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ENSURING RIGHTS MAKE REAL CHANGE



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ESR Review

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Families, some with young children and expectant mothers, were forced to sleep in the cold despite the fact that it was the rainy season, thereby making them vulnerable to disease. Zimbabwe Lawyers for Human Rights (ZLHR) and CHRA initially mobilised partners to provide temporary shelter and food packages to some victims.

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From the editor:

This is the third issue of the ESR Review in 2016. It includes two feature articles that discuss various areas of socio-economic rights. It also contains updates on General Comments 3 and 4 of the Committee on the Convention on the Rights of Persons with Disabilities relating to women and girls with disabilities and inclusive education.

The first feature is by Teddy Namatovu, who assesses Mozambique's performance on the reduction of the (MMR). Mozambique is still grappling with one of the world's highest MMRs. According to the World Health Organisation (WHO), Mozambique has made significant progress concerning maternal health over the last 10 years. The Demographic and Health Surveys (DHS) Program has shown some improvement of the national indicators related to the use of reproductive health services. This article seeks to review the reasons for the persistence of Mozambique's high MMR, while also making recommendations to facilitate its reduction. The assessments made by this article are based on a field study conducted in Maputo, Mozambique between 11–15 April 2016.

The second feature by Rodger Owiso, addresses the right to adequate housing in Zimbabwe. He focuses on arbitrary demolitions of houses in Arlington Estate in Harare and its implications for the enjoyment of the right to adequate housing. According to him, Zimbabwe is obligated under international and national law to secure the right to adequate housing for its citizens. However, findings from a field research in Arlington in Harare shows that the Zimbabwean government has continued to engage in demolitions and evictions in contravention of its obligations. He noted that while the section 74 of the Constitution guarantees the right to adequate housing, some of the challenges regarding the effective implementation of this right include ambiguities in Zimbabwe's domestic legal framework, an unregulated land allocation

system, political indiscipline, and government bureaucratic inefficiencies. He concludes by suggesting that The article concludes by making important suggestions such as the need for the parliament to strengthen its oversight function to harmonise different laws on land/housing and the for the government to conduct a comprehensive assessment of housing need in the country.

This issue was compiled as the Fees Must Fall student protest movement engulfed many South African universities. As Khaya Tyatya observes in his article, 'The second revolution – the struggle for social transformation in South Africa' (available at news24.com, 16 November 2015), some of the challenges that besiege students are issues of access, equity, redress, success and participation in higher education. Some student leaders 'assert that the constitution is a neo-colonial construct imposed on South Africa' (Richard Calland 'South Africa's constitution is under attack' Mail & Guardian 20 March 2017).

Clearly, the student protests are intended 'to remind our consciousness that transformation is not taking place at a pace which meets the expectations of our young people'. The debates and media reports that ensued raised a number of large questions: Who is responsible for transformation? Democratic transition is embedded in our constitution, but why is it under attack? With the nation-building project being contested every day, it is important to reflect on how far South Africa has come and where we want to be.

Gladys Mirugi-Mukundi, Co-Editor



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Assessing Mozambique's performance on the reduction of the maternal mortality ratio by **Teddy Namatovu**

Introduction

Despite its having committed to the reduction of the MMR by three-quarters between 1990 and 2015 under the Millennium Development Goals (MDG), which have since been reinforced into the Sustainable Development Goals (SDGs) (United Nations 2015), Mozambique is still grappling with one of the world's highest MMRs, at 408 deaths per 100 000 live births (WHO, 2013).

A myriad factors account for this, notwithstanding the ratification of several treaties that necessitate the reduction of maternal mortality and efforts by the Mozambican government to this end. This article seeks to identify the reasons for the persistence of Mozambique's high MMR and to make recommendations for reducing it. The assessments made in this article are based on a field study conducted in Maputo, Mozambique between 11–15 April 2016.

Scope and content of the right to maternal health care

According to the Committee on Economic Social and Cultural Rights (CESCR), the right to maternal health care is an integral part of the right to health (CESCR general comment No. 22). This right is protected under various international and regional human rights instruments to which Mozambique is a state party, such as:

- * article 12 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW);

- * article 16 of the African Charter on Human and Peoples' Rights (Banjul Charter), and

- * article 14 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).

However, in spite of the fact that the International Covenant on Social and Economic rights (ICESCR) is the key instrument spelling out the right to maternal health care, Mozambique has not ratified it (Nabeneh 2015).

Maternal health rights have been interpreted to include women's right to safe motherhood and emergency obstetric services, access to family planning, pre- and post-natal care as well as access to information and resources to act on that information (CESCR general comment No.14 para. 14).

The UN Committee on Economic Social and Cultural Rights also highlights the core contents of sexual and reproductive health

care, which encompasses the following essential elements:

- * an adequate number of functioning health-care facilities, services and goods to provide the fullest possible range of sexual and reproductive health care (CESCR general comment No. 22 para12);

- * availability of medical personnel trained to perform the full range of sexual and reproductive health-care services (CESCR general comment No. 22 para. 13); and

- * accessibility of all health facilities goods, services and information related to sexual and reproductive health care to individuals without barriers (CESCR general comment No. 22 para15).

Accessibility includes physical access and economic access in terms of affordability (CESCR general comment No. 22 paras. 16, 17 and 18). The various contents mentioned can therefore be used as indicators for assessing state performance in the realisation of maternal health

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rights.

Suffice it to say, the reduction of maternal mortality is subject to progressive realisation based on the allocation of resources to the maximum extent of what is available (Committee on Elimination of All Forms of Discrimination Against Women (CEDAW), general recommendation No. 24 para. 27). Notwithstanding the requirement for progressive realisation, states are required to move as expeditiously and effectively as possible while taking deliberate, concrete and targeted steps to use all appropriate means to reduce maternal mortality (CESCR general comment No.14 para. 33).

The UN Committee on CEDAW has highlighted the prevalence of a high mortality rate as an indication of a breach by the state of its duty to ensure that women have access to health care (CEDAW general recommendation No. 24 para. 17).

Factors that contribute to the high maternal mortality ratio in Mozambique

Even though Mozambique registered significant progress in attainment of MDG 5A by reducing its MMR from 1 390 to 408 per 100 000 live births between 1990 and 2015, the country still has one of the highest MMRs in the world (World Bank IBRD-IDA 2015). Currently, with MDGs having

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been overtaken by SDGs, the country needs to reduce its MMR to less than 70 per 100 000 live births by 2030 (United Nations 2015).

A number of pertinent respondents interviewed for this article raised concerns about the factors accounting for the country's high MMR. In particular, the low ratio of skilled personnel compared to the number of women in need of maternal health services was highlighted as a major contributor to maternal mortality in Mozambique.

The methodology employed in identifying the factors discussed below included a site visit of Central Hospital in Maputo and interviews with officials in the Ministry of Health and discussion interviews with members of civil society, journalists, and officials of the national human rights institution. The transcripts of the interviews are available on file with the author.

When interviewed on 13 April 2016, an obstetrician from the Central Hospital in Maputo noted that there is an alarmingly low number of skilled or qualified obstetricians in the

country who can offer emergency obstetric and essential care to women in need. The situation is exacerbated by their being stationed in provincial and general hospitals

in the cities, leaving the rural areas in limbo. These sentiments were shared by two doctors interviewed on 12 April 2016 at Hospital Geral Jose Macamo, who revealed that the scarcity of skilled health workers puts insurmountable pressure on existing personnel. They also revealed that the shortage is more pronounced in rural hospitals and health centres. This has prompted training of maternal and child health nurses from these facilities in essential obstetric care as well as antenatal and postpartum care.

When interviewed on 14 April 2016, officials from the Ministry of Health averred that the government was aware of the limited number of skilled personnel and thus hired foreign personnel to reinforce the country's human resources. They further stated that, despite the foreign reinforcements of trained medical and professional staff, the number of health professionals remains low and therefore stains to adequately respond to the maternal health needs of women in Mozambique.

The officials emphasised that underfunding of the health system was also a contributing factor to the country's high mortality rate. They stated that insufficient funding has resulted in limited numbers of personnel, inadequate medical equipment and a shortage of drugs in the hospitals, which has weakened the health system and impeded the full realisation of maternal health rights for many women. Likewise, a report by the United States Global Fund Initiative highlighted inadequate funding as a major underlying factor impeding the performance of Mozambique's health sector. The report indicates that a meagre eight per cent of the national budget is allocated to the health sector despite the country's commitment to dedicate 15 per cent of its total budget to health (United States Global Health Initiative Mozambique Strategy 2011–2015). The minimal number of ambulances, restricted for general and provincial hospital use, was never highlighted as a major contributing factor to the country's high MMR. All the medical workers

interviewed raised concerns regarding the fact that health centres have to call for ambulances from general hospitals, which is problematic in cases of emergency when the ambulances are unavailable. The effect of this is more devastating for women in hard-to-reach or rural areas.

All of the interviewees highlighted the inaccessibility of health facilities, especially in rural areas even more affected by the poor transport system in the country, as a contributing factor to the country's high MMR. In this vein, a 2014 study by BioMed Central found that 21.3 per cent of maternal deaths in Mozambique are a result of inaccessibility of health centres due to long distances (David, Fmchungo, Zanonato, Cavaliere, Fiosse, Sululu, Chiluvane & Bergstrom 2014).

An obstetrician interviewed at the Central Hospital in Maputo stated that indirect costs such as transport to health facilities, especially in the rural areas where a considerable portion of the population lives in poverty, compound challenges of inaccessibility. She also stated that indirect costs prevent most women from seeking

... expressed concern about the absence in these facilities of midwives to attend to waiting pregnant women in case of emergencies, which cripples the effectiveness of these maternity waiting homes.

institutionalised births, forcing them to risk their lives with traditional birth attendants. This is despite the absence of the requirement for user fees in public health facilities.

Measures taken by Mozambican government towards the reduction of the maternal mortality ratio

Respondents at the Ministry of Health revealed that the government of Mozambique is aware of the country's high MMR as well as its contributing factors and is therefore adopting various measures to address the issue. The effectiveness of these measures has to be assessed against the country's commitments under international and regional human rights law.

All the respondents underscored the critical role played by Casa de Espera (meaning maternity waiting homes) in increasing accessibility to obstetric care for pregnant women, especially in the rural areas, and thus reducing the risk of maternal mortality. The WHO defines maternity waiting homes as 'residential facilities located near a qualified medical facility, where women defined as high risk can await their delivery and be transferred to a nearby medical facility shortly before delivery, or earlier should complications arise' (WHO, 1996). However, the interviewees also expressed concern about the absence in these facilities of midwives to attend to waiting pregnant women in case of emergencies, which cripples the effectiveness of these maternity waiting homes. This indicates a shortfall in the state's efforts, given that the availability of an adequate number of trained medical and professional personnel is crucial in the reduction of MMR (CESCR general comment 14 para 12a). To address the high maternal mortality rates perpetuated by traditional birth attendants assisting women who deliver in rural areas, the Ministry of Health collaborates with attendants who are now trained to sensitise communities about the advantages of institutionalised delivery (WHO, 2015). The collaboration is based on the unique network and cultural connection that the attendants have with rural communities. This has helped the project to achieve considerable success in increasing the number of institutionalised deliveries in the rural areas (WHO, 2015). The measure is a sensible one, intended to increase the number of institutionalised births and protect women from

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the risks associated with deliveries by unskilled attendants (WHO, 2015).

The medical personnel interviewed lauded the government's decriminalisation of abortion in 2014. The decriminalisation was aimed at addressing the high maternal deaths arising from clandestine abortions. The law permits institutionalised abortion by qualified practitioners within the first 12 weeks of pregnancy and 16 weeks in case of rape. This is in line with the state's obligations under the Maputo Protocol, which prohibits states' adoption of restrictive abortion laws and which recognises women's right to safe abortion in instances of rape, incest, sexual assault, and when a pregnancy endangers the physical and mental health of the mother or the life of the mother or foetus (Maputo Protocol a.14.2.c).

The government has also developed a National Strategy for Reduction of Maternal Mortality, which forms the basis for formulation of interventions to reduce the MMR in Mozambique (Jamisse, 2015). The strategic plan aims to improve services at provincial level and the provision of emergency obstetric and essential care, which are reinforced by a strengthening of referral systems, community involvement and data collection systems (Jamisse, 2015). The plan is complemented by establishing a department in the Ministry of Health dedicated to the reduction of maternal mortality (Jamisse, 2015). However, interviewees stated that, despite the adoption of legislative and administrative measures to ensure reduction of MMR as required under CEDAW and the Maputo Protocol, the lack of proper implementation, especially in rural areas, makes the efforts taken almost futile.

Conclusion and recommendations

Research for this article shows that although the government has the political will to address maternal mortality, political will should be actuated by practical measures to engage with the root causes of maternal deaths. However, despite the strides taken by the government to curb maternal deaths, a myriad challenges still persist in the health sector and account for the overwhelmingly high MMR in the country. To this end, the study makes the following recommendations to address the persisting challenges:

* Addressing most of the highlighted factors contributing to the high MMR in the country requires availability of resources. The government should therefore heed its commitment under the Abuja Declaration and increase the budgetary allocation for health from eight per cent to 15 per cent of the national budget as this will go a long way in the fight against maternal mortality (United States Global Health Initiative Mozambique Strategy 2011–2015). The government can also mobilise more resources through international assistance and cooperation so as to increase the amount of funding available to improve maternal health services and curb maternal mortality (CESCR general comment No. 2 para 13).

* More medical personnel skilled in emergency and essential obstetric care at all levels, especially in the rural areas, are needed. The government should also mobilise international technical assistance through the recruitment of skilled medical personnel to complement the existing labour force (CESCR general comment No. 2 para 13). Additionally, the government should facilitate the provision of maternity waiting homes staffed by midwives to assist pregnant mothers in case of emergency during the waiting period.

* More health facilities are needed, especially in the rural areas. There should also be coordination between the Ministry of Transport and Communications and the Ministry of Health to revamp the transport network, especially in the rural areas, so as to improve accessibility to health facilities.

* Implementation of the National Strategy for

Reduction of Maternal Mortality, especially in rural areas, is required.

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Arbitrary home demolitions in Zimbabwe and the right to adequate shelter: Case study of Arlington Estate, Harare by **Rodger Owiso**

Introduction

Zimbabwe's human rights obligations under international and domestic law secure the rights to property, adequate shelter, freedom from arbitrary evictions, protection and benefit of the law, fair administrative action and due process. Despite these protections, the government has repeatedly and arbitrarily demolished homes it considers illegal

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settlements – particularly in Harare. Of significant concern was Operation Murambatsvina of 2005, which, according to a report by the UN Special Envoy on Human Settlements Issues in Zimbabwe 2005, saw hundreds of thousands rendered homeless. Despite domestic and international condemnation, demolitions have continued, the latest being in the Arlington suburb near Harare International Airport, where more than a hundred homes were demolished by Harare City Council (HCC) in January 2016.

This article presents the findings of a field study conducted in Harare from 11–15 April 2016 following the Arlington demolitions. The methodology included a site visit of demolished homes and discussion interviews with victims and their lawyers, members of civil society, journalists, officials of residents' associations and the National Human Rights Institution. The transcripts of the interview are available on file with the author. Secondary data from a review of existing relevant literature were used to complement primary data.

Zimbabwe's land question is complex and multidimensional, and this study is not an exhaustive and authoritative discussion of it. This article focuses on the Arlington demolitions as a representative case study of what has emerged over the years as a pattern, and examines home demolitions and evictions vis-à-vis Zimbabwe's legal obligations. The findings reveal ambiguities in Zimbabwe's domestic legal framework, an unregulated land allocation system, political indiscipline, and government bureaucratic inefficiencies as some of the factors that have allowed for arbitrary demolitions and related violations of human rights. The article concludes by making targeted recommendations.

Zimbabwe's legal obligations in relation to evictions and demolitions

The Constitution of Zimbabwe 2013 declares that the rule of law and fundamental human rights and freedoms are among the country's founding values and principles, and obliges the state to take reasonable measures to enable every person to access adequate shelter and to respect, protect and promote the right of every person to acquire, hold, occupy and use property. Section 74 of the Constitution prohibits eviction without a court order issued after a full determination.

Furthermore, section 32 of Zimbabwe's Regional Town and Country Planning Act [Chapter 29:12] expressly requires a one-month notice be provided to potential victims of intended evictions. This notice is to enable the potential victims to engage authorities in constructive dialogue or seek alternative accommodation or legal redress. Therefore, regardless of whatever claims the government or anyone else may have over a particular piece of land, a person living on such land should not be evicted without being heard.

Further to its domestic legal obligations, Zimbabwe is bound by the international instruments to which it is a party. Article 14 of the African Charter on Human and Peoples' Rights guarantees the right to property, which can be limited only in the interest of the public and in accordance with the law. The African Commission on Human and Peoples' Rights reiterated in *Social and Economic Rights Action Centre (SERAC) and another v Nigeria* alternative accommodation

and right of appeal are necessary to avoid rendering a person homeless. In these circumstances, it is not only the right to adequate housing that is violated, but also the related rights to water, health, food and earning a living.

These obligations are also enshrined in articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights. The Committee on Economic, Social and Cultural Rights in General Comments 4 and 7 also emphasised the need for due process in the form of consultation, adequate notice and compensation.

Opacity of the enabling legislation

Respondents pointed out that the progressive provisions of the Constitution of Zimbabwe 2013 have reduced arbitrary home demolitions, albeit to a small extent. However, the legislation meant to effect these constitutional guarantees is lacking in several respects.

Specifically, the law regulating land allocation and building approvals is scattered in various pieces of legislation and city regulations, which are also generally unavailable to the public. It is therefore difficult for residents to know what the exact procedure ought to be. The researcher's impression from discussions with lawyers was that even legal practitioners were not very conversant with these laws, particularly those on building approvals.

Inefficient land allocation and servicing process

One of the factors identified as contributing to the land issues in Harare is the procedurally uncoordinated process of land allocation and servicing. The state is the custodian of state land, which in the past it could transfer to the HCC to service and allocate to individuals. Respondents pointed out, however, that due to its inefficiencies, HCC was unable to service land, and a huge backlog accumulated as a result. It is estimated that more than 500 000 Harare residents in need of decent housing are still unable to get land allocations (Muchadenyika 2015a: 1).

In reaction to the HCC's inefficiencies, housing cooperatives sprung up in the late 1980s and 1990s to provide an alternative. Without proper legal and structural framework, the parent ministry, Ministry of Local Government (the ministry), started allocating land to these cooperatives to service and allocate to their members.

It emerged in the court case filed by Arlington residents following the demolitions, *Jean Pierre Dusabe and another v City of Harare and others*, that Nyikavanhu Housing Cooperative (Nyikavanhu) was issued with an offer letter by the ministry for

the Arlington land for housing development. The conditions of offer were that Nyikavanhu develops the land in accordance with approved subdivision and service plans, approvals which were to be issued by the ministry and the HCC, respectively. The allocation was confirmed by the Administrative Court, as required by the Land Acquisition Act.

Like many other cooperatives, however, Nyikavanhu allocated the land to members without first servicing it and without HCC approval. However, according to respondents, the HCC had developed a practice of approving service plans retroactively after the servicing had been done, which stood to encourage laxity in submitting plans for approval. Victims also claimed that the HCC accepted payment from them for water connection as they awaited approval of subdivision plans by the ministry. According to

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Zimbabwe's land question is complex and multidimensional, and this study is not an exhaustive and authoritative discussion of it.

Muchadenyika (2015a) this method of city planning, or lack thereof, is unresponsive to Harare's fast-changing socio-economic circumstances, which require new approaches.

Because of Arlington's proximity to the airport, Nyikavanhu sought and received clearance from the Civil Aviation Authority (CAA), which also advised that the requisite HCC approvals be obtained. This move was probably an attempt by Nyikavanhu to fortify its hold on the land and give its claim to ownership a semblance of legality. However, this does not reflect on legal ownership since CAA has no such jurisdiction. The ministry argued that due to the noncompliance with offer conditions, the land had not passed legally to Nyikavanhu.

Notably, Harare has a single land registry which contains only records of deeds issued: it has no interim register or record indicating the status of land before the process of issuing a deed has been completed. As such, Arlington residents could not reasonably be expected to know that the ministry considered Nyikavanhu to have violated its offer conditions, as this is an interim process for which no records are available. In fact, the ministry indicated to the court that the plot number of the Arlington land did not exist in its records because the allocation process had not been concluded.

The role of politics in the demolitions

The study found that the legal and procedural issues above are exacerbated by the role factional politics plays within the ruling Zimbabwe African National Union - Patriotic Front (Zanu-PF) party plays. Cooperatives are generally considered vehicles through which Zanu-PF mobilises political support in an attempt to regain control of Harare politics (Muchadenyika 2015(b): 1229). Zanu-PF politicians are closely linked to cooperatives and use their influence to have their cooperatives allocated land. They then tightly control issuance of land deeds, making them generally unavailable till election periods, when they can be used as bargaining chips for votes. This is possible because the voting system is not foolproof and voting patterns of a cooperative's members can easily be determined after an election.

According to Combined Harare Residents Association (CHRA), the Arlington demolitions were fuelled by recent internal wrangles within Zanu-PF. Nyikavanhu is said to be affiliated with a former Zanu-PF legislator who lost an election to another Zanu-PF candidate affiliated to a different cooperative which was interested in the Arlington land. Only stands belonging to Nyikavanhu were demolished, leaving those of other cooperatives untouched. Interestingly, the researcher was informed that some residents had unofficial information of the pending demolition but ignored it, claiming they had been assured by a senior official of Zanu-PF that their homes would not be demolished. This confidence by Zanu-PF affiliated cooperatives emboldens them to disregard development regulations of the opposition-led HCC.

Another factor is the power struggle between Zanu-PF and the opposition Movement for Democratic Change (MDC) for control of the HCC. The MDC heads the political leadership of the HCC whereas staff members are appointed by and beholden to the central Zanu-PF government. Furthermore, the law gives the Minister of Local Government significant supervisory powers over urban councils (Muchadenyika 2015(b): 1223). The result is a power struggle that causes significant disconnect and poor coordination between HCC leadership and staff, the ministry and the office of the president. When contacted by the CHRA as the demolitions were ongoing, the HCC mayor seemed unaware of what was happening, but he was later quoted by local media as saying the HCC carried out the demolitions to effect a central government directive.

Media reports had also earlier conveyed the president's displeasure at seeing the developments at Arlington, thereby suggesting that he was unaware of the allocation. Further evidence of poor coordination is the fact that in the past the HCC has demolished houses even where it has itself provided water connections.

The human rights violations during the demolitions

The manner in which the demolitions were carried out blatantly offended constitutional guarantees and drew the ire of the court in *Dusabe v City of Harare*. Neither the HCC nor the ministry gave the residents adequate written notice or obtained a court order. In fact, in a subsequent act that betrayed its insensitivity to the plight of the victims, the HCC belatedly sent the requisite written notice two months after the demolitions.

The demolitions were also carried out at a time of day when most residents were at work and could not salvage property from their houses. Household items were destroyed, and residents could only access their demolished homes the following day to salvage what was left in the rubble. Some residents, however, were in their houses when the demolitions started and were not given adequate time to vacate, thereby endangering their lives. It is alleged that residents called the national police to intervene but that this was in vain, given that the municipal police were on-site overseeing the demolitions.

Families, some with young children and expectant mothers, were forced to sleep in the cold despite the fact that it was the rainy season, thereby making them vulnerable to disease. Zimbabwe Lawyers for Human Rights (ZLHR) and CHRA initially mobilised partners to provide temporary shelter and food packages to some victims. However, most would-be donors are experiencing donor fatigue as a result of the hostile political environment and are reluctant to respond to emergencies. Furthermore, some organisations pledged help but failed to deliver, probably for fear of government reprisals.

The authorities' response to media coverage of the demolitions betrayed their awareness of the illegality or irregularity of the process. Some victims were moved to an undisclosed location, purportedly to be given alternative land, but the location was not disclosed to the media and journalists were denied access to these victims. Some witnesses who had taken photos during the demolitions had their phones confiscated by municipal police and the photos deleted. This made proper media coverage and documentation of the demolition difficult.

Since the majority of Nyikavanhu members are Zanu-PF members, most were unwilling to talk to the media or civil society organisations, fearing that, if identified, they would not benefit from resettlement to alternative land. While some Arlington residents were quite well-to-do, the majority were peasants dependent on Zanu-PF patronage. The latter had their lives disrupted and their children's schooling interrupted, in addition to which vulnerable women, children and elderly persons were exposed to health risks; however, none of them could speak up about it. In spite of government claims that alternative stands had been designated in the Stoneridge area for the relocation of these victims, it was later confirmed that all stands were already occupied. None of the affected people were actually resettled.

Reaction of other state organs

While the courts are known to issue bold restraining orders against the government, the study found that orders on land and demolitions are perennially ignored by the government. This points to what some respondents viewed as relentless attempts by government officials to manipulate the judiciary

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despite the new constitutional order. The government's disdainful attitude has emboldened other non-state actors. Nyikavanhu itself ignored an earlier court order barring it from further allocation of stands in Arlington and no sanctions ensued on this.

Respondents also faulted the court for adopting a restrictive interpretation of constitutional guarantees in *Dusabe v City of Harare*, despite the new constitution's creation of a reference point from which judges can draw inspiration for a purposive interpretation. The court declared that the government has no obligation to provide alternative accommodation to the residents of Arlington. While the law does not expressly impose such obligation, a purposive interpretation of the constitution would have reached a different conclusion in view of the emergency brought about by demolishing homes and leaving families, including children, unsheltered.

Indeed, the South African Constitutional Court previously adopted such an interpretation in similar circumstances in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties* (2012), where it declared that the government had an obligation to provide immediate alternative accommodation where eviction would leave people homeless. The Zimbabwean court's narrow interpretation of the Constitution thus frustrates endeavours to translate it into tangible gains for the people.

The Zimbabwe Human Rights Commission (ZHRC) was also unable to intervene meaningfully. The Commission is established by the Constitution and empowered to monitor human rights, investigate violations and secure appropriate redress. While these powers may seem extensive, the ZHRC is in reality quite constrained in exercising them. Acting on a formal complaint from ZLHR on behalf of the victims of Arlington, it launched investigations and received cooperation from the CAA, which indicated it has no interest in the land. The investigation also established that there were no written instructions from the ministry to HCC to demolish the homes. The ZHRC, however, ran into snag in its investigations when the HCC flatly refused to cooperate.

In this regard, respondents raised concerns about the fact that the ZHRC is a department under the Ministry of Justice, which determines its budget and deliberately underfunds it, thereby impairing its investigative capability. It also emerged that the ZHRC is infiltrated by government functionaries who compromise its effectiveness, independence and impartiality.

Conclusion and recommendations

This study reveals the multiple inadequacies in the land administration system in Harare that contributed to the Arlington debacle and other previous demolitions. In a feeble attempt to rectify systemic anomalies, the government recently established the Urban Development Corporation to cut out cooperatives and take up the role of servicing and allocating urban land.

However, respondents were sceptical about the likelihood of this entity succeeding in streamlining the chaotic sector, considering that inefficiencies and corruption are entrenched within most government departments. Furthermore, the study noted that there have been no attempts so far by the government to acknowledge responsibility and address the plight of the victims.

The following recommendations were thus made:

*Respondents argued that Zimbabwe's land reform was ineffectively and incompletely done. The first step towards addressing the urban settlement crisis, therefore, is to reopen the land debate urgently

for an honest discussion that will allow for wide consultation and culminate in comprehensive and robust land, housing and city planning policies.

*After the above process, parliament needs to harmonise laws relating to land into a single piece of legislation that provides clear procedures for land administration. This will streamline processes by providing a linear and clear administrative and responsibility structure.

*To avoid the pitfalls of the current system that promotes and sustains political patronage, the central government and the HCC should jointly commission an assessment of the city's housing needs and capacity to meet those needs. This will enable accurate mapping of those in need and the adoption of a holistic and equitable approach to meeting this need.

*The government should create an interim register showing the status of all land pending issuance of deeds. This interim register should be available to the public so that the status of any land is easily verifiable.

The CHRA is working with the ZLHR to convene an anti-demolition coalition bringing together civil society and residents in order to nationalise the discussion around Harare's land question. All relevant civil society groups and residents are therefore encouraged to get actively involved in this initiative.

Most residents of Harare are generally unaware of their constitutional rights, according to a baseline survey conducted for the ZHRC (Mushavayanhu & Mutangi 2015). The ZHRC and civil society groups should embark on countrywide sensitisation, particularly on land and property rights and housing rights.

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Updates

The United Nations Convention on the Rights of Persons with Disabilities has published two important General Comments on its interpretation of articles 6 and 24 of the Convention on the Rights of Persons with Disabilities (CRPD). These General Comments codify the Committee's views on these issues in order to give states which have ratified the Convention a clear understanding of their obligations and to indicate to government officials, legal practitioners and civil society where policy, laws and programmes may be failing and how they can be improved. The two General Comments are as follows:

General comment No. 3 (2016) on women and girls with disabilities

In this significant General Comment, Committee on the Convention on the Rights of Persons with Disabilities notes that women and girls with disabilities encounter serious challenges in every facet of life, which in turn lead to a situation of multiple and intersecting discrimination against them, especially in the areas of education, economic opportunities, social interaction and justice, health including sexual and reproductive health.

The Committee further explains that historically, laws and policies on disability at the international and national levels have tended to neglect the peculiar experiences of women and girls. At the same time, laws and policies focusing on women have omitted to address disability. In the Committee's view, women with disabilities are not homogenous in nature but rather include indigenous women; refugee, migrant, asylum-seeking and internally displaced women; women in detention; women with albinism; and lesbian, bisexual and transgender women, as well as intersex persons. The Committee affirms that gender equality is central to all human rights and that gender stereotypes can prevent women from enjoying their fundamental rights.

According to the Committee, article 6 of the Convention imposes obligations on states to ensure that they eliminate all forms of discrimination against women with disabilities. It identifies three areas of concerns for women with disabilities: violence, sexual and reproductive health and rights, and discrimination. In conclusion, the Committee observes that article 6 of the Convention must be read together with other provisions and that states have the obligations to respect, protect and fulfil the human rights of women with disabilities.

General comment No. 4 (2016) on the right to inclusive education

The Committee notes that while progress has been made in addressing the human rights of persons with disabilities, millions of 'persons with disabilities continue to be denied the right to education and for many more education is available only in settings where persons with disabilities are isolated from their peers and where the education they receive is of an inferior quality'. According to the Committee, barriers to inclusive education, include among others lack of knowledge about inclusive education, persistent discrimination against persons with disabilities, failure to apply the human rights model of disability, poor funding, lack of political will and lack of disaggregated data and research.

The Committee reasons that article 24 of the Convention imposes obligations on states to realise the right of persons with disabilities to education, including inclusive education. In this regard, the Committee describes inclusive education as a fundamental right of learners. It further describes inclusive education to mean 'A principle that values the well-being of all students, respects their inherent dignity and autonomy, and acknowledges individuals' requirements and their ability to effectively be included in and contribute to society'. Drawing on the recommendation of the Committee on Economic, Social and Cultural Rights, the Committee reasons that for states to fulfil their obligations under article 24, education system must satisfy the elements of availability, accessibility, acceptability and adaptability.

For more General Comments of the Committee on the Rights of Persons with Disabilities see

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>

Call for contributions to the ESR Review

The Socio-Economic Rights Project at the Dullah Omar Institute at the University of the Western Cape welcomes contributions to be published in the ESR Review.

The ESR Review is a quarterly publication that aims to inform and educate politicians, policymakers, NGOs, the academic community and legal practitioners about key developments relating to socio-economic rights at national and international levels. It also seeks to stimulate creative thinking on how to advance these rights as a tool for poverty alleviation in South Africa and abroad.

Contributions

- * should reflect contemporary debate or spark new debate;
 - * should be opinion pieces or serve an advocacy function, rather than simply stating legal principles or being descriptive in nature;
 - * should not be on a topic already published in the ESR Review, unless they take the debate forward;
 - * should not be a marketing exercise for a particular project or programme; and
 - * should be written in a simple, clear style that avoids technical language and legal jargon where possible, taking into account that the ESR Review is read by both legal practitioners and grassroots human rights organisations.
- *Send contributions in electronic format (MSWord) to serp@uwc.ac.za. Provide your full name and present position. Titles and qualifications are not necessary.

If the article has already been published elsewhere, give full details, including whether it has been shortened, updated or substantially changed for the ESR Review and whether the required authorisations have been granted.

Length

Contributions should be no longer than 3 000 words, except contributions for the Events section (1 500 words) and the Publications (Book Review) section (1 000 words).

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