



Statement on the proposed displacement for the indigenous Xhangan speaking people in Chiredzi rural district

Through research, MACRAD learnt in March 2021 that the government had intentions of evicting thousands of people in the Chilonga area in Chiredzi, South East of Zimbabwe. A fact finding inquiry was conducted within the area and MACRAD learnt that the government's reason for the proposed evictions was to pave way for Dendairy, a privately owned dairy company, to grow lucerne for its cattle. After the research enquiry, a well comprehensive position paper titled “ Forced displacements amongst the Indigenous Shaghaan people in Chiredzi District” was published on the MACRAD Website.

Soon after the publication, The Zimbabwe Human Rights Commission (ZHRC) engaged MACRAD and a meeting was conducted at MACRAD offices. The main agenda was discussing the human rights issues involved in the proposed eviction and suggesting possible solutions and recommendations. Present at the meeting were representatives of two other concerned civic society organisations, ZHRC Chairperson and other ZHRC officials. Between March 2020 and 25 February MACRAD conducted several discussion meetings with thousands of villagers in the Chilonga area. Main agenda of these discussions was to capacitate the villagers in so far as their Constitutional rights are concerned. The villagers were also informed that the government had legal authority to set aside Communal land but due process must be followed. Statistics held by MACRAD shows that about 95% of the villagers were against government's proposed eviction.

On 26 February 2021, the government published the Communal Land (*setting aside of land*) Chiredzi) Notice, 2021 commonly known as Statutory Instrument 50 of 2021. The Statutory Instrument had two main purposes. The first object was to set aside Communal land measuring about 12940 hectares in Chiredzi to pave way for lucerne production. The second purpose was to promptly evict all the villagers living within the identified land.

Having realised that fundamental rights and freedoms enshrined in the Constitution had been infringed and that several more were likely to be infringed through the government's eviction of Chilonga community through SI 50/2021, MACRAD acted on public interest and approached the High Court for relief in terms of Section 85 (1)(d) of the Constitution.

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The court challenges

MACRAD together with Livison Chikutu, a resident within the area under review made two court applications at the High Court of Zimbabwe sitting at Masvingo. Zimbabwe Environmental Law Association (ZELA) legal practitioners represented both applicants in the two cases. The respondents in both cases were; Ministry of Local Government and Public Works (First respondent), Chiredzi Rural District Council (Second respondent), Ministry of Agriculture, Land, Water Climate and Rural settlement (Third respondent) and the Minister for Provincial Affairs for Masvingo Province (Fourth respondent).

The first court application

Applicants challenged the constitutionality of section 10(3)d of the Communal Land Act (Chapter 20:04) and SI 50/2021. Section 10(3)(d) of the Communal Land Act empowers the local government minister to evict people living within any land that would have been set aside for specified purposes. The applicants' main prayer was to have the laws declared invalid and to have the matter referred to the Constitutional Court for confirmation in terms of the Constitution. The case is yet to be heard.

The second court application

SI 50/21 ordered the immediate eviction of villagers within the Chilonga area. It is for that reason that a second application was made to interdict the government from evicting the people pending determination of the first court application.

The matter was set down for hearing on an Urgent basis on the 9th of March 2021. On the set date, respondents had not filed opposition papers. They argued that they had not been given ample time to respond and they applied for a postponement of the matter so that they could adequately respond to the application. The matter was then postponed to the 12th of March 2021.

On the return date, the legal practitioner for the State respondents started arguing on facts which were not on the opposing affidavits, something which the MACRAD legal practitioners vehemently opposed. Respondent's legal practitioners then sought indulgence from the court to have the matter postponed for corrections to be done. MACRAD initially opposed the postponement as this was delaying a matter which was Urgent. Because the other respondent, Chiredzi Rural District Council indicated that they had been saved late, the matter was eventually postponed to the 16th of March 2021 to allow the State respondents to properly file their opposition papers.

By the 16th of March 2021, only Chiredzi Rural District Council, Ministry of Lands and Minister of State for Masvingo Province had filed their papers. The Ministry of local government further sought indulgence to have matter postponed and it was postponed to the 18th of March 2021.

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Meanwhile, MACRAD had launched a massive social media campaign against SI 50/2021 and the 'arbitrary' eviction of the helpless villagers. Many other civic society organisation also joined in and massively protested against the government's decision. This presumably pushed the government to amend SI 50/2021 with SI 63A of 2021. SI 63A/2021 however did nothing to stop the eviction. It only changed the purpose of setting aside the land from being “lucerne production” to being an “irrigation scheme”. Thousands of concerned individuals joined Civic society organisations on the social media campaign. Media houses also widely covered the issue.

As hinted earlier on, the High Court case was postponed to 18 March 2021 to allow the first respondent, the Ministry of local government and Public works time to file their opposition papers.

Instead of filing the papers on 17 March 2021 in view of the 18 March 2021 court day, respondent only filed the papers a few hours before the court starting time. It is on this same date that it became public that government had repealed SI 50/2021 through SI 73A of 2021. For that reason, the First respondent argued that Applicants' application had been overtaken by events.

SI 73A of 2021 replaced SI 50 of 2021. It then set aside the same land but did not order eviction of the villagers as had been done by SI 50/2021. Since the purpose of the second court application was to interdict the government from evicting the Chilonga people pending determination of the first court application, the matter was removed from the roll.

The government's position

According to the Permanent Secretary in the Ministry of local government and Public works, the irrigation scheme will benefit the community and “*a door to door visit was conducted by government officials and experts sensitising the community and explaining the benefits of the establishment of the scheme*”.

The Permanent Secretary also puts forward that the proposed irrigation scheme does not entail eviction of any member or family of the Chilonga Community.

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Analysis and MACRAD's position

Contrary to the permanent Secretary's averment that door to door visits were made to sensitise the community on the benefits of the proposed project, MACRAD has established that a large number of villagers and village heads have been intimidated by some unidentified government officials who claim to be from the President's Office. If at all door to door visits of constructive sensitisation were conducted, they were done to a handful out of thousands of the families concerned.

On one hand, the Permanent Secretary in the Local Government Ministry says no member nor family of the Chilonga community will be evicted. On the other hand, he says 5 villages with a total of 2000 families will be “reorganised to allow the irrigation infrastructure”. With all due respect, use of the term reorganise seem to avoid use of the word 'evict'. To avoid violations of fundamental human rights, the government must be guided by the supreme law of the land, the Constitution in whatever administrative decisions it makes.

MACRAD supports all government programmes done in the best interests of the public and implemented for purposes beneficial to the community. If at all, the proposed 'irrigation scheme' is scheduled to benefit the Chilonga Community, the government should do proper consultations and obtain an informed consent with all affected persons before the project is implemented.