

HOUSE DEMOLITIONS IN ZIMBABWE: A CONSTITUTIONAL AND HUMAN RIGHTS PERSPECTIVE

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'We live in a society in which there are great disparities in wealth. Millions of people are living in deplorable conditions and in great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services. These conditions already existed when the Constitution was adopted and a commitment to address them, and to transform our society into one in which there will be human dignity, freedom and equality, lies at the heart of our new constitutional order. For as long as these conditions continue to exist that aspiration will have a hollow ring.'²

Abstract

Since 2015 local authorities, particularly in Harare and Chitungwiza have embarked on a spree of house demolitions. The local authorities have contended that the demolished houses were built “illegally” either on land that was reserved for other purposes or without the necessary procedures having been adopted. The Constitution of Zimbabwe³ has a number of provisions against arbitrary eviction, and provision of adequate shelter as well as the standards against which administrative decisions and conduct is to be measured. The following paper will therefore investigate if the ongoing demolitions pass the human rights standards imposed by the Constitution of Zimbabwe as well as international human rights law.

Introduction

It is trite that the Constitution is the supreme law of the land⁴ and any law, practice, custom or conduct

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² Chaskalson P F in *Soobramoney v Minister of Health KwaZulu-Natal* 1998(1) SA 765 (CC) at 24H.

³ Amendment No.20 of 2013

⁴ Section 2 of the Constitution of Zimbabwe

inconsistent with it is invalid to the extent of the inconsistency. Therefore, as a starting premise this paper will interrogate whether or not the ongoing house demolitions comply with the standards and procedures set out in the constitution. Thereafter, it will investigate whether or not the demolitions pass the muster of international human rights law, particularly rules of customary international law and the various international and regional treaties to which Zimbabwe is party.

The Constitutional Standard

There are numerous constitutional provisions that should be complied with in order to bring the ongoing house demolitions within the scope of the Constitution. More specifically, s 74 provides protection against arbitrary eviction in the following terms;

"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."

Arbitrary eviction may be defined as the

"... permanent or temporary forceful removal individuals, families and or communities from their homes or land which they are occupying."⁵

Invariably, arbitrary evictions occur when there is no regard paid to due process and there is no mechanism followed to hear those who will be affected.⁶ Likewise, in the context of demolitions, a demolition would occur when a part or whole of a dwelling is destroyed against the will of the occupants and without following due process.

It is therefore clear that for any home demolition to comply with s 74 there should be a court order sanctioning the demolition of the house which court order should be made after the court has considered all "*relevant circumstances*". This provision mandates that substantive requirements should

⁵ The UN Committee on Economic , Social and Cultural Rights, General Comment No.7 On the Right to Housing (1997) para 4

⁶ See also Zimbabwe Lawyers for Human Rights Fact Sheet No.2 of 2015.

be met through a court order sanctioning the demolition⁷ before a person's home is demolished as was confirmed in the case of *Mavis Marange v Chitungwiza Municipality and Glory to Glory Housing Co-operative*,⁸ a judgment handed down by the Chitungwiza Magistrates Court.

Therefore, where homes are demolished without a court order the demolitions will be a direct breach of s 74 and any law that authorises the demolition of houses without a court order contravenes s 74. In this respect, it is common cause that where local authorities have carried out demolitions without court orders, and the municipal bye-laws under which the demolitions are taking place and make no provision for the obtaining of a court order as a pre-requisite, are in direct breach of s 74.

However, s 74 does not define what exactly the term 'home' entails and no judicial interpretation of the provision by the Zimbabwean Courts has been made. The South African Constitution in s 26(3) frames and creates a similar right to the one provided in terms of s 74. In interpreting this section in *Despatch Municipality v Sunridge Estate and Development Corporation*,⁹ the South African South East High Court Division held that the term 'home' relates to a dwelling that an occupant will be living in or intends to live in either in the short or long term. The Court also extended the term to cover shacks or informal settlements to fall within the purview of structures that may be described as homes.¹⁰

In this vein it is submitted that the so called 'illegal' structures demolished or targeted for demolition fall within the purview of 'homes' as envisaged by s 74 of the Constitution and are therefore protected from arbitrary demolition. It is further submitted that in terms of s 74 it is immaterial whether or not the dwelling being used for residential purposes is legal or whether its construction was and is sanctioned by the local authorities. It is this writer's view that, once the criteria set out in *Despatch Municipality v Sunridge Estate and Development Corporation* is met, then the dwelling or structure qualifies as a home and therefore qualifies for protection in terms of s 74.

⁷ Justice Mavedzenge and Douglas J.Coltrat, A Constitutional Law Guide Towards Understanding Zimbabwe's Fundamental Socio-Economic and Cultural Human Rights ,2014 , page 101

⁸ Case No 106/2014

⁹ 1997(4) SA 596 (SE)

¹⁰ See also J. Mavedzenge and D.J Coltrat, op cit note 7 at p 103

Further, s 74 imposes a duty on the courts to consider “relevant circumstances” before granting an order of eviction or demolition of a home although the constitution does not provide any indication of what an enquiry into relevant circumstances entails. In this respect, the South African Court jurisprudence would be helpful in ascertaining the relevant circumstances given the similarities between our s 74 and s 26 of the South African Constitution which provides for freedom from arbitrary eviction.

In *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties Pty (Ltd)*¹¹ the South African Constitutional Court held that relevant circumstances included legal status of the occupants; the period of occupation; and whether the eviction or demolition will leave the affected people homeless. It is however of crucial importance to note that the relevant circumstances can vary from case to case and the Court will therefore have to make a value judgment.

On the same trajectory, the Constitution in its national objectives in s 28 provides that

“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.”

It is important to note that the right to housing is not provided in the Declaration of Rights but reference to adequate housing is made only in the national objectives in terms of the aforementioned section. Logically, one cannot seek to enforce a right in terms of s 28 which does not offer substantive justiciable rights. However, in this author’s view, the matter does not end there. The national objectives can still be invoked as an aid in the holistic interpretation of s74 in ascertaining the constitutionality of the ongoing demolitions. The Indian Supreme Court in the case of *Francis Coralie Mullin v Administrator, Union Territory of Delhi*,¹² where the court broadly interpreted the right to life by reading into it the right to health, stated as follows;

¹¹ 2012 (2) SA 104 (CC)

¹² (1981) 2 SCR 516

"The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings. The magnitude and components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter, include the bare necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self".

Similarly, the Zimbabwean Supreme Court sitting as a Constitutional Court in the case of *Rattigan and Ors v Chief Immigration Officer and Ors* Gubbay CJ, observed as follows;

*"This Court has on several occasions in the past pronounced upon the proper approach to constitutional construction embodying fundamental rights and protections. What is to be avoided is the imparting of a narrow, artificial, rigid and pedantic interpretation; to be preferred is one which serves the interest of the Constitution and best carries out its objects and promotes its purpose..."*¹³

Similarly, the South African Constitutional Court in *Government of the Republic of South Africa and Others v Grootboom and Others* observed as follows;

*"Our Constitution entrenches both civil and political rights and social and economic rights. All the rights under the Bill of Rights are inter related and mutually supporting. There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied to those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights enshrined under Chapter 2. The realisation of these rights is also key to the advancement of race and gender equality and the evolution of a society in which men and women are equally able to achieve their full potential."*¹⁴

¹³ 1994 (2) ZLR 54 (S) at 57 F-H , see also the case of *Daniel Madzimbamuto v Registrar General & Ors* [2014] ZWCC 5 in which Ziyambi JA followed with approval the passage in *Rattigan*.

¹⁴ *Government of the Republic of South Africa & Ors v Grootboom and Others* CCT/00,Para 23

It is submitted that from the foregoing authorities the national objectives, in particular s 28, provide the textual background against which the content and scope of the right of freedom from arbitrary evictions and demolitions is to be understood.¹⁵ It is submitted that the expressly stated right from arbitrary eviction should be constructed in conjunction with the constitutional values and objectives in order to give fuller effect to other missing rights. In this spectrum, it is submitted that the national objective to housing enshrined in s 28 implies that the right to freedom from arbitrary eviction should be interpreted broadly and thus greatly restrict demolitions of people's homes in order to give effect to the national objective to adequate housing.

Furthermore, s 68 of the Constitution provides for the right of every person to administrative justice through judicial conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair. It is apparent from the above section that a number of duties are imposed upon the administrative authorities who are obligated constitutionally to perform for their conduct to pass the muster of s 68.¹⁶ Further s 3 of the Administrative Justice Act imposes the same obligations on administrative bodies.¹⁷ Each of these duties shall be considered below in turn

¹⁵ See *Keshavananda Bharati v. State of Kerala* (1973) 4 SCC 225 para. 1714, p. 881

¹⁶ See also the preamble to the Administrative Justice Act

¹⁷ An administrative authority which has the responsibility or power to take any administrative action which may affect the rights, interests or legitimate expectations of any person shall—

(a) act lawfully, reasonably and in a fair manner; and

(b) act within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to take the action by the person concerned; and

(c) where it has taken the action, supply written reasons therefore within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to supply reasons by the person concerned

2) In order for an administrative action to be taken in a fair manner as required by paragraph (a) of subsection (1), an administrative authority shall give a person referred to in subsection (1)— (a) adequate notice of the nature and purpose of the proposed action; and (b) a reasonable opportunity to make adequate representations; and (c) adequate notice of any right of review or appeal where applicable.

(3) An administrative authority may depart from any of the requirements referred to in subsection (1) or (2) if—

(a) the enactment under which the decision is made expressly provides for any of the matters referred to in those subsections so as to vary or exclude any of their requirements; or

(b) the departure is, under the circumstances, reasonable and justifiable, in which case the administrative authority shall take into account all relevant matters, including

(i) the objects of the applicable enactment or rule of common law;

(ii) the likely effect of its action;

(iii) the urgency of the matter or the urgency of acting thereon;

(iv) the need to promote efficient administration and good governance;

(v) the need to promote the public interest

and will be measured against the administrative decisions by local authorities to conduct demolitions.

Administrative bodies, local authorities included (my emphasis) have a duty to dispense their administrative duties lawfully. This therefore means that their conduct should be authorised by law and should be done within the confines of the law. The current home demolitions are not in conformity with the law as they do not adhere to the procedure and formalities prescribed by s 74. The local authorities' administrative conduct therefore fails on this basis and it is submitted that the demolitions are not authorised by any law but are rather carried out in direct breach of the Constitution.

Section 68 of the Constitution and s3 of the Administrative Justice Act also place an obligation on administrative bodies to act promptly.

This connotes two elements; first that the administrative body should act within the period specified by law or, if there is no such period, within a reasonable timeframe.¹⁸ The first element does not create any problems because if an administrative body is obliged to act within a specific period by statute or any other law and subsequently fails to act within such a period then it will be a clear breach of the statute concerned. However, the duty to act within a reasonable time warrants more attention as this is a value judgment that is exercised on a case by case basis. In *N & B Ventures (Pvt) Ltd v Minister of Home Affairs & Anor*¹⁹ the High Court held that;

"Where in the absence of an adverse reason an administrative authority fails to act, the courts have a duty to interfere in order to safeguard the financial and social interests of the applicant and the public respectively. Where an administrative authority is seized with a duty to perform a certain act, which act is a condition for another party to act, it cannot be allowed to penalise the

¹⁸ See Section 3(1)(b) of the Administrative Justice Act. See also G. Feltoe, *A Guide to Administrative Law in Zimbabwe*, 2012, page 24

¹⁹ The facts of the case were as follows "the applicant ran a hotel for which it held the appropriate liquor licence. It applied timeously for the renewal of the licence but the Liquor Licensing Board did not issue a new licence promptly, in spite of reminders. The licence was finally renewed some 18 months after the application for renewal was made. In the meantime, the applicant paid two admission of guilt fines and the police thereafter obtained a court order to seize the applicant's stock of liquor. The licence was renewed a few days later." Cited by G Feltoe *ibid*

other party on the basis of non-performance when it has not itself performed its own part. It must first perform its part before it penalises the other party for non-performance.”²⁰

In this vein, it is common cause that a significant part of the people affected by on-going demolitions have been living in the so-called ‘illegal’ structures for some considerable time and have even been paying their rates and municipal charges to the authorities. The local authorities are the administrative bodies charged with town planning and design of urban settlements by the Regional Town and Country Planning Act. Local authorities have the power to stop and prohibit the erection of any unplanned structure or the development of such unplanned settlements.

It is submitted that in the present circumstances, the local authorities have failed to act promptly and within a reasonable time to demolish and stop the erection of unplanned dwellings. It is submitted that waiting for a number of years before determining whether a settlement is planned or not constitutes a breach of the duty of administrative bodies to act promptly and within the reasonable time frame. The homes which have been demolished and are being demolished were built in full view of the local authorities but they did not take any active steps to stop the development of the settlements, and only acted after a considerable amount of time has lapsed. The local authorities had failed to perform their part timeously and thus cannot penalise the residents of the unplanned settlements for their own non-performance. The administrative conduct by the city fathers does not meet the requirement that administrative conduct be prompt as prescribed by s68 of the constitution.

Section 68 of the Constitution also provides that every person has a right to administrative conduct that is procedurally and substantively fair. Procedural fairness connotes that the people who will be affected by the administrative conduct should be given an opportunity to make representations before the administrative authority. This is known as the *audi partem* rule which means to hear the other side.²¹ The position was aptly captured by *Chatukuta J in Mtizira v Epworth Local Board and*

²⁰ 2005 (1) ZLR 27 (H) cited by G. Feltoe, *ibid* at page 25

²¹ See Section 2 of the Administrative Justice Act, see also G. Feltoe, *ibid* page 54

Ors²² where the learned judge made the following observation;

*"The rules of natural justice as embodied in the audi alteram partem rule require that a person be given reasonable notice to make representations where another takes action which adversely affects his/her interests or rights. The rule as espoused in the Administrative Justice Act [Chapter 10:28] (the Act) require that an administrative authority such as the first respondent, with the responsibility to take an administrative action which may adversely affect the rights or interest of any person, to give that person an opportunity to make adequate representations."*²³

Principles of natural justice such as the audi alterum partem principle are meant to ensure that fundamental tenets of fairness are observed in administrative decisions. Professor G. Feltoe summarises the position very well when he observes that;

*"The principles of natural justice embody fundamental notions of procedural fairness and justice. As applied to administrative decisions, these principles seek to ensure that such decisions are only taken after fair and equitable procedures have been followed. In essence, natural justice tries to guarantee that the parties who will be affected by the decisions receive a fair and unbiased hearing. By required adherence to standards of procedural fairness, not only is justice seen to be done, but also these principles assist administrative decision-makers to reach substantively correct decisions."*²⁴

In this respect, it is of paramount importance to note s 68 of the Constitution has shifted the situations in respect of which principles of natural justice apply. It is useful to briefly restate the old position relating to the application of the principles of natural justice which were to be applicable in situations whereby the affected party had a legitimate expectation to be heard. The concept of legitimate expectation was defined by the South African Appellate division in *Administrator, Transvaal & Ors v Traub*²⁵ in the following terms;

"The legitimate expectation principle, instead of insisting that an individual be affected in his liberty,

²² HH 37/2011

²³ See *U-Tow Trailers (Private) Limited v City of Harare & Anor* HH 103/09

²⁴ G Feltoe Ibid.

²⁵ 1989 (4) SA 731 (A)

property or existing rights before he may be heard in his own interest, lays down that an individual who can reasonably expect to acquire or retain some substantive benefit, advantage or privilege must be permitted a hearing before a decision affecting him is taken. The proper question to ask in any given case is therefore whether the person complaining is entitled to expect, in accordance with ordinary standards of fairness, that the rules of natural justice will be applied."

Thus, under such circumstances, it will be unfair to proceed and make the administrative decision without hearing the affected party first.²⁶

There are two related but distinct points which arise. First, it is clear that hundreds of residents whose houses have been demolished had substantive rights or benefits which stood to be affected by the local authorities' decision to demolish the houses. Consequently, it is submitted that they had a legitimate expectation to be heard before any decision affecting their rights was to be taken. The city fathers were bound by rules of natural justice to invite the residents whose houses were to be demolished to make representations before the local authorities before proceeding to raze down their houses. It is common cause that no such opportunity was ever accorded to the residents thereby violating the principles of natural justice. In most cases, the residents were merely given twenty-four hour notice to vacate. Accordingly, the house demolitions fail to satisfy the administrative conduct standards set by s 68 of the Constitution and are therefore potential violations of the affected people's right to administrative justice.

Further and in any event in light of the new constitutional dispensation it is submitted that the legitimate expectation principle is no longer a requirement for the applicability of the principles of natural justice. Section 68 states that every person has a right to administrative conduct that is procedurally and substantively fair whether or not they have a legitimate expectation (my emphasis). In this regard, it is put forward that the applications of the principles of natural justice have been entrenched by s 68 of the Constitution. It follows then that any administrative conduct has to fall

²⁶ See also *Taylor v Minister of Higher Education & Anor* 1996 (2) ZLR 772 (S)

within the scope of s 68 and thus has to observe the principles of natural justice whether or not the administrative authority deems that there is no legitimate expectation. In other words, the application of the principles of natural justice no longer flows from the existence of a legitimate expectation to be heard but arises as a matter of law from the constitution itself. Viewed along these lines, it is all the more apparent that the failure by the local authorities to hear the representations of residents who were to be affected by the demolitions is in clear breach of the principles of natural justice and consequently their right to administrative justice as enshrined in terms of the Constitution.

In light of the foregoing, it is submitted that the ongoing house demolition exercise in its present format falls foul of s 68 of the Constitution and s 74 of the Constitution. It is in breach of the affected resident's fundamental rights and freedoms as set out in the abovementioned constitutional provisions.

The Demolitions *vis a vis* International Human Rights Law

"Public international law would include non-binding as well as binding law. They may both be used under the section as tools of interpretation. International agreements and customary international law accordingly provide a framework within which [the Bill of Rights] can be evaluated and understood"
Chaskalson²⁷

Section 46 provides an interpretive guide on the fundamental rights and freedoms enshrined and entrenched in terms of the Constitution. In particular, S46 (1)(c) provides that when interpreting the Bill of Rights a Court , tribunal, forum or body must take into account international law and all treaties and conventions to which Zimbabwe is a party. This only serves to fortify the position that any investigation into a potential or alleged breach of the Bill of Rights will be incomplete without the guidance of international law norms.

In this section, the on-going house demolitions *vis-a vis* the international human rights law standards are examined. The scope of investigation shall, however, be confined to treaties and conventions to

²⁷ In *S v Makwanyane* 1995 (3) SA 391 (CC) para 35

which Zimbabwe is a party. This paper therefore examines the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Universal Declaration of Human Rights, the African Charter on Human and People's Rights (ACHPR), and how the provisions have been interpreted by international judicial bodies.

Article 11 of the ICESCR obligates State Parties to progressively realise people's right to an adequate standard of living for themselves and their families, including adequate housing and the continuous improvement of living conditions. It is therefore discerned that adequate housing is a constituent element of the right to an adequate standard of living and that, conversely, where there is no adequate housing adequate standards of living are unattainable.²⁸

ECOSOC, the treaty body charged with the implementation of the ICESCR, in its General Comment Number 4 stated that adequate housing envisaged in terms of Article 11(1) of the Covenant had elements including legal security of tenure; availability of services; materials and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. In the present discussion, reference will be made to the first element listed above, that is, legal security of tenure. In the words of the Committee, security of tenure;

*"... takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees against forced eviction."*²⁹

In this regard, it is submitted that arbitrary evictions are at face value a violation and breach of State Party's obligations in terms of the Covenant. In General Comment Number 7, the Committee noted that;

²⁸ Article 11 ICESCR "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on

²⁹ See ECOSOC General Comment No.4 para 8

*"The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions."*³⁰

It is clear that no issue of progressive realisation arises despite the right to adequate living standards being a socio-economic right. This is due to the wording of General Comment 7 which suggests that the State should refrain from carrying out forced or arbitrary evictions. In this regard the state has a negative duty to ensure that there are no forced or arbitrary evictions.³¹

This position is also supported by Article 17 (1) of the International Covenant on Civil and Political Rights (ICCPR) and complements the right not to be forcefully or arbitrarily evicted. Article 17 (1) of ICCPR provides as follows;

"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation .2. Everyone has the right to the protection of the law against such interference or attacks."

In *M v Germany*, the Human Rights Committee held that the right enshrined in terms of Article 17 of the Covenant, that an interference is only legally justifiable where it cumulatively meets three conditions, that is,

*"it must be provided for by law, be in accordance with the provisions, aims and objectives of the Covenant, and be reasonable in the particular circumstances of the case."*³²

In our particular context, it is clear that the demolitions are not being done in terms of any law but are actually being done in clear contravention of ss 68 and 74 of the Constitution. Invariably therefore, the demolitions are not being done within the objects, letter, purpose and spirit of the ICCPR. In this respect therefore, it is submitted that the house demolitions amount to breaches of rights guaranteed

³⁰ See ECOSOC General Comment No 7 para 9

³¹ Note that the State's obligation to ensure respect for that right is not qualified by considerations relating to its available resources. ECOSOC General Comment 7, para 9

³² *M v Germany*, Human Rights Committee, Communication No.1482/2006. See also Communication No. 903/1999, *Van Hulst v. The Netherlands*, Views adopted on 1 November 2004, at para 7.3, para 9

in terms of the ICESCR and the ICCPR.

Furthermore, from a continental perspective, it is conceded that a reading of the ACHPR reveals that it does not have a specific and expressly provided right to housing. Despite this, it is submitted that a right to housing may be read into the ACHPR if the rights protecting the right to the best state of attainable health, right to property, right to protection of the family provided under Article 16, 14 and 18 of the Charter are construed conjunctively and read in *pari materia*.

This was in fact the approach adopted by the ACHPR in the case of *SERAC v Nigeria*³³ in which the Commission adopted an innovative interpretation of the Charter provisions and read into it the right to housing despite the fact that it is not expressly provided therein, as stated above. The Commission observed as follows:

"Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health and family life are adversely affected. It is thus noted that the combined effect of articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing which the Nigerian government has apparently violated."

The Commission went further and observed thus;

"At a very minimum, the right to shelter obliges the Nigerian government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes. The state's obligation to respect housing rights requires it, and thereby all of its organs and agents, to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to him or her in a way he or she finds most appropriate to satisfy individual,

³³ (2001) AHRLR 60 (ACHPR 200)

family, household or community housing needs. Its obligations by any other individual or non-state actors like landlords, property developers, and landowners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to protect obliges it to prevent the violation of any individual's right to housing legal remedies. The right to shelter even goes further than a roof over one's head. It extends to embody the individual's right to be left alone and to live in peace whether under a roof or not"

It is clear that in the context of the demolitions, the State has a duty, at a minimum, not to destroy the houses of its citizens whether legal or "illegal" (my emphasis). This duty therefore imposes a duty on the State and its institutions including local authorities not to destroy and demolish people's homes without following due process. This principle is in fact in tandem with s 44 which obliges the State, every person, state agencies and institutions to respect, protect, promote and fulfill the rights and freedoms set out in the Bill of Rights.³⁴

Through engaging in unlawful demolitions, local authorities have breached the duty imposed on them by the Constitution to respect fundamental freedoms and rights. Accordingly also, by tolerating and even sanctioning the unlawful conduct of the local authorities, the State has breached its obligations in terms of the ACHPR.

Conclusion

In summation, it is apposite to borrow the words of Justice Mathonsi in the case of *Peter Makani v Epworth Local Board* in which the learned judge observed that;

"There can be no doubt whatsoever in the minds of all well-informed persons that this country currently faces extremely serious problems relating to poverty, unemployment and more importantly housing... local authorities are now waking up and, by force and power, demolishing the structures

³⁴ Section 44 of the Constitution reads as follows "The State and every person, including juristic persons, and every institution and agency of government at every level must respect, protect, promote and fulfill the rights and freedoms set out in this Chapter." See also national objective of fostering fundamental rights and freedoms in Section 11 of the Constitution. It reads as follows "The State must take all practical measures to protect the fundamental rights and freedoms enshrined in Chapter 4 and to promote their full realization."

*without regard to law and human dignity.*³⁵

These words summarise the obtaining situation in respect of the spate of demolitions that have occurred in the country. The mere fact that the homes were not constructed in accordance with the Municipal By-laws does not erode the rights and the procedures prescribed by the Constitution.

³⁵ *supra*, page 1 of the cyclostyled judgment