



THE Weekend Reader

"Your Weekly Read on Debt, Development & Social & Economic Justice"

FREE, PRIOR AND INFORMED CONSENT MATTERS

This week, our weekend reader focuses on an important issue that is often ignored in development projects. When development projects are discussed, introduced and implemented there is often disregard of the Free, Prior and Informed consent of host communities who are directly affected.

The decision by the government of Zimbabwe through the Publication of Statutory Instrument 50 of 2021 Communal Land (Setting Aside of Land) (Chiredzi) in the Government Gazette to evict Shangaan families in Chiredzi District from their ancestral land to pave way for lucerne grass farming is an example of how use rights that millions of rural families enjoy can be thwarted in a heartbeat. It demonstrates how Free, Prior and Informed Consent (FPIC) remains elusive in Zimbabwe.

The concept of FPIC is rooted in the UN Declaration on the Rights of Indigenous Peoples which requires States parties to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (article 19)¹. States must have consent as the objective of consultation before any of the following actions are taken:

- The adoption of legislation or administrative policies that affect indigenous peoples (article 19)
- The undertaking of projects that affect indigenous peoples' rights to land, territory and resources, including mining and other utilization or exploitation of resources (article 32).

Nearly a year ago the Government announced its plans for large-scale commercial lucerne production in a substantial area of Communal Land in the Chiredzi District. The announcement caused great disquiet among the predominantly Shangaan communities occupying the area because they were told they would have to leave. Media reports at the time said that thousands of people would be displaced to make way for lucerne farming by a named company in the dairy industry. Two statutory instruments [SIs] gazetted on the 26th of February 2021, and coming into force simultaneously on that day, show that the Government has decided to go ahead with its plans notwithstanding the reservations of the inhabitants².

¹ Office of the High Commissioner for Human Rights, Palais des Nations, CH-1211 Geneva 10, Switzerland

² BILL WATCH 11/2021 - The State v Shangaan Land Dispute in Chiredzi

The Statutory Instrument which was issued by the Minister of Local Government and Rural Development Honourable July Moyo in terms of the Communal Land Act [Chapter 20: 04] outlines the government's decision to evict 2,258 households with 13,840 people. As a social justice movement and network, ZIMCODD considers the decision as a gross violation of the Chilonga people's fundamental rights and freedoms set out in the Constitution of Zimbabwe. The proposed policy will benefit a private entity Dendairy (Pvt) Ltd at the expense of the Chilonga people's cultural heritage and agricultural land which sustains their livelihoods.

The government must respect and uphold Section 71 ③ of the Constitution which places an obligation on the government to ensure fair and just compensation for improvements effected on land payable before acquisition of the said land. In addition, Section 13② of the Constitution provides that national development programmes must involve local people in the formulation and implementation of development plans and programmes that affect them. Significantly, Section 16 of the Zimbabwean Constitution compels government to ensure that local people benefit from their land and resources. It clearly imposes an obligation to promote and preserve cultural values and practices, as well as enhance dignity, well-being and equality in Zimbabwe.

The government's intended eviction of the Chilonga people in preference for private capital therefore violates the constitution of the country, FPIC principles as well as the values of the liberation struggle which placed the ownership of land by black people at the centre of its freedom agenda.

Notwithstanding the importance of investment in the country, the government is called upon to realize that investment and economic development must not come at the expense of citizens' homes and sources of livelihoods. In fact, both government and private companies like Dendairy must come up with investment models that promote local community development and a shared economic development programme.

Cognizant of the fact that Zimbabwe has lots of underutilised arable land logic would therefore mean that the government must allocate Dendairy another piece of arable land and allow the people of Chilonga to remain on their land.

The first step therefore is for the Parliamentary Portfolio Committee on Legal, Justice and Parliamentary Affairs to declare Statutory Instrument 50 of 2021 unconstitutional so that the intended evictions can be halted. ZIMCODD further recommends the urgent setting up of a Commission of Inquiry to assess the socioeconomic and environmental impacts of intended move and subsequent relocation of the Chilonga people. The Commission's report must be presented and debated in Parliament first before any further steps are taken on the matter.