



Property Rights

Introduction

This bulletin provides information on property rights in Zimbabwe. Property refers to valuable commodities that are rightfully owned. The right to property gives exclusive authority to a property owner to sell, rent, consume, mortgage, transfer and exchange their property. The bulletin details domestic, regional and international legislation that provides for the right to property. It highlights the importance of respecting and protecting property rights as a key ingredient in promoting economic growth and national development.

Legislative Framework on Property Rights

Domestic Legislation

In Zimbabwe, the right to property is provided for in the Bill of Rights under Section 71 (2), (3) and (4) of the Constitution, which states that: "No person may be compulsorily deprived of their property except;

- a) where the deprivation is in terms of law of general application;
- b) in the interests of defence, public safety, order, morality, health or town and country planning; and
- c) the deprivation is in order to develop or use that or any other property for a purpose beneficial to the community."

Regional Legislation

Zimbabwe has ratified the **African Charter on Human and Peoples' Rights (ACHPR)**, which protects the right to property. Article 13 and 14 emphasize that property rights can only be encroached in the interest of the public and **article 21(2)** of the same Charter provides for recourse through the courts if one is disposed of his/her property without adequate compensation.

International Legislation

Article 17 of the **Universal Declaration on Human Rights (UDHR)** states that, "Everyone has the right to own property alone as well as in association with others and no one shall be

arbitrarily deprived of his property.” Though not a treaty, the UDHR is accepted as part of international customary law. Traditional aspects of property ownership are acknowledged under international law. **Article 27 of the ICCPR** recognises traditional or otherwise typical forms of economic life, often attached to land and for the benefit of indigenous peoples.

Discrimination and Property rights

There should be no discrimination in the fulfillment of property rights. Property rights are covered under the discriminatory clause in the **International Covenant on Civil and Political Rights (ICCPR)**. **Article 26** of the ICCPR provides that: *“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law...”* The UDHR proclaims that all human beings are born free and equal in dignity without distinction of any kind, including distinction based on sex. Hence everyone is entitled to property rights regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

General Comment 7 of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in article 11 recognises women's vulnerability to violence, sexual abuse and homelessness that derive from statutory and other forms of

discrimination in relation to property rights. **CESCR** takes note of the obligations enshrined within the 1949 Geneva Conventions and 1977 Protocols, which relate to prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced evictions resulting in violations of property rights. **Article 15 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** obliges state parties to accord to women equality with men before the law and in particular to give women *“equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals”*. Under **CEDAW** governments are therefore required to avoid policies or legislation that restrict women's enjoyment of property rights. Women and men therefore should have the freedom to choose property to own and use. **Article 16 (h)** of **CEDAW** provides for *“The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration”*.

The Beijing Platform for Action (1995) also requires governments to recognize women's right to inheritance and ownership of land and property and take legislative and reform measures to remove gender inequality. Goal 1 of the Millennium Development Goals on eradicating extreme poverty and Goal 3 on

gender equality defends women's rights to property and acknowledges that goals to reduce or eradicate poverty and achieving gender equality remain distant if women are not granted property rights.¹

Property rights violations

According to the Zimbabwe Human Rights NGO Forum's report on Land and Property Rights in Zimbabwe (2010), property rights violations entail planned or unplanned assaults on the right to tenure or entitlement. Infringements of property rights include expropriation of private property; eviction of forest dwellers for environmental reasons; the forcible eviction or relocation of urban squatters; excessive administrative difficulties in the registration of land; the forced relocation of villages for the development of capital projects without adequate compensation; and police searches and occupations without proper offer letters.

Property rights have not been fully respected in Zimbabwe. These violations are reflected in state sanctioned invasions and demolitions such as the 2000 farm invasions, 2005 Operation Murambatsvina, and ongoing property demolitions. The violations resulted not just in the arbitrary displacements of families, but also appropriation or damage of privately owned property.

Although property can be compulsorily acquired, this should be done under procedures provided under the law.

Procedures for compulsory property acquisition

In Zimbabwe, the responsible authority and government is expected to:

1. Give notice of intention to obtain anyone's property well before action is taken.
2. Obtain a court order that allows the authorities to acquire the property
3. Provide alternative property and compensation before or after one's property is acquired.

For any illegal property rights violations there is recourse to the law in Zimbabwe. The courts can determine the nature of property violations and the redress options.

Conclusion

Property rights are part of international human rights law. Respect for property rights secures commercial activities from the risk of investment losses and builds the confidence of domestic and international investors in the security of their assets. Where property rights are respected, wealth in property can also be

¹ <http://www.mywage.org/zimbabwe/main/decent-work-check/fair-treatment/property-rights>



transformed into other assets, enabling economic productivity, both in the short and long term, by allowing individuals to fully capture the fruit of their labours. Cases of property rights violations still exist in

Zimbabwe and judicial recourse has its limitations. The Zimbabwean government has not always respected property rights and should strengthen law enforcement in the fulfillment of the right to property.

The Human Rights Bulletin is produced by the Zimbabwe Human Rights NGO Forum (“the Forum”) and is distributed **free of charge** through its member NGOs. If you would like to receive or distribute copies, please contact us at **8th Floor Bluebridge North, Eastgate, Sam Nujoma/ Robert Mugabe Road, Harare**. Telephone **(04) 250511; 772860**; or **(04) 250494** postal address: P O Box 9077, Harare; or email: **research@hrforum.co.zw** or **admin@hrforum.co.zw** **www.hrforumzim.org**