

MALAWI HUMAN RIGHTS COMMISSION



**AN INVESTIGATION REPORT ON LANDLESS EX-ESTATE WORKERS
OF PRESS AGRICULTURE LIMITED IN KASUNGU DISTRICT**

HRC 05/16/188

SEPTEMBER, 2020

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ACRONYMS

PAL	Press Agriculture Limited
HRC	Human Rights Commission
T/A	Traditional Authority
OPC	Office of the President and Cabinet
VH	Village Headman
GVH	Group Village Headman

EXECUTIVE SUMMARY

In September, 2016, the Human Rights Commission (the Commission) received a complaint from Rev. Flywell Somanje (Complainant) in which he alleged that ex-workers in the employ of Press agriculture Limited (PAL) in Kasungu had been abandoned and were landless. These ex-employees worked as labourers.

According to the Complainant, these ex-employees sought the assistance of the Kasungu District council in 2010. However, they were not assisted. Consequently, he alleged that these ex-employees sought his assistance.

The alleged landlessness raises the prima-facie violations of human rights and fundamental freedoms particularly right to property, right to economic activity, right to development and right to human dignity as guaranteed by the Constitution of the Republic of Malawi and other related laws.

Pursuant to its constitutional and statutory mandate, the Human Rights Commission (the Commission) conducted investigations into the said matter. The Commission established the following findings:

Factual Findings

The Commission has recorded the following factual findings:

1. In the 1970s, PAL imported labourers to Kasungu from various districts of Malawi. These districts include Mulanje, Thyolo, Phalombe, Chiradzulu and Nsanje; Lilongwe and Dowa and Mzimba and Karonga to work in their estates.
2. The majority of these Ex-Labourers founded families in Kasungu District and never returned to their original districts even during off season.
3. Around 1990s, PAL started downsizing its operations necessitating disengagement with most of the Ex-Labourers. After the disengagement most of them stayed on the estates.
4. Around 2000s PAL completely closed its operations and evicted all the Ex-Labourers from its estates. As a result of this eviction, the majority of the Ex-Labourers sought temporal refuge in the nearby villages where they were provided with limited pockets of land specifically meant for putting up small shelters.

5. These Ex-Labourers did not have any piece of land where they would cultivate crops or engage in any other economic activity. In the absence of land for economic activities they resorted to piece work for their survival. Others engaged in small scale businesses.
6. These Ex-Labourers sought assistance from Government to provide them with land to settle. Government did not assist them.
7. Out of desperation Reverend Somanje facilitated the relocation of about 167 families of the Ex-Labourers in question to Rusa Estate in Mchinji district in 2018. However, this relocation was not regularized and the estate does not have amenities for basic services such as health and education services, water and sanitation.
8. There was conflict between the Ex-Labourers at Rusa Estate and the surrounding villages in the early days of the settlement. The conflict was ignited by the latter's expectation that the land at Rusa would be allocated to them. Currently the situation has calmed down as a result of mediation efforts initiated by Rev Somanje.
9. 146 families are still stuck in Kasungu and majority of them are living in slave like conditions at Zikomo Estate in T/A Mwase's area. The 146 families are living in deprived conditions where the sight of utter poverty is palpable.
10. The villagers surrounding Rusa Estate still feel aggrieved with the Ex-Labourers because they have been deprived of their land.
11. PAL handed over five estates of land including Rusa Estate to Government which remain idle in Kasungu and other districts. These Estates have not yet been converted into customary land.

Legal Findings

1. The State has violated the right to property of the Ex-Labourers as enshrined in section 28 of the Constitution by its failure to provide them with land to settle and use after PAL stopped doing farming on its estates where they depended for their livelihood.
2. By perpetually being subjected to a life where they have no land to live thereby forcing them to live in bonded labor (for those remaining in Kasungu) or forced to

live on land with no or very limited social amenities (for those currently staying at Rusa Estate) the State has violated their right not to be subjected to cruel and degrading treatment as provided for in section 19 of the Constitution.

3. The State violated the right to human dignity as guaranteed by section 19 of the Constitution as the ex-labourers were living on piece-work which only provided them with hand to mouth livelihood and perpetuated their destitution.
4. The State has failed to provide the Ex-Labourers with basic needs in this case land. Without land, they cannot involve themselves in any activities to improve their and develop their livelihoods. Thus, in denying the Ex-Labourers access to land, the State has fallen short of its duty under section 30 of the constitution on the right to development to provide its citizens with basic needs.

Pursuant to the powers conferred on it by section 130 of the Constitution and section 22 of the HRC Act, the Commission makes the following recommendations:

1. The Government should finalize the process of transfer of ownership of the 5 estates from PAL and convert them from Private Land to Customary Land and handover the said estates to respective District Commissioners of the Districts where the Estates are located. **The Commission will follow up on the progress of this recommendation three months after the date of submission of this report to the Government.**
2. Government (Mchinji District Council) should regularize the Rusa Estate settlement in Mchinji for those Ex-Labourers that were relocated there and put a system for inflow of social amenities to the area with priority being on water and sanitation but also ensuring availability of farm subsidies beginning from the 2020/21 growing season. **The Commission will follow up on the progress of this recommendation three months after the date of submission of this report to the Government.**
3. The Government should relocate and resettle those ex-laborers stuck in Kasungu to any of the five estates given out by PAL. Moreover, the District Commissioners should be granted authority to resettle all the landless people in their districts to any of the 5 estates available respectively. **The Commission will follow up on the progress of this recommendation three months after the date of submission of this report to the Government.**

4. The Ministry for Labor should prescribe minimum standards for labor policies in labor intensive corporations to ensure that those corporations comply with international and regional human rights principles. **The Commission will follow up on the progress of this recommendation three months after the date of submission of this report to the Government.**

1.0. INTRODUCTION

- 1.1. This is a report on the investigation into the state of landlessness of the Ex-Labourers of Press Agriculture Limited (PAL) who were left landless in Kasungu District after their contracts were terminated in the 1990's.
- 1.2. The report provides circumstances surrounding the landlessness of the Ex-Labourers; the legal mandate of the Human Rights Commission (the Commission); the methodology followed in the investigation and limitations of the investigation; analysis of the facts and evidence gathered; factual and legal findings; recommendations; and conclusion. The report has been arranged according to specific sections with respect to each of the aforementioned areas.

2.0. ALLEGED HUMAN RIGHTS VIOLATIONS

- 2.1. In September, 2016, the Commission received a complaint from Reverend. Flywell Somanje (the Complainant) in which he alleged that the Ex-Labourers of PAL in Kasungu had been abandoned.
- 2.2. According to the Complainant, these Ex-Labourers sought the assistance of the Kasungu District Council in 2010. However, when the Council did not assist them, the Ex-Labourers sought the assistance of the Complainant.
- 2.3. This matter raises the *prima-facie* violations of human rights and fundamental freedoms, particularly the right to property, right to development and right to human dignity as guaranteed by the Constitution of the Republic of Malawi (the Constitution) and other related laws. It is against this background that the Commission, pursuant to its constitutional and statutory mandate,¹ conducted an investigation into the alleged human rights violations raised.

¹ See sections 129 and 130 of the Constitution; see also section 12 of the HRC Act, Cap. 3:08 of the Laws of Malawi.

3.0. THE LEGAL MANDATE OF THE COMMISSION

3.1. The Commission is empowered by the Constitution to investigate human rights violations and make recommendations in response to a complaint or on its own volition. Section 130 of the Constitution provides as follows:

“The Human Rights Commission shall, with respect to the applications of an individual or class of persons, or on its own motion, have such powers of investigation and recommendation as are reasonably necessary for the effective promotion of the rights conferred by or under this Constitution, but shall not exercise a judicial or legislative function and shall not be given powers to do so.”

3.2. Further, section 12 of the Commission’s enabling Act, the Human Rights Commission Act (the HRC Act), outlines the Commission’s competence and powers. Section 12 of the HRC Act provides:

“The Commission shall be competent in every respect to protect and promote human rights in Malawi in the broadest sense possible and to investigate violations of human rights on its own motion or upon complaints received from any person, class or persons or body.”

3.3. Further, according to section 16(1) of the HRC Act, the Commission has competence to conduct hearings. Section 16(1) provides:

“The Commission may hear and consider complaints and petitions within its competence brought before it by individuals or groups of individuals.”

4.0. PURPOSE, METHODOLOGY AND LIMITATIONS OF THE INVESTIGATION

4.1. Purpose of the Investigation

The purpose of the investigation was to ascertain the alleged human rights violations and establish the circumstances surrounding and the cause or causes of the landlessness of the ex-employees of PAL. The specific objectives of the investigation were to:

1. establish circumstances that led to the Ex-Labourers to become landless;
2. assess the population and land requirements of the Ex-Labourers and their households;
3. identify human rights violations committed against the Ex-Labourers and the obligations of the state therein; and
4. facilitate access to justice and legal remedies of the Ex-Labourers sustained in the present matters.

4.2. Methodology

The Commission instituted an investigation team comprising one Commissioner and five senior members of staff of the Commission to carry out the investigation. The investigation was carried out through preliminary on-spot inquiries, public hearing, one-on-one interviews, collection, collation and review of documents; and site-visits.

1. *Preliminary on-spot inquiries*

Initially, the Commission conducted a series of on-spot inquiries in Kasungu and Mchinji districts. During these inquiries, the Commission interviewed various stakeholders to confirm the alleged human rights violations.

2. *Public hearing*

The Commission also conducted a public hearing chaired by Commissioner Bertha Sefu at Wimbe Trading Centre Grounds in the area of Traditional Authority Wimbe in Kasungu on 22nd June, 2018. This allowed in-depth collection of evidence from Ex-Labourers and key witnesses including traditional leaders and allowed duty bearers to hear and give response to the Ex-Labourers concerns.

The public hearing was attended by the Complainant; Ex-Labourers residing at their temporary shelters located in different areas of Traditional Authority (T/A) Wimbe and T/A Lukwa; traditional leaders of the affected areas; officials from PAL, Kasungu District Council, Kasungu District Lands Office, Office of the President and Cabinet (OPC); members of the general public and the media.

See Annex 1 for the list of Stakeholders that submitted evidence during the Public Inquiry.

The public hearing proceedings were recorded by a team of the Commission's officers and the media which included Zodiak Broadcasting Station, Malawi News Agency and Maziko Radio.

3. *Site-visits and inspections*

The investigation team visited the villages in the areas of T/A Wimbe and T/A Lukwa where the Ex-Labourers largely sought refuge. The visits were aimed at inspecting the circumstances under which the Ex-Labourers were living.

4. *Verification Exercise*

The Commission conducted a verification exercise from 18th to 20th June, 2018 on the existence of the Ex-Labourers in the areas of T/A Wimbe and T/A Lukwa in Kasungu district. The verification exercise was done by physical checking and engagement with traditional leaders on the existence of the Ex-Labourers in the areas. The Commission moved from one village to the other cross-checking the presence of the Ex-Labourers.

5. *Collection, Collation and Review of relevant documents*

The investigation team collected, collated and reviewed relevant laws, policies and guidelines and all the documents obtained during the investigations.

These documents include registers² of the Ex-Labourers; list of estates previously owned by PAL but handed over to government; minutes of previous meetings held between Kasungu District Council and PAL; and minutes originated by the OPC on the matter.

² Prepared and kept by the complainants

6. *Further Visits and Interviews*

In August 2020, led by Commissioner Martha Chizuma the Commission visited the settlement areas of some of the remaining Ex-Labourers in Kasungu and the settlements in Rusa, Mchinji. The Commission further held update meetings with Kasungu DC, Mchinji DC, Complainant, the chiefs that are surrounding Rusa Estate and also Officials from OPC. See Annex 2 for the List of stakeholders interviewed

4.3. Limitations

- 4.3.1. The investigation process had challenges in securing total cooperation from Kasungu District Council as they constantly denied existence of the complaint and the alleged situation in the district. In response to this challenge, the Commission proceeded to the communities to verify existence of the alleged situation.
- 4.3.2. The investigations required a comprehensive head count of the alleged Ex-Labourers. However, due to the geographical settlement of the Ex-Labourers who were scattered into various and distant villages, the exercise required more time and resources to reach out to all Ex-Labourers. To mitigate this, the Commission undertook a sampled verification on 40 households out of the total 112 households.

5.0. FACTS AND EVIDENCE

From its investigation, the Commission established the following facts:

- 5.1. In the early 1970's, PAL established tobacco estates throughout Kasungu District and recruited seasonal estate labourers to work on these tobacco estates. These labourers were mostly from Mulanje, Thyolo, Phalombe, Chiradzulu and Nsanje in the Southern Region; Lilongwe and Dowa in the Central Region and Mzimba and Karonga in the Northern Region. PAL provided these labourers with transport in form of lorries from their districts of origin to the estates in Kasungu.
- 5.2. At the end of each tobacco season, PAL would provide these labourers with bus fares back to their home districts. They only provided the transport fare to their

‘employee’. Accordingly, the majority of these labourers opted to remain on the PAL estates during the off-season period citing lack of adequate transport to travel to their homes with their families. In addition, the majority of the labourers got married and had children who later had own children. Children born from such families grew up on these PAL estates without ever visiting their original home districts.

- 5.3. As a result of financial constraints facing the company, in 1993, PAL came up with a new corporate strategy which required downsizing of the labour force. Consequently, PAL decided to re-engage fewer seasonal labourers out of those that were available in the previous growing seasons. PAL only re-engaged those seasonal labourers that were from areas that were proximal to its estates. Further, in line with this new corporate strategy, the engaged labourers were paid daily wages. Following the new recruitment approach, the majority of seasonal labourers became jobless
- 5.4. PAL expected that all labourers not rehired would vacate the estates and proceed to go back to their respective homes. However, considering that PAL only provided transport fares to its labourers only and not their family members like children born whilst parents were working at these estates, the majority were stranded and could not go to their home districts. These seasoned labourers opted to continue staying on PAL estates.
- 5.5. In 2010, PAL decided to cease tobacco production completely and close all its estates in Kasungu District due to the global campaign against smoking and the increased financial and microeconomic challenges. Following this, PAL refused the ex-labourers temporary stay on the estates as was previously the case. The continued stay on the estates was regarded as an act of trespass on private land. Thus, these ex-labourers and their families became destitute and landless. These destitute Ex-Labourers were mostly found in T/A Wimbwe’s area specifically in the areas of Group Village Headman (GVH) Vindevu, Village Head (VH) Tongole, VH Kamkondo and VH Mtandaza. Some of the Ex-Labourers were employed by other estates in the district while others established their own small-scale businesses.

- 5.6. In 2014, representatives of the destitute Ex-Labourers approached Kasungu District Council to allocate them permanent land in the district where they could live, farm and develop their livelihoods. They further suggested resettlement on the idle PAL estates in the district. The District Council rejected their request.
- 5.7. Upon noting that they were not being assisted, they approached Reverend Flywell Somanje, the Complainant³ in his capacity as Director of MIRECE for assistance in 2016. The Complainant approached Kasungu District Council and Kasungu District Lands Office on the issue. Both offices maintained their stance that the Ex-Labourers in question were not originally from Kasungu District therefore they could not assist them. .
- 5.8. The Complainant further took the matter to the OPC for assistance but to no avail. He then petitioned the Head of State on the matter. In the petition, he alleged that the Ex-Labourers in Kasungu were destitute and staying in camps. Upon receipt of the petition, the president instructed OPC to conduct inquiries into the matter. The inquiry by OPC revealed that there were no such camps.
- 5.9. However, OPC noted that there were some people scattered in Kasungu who were landless. Consequently, OPC directed Kasungu District Council, the Ministry of Lands, Housing and Urban Development and PAL that these few scattered landless people be resettled on permanent land and the complaint be resolved. However, the directive was not implemented.
- 5.10. As there was no action on the part of Government, the Complainant lodged a complaint with the Commission in September 2016. In the meantime, Complainant identified part of Rusa Estate, an idle land of approximately 400 hectares in size in the area of T/A Kapondo in the neighbouring Mchinji District in 2018.
- 5.11. The Rusa Estate had previously belonged to PAL with 430,620 hectares along with other four⁴ estates across the country which remained idle. However, the Malawi Government repossessed the five Estates from PAL under the then President Joyce

³ Rev. Flywel Somanje is an Anglican Priest and Director of Millenium Information Resource Centre based in Kasungu.

⁴ Nantipwiri Estate with 204,470 hectares; Rusa 1 Estate with 430,620 hectares; Ng'ongo Estate with 358,000 hectares; Namitondo Estate with 145,200 hectares and Chikwawa Estate in Salima with 6,903,000 hectares,

Banda's "Presidential Initiative" around 2012. After change of Government in 2014 the land continued to remain idle.

- 5.12. The Complainant identified Rusa Estate as the estate closest to Kasungu and started relocating these Ex-Laboureres there.
- 5.13. According to the Complainant, Rusa Estate was demarcated into 30 villages. Each village comprised 25 to 30 households. Each household was allocated 2 acres of land for shelter and farming. By June 2018, 498 households comprising 7,191 individuals were relocated to Rusa Estate.
- 5.14. However, about 1,000 Ex-Labourers still remained in Kasungu District. During the Commission's visit in August 2020, it was observed that majority of these individuals are living on bonded labour at Zikomo Estate in the area of T/A Mwase. The living conditions are very poor, they live in shark like homes with no sufficient land to grow own food and with very limited or completely no access to any social amenities.
- 5.15. Kasungu District Council reported that the problem of land was not unique to the Ex-Laboureres but was a general problem for the entire district. For them, the people requiring urgent attention were those that camped at Mthunduwala Camp⁵ in the area of T/A Lukwa.
- 5.16. As for the Ex-Laboureres that relocated to Rusa Estate there is evidence that in the early days they faced a lot of hostility from the surrounding villages who claimed that the land belonged to their ancestors before PAL took it from them. When PAL surrendered it back, they started reusing to grow their food. The scuffles continued until the Complainant facilitated an agreement between the Ex-Labourers and the leadership of the surrounding villages in July 2020. Currently the relationship between the two sides has substantially improved.
- 5.17. During the Commission's visit to Rusa Estate in August 2020, the Ex-Labourers at the Estate complained heavily about the lack of social amenities at the estate brought about by lack of formalization of their settlement. The Commission observed that

⁵ Mthunduwala Camp is located within the area of Kasungu National Park. The camp is made up of native inhabitants of Kasungu District who found themselves landless as a result of ecological factors which forced them to relocate to Zambia. The Malawi Government repatriated those people and resettled them Mthunduwala Camp. These people are in need of permanent resettlement.

much as the Ex-Labourers have tried to organize themselves and set up structures within the estate, their living conditions remain poor. For instance, the Commission observed that there is only one borehole serving about 572 households in the Estate.

- 5.18. The improved relationship between the Ex-Labourers and the surrounding villages was further confirmed by the chiefs of these surrounding villages. They stated that the situation is much better now and that the Ex-Labourers were divided into various chieftaincy and that most of them identify themselves as their subjects.
- 5.19. The chiefs however complained that with the coming in of the Ex-Labourers there is now pressure for land amongst their villagers who also used to cultivate their food in the estate. They also stated that the Ex-Labourers have increased pressure on education and health services.
- 5.20. Mchinji DC told the Commission that until the Rusa estate is converted to customary land they cannot do anything to help the Ex-Labourers since the estate remains private land. However, they are ready to take all necessary steps to assist the Ex-Labourers once that is sorted.
- 5.21. The Officials from OPC whilst appreciating the predicament of the Ex-Labourers and other landless people across the country stated that since the matter was brought to their attention in 2018 there has been little or no progress. They undertook to follow up on the status of the 5 PAL estates that were given to Government.

6.0. ANALYSIS OF FACTS AND EVIDENCE

Right to Property

- 6.1. Land is a form of property, and the Constitution provides for the right to property. In accordance with section 28 of the Constitution, every person has the right to acquire property alone or in association with others. However, under international law, States have the obligation to fulfill human rights. The obligation to fulfill entails that States should adopt measures to ensure the realization of human rights of those who cannot secure the rights through their personal efforts.⁶

⁶ See generally, A. Eide, 'Economic and Social Rights' in A. Edie, C. Krause and A. Rosas (Eds) *Economic Social and Cultural Rights* (Martinus Nijhoff Publishers, London, 1998) 22-40

- 6.2. Under international human rights law, a State cannot use resource constraints as justification for non-fulfillment of rights. However, resource constraints can only be used to justify non-fulfillment of rights, if it can be shown that the State in question did everything in its power to help with the limited resources it does have but could simply not reach the required standard.
- 6.3. In the present matter⁷, the State breached its duty to fulfill the right to property in respect of land acquisition for the Ex-Labourers by not providing them with land to settle on and use. The State is aware that the Ex-Labourers have no means of obtaining land and developing their lives and yet it has not assisted them. Failure by the State to take corrective measures to provide land to the Ex-Labourers represents a violation of the obligation of the State to fulfill the right to property.
- 6.4. The Commission established that OPC instructed Kasungu District Council and Ministry of Lands, Housing and Urban Development to resolve the matter but nothing has been done. It is these two institutions' defense that they lack financial resources to acquire land and to meet logistics for the purpose of reallocating these Ex-Labourers. However, Government is on record to have been given five estates of land by PAL most of which is idle.
- 6.5. Accordingly, it is clear that both Kasungu District Council and Kasungu District Lands refused failed to assist⁸ the Ex-Labourers by providing them with land to settle or make available the land given by PAL for their livelihoods.
- 6.6. The Commission established that a private person by the name of Reverend Somanje took upon himself to find idle land in Mchinji to relocate some of the Ex-Labourers. It is clear to observe that Reverend Somanje was pushed to do this after noting the plight of the Ex-Labourers and that the State did not seem bothered enough to do something about it.
- 6.7. The State had literally abandoned their duty in as far as this issue is concerned. The lack of interest to urgently look into the matter or indeed lack of action by the State

⁷ The matter at hand concerns the complaint lodged to the Commission by Rev. Flywell Somanje on behalf of the landless ex-labourers. Despite the fact that majority of Malawians do not have adequate land, the situation of the landless ex-labourers in this complaint is that they literally do not have land in Kasungu where they have been stranded.

⁸ Kasungu District Council under which Lands Department operates stated that in Kasungu are some people originally from the district who are also in need of land as such the Council was not only under obligation to resolve issue of land for this group of ex-labourers only but rather to resolve land scarcity for all landless people in the district.

can further be observed from the Commission's meeting with officials from OPC in August 2020 where it was clear that since 2018 nothing much has moved in terms of formal resettlement of the Ex-Labourers.

- 6.8. It is on record that PAL gave a total of 5 of its estates to Government covering a total of about 8 thousand hectares. Most of these estates remain idle to date whilst there are people who are suffering and living in slavery like conditions in their own country because of the lack of land.
- 6.9. As was stated by Mchinji District Commissioner all the State needs to do is formalize the transfer of the five estates from PAL to Malawi Government and then convert the land in question to customary land to now formerly be shared amongst the Ex-Labourers and other people who are landless across the country. In the Commission's considered view this is the process that should not take more than a month. However more than 24 months since the State became aware of this nothing has been done. Therefore, the State's continued failure to use all the resources at its disposal in providing the Ex-Labourers land is a failure to meet its obligation to fulfill the right to property guaranteed under section 28 of the Constitution.

The Right to Human Dignity

- 6.10. The Constitution of Malawi proscribes cruel, inhuman and degrading treatment. The African Commission on Human and Peoples Rights defined cruel, inhuman and degrading treatment as including not only acts that cause physical or psychological suffering but also those that humiliate and force someone to do something that is against their will.
- 6.11. The Commission established that the Ex-Labourers are living a dehumanizing life. For the ones that are currently living at Rusa Estate they have no access to most of the necessary social amenities. For 572 families they only have one borehole forcing them to dig own ponds to get water which is not healthy at all. For those that are still in Kasungu they live like slaves. The poverty and deprived conditions they are living in is quite palpable with no means of cultivating own crops for food and sale. But they have no other option but to live like that.

- 6.12. The situation that the Ex-Labourers have found themselves humiliates and forces them to do things that are against their will. Some are forced to trespass on public and private pieces of land.
- 6.13. Government, has a primary duty when it comes to human rights to ensure that none of its citizens live in degrading conditions that are harmful and threaten their enjoyment of their various human rights such as their right to housing, food and health. To knowingly allow them to live in conditions that are not conducive to their overall wellbeing is to violate their right to dignity.

The Right to Development

- 6.8 The Constitution guarantees the right of all persons to development and to the enjoyment of economic, social, cultural and political development under section 30. The section obligates the State to equalize opportunities for all in their access to basic resources. Thus, the right to development carries with it the obligation for the State to provide certain basic needs to its people for their survival. By failing to provide the Ex-Labourers with land, the State has obviously denied them a basic need which they can use to improve their well-being and develop their livelihoods. Thus, in denying the Ex-Labourers access to land, the State has fallen short of its duty under the right to development to provide its citizens with basic needs.

7.0. FINDINGS

7.1. Factual Findings

The Commission has recorded the following factual findings:

12. In the 1970s, PAL imported labourers to Kasungu from various districts of Malawi. These districts include Mulanje, Thyolo, Phalombe, Chiradzulu and Nsanje; Lilongwe and Dowa and Mzimba and Karonga to work in their estates.
13. The majority of these Ex-Labourers founded families in Kasungu District and never returned to their original districts even during off season.
14. Around 1990s, PAL started downsizing its operations necessitating disengagement with most of the Ex-Labourers. After the disengagement most of them stayed on the estates.

15. Around 2000s PAL completely closed its operations and evicted all the Ex-Labourers from its estates. As a result of this eviction, the majority of the Ex-Labourers sought temporal refuge in the nearby villages where they were provided with limited pockets of land specifically meant for putting up small shelters.
16. These Ex-Labourers did not have any piece of land where they would cultivate crops or engage in any other economic activity. In the absence of land for economic activities they resorted to piece work for their survival. Others engaged in small scale businesses.
17. These Ex-Labourers sought assistance from Government to provide them with land to settle. Government did not assist them.
18. Out of desperation Reverend Somanje facilitated the relocation of about 167 families of the Ex-Labourers in question to Rusa Estate in Mchinji district in 2018. However, this relocation was not regularized and the estate does not have amenities for basic services such as health and education services, water and sanitation.
19. There was conflict between the Ex-Labourers at Rusa Estate and the surrounding villages in the early days of the settlement. The conflict was ignited by the latter's expectation that the land at Rusa would be allocated to them. Currently the situation has calmed down as a result of mediation efforts initiated by Rev Somanje.
20. 146 families are still stuck in Kasungu and majority of them are living in slave like conditions at Zikomo Estate in T/A Mwase's area. The 146 families are living in deprived conditions where the sight of utter poverty is palpable.
21. The villagers surrounding Rusa Estate still feel aggrieved with the Ex-Labourers because they have been deprived of their land.
22. PAL handed over five estates of land including Rusa Estate to Government which remain idle in Kasungu and other districts. These Estates have not yet been converted into customary land.

7.2. Legal Findings

The following are the legal finding:

5. The State has violated the right to property of the Ex-Labourers as enshrined in section 28 of the Constitution by its failure to provide them with land to settle and

use after PAL stopped doing farming on its estates where they depended for their livelihood.

6. By perpetually being subjected to a life where they have no land to live thereby forcing them to live in bonded labor (for those remaining in Kasungu) or forced to live on land with no or very limited social amenities (for those currently staying at Rusa Estate) the State has violated their right not to be subjected to cruel and degrading treatment as provided for in section 19 of the Constitution.
7. The State violated the right to human dignity as guaranteed by section 19 of the Constitution as the ex-labourers were living on piece-work which only provided them with hand to mouth livelihood and perpetuated their destitution.
8. The State has failed to provide the Ex-Labourers with basic needs in this case land. Without land, they cannot involve themselves in any activities to improve their and develop their livelihoods. Thus, in denying the Ex-Labourers access to land, the State has fallen short of its duty under section 30 of the constitution on the right to development to provide its citizens with basic needs.

8.0 RECOMMENDATIONS

Pursuant to the powers conferred on it by section 130 of the Constitution and section 22 of the HRC Act, the Commission makes the following recommendations:

5. The Government should finalize the process of transfer of ownership of the 5 estates from PAL and convert them from Private Land to Customary Land and handover the said estates to respective District Commissioners of the Districts where the Estates are located. **The Commission will follow up on the progress of this recommendation three months after the date of submission of this report to the Government.**
6. Government (Mchinji District Council) should regularize the Rusa Estate settlement in Mchinji for those Ex-Labourers that were relocated there and put a system for inflow of social amenities to the area with priority being on water and sanitation but also ensuring availability of farm subsidies beginning from the 2020/21 growing season. **The Commission will follow up on the progress of this recommendation three months after the date of submission of this report to the Government.**

7. The Government should relocate and resettle those ex-laborers stuck in Kasungu to any of the five estates given out by PAL. Moreover, the District Commissioners should be granted authority to resettle all the landless people in their districts to any of the 5 estates available respectively. **The Commission will follow up on the progress of this recommendation three months after the date of submission of this report to the Government.**
8. The Ministry for Labor should prescribe minimum standards for labor policies in labor intensive corporations to ensure that those corporations comply with international and regional human rights principles. **The Commission will follow up on the progress of this recommendation three months after the date of submission of this report to the Government.**

10.0. CONCLUSION

The Commission has established various violations of human rights occasioned on the Ex-Labourers and has recommended remedies to be effected as above. The implementation of these recommendations cited above will ensure comprehensive protection and promotion of the rights of the Ex-Labourers. The Commission prays for timely implementation of these recommendations.

Dated this 4th September 2020

Martha Chizuma
COMMISISONER

ANNEXES

ANNEX 1:

STAKEHOLDERS WHO SUBMITTED TESTIMONIES AT THE COMMISSION'S PUBLIC HEARING HELD ON 22 JUNE, 2018, AT WIMBE, KASUNGU

1	Rev. Flywell Somanje	Complainant; Director – Millennium Information Resource Centre.
2	Mr. Shadreck Kaimfya	Landless victim <i>(Representing inhabitants of Rusa Estate).</i>
3	Mrs. Beatrice Msonthi	Landless victim.
4	Mr. Charles Kadamanja	Landless victim.
5	Mr. Eziron Ngwira	Landless victim.
6	Ms. Lezina Chinzeka	Landless victim <i>(Representing female inhabitants of Rusa Estate).</i>
7	Ms. Eliza Mbewe	Landless victim <i>(Representing the youth and children of Rusa Estate).</i>
8	Mr. Davison Banda	Advisor to Traditional Authority Wimbe <i>(Representing Traditional Authority Wimbe).</i>
9	Mr. Charles Nyoni	Company Surveyor, PAL <i>(Representing the CEO of PAL, Mr. Morut Martin Isyagi)</i>
10	Mr. Johnus Thom	District Lands Officer, Kasungu District Lands Office <i>(Representing the Ministry of Lands, Housing and Urban Development).</i>
11	Mr. Thomas Mwafongo	Director of Administration, Kasungu District Council <i>(Representing the Kasungu District Commissioner, Mr. James Kanyangalazi)</i>
12	Mr. Victor Sandikonda	Deputy Secretary, Office of the President and Cabinet (OPC) <i>(Representing the Chief Secretary to Government)</i>

ANNEX 2:**LIST OF STAKEHOLDERS INTERVIEWED BY THE COMMISSION IN AUGUST 2020**

	Name	Personal Particulars
1	Rev. Flywell Somanje	Complainant; Director – Millennium Information Resource Centre.
2	Mr. Reinford Mwangonde	Director (Good Governance), Office of the President and Cabinet
3	Dr. Victor Sandikonda	Deputy Director (Administration), Ministry of Local Government
4	Mr. James Kanyangalazi	Kasungu District Commissioner
5	Mr. Peter Jimusole	Mchinji District Commissioner
6	Mr. Raymond Nkhonya	Director of Administration, Mchinji District Council
7	Mr. Tom Chiphwantha	District Lands Officer, Kasungu District Council
8	Mr. Jonas Thomu	Assistant District Lands Officer, Kasungu District Council
9	Mr. Hendrix Tonde	Head of Human Resources and Administration, Press Agriculture Limited
10	GVH Chidazi	Traditional leader, T/A Kapondo's area, Mchinji
11	GVH Mphako	Traditional leader, T/A Kapondo's area, Mchinji
12	GVH Chivala	Traditional leader, T/A Kapondo's area, Mchinji
13	GVH Chagwilila	Traditional leader, T/A Kapondo's area, Mchinji
14	Mr. Raphael Chibwinja (and members of Rusa Estate Committee - 7 members)	Chairperson, Rusa Estate Committee
14	Inhabitants of Zikomo Estate (47 households)	T/A Mwase's area, Kasungu

