

# COMMUNITY GUIDE ON DEVELOPMENT INDUCED DISPLACEMENT AND RESETTLEMENT IN ZIMBABWE



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Zimbabwe Environmental  
Law Association (ZELA)



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# Background to the Community Guide

The Zimbabwe government is on a drive to lure Foreign Direct Investment (FDI) and local investment by Zimbabweans in the diaspora. The FDI is targeted at providing a spring board for the socio-economic transformation of the economy. The government's priority areas for FDI are infrastructural projects within the energy, mining and agricultural sectors. Whilst these developmental projects have widened opportunities for socio-economic development, they have not given adequate attention to the rights, interests and well-being of communities who are likely to be displaced and relocated to give way to these developments. Displacement induced by large scale investments and the subsequent resettlement affect communities' access to land, land tenure patterns and consequently tenure security. Clearly, these developmental projects endanger communities' land-related environmental, economic, social and cultural rights and benefits as enshrined in the Constitution of Zimbabwe. Unfortunately, increasing focus and publicity has been given to direct victims of forced relocation and displacement. This has ignored people living in the vicinity of developmental projects, or downstream of these projects who face indirect dangers and environmental hazards. Their livelihoods and socio-cultural integrity is also directly and indirectly adversely affected by these projects. Without doubt, the rights, well-being and interests of these downstream communities for purposes of protection.

In relation to forcible displacement, the World Bank Environment Department (WBED) estimated that about 10 million people are displaced annually as a result of dam construction, urban development, and transportation and infrastructure developmental programs. These projects are not the only ones that lead to displacement and resettlement; there are various other developmental projects that have led to forcible relocation, displacement and uncompensated evictions. Zimbabwe's socio-economic history provides ample historical and contemporary evidence of developmental projects significantly affecting the livelihoods of both host communities and downstream communities. For instance, the Gwembe Tonga community in the Zambezi valley were relocated between 1957 and 1958 to Binga to pave way for the construction of the Kariba dam. In 2009, the Marange community in Chiadzwa, Manicaland were relocated from Chiadzwa to



Arda Transau to pave way for large scale mining of diamonds by both local and foreign mining investors. Other example includes the relocation of smallholder farmers in Chisumbanje to pave way for the construction of the Greenfuel Ethanol project. Communities in Masvingo rural were also relocated to other nearby areas between 2010 and 2015 to enable the construction of the Tokwe Mukosi Dam in Masvingo Province.

These examples provide ample testimony that developmental projects across different sectors have the potential to displace communities. These projects have not directly benefitted host communities as envisaged by the government. A number of issues thus arise with regards to the impacts and implications of development induced displacements. These issues include;

1. What are the important principles that should be taken into account before the eviction and/or relocation of communities by developmental projects?
2. What factors and criteria should be considered when determining appropriate compensation, remediation and restitution to communities subjected to forcible relocation and displacement?
3. Under what social, economic and cultural conditions should developmental projects and/or associated forcible resettlement and relocations proceed?
4. How effective are the compensation, displacement and resettlement redress mechanisms and how can they be effectively utilised to the benefit of affected communities?

These questions form the backbone of this Community Guide on Development Induced Relocation and Resettlement. The guide is conscious of the fact that in some circumstances, relocation of communities may be inevitable. In such circumstances it is important to take into account a number of basic principles as reflected in various constitutional provisions, regional and international best practice that are aimed at addressing the adverse effects of displacement and resettlement. These principles include the following:

- Involuntary displacement and resettlement should be avoided;
- Where involuntary displacement and resettlement is unavoidable, all legal principles should be abided by and people affected by it should be compensated fully and fairly for lost assets.

- Involuntary displacement and resettlement should be conceived as an opportunity for improving the livelihoods of the affected people and thus, must be undertaken with due care and caution; and
- All people affected by involuntary displacement and resettlement should be consulted and involved in their resettlement planning so as to ensure the mitigation of adverse effects as well as the benefits of resettlement are acceptable, appropriate and sustainable.

It is against this background that this community guide seeks to highlight critical areas that could be taken into account before introducing developmental projects that may lead to displacement and eventual resettlement of host communities. Displacement and resettlement should effectively result in the restoration and or improvement in the livelihoods of the people affected by the project. The community guide is premised on two complementary publications by the Zimbabwe Environmental Law Association (ZELA): These publications are ‘The Impact of Large Scale Investments on the Livelihoods of Smallholder Farming Communities: The cases of Green Fuels and Tongaat Hullett in Zimbabwe’; and ‘The Legal, Policy and Institutional Frameworks for Community Land Rights in the wake of developmental projects in Zimbabwe: Challenges and Way Forward’. These documents provide lessons and guidance that can aid various stakeholders to promote the sustainable benefits whilst mitigating the adverse of those investments.

# Contents

Acknowledgements	3
Background to the Community Guide	4
Acronyms	8
Glossary of Terms	9
1. Introduction	10
2. Purpose of this community guide	11
3. Basis for land acquisition, displacement and resettlement	12
4. Steps to be followed in the displacement and resettlement process	15
5. Human rights that should be safeguarded during displacement and resettlements	17
6. Legal Framework for Land Acquisition and Compensation	19
7. How communities can enforce their rights in the event of Development Induced Relocation and Resettlement	20
8. Summary of projects in Zimbabwe that have displaced and resettled communities	22
9. Court cases in Zimbabwe on displacement and relocation	24
10. Where can communities go for legal advise	25
11. References	26

# Acronyms

FDI	Foreign Direct Investment
ZELA	Zimbabwe Environmental Law Association
WBED	World Bank Environment Department

# Glossary of Terms

**COMPENSATION:** Payment in cash or in kind for an asset or a resource that is acquired or affected by the establishment of a project at the time the asset needs to be replaced.

**HOST COMMUNITY:** People living in or around the vicinity of a developmental project and nearby areas. For the purposes of this guide, these people face the real risk of forcible relocation, resettlement and displacement by developmental projects.

**DISPLACEMENT:** Loss of income streams or means of livelihood resulting from land acquisition or obstructed access to resources (land, water, or forest) as a result from the establishment of a developmental project.

**INVOLUNTARY RESETTLEMENT:** This is resettlement that is undertaken without the free, prior and informed consent of the displaced persons or if they give their consent without having the power to refuse resettlement.

**LAND EXPROPRIATION:** Process whereby the state requires a person, household, or community to relinquish all rights to land that it occupies or otherwise uses, sometimes in return for compensation (at times, the compensation is not given).  
**Replacement Cost:** The value of compensation for lost assets calculated at full replacement cost needed to get similar assets replaced.

**STAKEHOLDERS:** Any and all individuals, groups, organizations, and institutions interested in and potentially affected by a project or having the ability to influence a project.

**VULNERABLE GROUPS:** People who by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may be more adversely affected by resettlement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits.

# 1. Introduction



Most developmental projects that have been implemented and may be implemented in the near future in Zimbabwe possess the risk of impacting not only on livelihoods, but also on the socio-economic and socio-cultural well-being of host communities. Clearly, such large scale developmental projects results in both positive and negative implications to both host and downstream communities. In most instances, the negative implications arising from the development induced displacement and resettlement are unavoidable. The method of engagement with various actors, interacting with various stakeholders and other forms of consultations that take place significantly impacts on host communities. For this and other reasons, it must be accepted that displacement and resettlement should in all earnest be minimised, properly planned and managed so that the host community reaps the short and long-term economic, social, environmental and cultural benefits. Lessons should always be learnt from previously undertaken developmental projects in Zimbabwe which disenfranchised host communities, endangered their livelihoods and adversely impacted on their social, cultural and economic well-being.

## 2. Purpose of this community guide



The purpose of this community guide is to equip communities with knowledge, skills and information on how the process of development induced displacement and resettlement should be handled. It further provides information on how communities can demand accountability from local level, regional and national regulatory authorities to their benefit. This guide indicates the strategic areas that stakeholders in particular communities should be cognizant of when any developmental project is introduced to them. Another target for this guide are all interested stakeholders who advocate and anticipate desired positive outcomes. The key outcome of any large scale development project must be to improve the livelihoods of the affected host communities and harness various other benefits to the nation.

### 3. Basis for land acquisition, displacement and resettlement



Zimbabwe has several pieces of legislation that have an indirect bearing on the land tenure and land rights of host communities. The laws that govern development induced displacement and relocation are as follows;

- i. The Constitution of Zimbabwe
- ii. Rural District Councils Act<sup>1</sup>
- iii. Mines and Minerals Act<sup>2</sup>
- iv. Communal Lands Act<sup>3</sup>
- v. Land Acquisition Act<sup>4</sup>

Importantly, Zimbabwe's Constitution provides for the recognition and protection of private property rights<sup>5</sup>. Property is defined in section 71 of the Constitution as

1 Chapter 29:13

2 Chapter 21:05

3 Chapter 20:04

4 Chapter 20:23

5 Constitution of Zimbabwe (No. 20) Act, 2013.



‘any description and any right or interest in property’ which is thus broad enough to include land. Interestingly, the definition of property includes not rights in other property such land, but also an interest in other property.

Section 71<sup>6</sup> of the Constitution states that no person may be compulsorily deprived of their property except in terms of the law. The right to property can be taken away for reasons such as ‘defence, public safety, public order, public morality, public health or town and country

planning’ or generally if it is deemed such action would be beneficial to the community. and where the deprivation is necessary for a purpose beneficial to the community. The law further requires the acquiring authority give notice of the intention to acquire the property to everyone whose interest or right in the property would be affected by the acquisition. The provision requires the acquirer to pay fair and adequate compensation for the acquisition before acquiring the property or within a reasonable time after the acquisition. It is important to note that where the property in question is agricultural land, compensation may not be paid and the acquisition is done in terms of section 72<sup>7</sup>.

In Zimbabwe, RDCs are expected to undertake the management of customary land and resources within their boundaries and this mandate is provided for in the Communal Land Act. Rural District Councils are responsible for the day to day administrative and development planning authority in all of Zimbabwe’s rural or communal areas. The Rural District Councils also have the power to issue permits for the occupation, use, access and management of customary land within their jurisdictions<sup>8</sup>. The power to issue permits corresponds with the power to compulsory acquire property with the minister’s consent as per section 78 of the RDC Act.

Constitutional compulsory acquisition of land is also supplemented by section 26 of the Mines and Minerals Act<sup>9</sup>. Section 26 (a) of the Mines and Minerals Act states that all state land and communal land is land that is open to prospecting for minerals. This provision gives mining prominence to all other activities that can be occurring on such land. The Mines and Minerals Act arguably has some safeguards in place aimed at protecting communities in instances that mining operations are established on customary land. Section 31 (1) of the Act prevents

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6 Section 71 deals with how any kind of property, including land that is not agricultural land, may be acquired by the state. The state is required to pay compensation, and the acquisition may be challenged.

7 Section deals with how agricultural land may be acquired by the state. Compensation is not paid for loss of land under this section, and the acquisition may not be challenged on the grounds of discrimination.

8 Section 78 of the RDC Act.

9 Chapter 21:05.

prospecting on ‘communal land without the consent of the occupier of the land concerned ‘or some person duly authorized thereto by the President and written consent of the RDC.

Specific legislation on land acquisition also exists in the form of the Communal Land Act<sup>10</sup> and the Land Acquisition Act<sup>11</sup> which lays out the procedures that would be followed when land is compulsory acquired. Communal Land Act vests use rights with communities residing on the communal land irrespective of them not having ownership rights. Communities, therefore, have usufruct rights over the communal land in question, that is land use and management rights for agriculture, housing and pasture. The Communal Land Act is also conscious of the idea that in some instances there may be a need for such land to be used for other land uses other than communal residence or agriculture. In those instances, consultations are mandatory with the entity within whom the power to allocate land is given, in this case, the RDCs working in conjunction with traditional leaders<sup>12</sup>.

Importantly, the Communal Land Act sees compensation as being adequate where one is given the right to occupy or use alternative land on its own. Section 12 seeks to particularly address the issue of compensation of the parties whom would have been dispossessed or suffered a diminution of the right to use and occupy the communal land. Compensation is limited to land that would have been taken to form state land, to advance communal land development or providing water rights. The discretion to negotiate the form and type of compensation and when it will be paid is left to the occupiers and development projects companies or to the Administrative Court in the event of them failing to agree.

In the exercise of the state’s powers to compulsory acquire land, certain principles must be taken note of from the founding values of the Constitution. These values are provided in Section 3 of the Constitution and include the principles of good governance, rule of law, equitable sharing of resources, gender equality and supremacy of the Constitution. The Constitution already has some safeguards that it mandates such as acquisition should be through a general law that applies to everyone. These values place reasonable constraints on the power of the government to compulsorily acquire land whilst simultaneously giving the populace confidence as to their land rights within the judicial system.

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<sup>10</sup> Chapter 20:04.

<sup>11</sup> Chapter 20:10.

<sup>12</sup> Communal Land Act, Section 8 (2).

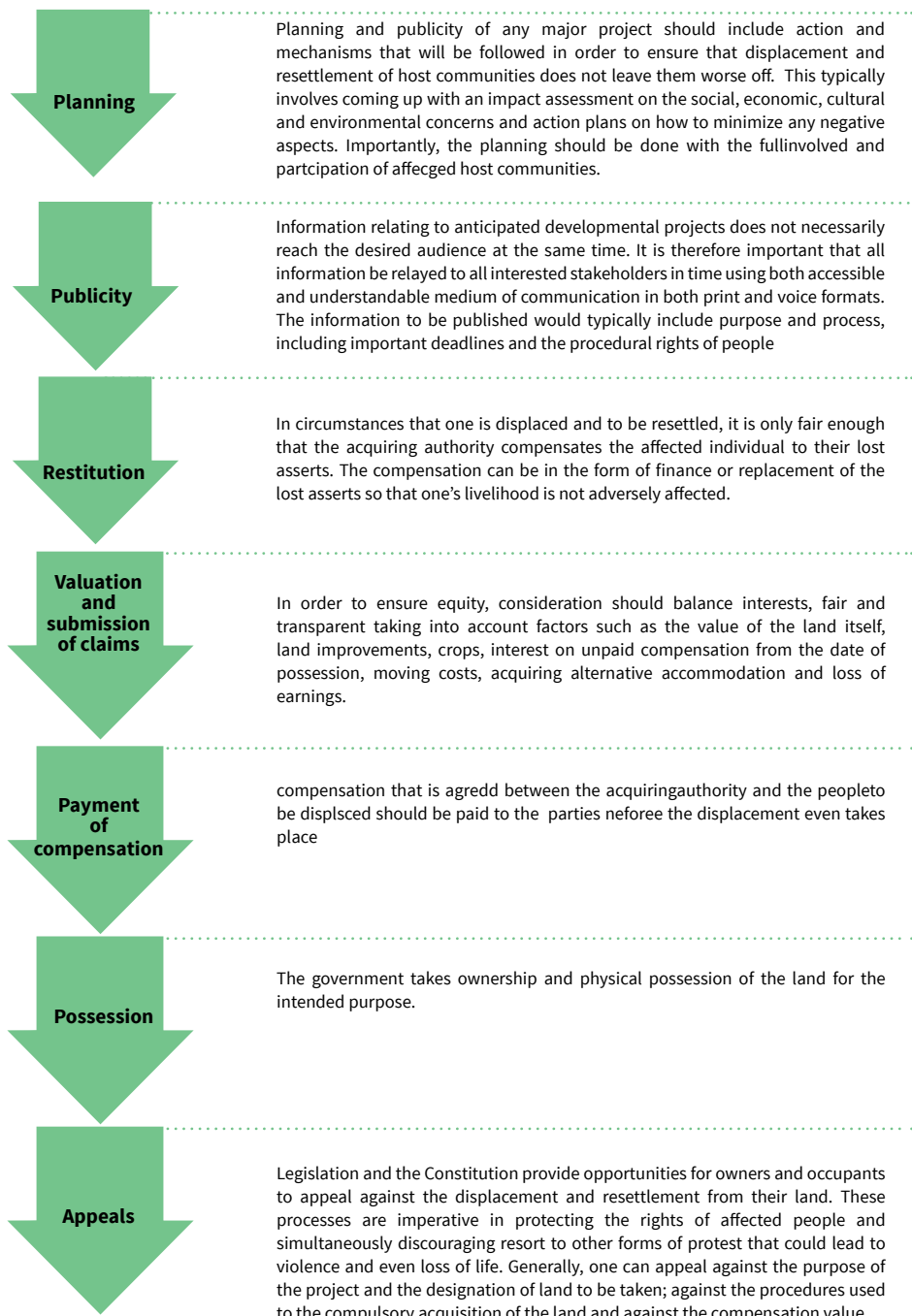
## 4. Steps to be followed in the displacement and resettlement process



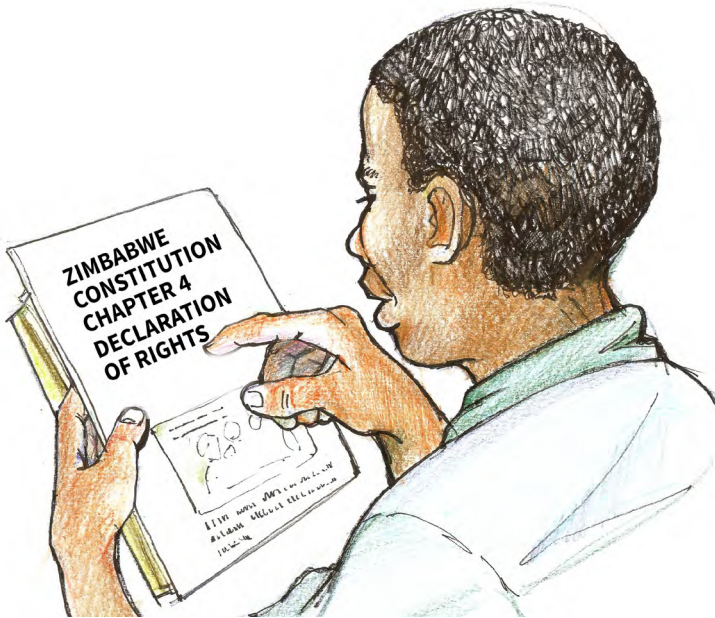
*Vehicle calling community members to a meeting with the investor.*

The steps that should be followed in a proper development induced relocation and resettlement are:

- i. Planning
- ii. Publicity
- iii. Restitution
- iv. Valuation
- v. Compensation
- vi. Possession
- vii. Appeals



## 5. Human rights that should be safeguarded during displacement and resettlements



The displacement and resettlement of communities inevitably leads to the need to put in place important safeguards to ensure that basic fundamental human rights are not violated in the process. Zimbabwe is a signatory to various international and regional legal instruments that protect human rights. These instruments include the Universal Declaration<sup>13</sup> of Human Rights, International Covenant on Economic, Social and Cultural Rights<sup>14</sup>, Convention on the Rights of the Child<sup>15</sup>, and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa amongst others<sup>16</sup>. These legal instruments have now been further domesticated and

13 <http://www.un.org/en/universal-declaration-human-rights/>

14 [https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch\\_iv\\_03.pdf](https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch_iv_03.pdf)

15 [https://www.unicef.org/crc/files/Rights\\_overview.pdf](https://www.unicef.org/crc/files/Rights_overview.pdf)

16 <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-personsafrica>

complement protections in our constitution and various legislations that guarantees respect for the right to human dignity<sup>17</sup>, right to personal security<sup>18</sup>, freedom from torture or cruel, inhuman or degrading treatment or punishment<sup>19</sup>, equality and non-discrimination<sup>20</sup>, right to privacy<sup>21</sup> access to information<sup>22</sup>, language and culture<sup>23</sup>, right to administrative justice<sup>24</sup>, property rights Ibid<sup>25</sup>, rights to agricultural land<sup>26</sup>, environmental rights<sup>27</sup>, freedom from arbitrary eviction<sup>28</sup>, right to education<sup>29</sup>, right to health care<sup>30</sup>, and right to food and water<sup>31</sup>, among other rights.

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17 Constitution of Zimbabwe, Section 51.

18 Ibid, Section 52

19 Ibid, Section 53.

20 Ibid, Section 56

21 Ibid, Section 57

22 Ibid, Section 62

23 Ibid, Section 63

24 Ibid, Section 68

25 Ibid, Section 71.

26 Ibid, Section 72.

27 Ibid, Section 73.

28 Ibid, Section 74.

29 Ibid, Section 75.

30 Ibid, Section 76.

31 Ibid, Section 77.

## 6. Legal Framework for Land Acquisition and Compensation



The legal framework that exists in any country with regards to displacement and resettlement is of particular importance. In Zimbabwe, the legislation and policies make reference to issues related to consultation, land expropriation and compensation for those persons that maybe the affected by the establishment of the developmental project. The key issue that has to be taken into account is monitoring and enforcing compliance by the laws that are in existence with regards to developmental projects. The various key areas that communities require guidance and information include:

- Land titling and registration procedures;
- The states powers to compulsorily acquire land and associated compensation;
- Procedures for assessing compensation, values and the schedule for making compensation payments;
- Legal and administrative procedures applicable, including the appeals process and the normal time for such procedures;
- Laws and regulations relating to the agencies responsible for implementing resettlement and those related to land compensation, consolidation, land use, environment, water use, and social welfare.



## 7. How communities can enforce their rights in the event of Development Induced Relocation and Resettlement



*Investors negotiating adequate compensation with affected community members before relocation*

Investors differ in terms of how they uphold human rights and the rights of host communities in the case of development induced relocation and resettlement. The type of investor therefore determines the strategies that the communities will use to engage each of the investors. However, in some cases, the situation is complicated if it involves land ownership by other government agencies.



## The responsible investor

A responsible investor is one who is willing to uphold communities' rights through engagement, valuation of developments, entering into contracts, compensating and relocating the affected communities. In such instances, the community can through their representative hold dialogue meetings and discuss the way forward. In most cases, discussions with investors in terms of compensation and or relocation are done in the presence of Rural District Council officials. Their involvement is necessary when it comes to following up on commitments by the investor.

## The Irresponsible Investor

An irresponsible investor is one who does not uphold community rights or is unwilling to engage with communities prior to resettlement. The investor may scuttle efforts for engagement by roping in the elite and other corrupted officials to avoid accountability. Such investors are prepared to finance the use of brute force to drive communities off their land. In such circumstances, the communities may have to pursue the legal routes to bring the investor to order. The legal routes includes among other things approaching judicial courts seeking interdicts for relocation, approaching human rights lawyers and public interest lawyers. However, what communities need to note is that the legal route may take time due to the court processes. Interestingly, if the applicants win, similarly affected households that did not pursue the legal route may not always benefit from the judgement.

## 8. Summary of projects in Zimbabwe that have displaced and resettled communities

Project	Year	Number of households/ people affected	How communities were resettled
Kariba Dam Construction	1954-1957	57,000 <sup>32</sup>	<ul style="list-style-type: none"> <li>•Communities were relocated to Gokwe, Lisulu and Binga.</li> <li>•No compensations was given to affected members.</li> </ul>
Tongatt-Hullels			<ul style="list-style-type: none"> <li>•Communities were displaced without compensation.</li> <li>•The displaced communities were given small irrigation plots and are now out growers.</li> </ul>
Murowa Diamond	2007 - 2015	141 families <sup>33</sup>	<ul style="list-style-type: none"> <li>•Communities were relocated together with their graves. When communities went to the relocated area, they found fields that had already been planted.</li> </ul>
Diamond Mining Companies in Chiadzwa	2011	4321 families <sup>34</sup>	<ul style="list-style-type: none"> <li>•Some community members were relocated to ARDA Transau.</li> <li>•Displaced families got 3-bedroomed house, 11 hectares of arable land including 1 hectare earmarked for irrigation and a once off US\$1 000 disturbance allowance.</li> <li>•reckon that they have lost between US\$25 000-30 000.</li> </ul>

32 T Mashingaidze Beyond the Kariba Dam Induced Displacements: The Zimbabwean Tonga's Struggles for Restitution, 1990s–2000s' *International Journal on Minority and Group Rights* 20 (2013) 381–404.

33 Vanclay, F and Esteves, A.,(eds). 2011. *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*, Edward Elgar Publishing.

34 Madebwe, C., Madebwe, V. Mavuso, S. 2011. Involuntary displacement and resettlement to make way for diamond mining: the case of Chiadzwa villagers in Marange, Zimbabwe, *Journal of Research in Peace, Gender and Development* (ISSN: 2251- 0036) Vol. 1(10) pp. 292-301.

Project	Year	Number of households/ people affected	How communities were resettled
Green Fuels	1,733 <sup>35</sup>		•Communities were displaced without compensation. Their fields were destroyed and there was no compensation. Communities were given 0.25 hectares of irrigated land
Tokwe Mukosi			



*Investor, authorities and communities discussing the map of project area*

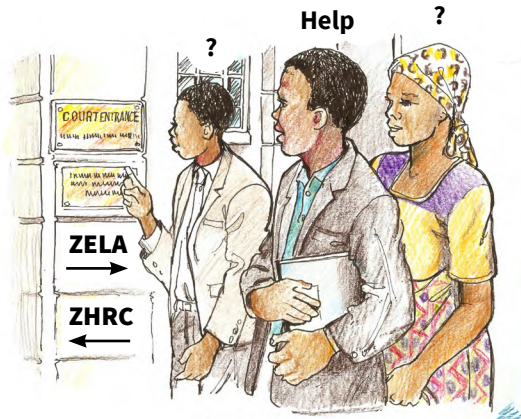
35. Chiweshe M K and Mutopo P 'National and International Actors in the Orchestration of Large-scale Land Deals in Zimbabwe: What's in It for Smallholder Farmers?' OSSREA 2014.

## 9. Court cases in Zimbabwe on displacement and relocation



- I. *Davies and Others v Minister of Lands, Agriculture and Water* 1996 (9) BCLR 1209 (ZS). [on acquisition of land rights and procedures]
- II. *Davies and Others v Minister of Lands, Agriculture and Water* 1996 (9) BCLR 1209 (ZS).
- III. *Hewlett v Minister of Finance and Another* 1981 ZLR 571 (SC). [on compensation for lost rights]
- IV. *Malvern Mudiwa and Others v Mbada Mining Private Limited and Others* HC 6334/09. [rights of communities against mining investors]
- V. *Marange Development Trust v The District Administrator Mutare District and Others* HC 12237/16. [rights of communities as enforceable against RDCs]
- VI. *Mike Campbell (Pty) Ltd v Minister of National Security Responsible for Land, Land Reform and Resettlement* (SC 49/07).

## 10. Where can communities go for legal advice



There are various organisations that can provide communities with free legal advice and assistance in the event of development induced displacement and resettlement. These organisations include;

### **The Zimbabwe Human Rights Commission**

49 Main Street  
Bulawayo

### **The Zimbabwe Human Rights Commission**

144 S Machel Avenue  
Harare

### **Zimbabwe Land Commission**

### **Zimbabwe Lawyers for Human Rights (ZLHR)**

105 Baines Avenue  
Harare

### **Zimbabwe Environmental Lawyers Association**

26B Seke Road  
Hatfield  
Harare

# 11. References



*Where to get information*

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2. Chiweshe M K and Mutopo P ‘National and International Actors in the Orchestration of Large-scale Land Deals in Zimbabwe: What’s in It for Smallholder Farmers?’ OSSREA 2014.
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4. Constitution of Zimbabwe Amendment (No.20) Act 2013.
5. Development-induced displacement and resettlement Author: Jason Stanley.
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8. Land Acquisition Act [Chapter 20:10].
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