwe must be commended for having embraced the spirit of the respect, promotion and fulfillment of human rights through the ratification of a number of regional and international instruments.
- 1.3 Some of the key human rights instruments that come to mind include the African Charter on human and Peoples' rights (ACHPR), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, social and Cultural Rights (ICESCR).
- 1.4 The state has also taken legislative, policy and administrative steps, to some extent, to give further legal safeguards to the enjoyment of the rights contained in the various regional and international instruments that the country is party to. A good example is the Constitution of Zimbabwe 2013 that provides an expansive bill of rights that strengthens the various civil and political rights and includes protective provisions of some economic, social and cultural rights that were not previously justiciable.
- 1.5 However, it is pertinent to note that there have been some violations of social and economic rights as well as civil and political rights due to a number of factors. Key drivers for the violations include the deteriorating economic situation and the El Niño induced drought, the ongoing political polarization.

2.0 OBJECTIVES

In its inquiry the Committee was guided by the following objectives;

- 2.1 To appreciate the state of Human Rights in Zimbabwe
- 2.2 To assess the levels of public confidence in the government's enforcement mechanism of fundamental human rights and freedoms.
- 2.4 To appreciate the challenges being faced by the Zimbabwe Human Rights Commission in the execution of its mandate, if any; and

2.5 To make appropriate recommendations in respect of possible solutions to the challenges identified.

3.0 METHODOLOGY

3.1 In order to fully appreciate the subject under consideration, the Committee invited the following stakeholders to provide both written and oral submissions:

- The Ministry of Justice, Legal and Parliamentary Affairs
- The Ministry of Public Service, Labour and Social Welfare
- The Zimbabwe Republic Police
- The Zimbabwe Prisons and Correctional Service Commission
- Law Society of Zimbabwe
- Zimbabwe Association of Crime Prevention and Rehabilitation
- Zimbabwe Lawyers for Human Rights
- The Zimbabwe Environmental Lawyer Association

4.0 KEY FINDINGS AND OBSERVATIONS

4.1 Progress in realizing human rights

4.1.1 The ratification and domestication of some of the major regional and international human rights treaties by the government of Zimbabwe must be commended. Zimbabwe is party to the main human rights instruments as stated above

4.1.2 The domestication of the various international and regional human rights treaties is a positive step by the government as it gives domestic legal safeguards where human rights are violated or are under threat

4.1.3 A cursory glance at sections 48 to 84 of the Constitution of Zimbabwe reveals a robust cocktail of substantive rights that everyone in Zimbabwe is entitled to.

- 4.1.4 The Bill of Rights is much more expansive and comprehensive. Not only does the New Constitution strengthen the civil and political rights, it makes social and economic rights mandatory. This is progressive and commendable as it is consistent with accepted regional and international standards that Zimbabwe ascribes to.
- 4.1.5 The government of Zimbabwe has also actively participated in the Universal Periodic Review (UPR) Process- a voluntary human rights peer review mechanism coordinated by the United Nations Human Rights Council. After undergoing the Universal Periodic Review by the Human Rights Council of the United Nations, the government set up a mechanism to monitor implementation of the UPR recommendations that it accepted. It is commendable that the government is preparing for the next review that is scheduled for October 2016.
- 4.1.6 There have been efforts by the government to engage strategic stakeholders such as civil society, to further human rights protection of the citizens.
- 4.1.7 The courts have played a positive role in ensuring that some victims in some cases of human rights violations access remedies. This is particularly true in cases of violations of rights of accused persons by the police. In some of the claims filed against perpetrators that have been finalised, awards have been honored by the state in some cases. This is critical as it reinforces the principles of rule of law as articulated in the constitution.
- 4.1.8 A number of key judgments both in the superior courts and the lower level courts have been handed down reflecting the letter and spirit of the rights regime in the new constitution.

4.2 Violations of human rights

Social and economic rights violations have been observed, with some cases being attended to over the last twelve months. Of concerns are violations of the rights to;

4.2.1 Shelter

This has, by far, been the biggest challenge from the legal and socio-political perspective.

- *Forced evictions* – Forced demolitions continue. At the moment, it is taking place in some areas of Harare and Chitungwiza.
- The case of the Chingwizi villagers is one of tragic proportions as the villagers who are victims of internal displacement continue to suffer further violations of their social and economic rights without a clear solution in sight.
- Other victims of forced evictions have been cases of some former farm workers who have been displaced. This has been done through the application of the Gazetted Lands (Consequential Provisions) Act, and through the civil courts. The Thematic Committee bemoans the lack of a clear policy to resettle this group of people who clearly constitute an indigenous vulnerable group deserving of some form of constitutional protection.
- *Eviction of informal traders* – This is another challenge, with those eking out a living by way of informal employment being at the mercy of authorities. The current economic decline continues to result in growing formal unemployment and increased informal trading, which the government has attempted to formalise with various challenges, including disrespect for constitutional protections. These populations are at risk of repression and political manipulation. Running battles continue to be experienced between this group and the municipal police and the Committee regrets that at times the action taken by authorities has been arbitrary leading to loss of wares by the informal traders even when the law is clear on how confiscated goods must be dealt with.

4.2.2 Education

Education -Economic conditions continue to make it difficult for parents to meet their obligations at secondary schools and primary schools remain inaccessible to many. Many children continue to face challenges. Some schools are withholding results from pupils due to non-payment of fees by parents. Schools must take appropriate action to deal with this issue that does not affect the best interest of the child, a principle that is entrenched in our Constitution.

4.2.3 Health

Public health – The facilities are failing to cope with demand; patients are being subjected to rights violations through denial of proper treatment, *access to medication, and arbitrary detention as a result of inability to pay fees for services.*

4.2.4 Food

Food and water– There continues to be cases of discrimination in the distribution of food aid, even in instances where it is being distributed by government departments such as the Social Welfare. Some people have been arrested and charged with violating the Criminal Law Codification and Reform Act after insisting on accessing food aid that is being distributed on alleged partisan lines. It is trite that relevant government departments ensure that vulnerable groups have access to clean water to prevent the outbreak of water borne diseases.

4.2.5 Civil and political rights

Civil and political rights continue to be undermined by the conduct of some state actors. The situation of Human Rights Defenders (HRDs) remains particularly dire. In most instances, the arrests are arbitrary and unjustified. In most of these cases they have been charged with violating provisions of the Criminal Law (Codification and Reform) Act – such as trespassing, criminal nuisance etc.

4.2.6 Freedom of assembly

Meetings and gatherings -The disruption of peaceful protests that are guaranteed in the Constitution due to application of section 37 of the Criminal Law (Codification and Reform) Act, and POSA in very few cases – is of concern. It is particularly distressing to note that in some cases the police have misinterpreted the requirements in POSA against non-political gatherings. In any event, POSA has to be repealed as it does not comply with the Constitution. The disruption of such gatherings has been done in a very heavy handed manner in defiance of rights of those affected.

4.2.7 Rights of vulnerable people

Children –While child marriages have been outlawed by the Constitutional

court, in a progressive judgment. A lot of measures still have to be taken to ensure that this is fully implemented. Also of concern is the increase in exploitation of children. There are a lot of children who are not attending schools but spending the whole day at traffic light intersections begging for money. Other than the fact that these children must be in school as they have a right to education, failure by Social Welfare to act on this exposes the children to abuse and exploitation.

5.0 INSTITUTIONS

5.1 The Courts and the Justice Delivery System

5.1.1 The court system is an important institution in protection of human rights. While some work is being done as part of long-term efforts to reform the justice delivery system, courts should deliver judgements timeously as justice delayed is justice denied.

5.1.2 The exorbitant court fees are also a barrier to access to justice

5.1.3 While there is a multi-stakeholder initiative ACT – Against Corruption Together – that was launched by the Judicial Services Commission, corruption still exist. There is a need for a specific plan on how to combat it. There is a need for legislation to corruption.

5.2 The Zimbabwe Prisons and Correctional Services

Conditions in prisons still need to be reformed to comply with decisions of the courts as well as international standards. The Committee notes the need to increase funding on the part of government to the correctional services so that detention facilities' infrastructure could be upgraded, provision of adequate nutrition, clothing and other social amenities could be enhanced so as to meet humane standards of treatment for prisoners and detainees.

5.3 The National Prosecuting Authority

The arrest of the Prosecutor General may make it impossible for future

exercise of the prosecutorial discretion without fear or favour. This also has a knock-on effect within the judiciary and legal practitioners in private and public sector.

5.4 The Zimbabwe Human Rights Commission

The government must avail adequate resources to the Zimbabwe Human Rights Commission. This would help to minimise institutional lethargy, motivate employees, and promote greater effectiveness and efficiency.

6.0 COMMITTEE'S RECOMMENDATIONS

- 6.1 The Executive should urgently harmonise laws that have a bearing on the promotion and protection of human rights
- 6.2 The Executive speed up the process of harmonising laws with the Constitution and regional and international human rights instruments;
- 6.3 In aligning laws with the Constitution, Parliament must take note of the decisions of the courts in interpreting whether certain provisions of the law are ultra vires the Constitution. Criminal defamation laws that have been declared unconstitutional must not find their way back into the statute books via Parliament.
- 6.4 There is need to constitute, resource and ensure that Commissions with a mandate of promoting and protecting human rights such as the Zimbabwe Human Rights Commission and the National Peace and Reconciliation Commission are fully operational;
- 6.5 There is need for a multi stakeholder initiative to protect the right to shelter of citizens.
- 6.6 Government must also formulate a clear housing and land policies to deal with shortages of urban land and the continued plight of former farm workers who were not properly resettled.