

Spring 2007

Mass Forced Evictions and the Human Right to Adequate Housing in Zimbabwe

Sean Romero

Follow this and additional works at: <http://scholarlycommons.law.northwestern.edu/njihr>

Recommended Citation

Sean Romero, *Mass Forced Evictions and the Human Right to Adequate Housing in Zimbabwe*, 5 *Nw. J. INT'L HUM. RTS.* 275 (2007).
<http://scholarlycommons.law.northwestern.edu/njihr/vol5/iss2/5>

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Northwestern Journal of International Human Rights by an authorized administrator of Northwestern University School of Law Scholarly Commons.

Mass Forced Evictions and the Human Right to Adequate Housing in Zimbabwe

Sean Romero*

¶1 A formidable problem faces urban populations in developing countries today, as seventy-five percent “live[] in informal housing: dwellings which have been constructed without the required permission, without the full title to land . . . [but] provide shelter to 1.5 billion people, or a quarter of the world’s population.”¹ Zimbabwe contributes to these figures, and its most recent land reform program to “clean up” its cities – Operation Murambatsvina – has displaced over 700,000 men, woman, and children who lived in informal housing.² In its aftermath, over one-hundred thousand families were rendered homeless.³ Though the Government of Zimbabwe, under the rule of President Robert Mugabe, has recognized “the right of every one to an adequate standard of living for himself and his family, including [] food, clothing and housing,”⁴ it has done little to comply with its international obligations and rectify the humanitarian crises now facing a vast sector of its population.⁵

¶2 Notwithstanding that the majority of demolished dwellings were informal housing settlements and therefore illegal, the Government acknowledged that it could “either upgrade any ‘illegal’ settlements or resettle the people on other planned residential sites in line with international law.”⁶ The Government chose neither, and issued an enforcement order for the Operation five days after the demolitions in the capital City of Harare had already begun.⁷ The devastating consequences could have been minimized if

* 2007 J.D. Candidate, Northwestern University School of Law, 2004 B.A., cum laude, University of New Mexico. I would like to thank my friends and colleagues Emily Stewart and Jen Kim for their support throughout the editing process. I would especially like to thank my family for their encouragement throughout law school. Comments on this piece may be sent to s-romero2007@law.northwestern.edu.

¹ THEO R.G. VAN BANNING, *THE HUMAN RIGHT TO PROPERTY* 85 (2002).

² U.N. Special Envoy on Human Settlements Issues in Zimbabwe, *Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina, 7, delivered to the U.N. Human Settlements Programme*, (July 22, 2005) (Anna Kajumulo Tibaijuka) available at <http://www.unhabitat.org/documents/ZimbabweReport.pdf> [hereinafter U.N. Report].

³ *Id.* at 85.

⁴ International Covenant on Economic, Social and Cultural Rights art. 11(1), G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966) (accession by Zimb. May 13, 1991) [hereinafter CESCR].

⁵ The U.N. Special Envoy estimates that “the total population indirectly affected by the Operation [is] 2.56 million.” U.N. Report, *supra* note 2, at 34.

⁶ HUMAN RIGHTS WATCH, “CLEAR THE FILTH”: MASS EVICTIONS AND DEMOLITIONS IN ZIMBABWE, A HUMAN RIGHTS WATCH BRIEFING PAPER 9 (2005), <http://www.hrw.org/backgrounder/africa/zimbabwe0905/zimbabwe0905.pdf> [hereinafter Human Rights Watch].

⁷ U.N. Report, *supra* note 2, at 58. The Operation began May 19 and the enforcement order was issued May 24, 2005.

relevant agencies had provided “genuine consultation with affected persons and groups”⁸ prior to the demolitions being carried out.⁹ This did not happen.

¶3 Though state-controlled newspapers have recently spun the Operation as a preemptive move to prevent a revolution “being planned and funded by . . . Western countries,” it is evident that the Government’s actions are consistent with its trend of “dismiss[ing] [human rights] allegations as part of a western neo-colonial conspiracy”¹⁰ Local non-governmental organizations (“NGO’s”) and human rights lawyers in Zimbabwe have reported that the Operation was largely a move to punish those who voted for the opposition party in March 2005¹¹ and to “prevent mass uprisings against deepening food insecurity and worsening economic conditions.”¹² Despite the conflicting rhetoric, it is clear that the Government has failed to comply with domestic and international obligations prohibiting forced evictions, including the right to adequate alternative housing, access to food, water, and health care¹³ for the six percent of its population adversely affected.¹⁴

¶4 This article analyzes the international and domestic legal doctrines implicated by the human rights violations arising from Operation Murambatsvina, namely the right to adequate alternative housing, and argues that international intervention is required to uphold the rule of law and assist Zimbabwe in recovery. Section I outlines the Government’s alleged rationale for the Operation, as well as the context, nature, and humanitarian consequences of the demolitions. Section II explores Zimbabwe’s international treaty obligations protecting individuals’ right to housing and prohibitions against forced eviction in an area of international law still under development.¹⁵ Sections III and IV evaluate Zimbabwe’s domestic doctrines and legal framework, and argues that although the Zimbabwe Constitution is informed by international human rights norms and Zimbabwean courts have conceded that “international law is . . . the law of [Zimbabwe],”¹⁶ applying its international obligations domestically is impractical because the judiciary has ceased functioning independently. Section V assesses whether the human rights abuses resulting from the Operation have reached the level of a humanitarian crisis that would justify direct international intervention, particularly in light of “the emerging norm of a [collective] responsibility to protect.”¹⁷ The article concludes with recommendations for international intervention in the form of assistance with implementing a sustainable recovery program, and a means of judicial recourse for the human rights abuses suffered by Zimbabweans at the hands of their government.

⁸ General Comment No. 4: The Human Right to Adequate Housing (Art. 11(1)), Report of the U.N. Committee on Economic, Social and Cultural Rights, 6th Sess., at para 8(a), U.N. Doc. E/1992/23 (1991) [hereinafter General Comment No. 4].

⁹ Human Rights Watch, *supra* note 6, at 19.

¹⁰ *Id.*

¹¹ *Id.* at 14.

¹² *Id.*

¹³ U.N. Report, *supra* note 2, at 7, 39. The U.N. Special Envoy estimates that 79,500 people over the age of 15 living with HIV/AIDS have been displaced, with basic HIV/AIDS services being discontinued as a result of the Operation.

¹⁴ Human Rights Watch, *supra* note 6, at 1.

¹⁵ Nick Dancaescu, *Land Reform in Zimbabwe*, 15 FLA. J. INT’L L. 615, 638 (2003).

¹⁶ *Barker McCormack Ltd. v. Gov’t of Kenya*, (1983) 2 Z.L.R. 72, 77.

¹⁷ A More Secure World: Our Shared Responsibility, Report of the High-Level Panel on Threats, Challenges and Changes, UN Doc. A/59/565 (2004), available at <http://www.un.org/secureworld/report.pdf> [hereinafter Shared Responsibility Report].

I. OPERATION MURAMBATSVINA

A. Context of the Operation

¶5 Since gaining independence from British colonialism in 1980, Zimbabwe has been governed by South African revolutionary Robert Mugabe and his Zimbabwe Africa Nationalist Union Patriotic Front (“ZANU-PF”) party. Initially viewed by the regional and international community as an exemplary South African country capable of successfully transforming from apartheid rule to a representative democracy, Mugabe’s Government was soon characterized by corruption, oppression, violence, and policies of wealth redistribution that caused skyrocketing inflation.¹⁸ The downward trend began in 1990 when President Mugabe implemented hyper-aggressive land reform programs allowing the Government to seize white-owned farms without compensation.¹⁹ The purpose of these programs was to redistribute white-owned commercial farms to native Zimbabweans who were formerly dispossessed and forbidden from owning property under the colonial regime.²⁰ Though land redistribution was necessary to overcome the inequitable ratio of white to black owned land, President Mugabe and the ZANU-PF failed to consider that “[w]hite commercial farmers produced 90% of the country’s food,”²¹ that the farming sector was the mainstay of exports and foreign exchange, and provided 400,000 jobs.²² Furthermore, dependence on untrained Black farmers to immediately fill this void was not feasible.²³

¶6 Coupled with cash handouts to war veterans in 1997²⁴ and military intervention in the Democratic Republic of the Congo from 1998 to 2002,²⁵ the “fast-track” land redistribution program provided the final blow from which the Zimbabwean economy has yet to recover. The economic collapse and redistribution programs effectively caused an exodus of unemployed Black rural farm workers into urban areas seeking employment. As demand increased, “legal” housing became unaffordable and the number of houses in violation of local building laws grew dramatically.²⁶ In addition, the informal business sector has been mushrooming because legitimate employment opportunities became unavailable.²⁷ The U.N. Special Envoy reports that prior to the demolitions “3 to 4 million Zimbabweans earned their living through informal sector employment, supporting another 5 million people, while the formal sector employed [] 1.3 million

¹⁸ *Why Gono’s ‘Turnaround’ Strategy May Fail*, ZIMB. STANDARD, Oct. 9, 2005 (Reporting that current inflation is at 264%, grossly up from the 8.49% inflation rate in 1985.); Lorna Davidson & Raj Purohit, *The Zimbabwean Human Rights Crises: A Collaborative Approach to International Advocacy*, 7 YALE HUM. RTS. & DEV. L.J. 108, 115-116 (2005).

¹⁹ A detailed analysis of the land reform program in Zimbabwe is beyond the scope of this paper. For an in-depth analysis see Hasani Claxton, *Land and Liberation: Lessons for the Creation of Effective Land Reform Policy in South Africa*, 8 MICH. J. RACE & L. 529 (2003).

²⁰ Dancaescu, *supra* note 16, at 619 (“700,000 black families lived on 16.2 million hectares, while 5,500 white farmers had rights to . . . 15.6 million hectares.”).

²¹ Claxton, *supra* note 19, at 541.

²² CIA World Factbook: Zimbabwe, <http://www.cia.gov/cia/publications/factbook/geos/zi.html#Econ> (last visited Oct. 19, 2005) [hereinafter CIA World Factbook].

²³ Claxton, *supra* note 19, at 541.

²⁴ U.N. Report, *supra* note 2, at 16.

²⁵ CIA World Factbook, *supra* note 22 (Zimbabwe’s involvement in the war “drained hundreds of millions of dollars from the economy”).

²⁶ Human Rights Watch, *supra* note 6, at 7.

²⁷ *Id.*; CIA World Factbook, *supra* note 23. (The CIA reports an unemployment rate of 70% in Zimbabwe).

people.”²⁸ Although the informal businesses “rarely pay[ed] taxes or fees in direct proportion to the services they use[d],” local authorities were collecting “substantial” revenues and fees from the informal activities.²⁹

¶7 In 1995, the government of Zimbabwe officially noted the illegal housing and informal business sector problem facing its urban areas in its initial State Party Report issued to the Committee on Economic Social and Cultural Rights (“ESCR Committee”).³⁰ In response, the ESCR Committee made clear its concern “about the precarious situation of persons living in illegal structures or unauthorized housing,” but insisted that “persons should not be subjected to forced evictions unless . . . done under conditions compatible with the Covenant.”³¹ In disregard of the ESCR Committee’s response and threats of tightened sanctions from the United States, United Kingdom and European Union,³² government officials announced in the capital city of Harare on May 19, 2005 their intention to destroy unlicensed businesses and “illegal” housing structures.³³

¶8 The notice given by local city council members and police “rang[ed] from [no notice to] one or two days to a week”³⁴ “to reorder the affairs which were put in place in a period of 20 years.”³⁵ Thereafter, police and security forces bulldozed informal trading shops, housing structures, and arrested illegal traders beginning in Harare and extending throughout the country – demolishing legal housing and businesses, and killing at least six people in the process.³⁶ The hundreds of thousands of evictees were loaded into trucks and shipped to transit camps that were inadequate to accommodate such large numbers of people.³⁷

B. Human Rights Abuses

¶9 The Operation has further crippled Zimbabwe’s economy, as well as its social and political structures, but the most hard-felt impact has been the human rights abuses directly inflicted on its most vulnerable population – those already living in poverty and barely making a living from the informal business sector; HIV/AIDS patients left with no access to treatment; school aged children having their educations disrupted; and the elderly left homeless with no support. As one victim of the Operation reported to an Australian news source: “‘ZANU-PF has killed us’ . . . as he explains that his shop was destroyed in the demolitions, and now he’s supporting his family – including a disabled

²⁸ U.N. Report, *supra* note 2, at 17. The U.N. Special Envoy also reports that the informal sector grew from 20% in 1986 to 40% by 2004.

²⁹ *Id.* at 22.

³⁰ Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Report: Zimbabwe, sec. 100(i), U.N. Doc. E/1990/5/Add.28 (1995) [hereinafter Zimbabwe’s State Party Report] available at <http://www.unhchr.ch/tbs/doc.nsf>. These reports are the primary way the ESCR Committee monitors compliance to provisions of the CESCR. State parties to the International Covenant on Economic, Social and Cultural Rights are required to send periodic reports to the ESCR Committee in accordance with Articles 16 and 17 of the CESCR.

³¹ Concluding observations of the Committee on Economic, Social and Cultural Rights: Zimbabwe, para. 13, U.N. Doc. E/C.12/1/Add.12 (1997), available at <http://www.unhchr.ch/tbs/doc.nsf>.

³² See Baffour Ankomah, *Zimbabwe: A nation of many surprises*, NEW AFRICAN, Oct. 1, 2005, at 52.

³³ Human Rights Watch, *supra* note 6, at 12.

³⁴ *Id.*

³⁵ Innocent Mawire, *Clean-Up Violated Basic Human Rights*, ZIMB. INDEPENDENT, July 31, 2005.

³⁶ Human Rights Watch, *supra* note 6, at 13.

³⁷ Augustine Mukaro, *Showdown Looms Over Human Rights*, ZIMB. INDEPENDENT, Sept. 23, 2005.

daughter – on about \$50 a month.”³⁸ This man, however, is fortunate not to have had his home destroyed as “thousands of families were left unprotected in the open in the middle of Zimbabwe’s winter . . . [and] families [] removed to transit camps . . . had no shelter or cooking facilities and minimal food supplies, and sanitary facilities.”³⁹

¶10 Deriving their numbers from “official” governmental sources, the U.N. Special Envoy reported that 92,460 homes had been demolished, affecting 133,543 families, and totaling nearly 569,685 individuals being rendered homeless.⁴⁰ The Envoy also reported that approximately 32,538 informal business structures were destroyed, leaving 97,614 individuals unemployed. These numbers do not include an estimated 2.56 million people “whose livelihoods are indirectly affected by, for example, loss of rental income and the disruption of highly integrated and complex networks involved in the supply chain of the informal economy.”⁴¹ Twenty percent of those directly affected are living with no shelter and have nowhere to go, another twenty percent have been forced into “transit camps” in rural areas, and the remaining sixty percent have either been taken in by friends or families, or have sought temporary accommodations with churches or other community shelters.⁴² It was reported from a Zimbabwean newspaper that those without shelter are staying in “mostly knee-high and unsightly makeshift structures made of . . . broken asbestos sheets, wood, dirty plastics and cardboard boxes.”⁴³

¶11 Since nearly a majority of those displaced are without alternative housing or assistance, the humanitarian crisis is substantial. This includes “immediate need of tents, blankets, food, water, sanitation and medical assistance,”⁴⁴ all of which humanitarian NGO’s have attempted to provide unsuccessfully due to bureaucratic hurdles and governmental interference.⁴⁵ Exacerbating this difficulty is the fact that the government is moving the displaced to secluded rural areas without notifying humanitarian agencies, and when humanitarian aid does arrive the police are reported to have been forcibly preventing food and water distribution.⁴⁶ This is disturbing considering children have been seen feeding on rotten food left by vendors.⁴⁷ In addition, the lack of sanitized water, coupled with a lack of medical care particularly within the transit camps, has led to water borne outbreaks of dysentery and cholera, and pneumonia and tuberculosis for those living without shelter.⁴⁸ The U.N. Special Envoy has reported an emerging epidemic, “with reported deaths among displaced children due to respiratory infections.”⁴⁹

³⁸ Zoe Daniel, *Mugabe Government faces possible split*, AUSTL. BROADCASTING CORP., Oct. 21, 2005.

³⁹ *State Department Issues Background Note on Zimbabwe*, U.S. FED. NEWS, Sept. 1, 2005.

⁴⁰ U.N. Report, *supra* note 2, at 32.

⁴¹ *Id.*

⁴² *Id.* at 35. One among many ironies stemming from the tragic demolition is that those who were employed by the informal sector, and who had gotten loans to build legitimate housing now have no means of repaying their loans.

⁴³ Walter Marwizi, *Clean Up Victims Win Court Reprieve*, ZIMB. STANDARD, Oct. 16, 2005.

⁴⁴ U.N. Report, *supra* note 2, at 36.

⁴⁵ U.S. Fed. News, *supra* note 39; Vusumuzi Sifile, *SA Food Aid Bogged Down by Red Tape*, ZIMB. STANDARD, Aug. 28, 2005.

⁴⁶ Barry Newhouse, *Human Rights Group Says Zimbabwe Secretly Scattering Homeless*, U.S FED. NEWS, Aug. 20, 2005.

⁴⁷ ZIMB. STANDARD, *supra* note 43.

⁴⁸ U.N. Report, *supra* note 2, at 37-38.

⁴⁹ *Id.* at 38.

C. *The International Response*

¶12 Although most Western powers, including the United States, United Kingdom and the European Union, have condemned the Operation, African states have not directly attacked Mugabe's demolitions.⁵⁰ This is largely due to the fact that many African leaders, including Nelson Mandela, view Mugabe "as a liberator of his nation in the long, bitter struggle on the continent in which so many . . . suffered so much."⁵¹ Despite the reluctance of neighboring states to condemn the Operation, the United States, European Union, United Kingdom, Switzerland, Canada, Australia and New Zealand have tightened "travel and economic sanctions on Mugabe, members of his Cabinet and his close allies in the armed forces and the judiciary,"⁵² further isolating Mugabe and Zimbabwe from the international community. In the U.S., Representative Tom Lantos (D-CA), ranking member of the House International Relations Committee, introduced a bipartisan resolution condemning the Operation and its disregard for human rights, and called on the International Monetary Fund ("IMF") to continue withholding benefits from Zimbabwe.⁵³

¶13 The sanctions imposed on Zimbabwe by Western states were initially implemented following the land redistribution program, but have since been tightened to limit economic aid and relations "in the area of trade, free circulation of capital, and free circulation of persons."⁵⁴ Because the sanctions were largely targeted at Zimbabwean heads of state and not the Zimbabwean economy or its people, the governments of the U.S., U.K. and E.U. continue to provide food and medical aid to the compulsorily displaced residents through delivery to local NGOs.⁵⁵ Additionally, in September 2005 the IMF chose not to continue withholding benefits to Zimbabwe, as that would further affect its already destitute population.⁵⁶

D. *Zimbabwe's Justification for the Operation*

¶14 The international community, humanitarian NGOs, and human rights lawyers interpret the government's justification for the Operation as a "smokescreen" . . . that had little to do with addressing the problem of informal structures and restoring order within urban areas."⁵⁷ These groups view the Operation as a reaction to the parliamentary elections in March 2005, where the Movement for Democratic Change ("MDC") – ZANU-PF's strongest political opposition – had a high turnout in urban areas.⁵⁸ Yet even after the U.N. Special Envoy distributed its report, the government of Zimbabwe remained steadfast in declaring that "the risk to public health and morality, national

⁵⁰ Human Rights Watch, *supra* note 6, at 35.

⁵¹ Nat Hentoff, *Mugabe's shameful apologist*, WASH. TIMES, Aug. 8, 2005, at A19.

⁵² Tendai Farai, *Zimbabwe on the Brink: Heart of Darkness*, ADVERTISER (Austl.), July 16, 2005, at W07.

⁵³ *Rep. Lantos Introduces Bill Condemning Zimbabwe's Wanton Destruction of Private Property*, U.S. FED. NEWS, July 29, 2005.

⁵⁴ Paola A. Pillitu, *European 'Sanctions' Against Zimbabwe's Head of State and Foreign Minister: A Blow to Personal Immunities of Senior State Officials?*, 1 J. INT'L CRIM. JUST. 453 (2003).

⁵⁵ Sarah Williams, *U.S. Envoy Affirms Solidarity with Zimbabwe's Hungry, Homeless*, U.S. FED. NEWS, Aug. 16, 2005.

⁵⁶ Ndimyake Mwakalyelye, *IMF: Outlook 'Bleak' for Zimbabwe Without Major Policy Shifts*, U.S. FED. NEWS, Oct. 4, 2005.

⁵⁷ U.N. Report, *supra* note 2, at 20.

⁵⁸ Zoe Daniel, *Mugabe Government faces possible split*, AUSTL. BROADCASTING CORP., Oct. 21, 2005.

security and the economy necessitated that the operation had to be undertaken without further delay.”⁵⁹ That Mugabe’s own Finance Minister conceded the Operation was “a spontaneous exercise that had no budget,” was carried out in the face of international condemnation and in the midst of economic paralysis, lends much credence to the notion that it was a “deliberate attempt . . . to scatter opposition supporters into rural areas where they [could not] mobilize against [ZANU-PF] – especially when they’re starving and cold.”⁶⁰

II. TREATY-BASED PROTECTIONS OF THE RIGHT TO PROPERTY, HOUSING AND PROHIBITIONS AGAINST FORCED EVICTIONS

¶15 Because “human rights are correctly perceived as an instrument for the defense of the vulnerable . . . [whereas] property rights have often been perceived as an instrument to protect the rich and the powerful,”⁶¹ the human right to property has received mixed reception among human rights specialists. Nonetheless, the right to adequate housing and protection from forced evictions has received near universal acceptance as a fundamental human right. Until recently, however, developing and applying a universally accepted interpretation of these rights has been difficult, primarily because of the complexity of reconciling property rights with the progressive goals of U.N. human rights treaties. The obligations of states have therefore been unclear.⁶² Committees to the major U.N. conventions have since sought to clarify these rights by adopting specific interpretations, guidelines, and due process procedures, which are embodied in resolutions that state parties are obligated to follow before compulsory evictions may take place. In addition, national and international jurisprudence continues to help clarify the guarantees of the right to adequate housing and protection from forced evictions as enshrined in the major U.N. and regional African human rights instruments.

¶16 International conventions to which Zimbabwe is a party, and that recognize a right to adequate housing and protection from forced evictions, include, among others,⁶³ the

⁵⁹ NEW AFRICAN, *supra* note 32.

⁶⁰ AUSTL. BROADCASTING CORP., *supra* note 58; Jennifer Nedelsky, *Should Property be Constitutionalized? A Relational and Comparative Approach*, in PROPERTY LAW ON THE THRESHOLD OF THE 21ST CENTURY 471, 421 (G.E. van Maanen & A.J. van der Walt eds. 1996) (“Taking people’s property is an effective form of persecution, of undermining the power and efficacy of a group, of designating an individual or group as inferior and unprotected.”).

⁶¹ Banning, *supra* note 1, at 7.

⁶² Scott Leckie, *The UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing: Towards an Appropriate Approach*, 11 HUM. RTS. Q. 522, 526 (1989).

⁶³ The right to adequate housing is also enshrined in other international conventions. See Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, 660 U.N.T.S. 195 (1969) (accession by Zimb. May 13, 1991). Article 5(e) provides that “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all of its forms and to guarantee the right to everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: . . . (e) Economic, Social and Cultural Rights in particular . . . (iii) the right to housing.”; Convention on the Elimination of All Forms of Discrimination Against Women, Sept. 3, 1981, U.N. Doc. A/RES/34/180 (1980) (accession by Zimb. May 13, 1991). Article 14(2) provides that “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right . . . (h) to enjoy adequate living conditions particularly in relation to housing, sanitation, electricity and water supply, transport and communications.” U.N. Declaration of the Rights of the Child, Nov. 20, 1959, G.A. Res. 1386 (XIV), 14 U.N. GAOR Supp. (No.

Universal Declaration of Human Rights (“Universal Declaration”)⁶⁴; the International Covenant on Economic, Social and Cultural Rights (“CESCR”)⁶⁵; and the African Charter on Human and Peoples’ Rights (“African Charter”)⁶⁶. The International Covenant on Civil and Political Rights (“ICCPR”)⁶⁷ is also implicated, because it obliges state parties to respect an individual’s freedom of movement and prohibits arbitrary interference with an individual’s home.

A. *The Universal Declaration of Human Rights*

¶17 As the oldest promulgation of universal human rights, the Universal Declaration, adopted in 1948 by the U.N. General Assembly, sets forth the most widely accepted provisions protecting individuals’ human rights *vis-à-vis* their state. The Universal Declaration is a non-binding resolution, but “although the declaration in itself may not be a legal document involving legal obligations . . . it contains an authoritative interpretation of the ‘human rights and fundamental freedoms’ which do constitute an obligation . . . binding upon the Members of the United Nations,”⁶⁸ stemming from the U.N. Charter, and therefore enforceable by the U.N. Security Council.⁶⁹ Furthermore, the provisions of the Universal Declaration have been interpreted as customary international law.⁷⁰ The right of private property ownership is extended in Article 17, which provides: “(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.”⁷¹

¶18 On its face, Article 17 extends a universal right of each individual to the ownership of private property, but in the context of Zimbabwe its practical affect stops short for two reasons. First, because “national laws [in Zimbabwe were] mostly ignored after independence, leading to [] rapid formation of backyard extensions now dubbed illegal,”⁷² there is a question as to whether technically “illegal” property comes under the protection of “the right to own property.” This right, however, is not exclusive to real property, and proof of formal ownership was held by the European Court of Human Rights not to bar the right to protection of informally owned property.⁷³ Second, the right

16) 19, U.N. Doc. A/4354 (1959). Principle 4 stipulates that “[t]he child shall enjoy the benefits of social security . . . The child shall have the right to adequate nutrition, housing, recreation and medical services.”

⁶⁴ Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. Doc. A/810 (1948), art. 17 [hereinafter Universal Declaration].

⁶⁵ CESCR, *supra* note 4, at art. 11(1).

⁶⁶ African Charter on Human and Peoples’ Rights art. 14, 22(2), June 27, 1981, OAU Doc. CAB/LEG/67/3 rev 5, 21 I.L.M. 58 (1982) [hereinafter African Charter].

⁶⁷ International Covenant on Civil and Political Rights (ICCPR), at art. 12.

⁶⁸ H. Lauterpacht, *International Law and Human Rights*, in INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW POLITICS MORALS, 147, 151 (Henry J. Steiner & Philip Alston eds., 2000).

⁶⁹ See Egon Schwelb, *An Instance of Enforcing the Universal Declaration of Human Rights: Action by the Security Council*, 22 INT’L & COMP L.Q. 161 (1973).

⁷⁰ See *Filartiga v. Pena-Irala*, 630 F.2d 876, 882 (2d Cir. 1980) (The Second Circuit recognized the Universal Declaration as customary international law in the context of freedom from torture, and noted that since 1977 “eighteen nations have incorporated the Universal Declaration into their own constitutions.”); Jonathan Shirley, *The Role of International Human Rights and the Law of Diplomatic Protection in Resolving Zimbabwe’s Land Crisis*, 27 B.C. INT’L & COMP. L. REV. 161, 166 (2004).

⁷¹ Universal Declaration, *supra* note 64, art. 17.

⁷² U.N. Report, *supra* note 2, at 56.

⁷³ See *Holy Monasteries v. Greece*, 301A Eur. Ct. H.R. (1994) (Interpreting Article I of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the right to

not to be “arbitrarily deprived” of property is ill-defined in international law.⁷⁴ But one can presume that “arbitrary deprivation” would be defined as the failure of a state to give fair “notice and an opportunity to be heard”⁷⁵ as the U.S. Supreme Court defined it in *Fuentes v. Shevin*.⁷⁶ This is analogous to the ESCR Committee’s Comment No. 7 due process requirement that a state provide “genuine consultation with affected persons and groups”⁷⁷ before depriving an individual of her property.

¶19 If one adopts these interpretations of the “right to own property” and protection from “arbitrary deprivation” as applicable to the construction of Article 17, it is evident that the compulsory evictions contravened these rights. Unable to afford “legal” housing, urban dwellers built “backyard extensions” onto existing “legal” plots and paid plot owners rent for their accommodations.⁷⁸ This not only “proliferated as a form of affordable rental housing . . . [but provided] a source of income for [plot] owners.”⁷⁹ Under the European Court of Human Rights’ interpretation, this would qualify as legitimate property ownership. In addition, adequate notice and genuine consultation before the evictions took place were not provided to the evictees before the demolitions began.⁸⁰ For instance, where “notice” appeared in a local newspaper five days *after* demolitions began⁸¹ and “consultations” were undertaken because . . . people were informed . . . through their monthly bills, which included a fine levied on owners who had illegal structures,”⁸² an “arbitrary deprivation” of property was clearly carried out.

B. *The International Covenant of Economic, Social and Cultural Rights*

¶20 The obligation to respect and protect the right to housing exists in the CESCRC and as a signatory Zimbabwe is bound by its provisions.⁸³ The right to housing is found in Article 11(1), which states: “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”⁸⁴ The supervisory committee – ESCR

property, to not require proper title documents or proper compliance with legislation when a state threatened to evict or interfere with peaceful enjoyment of monasteries established in the 9th and 13th centuries.).

⁷⁴ Shirley, *supra* note 70, at 166.

⁷⁵ 407 U.S. 67, 81 (1972).

⁷⁶ *Id.*

⁷⁷ General Comment No. 7: The right to adequate housing (Art. 11.1): Forced evictions, Report of the U.N. Committee on Economic, Social and Cultural Rights, 16th Sess., at para 8, U.N. Doc. E/1998/22, annex IV (1999) [hereinafter General Comment No. 7].

⁷⁸ U.N. Report, *supra* note 2, at 25.

⁷⁹ *Id.*

⁸⁰ *Id.* at 58, 60.

⁸¹ Human Rights Watch, *supra* note 6, at 12.

⁸² U.N. Report, *supra* note 2, at 60.

⁸³ Zimbabwe acceded to the CESCRC on May 13, 1991. See Michael Dennis & David Stewart, *Justiciability of Economic, Social, and Cultural Rights: Should there be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?*, 98 AM. J. INT’L L. 462, 476 (2004) Unlike the ICCPR, the rights set forth in the CESCRC “are not described as obligations to be performed by states parties in full and at once. Rather, they represent goals to be achieved progressively,” as specified in Article 2(1). This is evident in the fact that the CESCRC has no individual complaints mechanism that would make violations of specific rights justiciable.

⁸⁴ CESCRC, *supra* note 4, art. 11(1).

Committee⁸⁵ – in its General Comments Nos. 3 and 9 outline states’ obligations under the CESCR, requiring each party to use “*all* means at its disposal to give effect to the rights recognized in the Covenant . . . [including its] legal and administrative systems.”⁸⁶ For example, “a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant.”⁸⁷ Because in the context of Zimbabwe it is the agents of the state and not a third party infringing the rights of its citizens, “the right to an adequate standard of . . . housing” can be seen as a negative duty on the government of Zimbabwe to “respect” or “abstain from doing anything that violates the integrity of the individual or infringes on his/her recognized human rights . . . ,”⁸⁸ or put more simply, “duties to avoid depriving.”⁸⁹

¶21 Article 11(1) has been carefully defined and interpreted by the ESCR Committee in its General Comment No. 4.⁹⁰ Comment No. 4 specifies four duties obligating states to prevent forced evictions. These requirements include: (1) “all persons [must] possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats”⁹¹; (2) “demonstrat[ion] [through State Party Reports] that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of . . . those living in ‘illegal’ settlements, [and] those subject to forced evictions and low-income groups”⁹²; (3) the right to domestic legal remedies including “(a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction;”⁹³ and (4) concludes with a declaration that “instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”⁹⁴ The “exceptional circumstances” include “persistent behavior which threatens, harasses or intimidates neighbors; persistent behavior which threatens public health or is manifestly criminal behavior as defined by law . . . and illegal occupation of property without compensation.”⁹⁵ The government of Zimbabwe relies on these exceptions as justification for the evictions under international law.⁹⁶

⁸⁵ The ESCR Committee “seeks to achieve three principal objectives: (1) developing the normative content of the rights recognized in the Covenant; (2) acting as a catalyst to state action in developing national ‘benchmarks’ and devising appropriate mechanisms for establishing accountability, and providing means of vindication to aggrieved individuals and groups at the national level; and (3) holding states accountable at the international level through the examination of reports.” Steiner et al., *supra* note 68, at 305.

⁸⁶ General Comment No. 9: The domestic application of the Covenant, Report of the U.N. Committee on Economic, Social and Cultural Rights, 19th Sess., at para. 1, U.N. Doc. E/C.12/1998/24 (1998).

⁸⁷ General Comment No. 3: The nature of States parties obligations (Art. 2, para.1), Report of the U.N. Committee on Economic, Social and Cultural Rights, 5th Sess., at para. 10, U.N. Doc. E/1991/23 (1990).

⁸⁸ Banning, *supra* note 1, at 223.

⁸⁹ *Id.*

⁹⁰ General Comment No. 4, *supra* note 8.

⁹¹ *Id.* at para. 8(a).

⁹² *Id.* at para. 13.

⁹³ *Id.* at para. 17.

⁹⁴ *Id.* at para. 18.

⁹⁵ U.N. Report, *supra* note 2, at 59.

⁹⁶ *Id.* at 60.

¶22 While General Comment No. 4 provides “the most comprehensive international statement of law on the right to adequate housing to date,”⁹⁷ Comment No. 7 responds directly to forced evictions and stipulates the procedures required by a state before and after it carries out compulsory evictions.⁹⁸ Among those implicated are:

(a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions . . . [and] alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; . . . (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provisions of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts; [and] evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.⁹⁹

Even if these procedural requirements are satisfied, the evictions must be carried out in “strict compliance” with other provisions of the CESC, and the policy initiative must be reasonable and proportionate in light of the harm caused.¹⁰⁰

¶23 The case for the compulsorily displaced lies in the argument that none of these procedural requirements have been complied with, and the policy initiative to clean up Zimbabwe’s cities does not outweigh the right to security from compulsory evictions when there was no infrastructure in place to accommodate the displaced. As mentioned in the application of the Universal Declaration, the due process requirements of “genuine consultations” and fair notice were not affected prior to the evictions taking place, nor were the evictees provided with information on the proposed evictions.¹⁰¹ In addition, the Operation was carried out in the middle of Zimbabwe’s winter season, leaving families exposed to the weather with no alternative accommodations.¹⁰² But the most fundamental of these procedural violations is the fact that the Zimbabwean judiciary has been dismissive of complaints seeking injunctions preventing forced evictions and compensation for the destruction of homes and private property.¹⁰³ Though some homeless evictees have recently been granted a court order preventing their removal by the government from “transit camps” until adequate accommodations are provided, they still remain homeless with no alternative housing or basic services.¹⁰⁴

¶24 The government of Zimbabwe carried out the evictions without following any of the procedural requirements specified in the General Comments interpreting Article 11(1), but most importantly did not adhere to its “duties to avoid depriving.” However, because the ESCR Committee lacks “enforcement powers, leaving it primarily a doctrine

⁹⁷ Mayra Gomez & Bret Thiele, *Housing Rights are Human Rights*, 32 HUM. RTS. 2, 3 (2005).

⁹⁸ General Comment No. 7, *supra* note 77.

⁹⁹ *Id.* at para. 15.

¹⁰⁰ *Id.* at para. 14.

¹⁰¹ U.N. Report, *supra* note 2, at 60.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ ZIMB. STANDARD, *supra* note 43.

involved in data collection and recommendations,”¹⁰⁵ it is unlikely that Article 11(1) violations can be rectified by the ESCR committee alone. In an analogous case where the government of Nigeria undertook large scale forced evictions, for example, the ESCR Committee merely drafted its concluding observations,¹⁰⁶ had them circulated in Nigeria by NGOs, issued a press release, put them on the U.N. website and included them in the Committee’s Annual Report; no additional actions were undertaken to compel Nigerian officials to adhere to its CDESCR obligations.¹⁰⁷ Because the ESCR Committee “has yet to show that it has the capability to appropriately and comprehensively [enforce] the right to adequate housing . . . [despite] the procedural changes adopted by the committee . . . [that] permit a legal determination of its contents,”¹⁰⁸ it is left to the government of Zimbabwe to recognize its obligations under the CDESCR. This, however, is not feasible when the Zimbabwean judiciary has ceased to function independently.¹⁰⁹

C. *The International Covenant on Civil and Political Rights*

¶25 It is argued that the right to property ownership is civil and political, while “[t]he right to land for survival, the right to development, and the right to self-determination of oppressed people to natural resources are all social and economic rights.”¹¹⁰ Nonetheless, both civil and political, and social, economic and cultural rights are interdependent insofar as they both require states to realize “that every woman, man and child has the right to a secure place to live in peace and dignity, which includes the right not to be evicted unlawfully, arbitrarily or on a discriminatory basis from their home, land or community.”¹¹¹ The ICCPR is significant in the context of Zimbabwe because it explicitly identifies in Article 2(3) the right to a remedy within a state party’s domestic legal framework, and allows individuals to bring a complaint against the state if it has accepted the jurisdiction of the U.N. Human Rights Committee by signing the Optional Protocol specified in Article 41.¹¹² Zimbabwe acceded to the ICCPR on August 13, 1991. It has not, however, signed the first or second Optional Protocols and therefore does not

¹⁰⁵ Dancaescu, *supra* note 16, at 638; *see also* Michael J. Dennis & David P. Stewart, *Justiciability of Economic, Social, and Cultural Rights: Should There be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?*, 98 AM. J. INT’L L. 462 (2004).

¹⁰⁶ Concluding observations of the Committee on Economic, Social and Cultural Rights: Nigeria, U.N. Doc. E/C.12/1/Add.23 (1998), *available at* <http://www.unhcr.ch/tbs/doc.nef>.

¹⁰⁷ Steiner et al., *supra* note 68, at 306.

¹⁰⁸ Leckie, *supra* note 62, at 534.

¹⁰⁹ Dancaescu, *supra* note 15, at 637 (“As is the case in Zimbabwe, when a judiciary ceases to function independently and no international civil or constitutional court exists, there is no oversight, other than that of a despot of a nation, to find a balance between the right to development and the right to security in property, unless the international community intervenes.”).

¹¹⁰ John M. Nading, *Property Under Siege: The Legality of Land Reform in Zimbabwe*, 16 EMORY INT’L L. REV. 737, 786 (2002).

¹¹¹ U.N. Commission on Human Rights, Resolution on the Prohibition of forced evictions, para. 3, U.N. Doc. E/1998/22, annex IV (2004), *available at* http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2004-28.doc [hereinafter Forced Evictions Resolution].

¹¹² ICCPR, *supra* note 67, at art. 2 para. 3(b) (“Each State Party to the present Covenant undertakes . . . To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop possibilities of judicial remedy.”).

“recognize the competence” of the Human Rights Committee to receive and consider individual complaints.¹¹³

¶26 The ICCPR addresses the right to be free from the deprivation of property in Article 17, which provides: “(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence . . . (2) Everyone has the right to the protection of the law against such interference or attacks.”¹¹⁴ The right to freedom of movement and “freedom to choose [a] residence” is extended in Article 12, with limited exceptions that “are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.”¹¹⁵ In accordance with the Human Rights Committee’s General Comment No. 27, the exceptions provided in Article 12(3) are to be interpreted narrowly, and “[t]he laws authorizing the application of restrictions . . . may not confer unfettered discretion on those charged with their execution.”¹¹⁶

¶27 The Human Rights Committee has responded to the problem of forced evictions in a 2004 Resolution.¹¹⁷ The Resolution recommends, *inter alia*, that “Governments [] provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation . . . to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups . . .,” and most importantly “that all Governments ensure that any eviction that is otherwise deemed lawful is carried out in a manner that does not violate any of the human rights of those evicted.”¹¹⁸ The Resolution, therefore, makes explicit the positive obligations of states parties to the ICCPR to provide due process, remedies, and prevention of further human rights abuses if the evictions are indeed “legal.”

¶28 Zimbabwe did not fulfill its obligations under the ICCPR during the Operation. When armed Zimbabwean police “forced [the residents] to destroy their own houses, [] at gunpoint . . . [and] destroyed [the homes] by bulldozers . . . or burnt and razed [them] to the ground,”¹¹⁹ without restitution, compensation or alternative housing, it can safely be said that an “arbitrary or unlawful interference with [the residents’] privacy, family, [and] home” was carried out. Further, by “compelling people to move to the rural areas against their wishes,”¹²⁰ there was clearly a violation of the evictee’s right to the freedom of movement and choice of residence. As mentioned, Article 2(3) requires that these victims receive “an effective remedy” from “competent judicial, administrative or legislative authorities,”¹²¹ and because Zimbabwe acceded to the ICCPR before 1993, it is a self-executing treaty, and therefore requires a “competent” tribunal to remedy the

¹¹³ See Office of the United Nations High Commissioner for Human Rights: Status of Ratifications of the Principal International Human Rights Treaties as of 09 June 2004, <http://www.unhcr.ch/pdf/report.pdf>; ICCPR, *supra* note 67, at art. 41.

¹¹⁴ *Id.* at art. 17.

¹¹⁵ *Id.* at art. 12(1), (3).

¹¹⁶ General Comment No. 27: Freedom of movement (Art. 12), Hum. Rts. Comm., 67th Sess., at para. 13, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (1999).

¹¹⁷ Forced Evictions Resolution, *supra* note 111.

¹¹⁸ *Id.* at para. 4, 5.

¹¹⁹ Human Rights Report, *supra* note 6, at 2.

¹²⁰ *Id.* at 38.

¹²¹ ICCPR, *supra* note 67, at art. 2(3).

government's human rights violations resulting from the Operation.¹²² The victims are therefore entitled to an effective remedy.

D. *The African Charter on Human and Peoples' Rights*

¶29 The African Charter stands as a regional human rights instrument that is concurrent with the U.N.'s promulgation of universal human rights specified in the Universal Declaration, CESC, and the ICCPR. The African Charter was adopted by the Organization of African Unity ("OAU") in 1986 and ratified by Zimbabwe that same year.¹²³ Article 30 established the African Commission on Human and Peoples' Rights ("African Commission"),¹²⁴ which unlike the ESCR Committee, functions as a quasi-adjudicatory body that hears individual and state party complaints with the goal of "seek[ing] an amicable settlement between the parties."¹²⁵ However, in 1998 the Assembly of Heads of State and Government of the OAU adopted a Protocol to the African Charter, entering into force on January 2004, which established an African Court on Human and Peoples' Rights ("African Court").¹²⁶ Although the African Court and African Commission's general responsibilities "appear to be in competition with each other," the African Court will hear "disputes 'concerning the interpretation and application' of the Charter, Protocol, and any other relevant human rights instrument ratified by the States concerned."¹²⁷ As of now, however, the African Court is not yet fully operational.

¶30 The African Charter addresses the right to property in Article 14, which states: "[t]he right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."¹²⁸ Article 14 is peculiar, however, because it subordinates the "guarantee" of property rights to national law in the second clause, and thereby "permits states, in their nearly unrestrained discretion, to restrict the rights guaranteed by the Charter."¹²⁹ Furthermore, the "right to property" is ill-defined in the African Charter and there are no provisions that specifically protect against forced evictions. Although displaced victims may bring a "communication" to the African Commission to seek redress for other human rights violations resulting from the forced

¹²² Zimb. Const. § 111B(2). International human rights treaties acceded to before 1993 do not require parliamentary approval, and are therefore self-executing.

¹²³ Shirley, *supra* note 70, at 167.

¹²⁴ African Charter, *supra* note 66, at art 30. Article 30 created the African Commission to be established within the OAU, with the role of "promot[ing] human and peoples' rights and [to] ensure their protection in Africa."

¹²⁵ Chidi Anselm Odinkalu, *The Individual Complaints Procedures of the African Commission on Human and Peoples' Rights: A Preliminary Assessment*, in INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW POLITICS MORALS 926 (Henry J. Steiner & Philip Alston eds., 2000).

¹²⁶ African Commission, Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, http://www.achpr.org/english/_info/court_en.html; for an in-depth explanation of the Court and its procedures see Association for the Prevention of Torture, *The African Court on Human and Peoples' Rights* (Jan. 2000), <http://www.apt.ch/africa/African%20Court.pdf>.

¹²⁷ Steiner et al., *supra* note 68, at 936.

¹²⁸ African Charter, *supra* note 66, at art. 14.

¹²⁹ Shirley, *supra* note 70, at 168.

evictions, until the African Court is operative, the African Charter affords very little protection for the property rights of the compulsorily displaced.¹³⁰

III. DOMESTIC ENFORCEABILITY OF INTERNATIONAL TREATY OBLIGATIONS

¶31 The Bangalore Principles, adopted in 1988 at a colloquium by Commonwealth jurists from around the world in Bangalore, India, provide judicial standards and methods by which a state may, through practical means, incorporate its international human rights obligations into its domestic legal framework.¹³¹ The Principles would ideally be the starting point for any discussion on the domestic enforceability of international treaty obligations. However, two fundamental prerequisites must be satisfied before the methods specified in the Principles can be realized. First, the executive and legislative branches must abstain from coercing or threatening a state's judiciary and its political autonomy. Second, a state's judiciary must function independently from the executive and legislative branches. As discussed more fully below, Zimbabwean officials continue to experience coercive action by the executive and a lack of judicial independence. Therefore, the Principles are of little practical use to the situation in Zimbabwe.

¶32 The only reference to international law in relation to municipal law in the Constitution of Zimbabwe ("Constitution") is found in Section 111B, which provides that "any convention, treaty or agreement acceded to, concluded or executed . . . shall not form part of the law of Zimbabwe unless it has been incorporated into the law by or under an Act of Parliament."¹³² This provision was an amendment to Section 111B and therefore applies only to the conventions Zimbabwe entered into after 1993.¹³³ It is well established that "a party [to a binding treaty] may not invoke the provisions of its internal law as justification for its failure to perform a treaty," as specified in article 27 of the 1969 Vienna Convention on the Law of Treaties.¹³⁴ Thus, by signing the CESCPR, ICCPR, and the African Charter, the fact that section 111B renders treaties non-self-executing "in no way reduces or significantly postpones [Zimbabwe's] legal obligations"¹³⁵ specified therein.

¶33 Though customary international law is not mentioned in the Constitution, the High Court of Zimbabwe has ruled, prior to the amendment of section 111B, that "international human rights norms will become part of [Zimbabwe's] domestic human rights law."¹³⁶ Despite that immediately following Zimbabwe's independence the government progressively acceded to U.N. and regional human rights instruments, and courts and

¹³⁰ Banning, *supra* note 1, at 61-62 ("The article is . . . not sufficiently clear as to the circumstances under which the right [to property] may be restricted . . . In practice, confiscations do occur in Africa on a substantial scale with little recourse to justice.").

¹³¹ A discussion of The Bangalore Principles of Judicial Conduct can be found in Michael Kirby, *The Role of the Judge in Advancing Human Rights by Reference to International Human Rights Norms*, 62 AUSTL. L.J. 514, 531-32 (1988); The Bangalore Principles of Judicial Conduct, available at http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf [hereinafter Bangalore Principles].

¹³² Zimb. Const. 111B(1)(b), amended by Constitution of Zimbabwe Amendment (No. 12) Act, 1993, § 12(1).

¹³³ *Id.*

¹³⁴ Vienna Convention on the Law of Treaties art. 27, May 22, 1969, 1155 U.N.T.S. 331.

¹³⁵ Louis Henkin, *Treaties in a Constitutional Democracy*, 10 MICH. J. INT'L L. 406, 425 (1989).

¹³⁶ *A Juvenile v. The State* (1990) 4 S.A. 151, 155 (Zimb.).

legislatures were “free to adopt the international law rule even if doing so would [have] invalidate[d] a provision of domestic legislation,”¹³⁷ this has ceased to be the case. Mugabe’s regime has continually shown “disdain for the rule of law where it runs counter to his aims,” by actions such as “pack[ing] the [High Court] with party faithfuls” when Mugabe felt that justices ruling in line with internationally accepted practices conflict with his policy initiatives.¹³⁸ This presents a difficult challenge for advancing an international human right to adequate housing and prevention of forced evictions within Zimbabwe’s domestic legal framework. The following section will address the argument for the incorporation of international obligations into Zimbabwe’s domestic legal framework and the practical difficulties when the judiciary has ceased to function independently.

A. *Treaty Obligations as a Basis of Customary International Law*

¶34 It is accepted customary international law that a state party to a binding multilateral treaty is obligated to make domestic changes necessary to fulfill its international obligations, including its incorporation into municipal law.¹³⁹ This rule of customary international law has been accepted in the United States and elsewhere, and is the underlying tenant of the Bangalore Principles. For instance, in an interpretation of a U.N. Charter provision describing the trusteeship system, the U.S. Court of Appeals for the Ninth Circuit in *People of Saipan ex rel. Guerrero v. U.S. Dep. Of Interior*,¹⁴⁰ noted that

The extent to which an international agreement establishes affirmative and judicially enforceable obligations without implementing legislation must be determined in each case by reference to many contextual factors: the purposes of the treaty and the objectives of its creators, the existence of domestic procedures and institutions appropriate for direct implementation, the availability and feasibility of alternative enforcement methods, and the immediate and long-range social consequences of self- or non-self-execution.¹⁴¹

Although this is a default doctrine applied to the question of whether a treaty is self-executing in the U.S., failure by “competent” authorities in Zimbabwe to adopt similar reasoning as an exception to the Constitution’s non-self-execution clause would deprive the compulsorily evicted residents of the internationally recognized human right to adequate housing and prohibition of forced evictions, thereby undermining the purpose of “promot[ing] universal respect for and observance of human rights and fundamental freedoms” as envisioned by the Universal Declaration.¹⁴²

¹³⁷ Michael G. Bochenek, *Compensation for Human Rights Abuses in Zimbabwe*, 26 COLUM. HUM. RTS. L. REV. 483, 548 n 133 (1993).

¹³⁸ Nading, *supra* note 110, at 788-89.

¹³⁹ Alan Brudner, *The Domestic Enforcement of International Covenants on Human Rights: A Theoretical Framework*, 35 U. Tol. L. Rev. 219, 221 (1985); see Bangalore Principles, *supra* note 131 at para. 3.

¹⁴⁰ 502 F.2d 90 (9th Cir. 1974).

¹⁴¹ *Id.* at 97 (citing M. MCDUGAL, H. LASSWELL & J. MILLER, THE INTERPRETATION OF AGREEMENTS AND WORLD PUBLIC ORDER (1967)).

¹⁴² Universal Declaration, *supra* note 64, at para. 5.

¶35 Further, it has been contended that all of the rights enumerated in the Universal Declaration, including Article 17(2)'s prohibition of arbitrary deprivation of property, "has 'the attributes of jus cogens.'" ¹⁴³ Though arguably "an overly enthusiastic assertion," ¹⁴⁴ the Universal Declaration and other binding human rights conventions have been used numerous times to interpret national statutes in cases giving rise to human rights violations in the U.S. and elsewhere; evincing widespread and representative participation in the agreement[s]. ¹⁴⁵ Despite courts in Zimbabwe being "asked to . . . 'uphold and to enforce discriminatory laws: at one time to be an instrument of justice and at another to be an instrument of oppression'," ¹⁴⁶ the Universal Declaration, CESCRR, and the ICCPR should provide "competent" tribunals clear guidance in the face of oppressive or discriminatory laws and actions by state officials. Provisions of the CESCRR and ICCPR are not only legally binding international law for member states, but as a matter of customary international law, the Zimbabwean parliament and courts must utilize these instruments "to determine [the] context and reach of rights guaranteed by domestic law." ¹⁴⁷

¶36 There is one fundamental prerequisite before this "infusionist" approach can be used to inform domestic legislation and interpret constitutional provisions to be concurrent with international human rights law, as specified in the Bangalore Principles. ¹⁴⁸ This is the requirement of an independent judiciary that is not coerced by the executive and that is willing to supplement municipal law and statutory interpretation with international human rights law. ¹⁴⁹ Although Zimbabwean courts were once able to "refer to international human rights norms in order to give flesh to domestic legal provisions," ¹⁵⁰ since 2000 "activist" judges and those exhibiting independence from Mugabe and ZANU-PF have been removed, forced to resign, physically assaulted, and arrested. ¹⁵¹

¶37 This not only makes it impossible for victims of the Operation to bring a direct cause of action against responsible officials under justiciable guarantees in the Constitution – particularly the "Protection from deprivation of property" of Section 16 ¹⁵² – but also impedes any hope of a Zimbabwean court applying international human rights standards so that the Constitution and domestic laws conform to Zimbabwe's obligations

¹⁴³ Richard B. Lillich, *Invoking International Human Rights Law in Domestic Courts*, 54 U. CIN. L. REV. 367, 395 (1985).

¹⁴⁴ *Id.*

¹⁴⁵ Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78 CAL. L. REV. 449, 491, 513 n.205.

¹⁴⁶ Enoch Dumbutshena (former Chief Justice of Zimbabwe), *Role of the Judge in Advancing Human Rights*, 18 COMMONWEALTH L. BULL. 1298 (1992) (quoting an address by Mr. Arthur Chaskalson, National Director, Legal Resources Centre, Johannesburg, at a Bar Dinner in Harare, April 1989).

¹⁴⁷ Lillich, *supra* note 143, at 408.

¹⁴⁸ Bochenek, *supra* note 137, at 515.

¹⁴⁹ *Id.* at 524.

¹⁵⁰ *Id.* at 519 (quoting Geoffrey Feltoe, *Towards a Stronger Human Rights Culture in Zimbabwe: The Special Role of Lawyers*, 7-8 ZIMB. L. REV. 134 (1989-90)).

¹⁵¹ Davidson et al., *supra* note 19, at 118; Heather Boyle, *The Land Problem: What Does the Future Hold for South Africa's Reform Program?*, 11 IND. INT'L & COMP. L. REV. 665, 690-92 (2001). This began as a result of the Land Acquisition Act of 1992, which allowed the government to take white-owned farm land without compensation. Courts began holding that this was illegal under the Constitution and ordered squatters to leave. Coercive measures were then taken by Mugabe to curtail such judicial "activism."

¹⁵² Zimb. Const. ch. III, § 16.

under international law. This is particularly the case when an issue involves a governmental policy or ruling favoring the MDC; as one High Court Justice was detained without food, clothing and medication after holding a government official in contempt for not adhering to a court order, while another was beaten after ruling in favor of MDC members.¹⁵³ Moreover, as discussed below, Section 16(a)(ii) of the Constitution gives an extremely broad exception to government acquisition of property, rendering the “protection from deprivation of property” mostly symbolic.¹⁵⁴ Under present circumstances, it is doubtful any Zimbabwean Justice would uphold the rule of law at the expense of his life and freedom, no matter the extent of human rights abuses involved.

IV. ZIMBABWE’S DOMESTIC LEGAL FRAMEWORK

¶38 The Zimbabwean common law system comes from South Africa, which is derived from Roman civil law and Dutch common law, and influenced by English common law.¹⁵⁵ Judges in Zimbabwe ideally observe the doctrine of *stare decisis* and apply the law on a case-by-case basis.¹⁵⁶ When interpreting the Constitution, particularly the Declaration of Rights, the Supreme Court of Zimbabwe generally gives high regard to decisions of other Commonwealth courts, including Australia, Canada, India, and the United States.¹⁵⁷ The Constitution of Zimbabwe was entered into force shortly after independence from Britain on April 18, 1980. The Declaration of Rights, found in Chapter III of the Constitution, was largely taken from the European Convention on Human Rights and Fundamental Freedoms¹⁵⁸ and provides for the protection from governmental interference with property in Section 16. Both Section 16 and the Regional Town and Country Planning Act of 1976 extend procedural safeguards, but still “[n]o law exists in Zimbabwe that prohibits arbitrary evictions [*per se*] and grants a measure of protection of tenure to the persons who could be affected.”¹⁵⁹

¶39 It is commonly recognized in Roman-Dutch law that a person who is unlawfully deprived of his property must be restored to his previous position, and the act of dispossession or spoliation by government officials in an unlawful manner – against the will of the possessor – gives the dispossessed the right to a remedy.¹⁶⁰ Therefore, “[s]tate officials who cause squatters to surrender shacks under duress, commit acts of spoliation,” but only “where the ‘spoliator’ was authorized by the Court or by statute to dispossess the applicant”¹⁶¹ who seeks a remedy. Section 16, “Protection from Deprivation of Property,” is consistent with this Roman-Dutch black letter law insofar as it protects “property of any description or interest or right . . . [from being] compulsorily

¹⁵³ Davidson et al., *supra* note 18, at 118-19.

¹⁵⁴ Zimb. Const. ch. III, § 16(a)(ii) (“[I]n the case of any property, including land, or any interest or right therein, that the . . . utilization of that or any other property [is] for a purpose beneficial to the public generally or to any section of the public.”).

¹⁵⁵ C.G. VAN DER MERWE & JACQUES E. DU PLESSIS, INTRODUCTION TO THE LAW OF SOUTH AFRICA 201 (2004); Nading, *supra* note 111, at 772 (“The Dutch gave South Africa its civil law, but the British brought with them the common law.”).

¹⁵⁶ Bochenek, *supra* note 137, at 548 n.57.

¹⁵⁷ *Id.* at 499.

¹⁵⁸ Nading, *supra* note 110, at 772.

¹⁵⁹ Human Rights Watch, *supra* note 6, at 37.

¹⁶⁰ Merwe et al., *supra* note 155, at 205.

¹⁶¹ *Id.*

acquired”¹⁶² by the government without adherence to certain procedural safeguards. Section 16(a)(i)-(ii), however, subordinates the protection from compulsory acquisition by providing very broad exceptions, which would be adequate authorization “by statute” under Roman-Dutch law to legally dispossess those informally housed.¹⁶³

¶40 The most far-reaching exception is found in Section 16(a)(ii), which states that:

in the case of any property, including land, or any interest or right therein, that the acquisition is reasonably necessary in the interest of defense, public safety, public order, public morality, public health, town and country planning or the utilization of that or any other property for a purpose beneficial to the public generally or to any section of the public.¹⁶⁴

¶41 Because Mugabe has couched the Operation in terms of preventing illegal activity, restoring order in urban areas, and preventing “disorderly urbanization,” the compulsory acquisitions fit squarely within the “public safety, public order, public morality, public health” exceptions. These exceptions, however, are qualified by the conjunctive term “and” with a list of procedural requirements, indicating that even if an exception applies, the acquiring authority must satisfy the procedural requirements. These include reasonable notice to any person affected by the acquisition, and fair compensation within a reasonable time after acquiring the property. If the acquisition is contested, the acquiring authority must apply to the High Court for an order confirming the acquisition, and if an order is denied, it requires the return of the property. Finally, if the acquiring authority has not complied with the procedures, subsection (f) creates a right of action for the dispossessed.¹⁶⁵

¶42 Part V of the Regional Town and Country Planning Act (“Planning Act”) extends additional due process safeguards in the case of compulsory acquisitions.¹⁶⁶ Section 34 requires authorities to issue a “prohibition order” giving thirty days notice before the acquisitions take place, so that those “who [have] erected the unlawful structure[s] [have] an opportunity to make presentations, and also [have] time to take steps to either regularize their position or find an alternative place to reside”¹⁶⁷ The “prohibition order” was issued in no other city except Harare on May 24, 2005, while the demolitions began on May 19, 2005.¹⁶⁸ In no instance did an evictee have an opportunity to “regularize” their structure, as notice was given as little as a few hours before the demolitions began, and some owners of homes and business who complied with the law also had their structures destroyed.¹⁶⁹

¶43 A feat of judicial activism in the face of arbitrary mass forced evictions, which may provide guidance to the Zimbabwe judiciary, was evidenced by the Supreme Court of

¹⁶² Zimb. Const. ch. III, § 16.

¹⁶³ Conspicuously absent from Section 16, or anywhere else in the Constitution, is a right to alternative housing if the government “legally” acquires the property.

¹⁶⁴ Zimb. Const. ch. III, § 16(a)(ii).

¹⁶⁵ Zimb. Const. ch. III, § 16(b)-(f).

¹⁶⁶ Regional Town and Country Planning Act (1976), Part V, sec. 34(2) (Zimb.), available at http://www.kubatana.net/docs/legisl/reg_town_ctry_plan_act761101.pdf.

¹⁶⁷ U.N. Report, *supra* note 2, at 57.

¹⁶⁸ *Id.* at 58.

¹⁶⁹ *Id.* at 57-58.

India's decision in *Olga Tellis v. Bombay Municipal Corporation*.¹⁷⁰ In *Olga Tellis*, the Supreme Court of India overruled a statute that gave local officials the right to forcibly evict urban dwellers occupying public property without due process safeguards. Unlike the present context, however, India's constitution does not include an explicit right to property, and the Court therefore broadly interpreted the right to life to include the right to housing. The Court found that to compulsorily evict "pavement dwellers" would deprive them of their means of livelihood because of the proximity of the dwellings to their place of employment. While the government argued that it was justified because of the hazards of public safety and health, the Court remained resolute in declaring that if you "[d]eprive a person of his right to livelihood [] you shall have deprived him of his life," and therefore "if the petitioners are evicted from their dwellings, they will be deprived of their livelihood."¹⁷¹

¶44 In Zimbabwe, the Constitution explicitly guarantees the right of its citizens to be protected from arbitrary deprivation of property. Yet in the process of implementing the forced evictions, the government disregarded all of its own constitutional and statutory protections from compulsory displacement, with absolutely no check by the judiciary. Practically speaking, this renders Section 16 of the Constitution and Part V of the Planning Act largely null and void, and reinforces the argument that "Zimbabwe is a classic case of an authoritarian government clinging to power and using whatever methods it considers necessary to ensure its continued survival."¹⁷² When parliament and the executive can simply bypass the judiciary in implementing any policy initiative it considers "beneficial to the public generally," then international intervention is necessary to reinforce the rule of law and prevent further harm by government officials.

V. THE ARGUMENT FOR INTERNATIONAL INTERVENTION

¶45 Some scholars argue that the push for the "rule of law" by the human rights movement – particularly within the U.S. – through funneling money to NGOs and using military force to curtail human rights violations have been unsuccessful, as evidenced by the occupations in Sierra Leone, Iraq, and Afghanistan.¹⁷³ It is critical for the realization of universally recognized human rights that they be judicially enforceable rather than hopeful aspirations. International intervention is requisite when a state continually evinces that it will not uphold its own law, much less comply with its international obligations. In the case of Zimbabwe, such intervention is absolutely critical, and its continued violations of international human rights obligations concern the entire international community.

¶46 The report of the United Nations secretary-general's High-Level Panel on Threats, Challenges and Change proposes such intervention and responds to the fact that the decision-making of intergovernmental enforcement mechanisms are not "divorced" from the decisions of its members.¹⁷⁴ The High-Level Panel recommends international

¹⁷⁰ (1986) 73 A.I.R. 180, 193-94 (1985).

¹⁷¹ *Id.*

¹⁷² Davidson et al., *supra* note 18, at 109.

¹⁷³ Rosa E. Brooks, *The New Imperialism: Violence, Norms, and the "Rule of Law"*, 101 MICH. L. REV. 2275, 2277-2279 (2003).

¹⁷⁴ The High-Level Panel's recommendations were adopted by the U.N. General Assembly at the 2005 World Summit on September 16, 2005. See 2005 World Summit Outcome, U.N. GAOR, 60th Sess., U.N.

intervention through humanitarian aid, monitoring missions, diplomatic pressure, and military force as a last resort when a state's authorities are unable or unwilling to protect its civilians.¹⁷⁵ The underlying premise is that "all signatories of the UN Charter accept a responsibility both to protect their own citizens and to meet their international obligations to their fellow nations."¹⁷⁶ This does not mean merely that a state must have a right to intervene, "but [that it has a] 'responsibility to protect' . . . when it comes to people suffering from avoidable catastrophe – mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease."¹⁷⁷ The idea implies that participation in the U.N. itself requires member states to intervene when the "responsibility to protect" is implicated and not fulfilled, despite whether member states favor non-intervention or not.¹⁷⁸

¶47 Though intervention requires evidence of a threat to international peace and security, non-intervention yields to the responsibility to protect also when there are breaches of international law.¹⁷⁹ With direct evidence that the Operation has caused starvation, disease outbreaks, and deaths reported by the U.N. Special Envoy, the "serious violation[s] of international humanitarian law"¹⁸⁰ *per se* justify international response and intervention. This argument was endorsed by the High-Level Panel, as it noted that "sovereign Governments have proved powerless or unwilling to prevent"¹⁸¹ serious violations of international human rights law.

¶48 It is evident from the analysis in section III that the government of Zimbabwe has violated the right to adequate housing and prohibition of forced evictions without due process specified in the Universal Declaration, the CESCRC, and the ICCPR, and its unwillingness to accommodate the displaced has subjected its citizens to further human rights violations. Moreover, the Human Rights and ESCR Commissions have been largely ineffective in enforcing member states' treaty obligations. It is therefore imperative that the U.N. give teeth to its human rights provisions by compelling member states to take action and enforce compliance in Zimbabwe.

¶49 In addition, because 570,000 individuals have been rendered homeless¹⁸² without adequate shelter, food, clean water, or health care as a direct result of the actions of their own government, the "responsibility to protect" is clearly implicated. Though the government has attempted to respond to the humanitarian crises it created by launching "Operation Gerikai" – reconstruction and rebuilding – by giving plots of land to the displaced so they may build new homes, "the scale of the problem is too large and exceeds the present ability of the Government to address the basic needs of those affected by Operation Restore Order."¹⁸³ Indeed, with 2.4 million people in need of food aid,¹⁸⁴

Doc. A/60/L.1 (Sept. 16, 2005), available at <http://www.globalpolicy.org/msummit/millenni/2005/0913thirteenth.pdf>.

¹⁷⁵ Shared Responsibility Report, *supra* note 17, at para. 201.

¹⁷⁶ Anne-Marie Slaughter, *Security, Solidarity, and Sovereignty: The Grand Themes of UN Reform*, 99 AM. J. INT'L L. 619, 620 (2005).

¹⁷⁷ Shared Responsibility Report, *supra* note 17, at para. 201.

¹⁷⁸ Slaughter, *supra* note 176, at 620.

¹⁷⁹ Shared Responsibility Report, *supra* note 17, at para. 202.

¹⁸⁰ *Id.* at para. 203.

¹⁸¹ *Id.*

¹⁸² U.N. Report, *supra* note 2, at 47.

¹⁸³ *Id.* at 64.

¹⁸⁴ *Id.* at 47 ("The fact that Zimbabwe has no ready access to international credit, as well as a serious lack

“chronic budget deficits, a strained fiscal base and hyperinflation[,] observers are critical about whether Operation Garikai will materialize.”¹⁸⁵ Consistent with the High-Level Panel’s recommendations, the U.N. “must now subordinate state security for human security,”¹⁸⁶ and urge member states to intervene in Zimbabwe so that the victims of the Operation can seek redress and protection from a government that is wholly apathetic to their suffering.

VI. CONCLUSION & RECOMMENDATIONS

¶50 The unplanned and chaotic execution of Operation Murambatsvina has caused avoidable and untold human suffering for more than half a million of Zimbabwe’s most vulnerable population. In such a crisis, it is difficult to determine the most effective means of reconciliation. Though international human rights law recognizes the right of individuals to protection from the arbitrary deprivation of property by their state, the enforcement mechanisms are completely ineffective when a government is unwilling to adhere to its international obligations. Coupled with the failure of Zimbabwe’s domestic legal system, and the inability of the judiciary to apply the law without succumbing to intimidation by Mugabe and ZANU-PF, there are few alternatives other than some substantial form of international intervention.

¶51 Sustainable and coherent strategies to immediately remedy the housing problem are available with the help of the international community. These would include: (1) “rewrit[ing] building codes and zoning regulations to standards attainable by low-income groups”; (2) providing “inexpensive building materials, common components, fixtures and fittings” in support of “Operation Garikai”; (3) urban planning that would utilize underdeveloped and vacant land to “secure available housing sites as legal alternatives to squatter settlements (as Managua, Nicaragua and Several Tunisian cities have done), [that would] ensure sufficient space for recreation and good connections to employment or income for lower-income groups”; and finally (4) “chang[ing] finance systems so that inexpensive loans are available to low-income and community groups without unrealistic demands for collateral.”¹⁸⁷ In addition, the implementation of a truth and reconciliation commission to remedy the systematic abuses inflicted on the citizens of Zimbabwe by their government is another possibility.¹⁸⁸

¶52 Indeed, redressing the abuses stemming from the Operation through international intervention by implementing some of these strategies is only the first step in preventing future human rights abuses by Mugabe and ZANU-PF. Zimbabwean decision-makers have proven not only irresponsible in setting a sustainable fiscal course for the country,

of foreign exchange implies that it is highly unlikely that Government will be able to fulfill basic food requirements without substantial external assistance.”).

¹⁸⁵ *Id.* at 48; Ray Matikinye, “*Garikai*” Bears No Fruit for Homeless, *Zimb. Independent*, Oct. 14, 2005 (“[F]ive months after the state launched Operation Murambatsvina and sought to counter its disastrous consequences that left 700,000 people roofless countrywide, victims remain without homes and with little hope of getting housed any time soon.”).

¹⁸⁶ Slaughter, *supra* note 176, at 619.

¹⁸⁷ Leckie, *supra* note 62, at 533 (citing J. HARDOY & D. SATTERTHWAITHE, *SHELTER, INFRASTRUCTURE AND SERVICES IN THIRD WORLD CITIES* 275-84 (1986)).

¹⁸⁸ For an analysis of truth commissions and their primary functions see Henry Steiner, *Introduction to Truth Commissions*, in *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW POLITICS MORALS* 1217 (Henry J. Steiner & Philip Alston eds., 2000).

but have shown complete disregard for the well-being of their citizens during the implementation of every state sponsored policy initiative since Zimbabwe's independence. Operation Murambatsvina and the subsequent nonfeasance on the part of government officials must be the last time the international community stands aside while the government of Zimbabwe inflicts mass suffering on its citizens.¹⁸⁹ Operation Murambatsvina and the subsequent nonfeasance on the part of government officials must be the last time the international community stands aside while the government of Zimbabwe inflicts mass suffering on its citizens.¹⁹⁰

¹⁸⁹ See generally, Sarah Hager, *Zimbabwe: Why the United Nations, State and Non-State Actors Failed to Effectively Regulate Mugabe's Policy of Internal Displacement*, 37 CA. WESTERN INT. LAW JRNL. (forthcoming Spring 2007) (detailing the steps leading Mugabe to implement Operation Murambatsvina).

¹⁹⁰ "Almost two years after the government's program of mass evictions and demolitions- Operation Murambatsvina – tens of thousands of people continue to suffer the catastrophic consequences. A government reconstruction program, purportedly initiated to address the homelessness created by the evictions, has failed to benefit the thousands of people displaced by the evictions, who remain in urgent need of shelter, food, water, and other forms of assistance. In addition, the government has subjected many of the victims to repeated forced evictions." U.S. Federal News, *More Business Than Usual: The Work Which Awaits the Human Rights Council*, March 12, 2007.