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With the support of FIAN International, which is an International Human Rights Organization that advocates for the realization of the Right to Food and Nutrition.

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Economic, Social and Cultural Rights violations in Malawi: The case of forced eviction of community members from Phanga Village in Dedza district.

Introduction

1. Between April and July 2014, more than seventy-five families composed of 600 people were forcefully evicted from their land in Phanga Village, Traditional Authority Masasa in Dedza District. They were relocated to 200 km away from their land in Mchinji District. The community members were deceived by their own chiefs who allegedly contacted Crown Plantations, a South African Company that bought the land where they used to live, cultivate and keep their livestock.
2. Crown Plantations,[1] in search for land for farming (including poultry) approached traditional leaders to buy land. In total they were 9 chiefs (village heads) in Phanga Village. In a secret move, the Traditional Authority[2] consulted only four chiefs who were on his side and made deals with the client. At this stage, the community members did not know anything about their eviction. However, they started seeing strange faces around their area and they asked a lot of questions to their chiefs about those strangers but did not get answers.
3. Prior to the eviction, chiefs summoned their subjects to come for a census that was intended to register names for maize donations[3] from the government. The community members willingly came for this exercise and gave their names hoping that they would receive maize. However, when they were asked about the purpose of the names, the chiefs informed them that they would receive maize from the government. The chiefs informed community members that it was a way of estimating how much maize would be needed for the village. The intention was to get the number of community members from the most fertile land to move away. Community members were later surprised to hear that it was about their land being taken away. The other 5 chiefs, who did not benefit from the land deal and the people themselves spread the news to the entire village.
4. Weeks later, the chiefs informed all those who registered for maize donation that they are supposed to move away to another place allocated to them by the government. The community members were surprised and started asking questions about the relocation to their chiefs. Few weeks later, they saw a small plane and a helicopter patrolling the area. They were not sure what the motivation of the patrol was and some people[4] started to reveal that part of the community's land had been sold.
5. When news broke out that the village land was sold to Crown Plantations, the Traditional Authority and the four chiefs informed the people that they are supposed to move to another place. In 2014, all customary land in Malawi was vested in the President. This means that the people could only use it as trustees and chiefs were representatives of the President. The chiefs were only in charge on behalf of the ultimate authority of the President. Although the affected community members had customary right over the land, they were protected by the 1994 Constitution[5] in the article 44-4 which stipulate that

[1] Crown Plantations is a South African Company which had already established itself in some parts of the country e.g. Lilongwe-Blantyre MI Road along Zalewa near Blantyre. The Company also does poultry farming. The company had plans to go to other villages too within the district, but Phanga was the first village.
[2] He is supreme and head of all chiefs at the Area Development Committee level.
[3] The writing of names created a lot of expectations among the community members as they looked forwarded to this help.
[4] The 5 chiefs and other community members who knew about the deal and who spread the news to the entire village.
[5]Food and Agriculture Organization, Malawi's Constitution of 1994 with Amendments through 1999, https://faolex.fao.org/docs/pdf/mlw136089.pdf, consulted on 06 August 2024

"*Expropriation of property shall be permissible only when done for public utility and only when there has been adequate notification and appropriate compensation*…"

6. In turn, community members resisted and reacted to the move. They obtained a temporary court injunction which, unfortunately expired within three weeks. In an interview then, community members mentioned that they could not contribute again in the legal battle because of their financial limitations. The forced eviction started immediately, because after the announcement from the Traditional Authority and the chiefs that the land has been sold to Crown Plantations, community members had little time to harvest what was in their land (maize, beans, pigeon peas, sugar cane, pumpkins etc…) and this company started immediately farming in the land of affected community members. Since the affected community members did not have any more the land to cultivate, they opted to move to the district of Mchinji.
7. Community members were re-settled in Mchinji District by the government. They moved to Mchinji on public transport and they used their own means to travel to the new place. The compensation was done to few lucky families and it was calculated by the district. The compensation was in form of money ranging from MK15,000 (8$) to MK50,000 (28$). This was done through each family's village head. It was not clear what criteria was used to select these families.

Human Rights Violations

After the forced eviction, a number of human rights violations occurred as outlined below:

The Right to Food and Nutrition

8. Directly after the forced eviction, affected community members did not have enough food because the harvest of their crops was precipitated by the taking over of their land by Crown Plantations. The eviction and land grabbing negatively impacted the affected community members' lives and changed their way of living. This means that they could no longer cultivate the same crops to make culturally accepted meals. This situation is due to the fact that the land in the district of Mchinji is less fertile. Hence, affected community members are no longer cultivating the crops they used to cultivate such as maize, beans, pigeon peas, sugar cane, pumpkins etc… and they cultivate today new crops such as groundnuts. The change of culturally accepted meals which are healthy and nutritious has increased wasting (low weight-for-height), stunting (low height-for-age) and underweight (low weight-for-age) among children. Loss of fertile agricultural land has led to reduced crop yields and the affected community members can't feed themselves adequately. Malnutrition has increased among adults and this situation affects significantly pregnant and breastfeeding women.

The Right to Land

9. The affected community members faced unlawful land grabbing and forced eviction, resulting in significant violations of their right to land. They lost a fertile land without adequate compensation although this is provided in the 1994 Constitution of Malawi in the article 44-4. The land was given to a private company although the Constitution of Malawi in the same article highlights that expropriation of property shall be permissible only when done for public utility. Affected community members did not have enough financial means to legally defend their land in the court of law. Today affected

community members have less size of land compare to the land they had before. This is because they used to live and cultivate on 45 hectares of land and today, they have only about 22 hectares.

The Right to Water

10. The right to water and sanitation was also heavily compromised as affected community members were forcibly moved to another area which has shortage of water. One member complained that clean drinking water was not available. Some efforts were being made by affected members to drill boreholes in the new area. However, access to enough water is still problematic because affected community members do not have water for irrigation.

The Right to Health

11. After the forced eviction, in the new area of relocation in Mchinji District, the lack of access to clean water, sanitation, and adequate shelter has led to deterioration in overall health and increased vulnerability to illnesses such as malaria, diarrhea etc... Affected community members did not have mosquito nets for protection against malaria infection for instance. Today heath centers are far away from households and community members have no financial means to travel for treatment. This situation is particularly difficult for pregnant women who can't walk for a long distance to health centers.

The Right to Adequate Housing

12. While the houses of affected community members have been destroyed, no decent houses were available as people moved into the new area. Since poverty has increased among affected community members, they are unable to build adequate houses. This situation is caused also by the fact that materials for building are expensive and until today the quality of houses are compromised.

Women's Rights

13. Although men can move and find a work somewhere else, women stay at home and care for the children and elderly. They are mostly attached to the land to ensure that crops are well maintained to be able to have a healthy meal on the table. Additionally, women grew vegetables and could sell surplus of the harvest and have some financial means to ensure the wellbeing of their families. After the forced eviction, they have been emotionally affected by not being able to support their families as they used to do. The fact of not having enough food and changing of culturally accepted meals affected pregnant and breastfeeding women. Equally, the fact that heath centers are far, it is very difficult for pregnant women to work a long distance.

The Right to Education

14. Directly after the eviction children did not attend school as parents had to find a place to settle first. This situation has been exacerbated by the increased poverty among families and many children are not going to school as their parents can't afford to pay school fees, buy uniform and pay for school materials. In addition, the school is far from the community resettlement place and this situation continue to push children out of school. Most of the children do not attend higher education since the parents can't afford the cost.

Demands of the Affected Community Members

15. The affected community members are asking for:
    - Legal protection of customary rights over their land
    - Compensation of all damages caused by forced eviction
    - Improvement of the soil quality
    - Water for irrigation
    - Nearby school and financial support for school fees, uniform and school materials
    - Nearby health centers and free access to health services
    - Adequate houses

Recommendations

16. Malawian state must:
    - Ensure legal protection of customary rights over the land
    - Compensate adequately all affected community members for the damages caused by the forced eviction
    - Improve the quality of the soil to enable the affected community members to cultivable culturally accepted crops
    - Provide water for irrigation
    - Build a nearby school and provide financial support to the affected community members to be able to deal with school fees, uniform and school materials
    - Build nearby health centers and ensure free access to health services
    - Provide financial support to affected community members to build adequate houses