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CRD Policy insights on Protected Places and Areas Act

Background and Contextualization

In 2006, diamond was discovered in Chiadzwa and numerous mining companies, namely, Mbada Diamonds, Diamond Mining Company, Anjin, and Marange resources started to operate in the area. However, due to the rampant diamond rush and artisanal mining from people nationwide, the area was declared a protected area in 2007 through a pronouncement by the Minister of mines. The independently operating mines were then submerged into one mining company which is the Zimbabwe Consolidated Diamond Company ZCDC. By that time, only around 2000 families had been moved to the Arda Transau Area, the rest of the population remains and resides in Marange, Chiadzwa. However, because their homes had now been proclaimed a protected area it meant that they had to adjust to the new restrictions that came with living in a protected area.

What PPAA means for Locals

- Locals now need to produce their Identification documents that show that they are originally from the area, if one does not have this ID, they then need to obtain a clearance letter from the police. This has disadvantaged some locals who may not have the ID Numbers for that area but moved into the area before the diamond mining and are now recognized by the traditional leadership as being locals in Marange. Previously, they could access their homes with a letter of authorization from the chief or headman but these have since been scrapped. In most instances, the security personnel requires bribes in the form of money if they are to allow you to proceed without hustle. Locals are now therefore scared to move around which is curtailing their freedom of movement.
- Locals also have to pass through numerous state security manned blocks that have the liberty to search their belongings and arrest them if they have any suspicions. They live through numerous raids at the shops and recreational spaces as well as within their homes if they are suspected of harboring artisanal miners. This violates their rights to privacy and human dignity.

- Their freedom to economic enterprise has also been hampered due to the fact that the Rural District Council can no longer license shops in areas that are deemed to be protected, which means that the locals cannot engage in lawful enterprise in order to earn a living. The shops that are operating have to pay steep monthly bribes to the local security personnel which drastically affects profitability.
- Social amenities and service delivery from the RDC can also no longer reach Marange ever since it was declared a protected area, this means that roads, clinics, and schools are no longer serviced. The elderly, women, and children as well as people living with disabilities have to travel long distances to get to clinics and schools.
- Women and Children are also exposed to sexual harassment and also rape not only from some members of the state security but also from the vast numbers of artisanal miners that are flocking into Marange.

LEGAL CONSIDERATION

1. We have a supreme law in Zimbabwe that enshrines principles such as the supremacy of the law, the inviolability of human rights, and the need for protection of the same. This is according to the following sections:-

Section 2: Supremacy of Constitution

“1. This Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.

2. The obligations imposed by this Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of government at every level, and must be fulfilled by them.”

Section 11: Fostering of fundamental rights and freedoms

“The State must take all practical measures to protect the fundamental rights and freedoms enshrined in Chapter 4 and to promote their full realization and fulfilment.”

Section 44: Duty to respect fundamental human rights and freedoms

“The State and every person, including juristic persons, and every institution and agency of the government at every level must respect, protect, promote and fulfil the rights and freedoms set out in this Chapter.”

Section 49: Right to personal liberty

“1. Every person has the right to personal liberty, which includes the right-- a. not to be detained without trial; and b. not to be deprived of their liberty arbitrarily or without just cause.”

Section 51: Right to human dignity

“Every person has inherent dignity in their private and public life, and the right to have that dignity respected and protected.”

Section 53: Freedom from torture or cruel, inhuman or degrading treatment or punishment

“No person may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment.”

Section 57: Right to privacy

“Every person has the right to privacy, which includes the right not to have-- a. their home, premises or property entered without their permission; b. their person, home, premises or property searched; c. their possessions seized; d. the privacy of their communications infringed, or e. their health condition disclosed.”

Section 66: Freedom of movement and residence

“2. Every Zimbabwean citizen and everyone else who is legally in Zimbabwe has the right to-- a. move freely within Zimbabwe; b. reside in any part of Zimbabwe;”

2. It is also trite that in terms of the very same Constitution certain limitations are allowed to be imposed on certain rights by the law.

Section 86: Limitation of rights and freedoms

“2. The fundamental rights and freedoms set out in this Chapter may be limited only in terms of a law of general application and to the extent that the limitation is fair, reasonable, necessary, and justifiable in a democratic society based on openness, justice, human dignity, equality, and freedom, taking into account all relevant factors, including—

- a. the nature of the right or freedom concerned;*
- b. the purpose of the limitation, in particular, whether it is necessary in the interests of defense, public safety, public order, public morality, public health, regional or town planning, or the general public interest;*
- c. the nature and extent of the limitation;*
- d. the need to ensure that the enjoyment of rights and freedoms by any person does not prejudice the rights and freedoms of others;*
- e. the relationship between the limitation and its purpose, in particular, whether it imposes greater restrictions on the right or freedom concerned than are necessary to achieve its purpose; and f. whether there are any less restrictive means of achieving the purpose of the limitation.*

3. No law may limit the following rights enshrined in this Chapter, and no person may violate them—

- a. the right to life, except to the extent specified in section 48;*
- b. the right to human dignity; “*

These limitations must be exercised reasonably and with regard for the rights and freedoms of other person’s and that the fundamental rights and freedoms may be limited only in terms of a law of general application and to the extent that the limitation is fair, reasonable, necessary and

justifiable in a democratic society based on openness, justice, human dignity, equality, and freedom.

3. The Protected Places and Areas Act [Chapter 11:12] consists of one such limitation to certain rights in the interests of public order and protection. The PPAA is meant to bring protection to certain areas and places so it will place limitations such as the right to freedom of movement and the right to privacy.
4. To this effect, the provisions of the PPAA must be scrutinized against the requirements of Section 86 to ensure that they are reasonable and justifiable in a democratic state.

- The situation that befalls Marange is well documented, and so are the human rights abuses that have been perpetrated against the locals by state security. Legally, the salient points are that:
- Whilst the PPAA should apply as a law of general application to everyone, this is not the case in Marange because the 4000 households that the government ought to have relocated as soon as the area came under the protection were not entirely relocated. Only a small fraction of that number was relocated to the Arda Transau area.
- According to the latest population census, Marange has a population of close to 26 000 locals. This does not take into account the thousands of artisanal gold miners that are operating within the area.
- Effectively, this means that 26 000 legitimate residents of Marange are being disproportionately affected by the PPAA with their basic rights to human dignity being infringed upon on a daily basis.
- Whilst the PPAA does not constitute an unjustifiable limitation of human rights on its own, its application in Marange however, constitutes an unjustifiable limitation to human rights for the locals who still live in the area.
- The operation of the PPAA means that their rights to freedom of movement, privacy, freedom from torture, and inhumane and degrading treatment among others are non-existent.
- A legal case can therefore be made that the operation of the PPAA in Marange is unconstitutional to the extent that it infringes upon certain inviolable rights such as a right to Human Dignity in Marange.
- The prayer would be to compel the Ministry of Mines to move Marange residents to a more conducive residence or in the alternative to cause the Minister to amend his proclamation to cater to the needs of the locals.

Other Recommendations

- Minister of Home Affairs with consultation from Minister of Mines need to review the Minister's PPAA declaration on Marange for an amendment that gives directions taking into account the fact that

Marange is an occupied area by civilians who's Human Rights must be protected.

- The Minister of Mines, Minister of Home Affairs and Ministry of Defense must cure the operational challenges that the people of Marange are facing on an everyday basis such as being asked for bribes, victimization and violence. Each department in the interim must regularize the operations of state security in the area to ensure that the locals do not continue to have their rights infringed upon.
- The rotation of security personnel every three months must be accompanied by meetings with community leadership so that the locals are not victimized.
- Locals who do not have ID numbers from Marange but are known by traditional leadership must also be recognized.
- State security is protecting artisanal miners due to corrupt rings and victimizing locals who are not in fact involved with the mining, this issue must be clearly investigated and dealt with by the Minister of Mines and Mining Development
- Businesses must be regularized through the RDC so that the locals can have the freedom to economic enterprise without having bribes to state security personnel.
- Soldiers must be removed from camping close to the civilian spaces such as in schools and clinics as this causes friction with the locals.