

Shelter, a Home a House or Housing? ¹

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Abstract

Cities in Zimbabwe have, since Independence from the colonial state in 1980, been freed from the strictures of racial segregation and confinement of the black population to limited areas and access to appropriate accommodation. During the colonial period black men had restricted access to accommodation in cities, the policy being that they were temporarily in the city for work. Black women were further restricted in their access to accommodation in cities. The post-Independence influx of individuals to cities has placed high pressure on available, appropriate and affordable accommodation especially for the lower income brackets among black urban populations. Many individuals live in overcrowded and unsafe conditions. State responses to such situations are inconsistent and highly problematic at times. This paper explores the potential of the 2013 Zimbabwe Constitution to facilitate the development of appropriate housing policies and protect the rights of urban residents in relation to housing.

1. Introduction

This paper is based on the findings of scoping studies conducted as an initial exploratory exercise in an international project funded by the Canadian International Development Research Centre (IDRC) and the UK Department for International Development (DFID). The broader study seeks to document the links between urban violence, poverty and inequality across countries in the global south and also seeks to consider ways, in given contexts, that cities can be made safer and more inclusive.

The research in Zimbabwe was primarily directed at understanding laws and policies that impact on the provision of urban housing and services and the effect of these laws on the lives of women. Among the primary questions the research seeks to address is the manner in which the state by non-implementation of some laws and selective and discriminatory application of other laws has failed to effectively address issues of urban housing and provision of services especially

¹ This paper was originally presented in 2014, some aspects have been updated to take account of recent litigation in Zimbabwe in 2015 and 2016.

for those who are reliant on the provision of accessible, convenient and affordable housing by state and municipal authorities.

Our projected outcome from the study is to consider ways in which law can be a tool that contributes to cities being made safer and more inclusive through claiming and monitoring appropriate and adequate provision of ‘housing’ and services. But it is the proverbial Catch 22, such is the inadequacy of housing and services especially in high density suburbs that enforcing some of these laws may further marginalize and exclude the already excluded. As the findings of our study show, Zimbabwe has inadequate housing stock, living conditions in many suburbs are multiply overcrowded, a health risk, unsafe and insecure.

2. Methodology

When the research was being designed the 2013 Zimbabwe Constitution was still only in draft form, but in that form it clearly promised a way forward for tackling many of the problems of the urban excluded. Consequent legal reforms would, in many instances only require minimal adjustment to existing laws, although other areas would require a major overhaul. The human rights and national objectives in the new Constitution came into effect on 22 May 2013, simultaneously with its signing into law. The comprehensive human rights provisions especially those protecting women’s and girls’ rights and outlawing discriminatory religious and customary practices are a central plank of the declaration of rights. Utilizing the constitution as a touchstone for determining, assessing, demanding and implementing citizens’ rights is a key tenet of the research.

From the outset the research was framed within a rights, sex and gender paradigm. As proponents of women’s law, a legal research methodology that seeks to map women’s and girls’ (collectively females) lived experiences against the masculinities of law and/or its purported sex and gender neutrality, we immediately honed in on devising a research project that would allow us to examine, with respect to Zimbabwe whether there was direct or indirect discrimination against females in relation to their inclusion in cities. If so what was its source and origin, and is it still a factor affecting the quality and safety of life in Zimbabwe’s cities, especially so, for women and girls? (Benzton, et al., 1998; Stewart, 2011) Zimbabwe has been through periods where assertion of rights have been seen as antithetical to the government of the day and pursuit of human rights as a direct political challenge (Hellum et al, 2013).

The Zimbabwe Constitution of 2013 with its proactive human rights and socio-economic entitlements delivery frameworks facilitated effective and non-confrontational engagement in our feedback meetings with municipalities, government departments and civil society organizations. It provided a neutral ‘legal space’ to enable engagement with what might previously have been difficult and potentially provocative critiques of government actions and in-actions if we had been confined to using international and regional human rights norms as our benchmarks.

As we began brainstorming on how to develop our research proposal and tentative design we were influenced by the prior knowledge from our observations, personal experience, in some cases our own life trajectories, and accounts in the media that there were profound inequalities in Zimbabwean cities. Our initial forays into the field involved individual interviews at household level, focus group discussions, interviews with municipal and government officials as well as post field research feedback meetings with government ministries, municipal officials, NGOs and CBOs.

3. Collecting the Evidence: The Research Sites

Our initial selection of research sites was rather ambitious and with hindsight we might have chosen fewer suburbs, but to balance this we do have a broad understanding of the issues that individuals and families face in relation to acquiring and retaining a home. In our selection of research sites we chose three early colonial high density suburbs (the former African townships) where providing for accommodation and services from their own resources was likely to be difficult to achieve for individuals and families under current conditions. These three suburbs were created and developed during the colonial period and characterized by racial segregation. Access was limited and controlled for black males but for black women, there was even more severe sex/gendered discrimination. Law was a tool that sanctioned and supported discrimination, primarily against citizens other than white citizens, but particularly against the black population and within that community women were especially excluded from access to cities. We then selected in each city a newer high density suburb built largely post 1980 in which individuals were able to access housing supported by building societies, housing cooperatives and self-build initiatives or opportunities. There were in theory, by this time, no

racial or other discriminatory provisions limiting access to cities, but segregation continued on class and economic lines.

In Harare the suburbs² selected were Mbare, the oldest ‘black suburb’, and Hatcliffe a post 1980 suburb. In both Bulawayo and Kadoma similar historical considerations influenced the choice of suburbs. The oldest ‘black’ citizens’ suburb in Bulawayo Makokoba and Nketa a newer suburb were chosen. In Kadoma the oldest suburb Rimuka was identified as was a relatively new suburb of Ngezi. Both Nketa and Ngezi, in Bulawayo and Kadoma respectively, have both older and newer sections and reflect different policy regimes ranging from state provision of housing, employer financed and tied housing, self-financing, self builds and cooperative housing schemes. These suburbs reflect the various initiatives taken over the years to provide accommodation in cities for lower income groupings.

Each suburb has its own rich history, experience and trials and tribulations over the years. In recent years Hatcliffe residents in particular have experienced exclusion, inclusion and then uncertainty as part of the suburb became a reception site for individuals dislocated by Operation Murambatsvina³. But having found a place, apparently urban, to put up their shacks, plastic and wood, these residents have subsequently experienced uncertainty of tenure and further threats of eviction. In Kadoma the current defining of the city’s limits leave some residents in a kind of no-man’s land betwixt and between responsible authorities, plus continuing uncertainty around whether they live in an urban, peri-urban or rural district. These uncertainties and lack of clarity as to their urban status has significant impact on residents’ capacity to demand services, live in a safe environment and have security of tenure.

Hatcliffe became an important research site as it is facilitating our understanding of how the lives of citizens are manipulated often to avoid social and legal responsibility on the part of the state and also municipalities. Hatcliffe also alerted us to critical constitutional and legal questions that are also emerging in other research sites. These issues require further detailed legal research, and in depth engagement with community members on how they understand and experience rights or lack thereof in housing and delivery of services.

² The term suburb will be used to describe the areas of study. Historically they were known as ‘native locations’, then native townships, then black townships and post-Independence as high density suburbs.

³ s74 of the 2013 Constitution which prohibits arbitrary eviction of an individual from their home or for their home to be demolished ought now to protect individuals from an operation similar to Murambatsvina.

In this paper we primarily focus on the provision of housing and protection of rights in relation to housing, although we do consider interrelated rights and entitlements in relation to ancillary services. The research might result in revealing issues for litigation, informing self-help action by occupants and community development initiatives as well as the preparation of information on legal and constitutional rights of urban citizens⁴.

4. The Tales of Two Cities in One City

All three of the cities selected for study were, until 1980, segregated by race perhaps to be more accurate by races, as the Indian and mixed race populations were also assigned and confined to designated areas within cities. But the descriptor ‘two in one city’ describes the most observable phenomenon of racial division into literally ‘black and white’. Post-Independence, after 1980, the patterns of occupancy are based on economic status, but this perpetuates segregation as the occupants of high density suburbs come from the economically disadvantaged sectors of the black population. Although, we were informed during the field research, in a form best described as hearsay, that there are quite wealthy individuals in Mbare, who have houses in other more salubrious low density suburbs who choose to live in Mbare for the business opportunities it presents and also so that they can rent out their other houses in the suburbs.

The former white suburbs are now, that the restrictions on where one can reside have been removed, largely racially integrated by self-includers. But the suburbs we investigated remain black through economic differentiation. Given the economic situation of the inhabitants they are heavily dependent on the provision of services and provision of housing from state and municipal resources.

The cities were conceived of as ‘white spaces’ to be served by permitted members of the black population. As the analysis of the laws and policies that frame this study reveals over time there was increased access to cities for the black population and for some the cities became their primary home. Until Independence in 1980 life in the city for the black population remained tightly regulated and confined. It is these limited parameters of access and the colonial state’s segregation policies that this research postulates as a significant contributory factor to the failure of the post-colonial state to adequately provide for accommodation and related facilities in the

⁴ There had already been litigation challenging state eviction activities in early 2014 at magistrates courts effected stays of eviction or demolition.

rapidly growing municipalities whose populations were outstripping the cities' capacities to provide adequate urban based resources for dependent populations.

Pre-Independence segregation laws and policies are only one contributory factor to the inability to manage the needs of the post-Independence cities' new populations. Sight must not be lost of the post-Independence political tensions and state sponsored violence such as Gukurahundi in Matabeleland in the 1980s⁵, the city of Bulawayo, situated in Matabeleland made space as best it could for those who fled the rural areas in the face of the unleashed violence. Bulawayo has been treated as a city in opposition to the ruling party ZANU (PF) and there is an historical post 1980 pattern of trying to hamper the city's growth. Although not quite as pronounced other cities have been marginalized by central government because they form the core of political opposition. So not only are residents victims of exclusion but cities are excluded from their due share of the national 'cake'. Political support was seen as coming from rural constituencies for ZANU (PF) thus they needed to be supported and pandered to, especially as elections drew near. Rural areas undoubtedly needed and still need development but the failure to keep pace with urban development needs has created a huge deficit in meeting the housing needs of urban dwellers. Failure to attend to their needs, arguably, increases political dislocation.

There was huge escalation in the need for housing and the response has not been sustained. All three cities in the post-colonial era experienced significant population movements that increased pressure on existing infrastructure, facilities and accommodation. The laws pre-independence were the prelude to overcrowding; they artificially limited the need for accommodation especially for black women and families of men working in the city. Thus when the restrictions on access to cities were removed in 1980 the required volume of housing was not available.

After Independence some individuals who had been confined to living in what were previously exclusively black suburbs, moved into the former white (and other racial groups) suburbs, which should have made more space available. The urban influx has not stopped and the pace of building and availability of affordable accommodation for those left behind in the old black suburbs remains a problem. As the state failed to keep pace with provision of adequate housing and infrastructure, individuals sought their own solutions, dividing up small spaces such as

⁵ Instituted by it is alleged, 5th Brigade and North Korean soldiers seeking to eliminate internal resistance from former ZANLA and ZAPU supporters, followers of Joshua Nkomo, during the Liberation war.

rooms in hostels, sub-dividing flats, taking in multiple occupants in crowded spaces and putting up wooden structures for lodgers in gardens without planning approval. Those who had space, who were lessees or homeowners made money out of the need for housing. This sparked sporadic ‘attacks’ on urban dwellers in high density suburbs, pulling down the mushrooming squatter arrangements that were technically unapproved illegal structures.

The most widely known and criticized of these demolition campaigns was Murambatsvina in 2005 which involved the pulling down of structures and evicting so called illegal lodgers. All this was done purportedly using existing laws as the basis for such actions. It needs to be appreciated that although the overcrowding and conditions were in violation of housing standards provisions central government and municipalities had turned a blind eye to what was happening. The summary demolitions and the evictions exacerbated the cumulative problems of overcrowding, lack of adequate services, instability and tensions in these suburbs. Suffice it to say at this point that the central government’s attempts to provide new appropriate housing in outer suburbs, such as Hatcliffe, dubbed Operation Garikayi (Garikai being another Shona spelling) and Hlalani Kuhle in Ndebele have been adjudged failures and adequate shelter/housing has not been made available to those in the greatest need.

5. Why the title? The Constitutional Framework

When we began planning the research, socio-economic rights and clearly articulated human rights were not yet provided for in the law and whether a new constitution would emerge was still uncertain. But emerge it did, with roughly 93% of those voting in the referendum voting in favour of its adoption.

The new Constitutional dispensation of Zimbabwe in 2013 contains two critical sections which address the State’s socio-economic obligations in relation to housing, s28 and a protective human rights provision in the declaration of rights s 74.

Section 28 is contained in the national objectives and states:

The State and all institutions and agencies of government at every level must take reasonable legislative and other measures, within the limits of the resources available to them, to enable every person to have access to adequate shelter.

The wording of s28, arguably, imposes a clear obligation on the state to take measures to ensure that every Zimbabwean has access to adequate shelter.⁶ Supporting such an interpretation despite s28 only appearing in the national objectives chapter is that there is no limitation contained in s8 of the constitution that national objectives are for guidance alone, thus section 28 can be used as a benchmark politically and economically to determine state compliance or effort to meet the needs of the most needy and marginalized in relation to the provision of shelter.⁷

6. Shelter? A Home?

What is not clear or what would need to be determined is what does the word shelter mean in this context and what is meant by ‘have access to adequate shelter’? The term ‘shelter’ is not defined in the constitution so precisely what it is that government ought to provide and what steps it should take and the legislative measures required to secure sources or make provision for access to adequate shelter is not clear.

The South African Constitutional Court’s decision in the *Government of the Republic of South Africa v Grootboom 2001(1) SA 46 (CC)* gives guidance on how such compliance could be assessed. Importantly, the Grootboom decision did not envisage a right to housing for every needy individual; rather it provided scope for assessing whether ‘reasonable legislative and other measures’ including financial measures have been taken by government in its many manifestations to provide adequate shelter to the populace. Applying similar reasoning in the Zimbabwean context Parliament would have an oversight role and courts could consider, if litigation to test compliance was instituted, whether given the resources available government has met its obligations with regard to the provision of shelter. So it presages the creation of a ‘rights’ attainment budget and scrutiny of such a budget at national level.

Litigation, as in South Africa, may be needed to establish the parameters for compliance. Even if government responds with legislation and new policies or municipalities use the devolution opportunities in Chapter 14 of the 2013 Constitution constitutional litigation is bound to arise at some point and we suspect that this research may uncover a number of potential cases for litigation.

⁶ Person is defined in section 332 of the Constitution as ‘person’ means an individual or body of persons, whether incorporated or unincorporated.

⁷ Litigation seeking clarity, this time from the Constitutional Court, is needed to determine the ambit of s28 on the State’s obligation to provide shelter, the court may respond favourably but will the State act – that is another matter.

As will be seen in the context of our study, there seem to be many Zimbabweans who in urban settings have access to shelter, and perhaps a home but do they have security in the sense of title, or some defined right of occupation? We found in the scoping studies in all the three cities we were investigating that in some instances up to four or more families crowded into accommodation clearly intended for either a single family or very often a single person. So shelter in the sense of being out of the elements and off the street they had, but can it be defined as adequate?

One example of the dilemma in trying to assess ‘adequate shelter’ and the protection of occupation rights arose in Mbare. A family of eleven, two adults and their nine children occupy, in reality squat, with no formal rights of occupation, in a downstairs communal toilet in what used to be a single sex, single room occupant, hostel. For health reasons these toilets were closed, toilets are still functional on upper floors, but they overflow into the downstairs toilet. It is shelter and it is a home, and as a home we would argue that falls under the protection of s74 of the 2013 Constitution but it is far from adequate shelter.

Section 74 is a brief but powerful provision, which provides for Freedom from arbitrary eviction:

No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.

Thus, we would argue, that in the event of government or municipal intervention in relation to trying to regulate or control occupation of ‘homes’ however rudimentary, overcrowded and problematic in terms of health and safety considerations, that each of the occupants either as individuals or as a family in such accommodation should be protected, albeit temporarily, by section 74 because this is their home. Likewise an individual or a family living in simple and rudimentary accommodation, as we found in Hatcliffe, cannot summarily have their home demolished. So this is a way of defining our first two elements of the title – a shelter and home. The structures wherever located may be fragile, inadequate, overcrowded, unsanitary and impermanent but nonetheless constitute shelter and within the shelter a home.⁸

⁸ When this paper was originally written in 2014 litigation on evictions had not yet reached the level of the High Court, even in 2016 a conclusive determination has not been made by the Constitutional Court, but in early 2016 the High Court made it clear that summary evictions were a violation of occupiers rights, regardless of the manner in which they had come into occupation of the ‘home’ from which they were evicted. In *Dusabe and Another v Harare*

7. A House?

Within the constitutional protections a physical dwelling space encompasses and provides both shelter and a home but arguably where there are clear and vested rights, or security of tenure we can style it a house, there is permanence and as discussed by Moser (1996) in the context of insecurity and vulnerability:

Housing insecurity, such as when households lack formal legal title, increases the vulnerability of the poor. But when the poor have secure ownership of their housing, they often use this asset with particular resourcefulness when other sources of income are reduced. Home owners use their housing as a base for enterprises or rent it to raise income.

In a study recently carried out by the Institute of Environmental Studies at the University of Zimbabwe a clear link emerged between being able to avoid the worst consequences of poverty and home ownership. Those who owned their homes in Harare were able to use them for income generating purposes such as renting them out; also being free of paying rentals meant there was more disposable income for other purposes (Manjengwa et al, 2014).

In this context, individuals who own a house or a flat, however have shelter, a home and an important economic asset. During the period of the research there have been problems in other

City and Others [2016]ZWHCC 116 Justice Chigumba made it abundantly clear that in terms of s74 of the Constitution a court order must be obtained to enable demolition to take place:

“Under no circumstances are government departments at liberty to unilaterally and arbitrarily demolish any structures in the absence of a court order authorizing them to do so, whether the structures were built without approval of building plans, or layout plans or without complying with any other legal requirements. Even if the structures are an eyesore, they cannot be razed to the ground (sic) at the drop of a hat or on a whim”.

(Apparently the applicants have pursued the issue of planning permission and had, like many other erstwhile home builders received no response from the authorities, so like many others they went ahead with their building activities, only for their efforts to be reduced to rubble.)

A similar decision with similar admonitions to those who tore down the structures was given by Justice Mangota in *Together As One Housing Coop v City of Harare and Nyatsime Beneficiaries Trust [2016] ZWHCC 101* in this case regularization of building plans and subsequent buildings had not taken place so summary evictions were and demolitions were in hand. The respondents, the City of Harare, sought to rely on a subsidiary law from 1979 which permitted precisely the action they had undertaken. However this law was in direct conflict with s74 of the 2013 Constitution and thus void to the extent of that conflict. Quite senior legal practitioners were castigated for their poor understanding and application of the principle of the supremacy of the constitution and the demolitions both past and future were ruled unlawful. So the courts are prepared to provide citizens with protection, the problem remains however, will there be someone there in the dark of night to champion their rights. Eviction threats continue, unsanctioned evictions continue to take place, the courts pronounce; the State and its agencies seemingly ignore them.

areas where the lawful occupation and transfer of ownership to residents who allegedly built on land not available for housing has raged as a serious political issue and litigation has taken place. These incidents fell outside our research areas, but merit deeper investigation and we will incorporate them at a later date.

8. Inclusion, Exclusion, Who Can and is Doing What?

Individual responses to the exigencies of city life resulted, quite early in our analysis of our preliminary findings, in our categorizing city dwellers into self-including and those who are dependent on state resources for the provision of housing, amenities, services and general welfare benefits. Self-including involves being able to afford, or have security of tenure through title or security of occupation rights to one's dwelling, being able to secure and protect your family and your goods and chattels.

Self-inclusion also involves self-based provision of potable water and general access to water, electricity generation capacity separate from the national grid for use during power outages, alternative sources of fuel may also be required. Private rubbish disposal or removal services, adequate human waste and sanitation measures which are not dependent on state or municipal provision of sewerage facilities, plus security fencing, domestic security alarms or security guards are all components of self-inclusion. It is not that there is necessarily a complete absence of these components from what is provided by the state and the municipality. The basic infrastructure may be there, or ought to be there. The problem is that services are defunct, water reticulation has ceased, pipes are burst, and pumping capacity is below required levels. Streets are not lit, homes have electricity connections but there is inadequate power generation.

In all our research sites service delivery was poor and frequently non-existent. Urban residents were paying for services they did not receive. In some instances they had declined to pay on the instructions of the Minister for Local Government and Housing, thus creating a self-fuelling cycle of no-services no payment-no payment no services.

In Mbare, Rimuka and Makokoba we found gross overcrowding in rooms and flats meant for single person or single family occupancy. All of these situations had adverse effects on individuals living under such conditions. The individuals in these overcrowded spaces might be described as self-inserting, meaning that they commandeered space that is available, often in

defiance of formal legal regulatory processes, and made it their home. They are not, however, able to self-include and remain dependent on the state or municipality for the provision of services. Technically, they are without leases or occupation rights and are likely to be in violation of the provisions of the Housing Standards Control Act, Chapter 29:08. Under the act they could be required to vacate the premises, or in the case of abatement the numbers of occupiers can be compulsorily reduced by order of a court. In Kadoma, Harare and Makokoba there are clear visible violations of the act⁹.

But we would argue that councils are complicit in the violations. At Mbare Flats and Shawasha Flats in Mbare, single rooms meant for one male individual, as designed under the colonial restrictive and discriminatory racially determined occupation provisions, may be occupied by four or more individuals. This arrangement is known as ‘four corner cards’. Each occupier, who may be a single individual, or a family, has a rental card from the Municipality and pays a fixed monthly fee to council for occupation of their ‘corner’. So, even though occupants are in violation of the regulatory frameworks, municipalities are complicit in these violations. This takes us back to our Catch 22 scenario, municipalities are cash restricted, and do not have the resources to provide adequately for accommodation needs. Those in need of such accommodation do not have the financial resources to take advantage of housing schemes in other areas.

9. Vulnerability, Affordable and Accessible Housing Stock

Urban living is a reality and governments have to keep pace with need. Essentially there is no security of tenure for people who are dependent on ‘provided’ housing. People are readily prey to schemes to provide housing – the problem with schemes is that very often; the scheme itself is or becomes dubious. The Consortium scheme in Hatcliffe has multiple potential occupiers on the same stand, there is lack of clarity as to what has been paid or even what the developer is required to provide. Even where government or municipalities have tried to provide housing it is not always in the form that is most needed and feasible for potential occupants and owners.

⁹ But with s74 of the 2013 Constitution now in place and affirmed by the courts, it is hoped that summary evictions and demolitions will be a thing of the past. Although subject to an order of court evictions and demolitions can and will take place. Further the issue of provision of shelter to those dependent on the State for their housing needs still remains a pressing issue.

Arguably, there is housing available but many cannot afford to take up the options available. There are individuals who are on municipal housing lists, waiting for the allocation of a stand or a house as new areas are developed. Remaining on the list costs US\$6 per year¹⁰. The problem is that when stands or homes become available many of those who have diligently paid every year do not have the funds to make the initial deposits required or to begin the building processes. Thus, individuals who have been on a waiting list for many years are 'leap-frogged' by those who have the ready cash to take up the offers, so they remain permanently on the list. So the housing needs of the most-needy remain unrequited. It is widely believed, and stated by our respondents in Mbare, that the beneficiaries of these houses or stands from the housing lists are people who already own other houses and sublet the new acquired houses, we are yet to verify this empirically.

One stark realization from Hatcliffe, which is a significant distance from the CBD and poorly served by roads and transport systems, is that even if it would be possible to reside there the suburb presents accessibility problems for low income or informal sector workers who have to commute into central Harare for work or for sales of products. One has to consider how viable is it as a place to live and viably generate an income? Despite the problems we have noted in Mbare it remains a very desirable space for people who are seeking to make an income from the multiple opportunities that present themselves in a busy vibrant suburb. Your chances of making effective use of your accommodation are much greater in Mbare than they are in Hatcliffe. Rimuka and Makokoba are, also, more economically viable places of residence and income sourcing as they border on the central business districts.

Mbare and Makokoba in particular are within easy walking distance of industries and commercial areas, but reflect the pre-Independence concerns of the white government; they are densely populated and trapped between major roads that could be used to contain rebelling populations, access to each city from these suburbs being channeled through narrow causeways and tunnels. Flyovers across the roads also provide strategic points for locating troops required in containment exercises. Other segregated pre-Independence black suburbs such as Nketa and

¹⁰ Housing lists have now, 2016, supposedly been abolished, but this then means that a first come first served basis prevails.

Ngezi are situated on the outskirts of towns so as already indicated commuting is a problem and there is also very little local industry or commerce.

10. Uncertainty, Tenure and Insecurity, Do I have Rights?

Before independence, there were individuals who were only permitted to rent housing in the high density suburbs, being a black member of society meant that you were deemed to be impermanent in the city. After Independence it was determined that individuals who had been renting for 30 years should be able to convert that into home ownership. So this increased the number of home owners in high density suburbs, but there are still problems over the recognition and transfer of rights in those homes to successors in title such heirs after the death of the owner. Record keeping by families seems to be partly to blame but tracking the documentation and verifying registration seems to be a problem when state or municipal records have to be relied on to source the proof of completion of such schemes.¹¹

Many individuals living in the suburbs under investigation (investigation is used deliberately) do not know, cannot ascertain, do not understand or seem unable to obtain clarity on the legal nature and form of their rights to their home. In some suburbs in cities we found individuals who claimed they had entered into rent to buy agreements with the government or municipalities or believed they had rights through predecessors in title but had no proof of such rights.

11. Security of Tenure?

We interviewed two women in Hatcliffe Extension who had been relocated there after previous removals from informal settlements, or from informal housing in high density suburbs. They were, with their spouses or divorced spouses, recipients of stands/basic housing under the incomplete operation Garikayi. They expressed their fears and frustration at the situation they had literally been dumped in, they are not sure if they will be moved again as they said, ‘We don’t know when the trucks will come’.

¹¹ Most original purchasers, lessees or rent to buy contract holders had copies of their agreements. Most contracts were made with males only, there is no record of the interests of wives, women or children, or if they are listed it is as mere occupants.

The women's spouses had like others in Hatcliffe agreements with local government authorities which require building of residential premises of a certain value within specified periods. This they had not been able to do because of financial constraints. Initial completion should have taken place by 2009. Yet they continue to pay rent to government and rates for non-existent services. There was and is fear that any default in payment will lead to loss of the stand. Those who had paid up to 2009 but had not yet completed their homes have been issued with new contracts taking them through to 2016 as the new completion date. Very few of them will have completed the structures by 2016 or completed them to the required standard. They may feel some sense of relief as the day of reckoning has been postponed. But we wonder whether they might not be deemed to have met the conditions imposed by 2004/5 contracts in terms of their compliance with the financial conditions set down in those contracts.

As we proceed with this study, we want to determine whether they can be considered to have satisfied the requirements of the agreements. These are just a few of many. We have since this paper was presented engaged on much deeper, albeit narrower, level with all these communities to explore the exact nature of their legal rights and entitlements and recommend appropriate action at community and individual level to secure or at least clarify their rights.

12. Conclusion

The Government of Zimbabwe has the legal and policy frameworks in place to create affordable and accessible housing stock but the tensions that seem to surround the realization of urban dwellers rights is curtailing the implementation. The 2013 Constitution creates a new legal dispensation which must be adhered to, that articulates human and socio-economic rights claimable by citizens, male, female, young old, urban or rural. Unequivocal equality is entrenched in s56 with no claw backs, no exceptions.

The constitution brings a fresh perspective and enforceable human and socio-economic rights for citizens. Citizens have constitutional backing and facilitation to demand their rights from the state, municipalities and service delivers. As we move forward with the study, we will explore individual cases, examine and interrogate the situation of communities and provide information on legal rights and entitlements of a general nature that is pertinent to communities. Where appropriate cases for test case litigation will be identified and willing litigants referred to law

oriented NGOs and legal aid services. Law reform, lobbying and promoting legal activism is also on the agenda. But the most important tool we now have is the 2013 Zimbabwe Constitution – it needs to be used, every citizen can do so in terms of s85 of the constitution.

Bibliography

Benzton, AW, Hellum, A & Ncube, W, 1998. Pursuing Grounded Theory in Law: South - North Experiences in Developing Women's law, Mond Books , Harare and Tano - Aschehong, Oslo:

Hellum, A et al , 2013. Rights claiming and rights making in Zimbabwe: a study of three human rights NGOs. In: B. A. Andreassen & G. Crawford, eds. Human Rights, power and Civic action: Comparative Analyses of Struggles for Rights in Developing Societies, Routledge, New York: pp. 22 - 53.

Damiso, C & Stewart JE, 2013. Zimbabwe and CEDAW Compliance: Pursuing Women;s Equality in Fits and Starts. In: A. Hellum & H. S. Aasen, eds. Women's Rights CEDAW in International, Regional and National Law. Cambridge University Press, Cambridge pp. 454 - 481.

Manjengwa, J, Matema, C, Mataruka J, Tirivanhu, D and Feresu, S 2014. Specialized Study on Urban Poverty in Highfield and Epworth High Density Suburbs, Harare Metropolitan Province, Zimbabwe, Institute of Environmental Studies, University of Zimbabwe and UNICEF, Harare.

Stewart JE, 2011, Breaking the Mould: Research Methodologies and Methods in Tsanga. A.S and Stewart, J.E. (eds) Women and Law: Innovative Approaches to Teaching, Research and Analysis, Weaver Press, Harare

Moser, C, 1996 Confronting Crisis. A Comparative Study of Household Responses to Poverty and Vulnerability in Four Poor Urban Communities. Environmentally Sustainable Development Studies and Monograph Series NO 8, World Bank, Washington

List of Cases

Republic of South Africa v Grootboom 2001(1) SA 46 (CC)

Dusabe and Anor v Harare City and Others[2016] ZWHCC 116 (High Court, Harare)

Together As One Housing Coop v City of Harare and Nyatsime Beneficiaries Trust and 11 Others v Chitungwiza Municipality [2016] ZWHHC 101

List of Statutes

Zimbabwe Constitution 2013

Housing Standards Control Act [Chapter 29:08]