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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

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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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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