



FILE REF ZHRC/497/2018

In the matter between:

CHIMANIMANI WEST CONSTITUENCY RESIDENTS

COMPLAINANTS

And

SHEILA MAKUNI & OTHERS

1ST RESPONDENT

And

GRAIN MARKETING BOARD

2ND RESPONDENT

INVESTIGATIVE REPORT

1. INTRODUCTION

The Zimbabwe Human Rights Commission (ZHRC/ Commission) received a complaint involving alleged partisan distribution of Presidential Agricultural Inputs in Ward 6 Chimanimani West Constituency, Chimanimani District in Manicaland Province. This report contains findings of the ZHRC investigation conducted in response to the complaint received.

- 1.1. The complainants lodged their complaints through the ZHRC hotline. Although two complaints were reported as independent complaints, both complainants were on partisan distribution of Presidential Inputs in Nemaramba Village, Ward 6 of Chimanimani West. Allegations were that the ZANU PF supporters were interfering with the distribution of Presidential

Inputs and openly threatening that all those aligned to the opposition political parties and independent candidates would not receive any food aid.

1.2. In determining its role in this matter, the ZHRC considered the two sets of facts which give rise to distinct causes of action, namely;

1.2.1 Human rights investigations into human rights violations of the constitutional right to equality and non-discrimination (Section 56), freedom of association and assembly (Section 58), the right to make political choices freely (Section 67) and the right to food (Section 77) of the Constitution of Zimbabwe, 2013.

1.2.2 Maladministration investigations on the part of public officials who were allegedly performing their duties partially and with bias against persons of a particular political affiliation. This was in contravention of the provisions of the Public Service Regulations SI 1/2000.

2. MANDATE OF THE COMMISSION

2.1 The ZHRC is established as an Independent Commission in terms of Sections 232 and 242 of the Constitution of Zimbabwe. The functions of the ZHRC are set out in terms of Section 243 (1) (a)–(k) which include among others; to promote awareness of and respect for human rights and freedoms at all levels of society; to promote the protection, development and attainment of human rights and freedoms; to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate; and to investigate the conduct of any authority or person where it is alleged that any of the human rights and freedoms set out in the Declaration of Rights has been violated by that authority or person. Furthermore, the ZHRC can recommend the prosecution of offenders where human rights or freedoms have been violated.

2.2 The Zimbabwe Human Rights Commission Act [Chapter 10:30] in Section 9, empowers the ZHRC to conduct investigations into allegations of human rights violations.

3. METHODOLOGY

In conducting its investigations the ZHRC employed a number of research tools encompassing desk research, interviews with key informants, complainants and the respondents.

3.1 Desk Research

The ZHRC conducted extensive legal research into the framework governing human rights locally, regionally and internationally. This was done in order to, identify and assess the human rights that were allegedly violated by the respondents.

3.2 Interviews

In conducting the investigation, the ZHRC interviewed some of the affected community members in individual interviews. The ZHRC also interviewed respondents in order to make a balanced assessment of the situation. An interview guide was developed to facilitate interviews. This instrument was used to extract qualitative data. The ZHRC interviewed the following:

3.2.1 In Nemaramba and Chayamiti Villages, Ward 6 Chimanimani West Constituency, two complainants who were both males were interviewed. Four households were approached for systematic interviews where nine people were interviewed being five females and four males. Two respondents both males being the Councillor for the ward and the Grain Marketing Board (GMB) Depot Manager for Chimanimani were interviewed.

4. APPLICABLE LAW

4.1 The Constitution of Zimbabwe Amendment (No.20) Act 2013

In summary, the complaint before the ZHRC is that the human rights to freedom of association and assembly and political rights have been violated by the respondents in Ward 6, Chimanimani West Constituency. The other human rights violated include the human rights to food, equality and non-discrimination by those legally tasked to be responsible for the Presidential Inputs Programme. The Constitution of Zimbabwe is the supreme law of the land and the following provisions are key:

- 4.1.1 **Section 56 (1)** which provides that: “*All persons are equal before the law and have the right to equal protection and benefit of the law*”, is one of the most essential rights particularly in the context of the present complaint.
- 4.1.2 **Section 56 (3)** further provides that “*Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their.....political affiliation.....*” amongst other grounds. Recognition of equality is one of the cornerstones of Zimbabwe’s founding values and principles as enshrined in **Section 3 (1) (f)** which states that Zimbabwe is founded on respect for the “*recognition of the equality of all human beings*”.
- 4.1.3 **Section 58 (1) of the Constitution** provides that, “*Every person has the right to freedom of assembly and association, and the right not to assemble or associate with others.*” In addition, **Section 58 (2)** provides that, “*No person may be compelled to belong to an association or to attend a meeting or gathering.*” The freedom of assembly and association, is one of the most essential rights particularly in the context of the present complaint.
- 4.1.4 **Section 67 (2)** further provides that “*Subject to this Constitution, every Zimbabwean has the right-(a) to form, join and to participate in the activities of a political party or organisation of their choice, (b) to campaign freely and peacefully for a political party or cause (c) to participate in peaceful political activity.*”
- 4.1.5 **Section 77(2)** of the Constitution provides for the right to sufficient food.
- 4.1.6 **Section 82 (a)** which guarantees the rights of older persons.
- 4.1.7 **Section 281(2)** of the Constitution provides that, “*Traditional Leaders must not – (a) be members of any political party or in any way participate in partisan politics (b) act in a partisan manner (c) further the interests of any political party or cause; or (d) violate the fundamental rights and freedoms of any person*”.

4.2 National Legislation and Policies

4.2.1. Electoral Act Chapter 2.13

The Act provides for measures to be taken against intimidatory practices in part XVIII A and provides for a definition of intimidation. The following are listed as acts of intimidation in **Section 133 A**:-

- (a) Inflicting or threatening to inflict bodily injury upon a person; or*
 - (c) Causing or threatening to cause unlawful damage to a person's property;*
 - (d) Withholding or threatening to withhold from a person any assistance or benefit to which that person is legally entitled; or*
 - (e) Illegally doing or threatening to do anything to the disadvantage of a person.*
- **Section 133B** (d) also provides as follows, “A person who, through intimidation—compels or attempts to compel a person or persons generally to attend, or participate in any political meeting, march, demonstration or other political event; shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.”

4.2.2 Social Welfare Assistance Act (Chapter 17:06) and the National Policy on Drought Management

- The Act and the Policy provide for procedures to be taken by the Government to ensure social protection for vulnerable and disadvantaged groups in society. Programmes implemented by the Government include the food deficit mitigation programme /drought management strategy. **Section 6** of the Social Welfare Assistance Act stipulates the criteria for selection as follows;
“6 (1) The Director or any person acting on his behalf, may grant social welfare assistance to a destitute or indigent person where he is satisfied that such person—
 - (a) is over sixty years of age; or*
 - (b) is handicapped physically or mentally; or*
 - (c) Suffers continuous ill-health; or*

(d) is a dependant of a person who is destitute or indigent or incapable of looking after himself; or

(e) Otherwise has need of social welfare assistance.”

4.2.3 Traditional Leaders Act [Chapter 29:17]

This piece of legislation provides for the role of traditional leaders, specifically Chiefs, which include: (a) performing the functions pertaining to the office of a chief as the traditional head of the community under his jurisdiction; (b) promoting and upholding cultural values among members of the community under his jurisdiction, particularly the preservation of the extended family and the promotion of traditional family life; (c) carrying out, in accordance with Part IX, the functions of a chief in relation to provincial assemblies, the Council and the overall leadership of his area; and (d) supervising headmen and village heads in the performance of their duties; and (e) discharging any functions conferred upon him in terms of the Customary Law and Local Courts Act. It also provides for the role of traditional leaders in assisting drought and famine relief agencies in coordinating relief and related matters in their areas. **Section 5 (1) (t)** provides that (1) *‘A chief shall be responsible within his area for – under the direction of the district administrator or the rural district council, as the case may be, assisting drought and famine relief agencies in co-ordinating relief and related matters in his area....’*

4.2.4. Other applicable pieces of legislation

Other applicable pieces of legislation are as follows:

- Older Persons Act [Chapter 17:11]
- Disabled Persons Act [Chapter 17:01]
- National Policy on Drought Management
- Food Deficit Mitigation Programme (Drought Management)

The above-mentioned pieces of legislation and policies seek to enhance self-reliance through provision of social protection services (including food aid under the Food Deficit Mitigation Programme) to vulnerable and disadvantaged groups in society such as orphans, older persons, persons with disabilities and the chronically ill.

4.2.5. Rural District Councils (RDC) Act [Chapter 29:13]

This Act provides for the declaration of districts and the establishment of rural district councils; to confer and impose functions upon rural district councils and provide for the administration of their areas; and to provide for matters connected with or incidental to the foregoing. Briefly, the Act explains the duties or roles of the RDCs as key implementing partners of the food programme.

4.3 Regional Instruments

4.3.1 African Charter on Human and Peoples Rights

The general principle of assembly and association is also enshrined in this regional instrument.

- **Article 10** provides as follows, “*Every individual shall have the right to free association provided that he abides by the law. 2. Subject to the obligations of solidarity provided for in Article 29 no one may be compelled to join an association.*”
- **Article 11** provides the following, “*Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedom of others.*”
- **Article 13** states, (1.) “*Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. (2.) Every*

citizen shall have the right of equal access to the public service of his country. “

4.4 International Law

4.4.1 Universal Declaration of Human Rights

- The general principle of equality and non-discrimination is a fundamental element of international human rights law. **Article 7** of the Universal Declaration of Human Rights stipulates that: *“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”*
- **Article 20(1)** provides as follows. *“Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.”*
- **Article 25(1)** further provides that *“Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right to equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”*

4.4.2 International Covenant on Civil and Political Rights

- **Article 1** of the International Covenant on Civil and Political Rights provides that, *“All Peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”*
- **Article 21** provides that, *“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or*

public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

- **Article 22 (1)** provides as follows. *“Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.” (2.) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”* The article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
- **Article 26** of the International Covenant on Civil and Political Rights provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law and prohibits any discrimination on any grounds such as race, colour...political or other affiliation.

4.4.3 **International Covenant on Economic, Social and Cultural Rights**

Article 2 of the International Covenant on Economic, Social and Cultural Rights provides that States Parties to the Covenant should guarantee the enjoyment of the rights enunciated in the Covenant without discrimination of any kind on grounds such as race, colour...political or other opinion or other status. Article 11 provides that the States Parties "**recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...**" In paragraph 2 of the same article, the States Parties to the Covenant recognize the fundamental right of everyone to be free from hunger and list measures to be taken individually and through international cooperation in order to bring hunger to an end.

5. RESPONSES FROM INTERVIEWED COMPLAINANT & WITNESSES

The following issues arose from interviews with the complainant and witnesses which was carried out during the field investigation:

5.1 Partisan Presidential Inputs Distribution

5.1.1 Complainants from Nemaramba and Chayamiti villages in ward 6 Chimanimani West indicated that before the distribution of the humanitarian aid the Ward Councillor was moving about in the community telling people that there would be distribution of presidential inputs and everyone was supposed to benefit. However, on the day of the distribution Mrs. Sheila Makuni, the District ZANU PF Chairperson was said to have announced that the inputs were only for ZANU PF supporters as they were coming from their President and those who voted for other parties were supposed to benefit from their own Presidents. She and other party supporters then took over the distribution exercise. Both complainants highlighted that they had not reported the issue to the Grain Marketing Board (GMB) or the District Administrator (DA).

6. RESPONSES FROM INTERVIEWED RESPONDENTS

In accordance with the *audi alteram partem* rule ("let the other side be heard as well"), the ZHRC held separate interviews with the respondents so as to hear their side of the story. From the separate interviews and in response to the allegations raised by the complainants, the following information was gathered:

6.1 Interview with Councillor Mutsengwa

6.1.1 The respondents for both complaints from ward 6 Chimanimani West were the same. All complaints were made against the ZANU PF District Chairperson Mrs Makuni. The ZHRC could not interview the ZANU PF District Chairperson for Chimanimani West Mrs. Makuni because she evaded the Commission on both days that the Commission went to her house to try and engage her. Some community members confirmed that she knew about the ZHRC visit and deliberately evaded the Commission. The Commission also failed to get her contact

details because each time the Commission went to her house it was deserted and no one from the community was willing to reveal her contact details. This showed the level of fear that people from her community have of her even those within her party.

6.1.2 Nevertheless the ZHRC managed to engage with the Councillor for the ward. The Councillor confirmed that he moved around the village making people aware that there would be presidential inputs which were to be distributed to everyone. He highlighted that he was responsible for the food aid only at ward level where he received the Presidential Inputs from the GMB. He highlighted that the number of bags that were received from the GMB were not enough to give each household a bag. He and the Village Heads agreed that they would use a ratio where the village with the highest number of households received the most bags while the smallest village with the least households received the least number of bags.

6.1.3 He further highlighted that he and the Village Heads had been conscientised on the beneficiaries of humanitarian aid and had worked on the beneficiaries list with the Agritex Officer in line with what was required for them. He explained after distributing to Village Heads, it was the Village Heads who would be responsible for allocating to the intended beneficiaries. He had not received any complaints from people who were deprived of any aid. He was however aware that threats of deprivation to opposition supporters had been uttered.

6.2 Interview with the Grain Marketing Board

The ZHRC also managed to talk to the Manager of the Grain Marketing Board for Chimanimani District. He reiterated that presidential inputs were for everyone even though there was a requirement for there to be a list of beneficiaries to safeguard against fraud. He said that a list of beneficiaries was created by Village Heads in collaboration with ward Agritex Officers who were the GMB Secretariat and were based in the respective wards. The list of beneficiaries was then given to the ward Councillor who would then submit to the GMB. He further highlighted that there were terms of reference for the presidential inputs which provided for a committee consisting of the Zimbabwe Republic Police, GMB, Agritex, Ward Councillors,

Village Heads and Chiefs where applicable. He highlighted that he had not received any complaints of partisan distribution of presidential inputs but he was free to receive them in the event that people had complaints.

6.3 Interview with District Administrator's Office

The ZHRC paid a visit to the District Administrator's office but he was said to be out of the office. The ZHRC engaged the Assistant DA. He was advised that the ZHRC had referred the complainants to him. He indicated that they had not received any such complaints but would act on them if complainants came to them.

7. FINDINGS ON VIOLATIONS OF HUMAN RIGHTS

The rights that the ZHRC found to have been violated are discussed and analysed in detail below.

7.1 Whether or not complainants' political rights and freedom of assembly and association were violated

Political rights as provided for in the Constitution involve making political decisions freely as well as deciding which party to join. Freedom of assembly and association rights as provided for in the Constitution include the right not to assemble or associate with others and not to be compelled to attend a meeting or gathering. In Chimanimani West Constituency, threats were uttered that those who did not support the ZANU PF party by attending their political meetings or becoming polling agents for parties other than ZANU PF would not benefit from humanitarian aid meant for all community members. This amounts to a violation of political rights and the freedom of assembly and association as enshrined in section 67 and 58 of the Constitution respectively.

7.2 Whether or not the Right to non-discrimination and Right to sufficient food (Section 56 & Section 77 (b) of the Constitution) was violated

7.2.1 According to General Comment 12 of the CESCR, *'the right to adequate food is realized when every man, woman and child, alone or in community with others, has the physical and economic access at all times to adequate food or means for*

its procurement.' Therefore, States have a core obligation to take the necessary action to mitigate and alleviate hunger even in times of natural or other disasters. They further have the obligation to refrain from any discrimination in access to food as well as to means and entitlements for its procurement, on the grounds of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth or other status. The failure by the State to provide adequate food and agricultural inputs to communities can be said to lead to the violation of the right to food provided for in section 77 of the Constitution. Furthermore, the threats issued by ZANU PF supporters at the food aid or agricultural inputs distribution whether carried out or not amounted to discrimination on political party affiliation grounds and were therefore a violation of section 56 of the Constitution.

8 Based on the investigations conducted by the ZHRC and analysis of the Constitution and the applicable law, the ZHRC made the following findings;

8.1 It was noted in Chimanimani West, that MDC Alliance polling agents and all those who were aligned to other political parties that are not ZANU PF were threatened that they would not receive any humanitarian aid. The threats were uttered by the ZANU PF District Chairperson at distribution meetings. It could however, not be verified whether the threats to be deprived of Presidential Inputs were carried out since one of the witnesses called upon by one of the complainants highlighted that she had received Presidential Inputs though everyone knew she was from the MDC Alliance party. She however, highlighted this was after a lot of threats and intimidation directed at her for being aligned to the MDC political party in front of the whole village.

9. CONCLUSION

From the above observations, the ZHRC noted that in Chimanimani West ZANU PF leadership especially the District Chairperson were becoming a law unto themselves by taking over the role of the Councillors, the GMB and the Department of Social Welfare. It was also noted that people were intimidated at community meetings by ZANU PF leadership where they uttered discriminatory statements in violation of their right not to be discriminated against.

10. RECOMMENDATIONS

From the above report and findings, the ZHRC makes the following recommendations:

TO COMPLAINANTS AND CONCERNED MEMBERS OF THE PUBLIC

10.1 To keep utilising the complaint channels available to them for recourse, through reporting cases on partisan food distribution. They should also not be afraid to approach public institutions such as the Department of Social Welfare, Grain Marketing Board and the Ministry of Local Government Public Works and National Housing who have the mandate to receive such cases and follow up their cases till finalisation.

TO ZANU PF and OTHER POLITICAL PARTIES

10.2 The ZANU-PF party should ensure that its officials and members do not interfere with or politicize implementation of state funded development programmes;

10.3 Political parties should respect the role of traditional leaders and refrain from conflating the functions of traditional leaders with political party issues.

10.3.1 That ZANU PF as the ruling party should demonstrate political maturity and tolerance by advocating for inclusive development programmes.

10.4 ZANU PF and MDC Alliance supporters and leaders must be conscientised on political tolerance and to allow the smooth running of community programmes and projects.

TO THE MINISTRY OF LOCAL GOVERNMENT, PUBLIC WORKS AND NATIONAL HOUSING

10.5 The Ministry should ensure that traditional leaders are well aware of their Constitutional obligations and principles including the principle not to belong to political parties or act in a partisan manner. This is a non-negotiable issue which should be guided by a clear code of conduct.

10.6 The Ministry should ensure that there are capacity building programmes put in place to induct and equip local authorities (Councillors and traditional leadership)

on their respective roles in ensuring non-partisan implementation of development programmes.

TO THE MINISTRY OF LANDS, AGRICULTURE, WATER, CLIMATE AND RURAL RESETTLEMENT

- 10.7 The Ministry of Lands, Agriculture, Water, Climate and Rural Resettlement must take steps that empower and protect their officials in the provinces and districts to perform their duties without interference from politicians and other stakeholders;
- 10.8 The Ministry must come up with monitoring and evaluation measures for accountability for their Presidential Inputs scheme and any other state funded programme they may partake;
- 10.9 The Ministry must ensure that their extension officers develop official inputs distribution registers for all villages in consultation with nonpartisan local leaders and stakeholders;
- 10.10 The Ministry must establish a queries or help desk mechanism in each district to address exclusion/inclusion errors in the Presidential Inputs distribution programme;
- 10.11 The Ministry must establish clear terms of reference for stakeholders involved in inputs distribution and restrict traditional leaders and policy level local leaders (including Ward Councillors) to an oversight as opposed to an implementation role.
- 10.12 The Ministry should come up with guidelines where distribution of inputs are suspended for a specified period in the run up to an election to avoid politicization of the programme.

MINISTRY OF PUBLIC SERVICE LABOUR AND SOCIAL WELFARE

- 10.13 The Ministry of Public Service, Labour and Social Welfare must take steps that empower and protect their officials in the provinces and districts to

- perform their duties without interference from politicians and other stakeholders;
- 10.14 The Ministry must come up with monitoring and evaluation measures for accountability for its Food Aid scheme and any other state funded programme it may partake;
- 10.15 The Ministry must ensure that their Department of Social Welfare Officers develop official food aid distribution registers for all villages in consultation with nonpartisan local leaders and stakeholders;
- 10.16 The Ministry must establish a queries or help desk mechanism in each district to address exclusion/inclusion errors in the in the food aid distribution programme;
- 10.17 The Ministry must establish clear terms of reference for stakeholders involved in food aid distribution and restrict traditional leaders and policy level local leaders (including Ward Councillors) to an oversight as opposed to an implementation role.
- 10.18 The Ministry should come up with guidelines where distribution of food aid is suspended for a specified period in the run up to an election to avoid politicization of the programme.