

**COMMISSIONS WATCH 2/2017**  
**[23rd March 2017]**  
**Zimbabwe Human Rights Commission Report: Tokwe–Mukosi Floods of and Chingwizi**  
**Relocation Site**

This bulletin is the first of several that will draw attention to and summarise reports of the Zimbabwe Human Rights Commission on investigations carried out since the Commission became operational. We start with a report that, although dating from 2014, deals with an important aspect of a subject that has again been in the news and is still prompting headlines – namely, floods and the rights of persons in communities affected by floods. The report is essential reading for those evaluating the authorities’ response to the recent widespread floods in both rural and urban areas. It should also inform the thinking of those responsible for decisions on the planning and construction of the proposed Kunzvi dam to augment Harare’s water supplies; that major project will displace many people and the Kampala Convention referred to below has provisions devoted to the obligations of State authorities as regards displacement of persons by projects carried out by private or public actors.

The Commission has maintained its interest in environmental rights in the context of floods. In January it issued a Press Statement on The Promotion and Protection of Environmental and Related Rights in the Face of Ongoing Flooding in Urban Areas [link](#), the subject of Commissions Watch 1/2017 [link](#).

**Background to the Commission’s Report on Chingwizi**

Early in 2014, Masvingo Province experienced torrential rainfall. The consequential flooding resulted in the partial collapse of the Tokwe–Mukosi Dam. As a result of the devastation caused by the flooding, those directly affected and those perceived to be in imminent danger were evacuated from the Tokwe–Mukosi area to Chingwizi Relocation Site. The flooding induced a severe humanitarian crisis, and in February 2014 the Government of Zimbabwe declared the Tokwe–Mukosi Dam flooding a national disaster, and appealed to the international community for assistance. Chingwizi was intended to be a temporary relocation site, but the flood victims were not resettled promptly as expected. The situation at Chingwizi deteriorated quickly, and urgent human rights concerns began to emerge, which led representatives of those living at Chingwizi to file a complaint with the Human Rights Commission. Section 243(1)(d) of the Constitution, requires the Commission to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate. In response to the complaint filed, members of the Commission conducted a site visit at Chingwizi Relocation Site from 19th to 22nd August 2014.

**The Commission’s Report**

This bulletin summarises the Zimbabwe Human Rights Commission’s report following its investigation into the Chingwizi Relocation Site. The report, which was released in October 2014, contains very strong recommendations. *[The full text of the report is available on the Veritas website [here](#) or [from](#)].* The Commission’s report classified those affected by the floods as internally displaced persons, and made it clear that they required the same protection and remedies as those regarded as such by the African Union Convention for the Protection and Assistance for the Internally Displaced Persons in Africa (the Kampala Convention) and the UN Guiding Principles on Internal Displacement *[available on Veritas website [here](#)] [see the end of*

*this bulletin for a note on the Convention*]. The report also found that the Chingwizi disaster was man-made – “*The flooding and subsequent emergency evacuation was clearly caused by a government-planned dam construction project*” reads the report.

### **Highlights of the Report**

The Commission’s report draws attention to human rights issues emanating from the disaster and raises legitimate concerns about access to adequate housing and basic health services, as well as the well-being and safety of the internally displaced persons. Initial government statistics estimated that “*at least 2 700 families with an average size of 4,5 people per household*” were transferred to Chingwizi relocation site. It later emerged that it was possible that about 6 393 families had been affected by the floods and moved to safety.

The Right to Land and The Right to Secure Livelihoods Chingwizi Relocation Site is situated in Nuanetsi Ranch in Mwenzi District, an area that receives very little rainfall and is only suitable for rearing livestock and drought resistant crop farming. Not having access to arable land affects, in a huge way, the Chingwizi residents’ ability to fend for themselves, leaving them at the mercy of government and donor hand-outs, which for the most part are insufficient. Promises from the government to provide land suitable for farming remained unfulfilled, and the farming season came and went with no land being allocated. In addition to having to settle in an infertile area, Chingwizi residents were apportioned inadequate hectareage for their plots during the initial resettlement phase; each family was allocated 4 hectares. However, as the resettlement process progressed, families that had earlier been allocated 4 hectares of land were required to share the 4 hectares with three other families. Ultimately, each family was allocated a 1 hectare plot, a considerable downsize from the 5 hectare plots that they lived on before the floods. The report also notes with concern that “*the authorities were neither clear nor consistent on the resettlement model they were adopting for Chingwizi*”.

The Right to Adequate and Decent Shelter The report points out that a “*significant proportion (50%) of the respondent households exceeded 6 persons per household*” yet each household was allocated one tent, with no regard to the size of the family and culturally accepted norms. Also, the tents provided were of substandard quality and were unsuitable as they did not adequately protect the Chingwizi residents from the elements. In an attempt to address the problem, some residents erected basic pole and dagga shelters. In its report, the Commission recommended that the government should “*facilitate the provision of adequate temporary durable shelter for the IDPs taking into account their family sizes*”, and that in the long term decent permanent shelter should be provided.

Right to education According to the Kampala Convention, the right to education must still be upheld in cases of internal displacement. A total of four schools were established at Chingwizi; three primary schools and one secondary school. Through BEAM (Basic Education Assistance Module) those living at the Chingwizi Relocation Site would have access to free education from 2014 to 2015. However, the report notes that the provisional structures erected were inadequate and the schools were also under-resourced and unable to meet the needs of the pupils. Because the entire relocation site, which spans a distance of about 35km, only has one secondary school, pupils walked long distances to attend class. Also, the relocation site did not have any Early Childhood Development facilities.

The Right to Compensation The right to compensation emerged as the most important issue among the flood victims. More than half of the participants interviewed during the site visit identified compensation as their first priority, ahead of shelter, food, health and education. This is hardly surprising as the floods resulted in significant losses for those affected. Timely

and adequate compensation is the cornerstone of the right to compensation. According to the report, \$9 million was needed to provide full compensation, yet at the time that the report was published only \$2 million was in the pipeline to be released, and the \$2 million was already six months late. *“Ideally, the government should have compensated and properly relocated affected families prior to commencement of the construction”* the Commission said in its report. The report recommends that *“the State should expedite the process of providing just and fair compensation”* and also ensure that the *“information on the assessment of homes and the criteria used to evaluate lost property should also be shared with the affected IDPs.”*

The Right to Water and Sanitation Safe, clean water and basic sanitation are essential. Sustainable access thereto is equally important. The absence of clean, potable water at Chingwizi Relocation Site was raised as a concern by the Commission. The Commission’s report reveals that water sources were inadequate and inaccessible, with residents having to walk as far as 5km to access water. According to the report, the majority of households at the relocation site did not have proper ablution facilities, forcing the residents to relieve themselves in the open.

#### **Note on the Kampala Convention**

**Why “Kampala” Convention?** The Convention is commonly referred to as the Kampala Convention because it was adopted at an AU Summit in Kampala, Uganda, on 23rd October 2009. The Summit was a special summit held for the purpose of adopting the African Union Convention for the Protection and Assistance for the Internally Displaced Persons in Africa [*full text of Convention available on Veritas website [here](#)*].

**Signature and ratification by Zimbabwe** President Mugabe signed the Convention on behalf of Zimbabwe at the Kampala Summit on 23rd October 2009. Parliament approved it in May 2013 and Zimbabwe’s instrument of ratification was deposited with the AU on 7th November 2013, making Zimbabwe a State party to the Convention with effect from that date. For the first fifteen States who had previously ratified it, the Convention had already come into force on 6th December 2012.

**Status of the Convention in Zimbabwe** The Convention as such does not form part of the law of Zimbabwe because it has not yet been “domesticated” [incorporated into the law of Zimbabwe through an Act of Parliament]. Nevertheless—

– Parliament’s approval of the Convention means that Zimbabwe is bound by the terms of the Convention under international law, and has been so bound since the deposit of its Instrument of Ratification in November 2013 [*Constitution, section 327(2)*].

– Even without domestication, whenever Zimbabwean legislation is applied, any reasonable interpretation that is consistent with the Convention must be adopted in preference to an interpretation that is inconsistent with it [*Constitution, section 327(6)*].

**Is domestication of the Convention necessary?** Yes. Zimbabwe is obliged to pass an Act of Parliament domesticating the Convention. That is one of the obligations accepted by every State Party to the Convention [*Article 3.2.a*]. It is also an obligation imposed by section 34 of our own Constitution—

#### **“34 Domestication of international instruments**

The State must ensure that all international conventions, treaties and agreements to which Zimbabwe is a party are incorporated into domestic law.”

The Convention must, therefore, be added to the Government's list of international instruments for which domesticating Bills are required.

### **Other States Parties**

To date 25 AU member States have ratified the Convention, with the last ratification occurring in August 2015.

Of nearby countries, Angola, Zambia, Uganda, Malawi, Swaziland and Lesotho are also States Parties to the Convention. South Africa, Namibia, Botswana, DRC, Tanzania and Mozambique are not.