Internally Displaced Persons and the Right to Adequate Housing: An Appraisal of Operation *Murambatsvina* in Zimbabwe

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DECLARATION

I, Rodgers Zivanai, hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that any secondary information used has been duly acknowledged.

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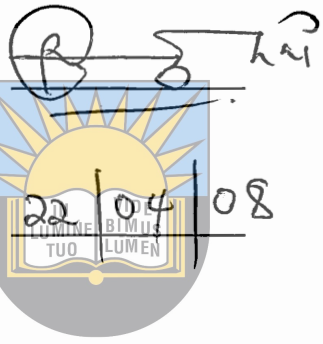
Signature: 

Date: 22/04/08

DEDICATION

To

My dear wife, Tafadzwa,

and

My lovely sons, Bearn and Michael.

ACKNOWLEDGMENTS

There seems to be a popular myth that writing a Masters dissertation has something to do with being clever. However, after two years of writing my dissertation, I have come to the conclusion that it is more than anything else a test of stamina. Dissertation writing can seem like a long, arduous and lonely journey across often difficult and unfamiliar terrain. The surroundings may be relatively unremarkable, a room and a computer or a desk in a library, but it does require commitment, a considerable amount of time, and, above all, a sense of excitement. I began the Masters in Law degree programme at the Faculty of Law of the University of Fort Hare in March 2006. Towards the end of 2007 it was basically complete with some of the final polishing taking place. I am happy to say that, while the subject of internal displacement has often left me confused and exasperated, it has never left me bored. I only hope that I can convey this sense of interest in the present work (hopefully, leaving out the confusion and exasperation).

I would like to thank my supervisor, Dr. Oladejo Olowu, for taking time off his busy schedule to read and advise on the work, for the constructive criticism, and for sharing his wealth of experience on the subject with me. He has always been available with suggestions and, I have to admit, also helped me considerably to improve my English. My sincere gratitude goes to the Centre on Housing Rights and Evictions (COHRE), especially Daniel Bailey for providing me with some of the relevant material used in this dissertation. I am extremely grateful for all the support I have received in writing this piece of work. Finance for this project came in part from the government of Zimbabwe. I would also like to thank, unreservedly, Professor Patrick Osode, Executive Dean of the School of Law of the University of Fort Hare, for the financial support that enabled me to finish this dissertation. I have also received many invaluable ideas from my lifetime friend and colleague, Remember Benjamin, from our many conversations about Operation *Murambatsvina* and other issues. I am deeply indebted to my mother, Patricia, for all her support and encouragement. Finally, I would like to thank my wife, Tafadzwa, who has always been there for support and always shown total faith and confidence in this project.

LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ACP	African, Caribbean and Pacific
AGOA	African Growth and Opportunity Act
AIDS	Acquired Immune Deficiency Syndrome
ARVs	Anti-Retro-Virals
AU	African Union
BCLR	Butterworth Criminal Law Reports
CAT	Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
COHRE	Centre on Housing Rights and Evictions
CRC	Convention on the Rights of the Child
DEVAW	Declaration on the Elimination of Violence Against Women
DRC	Democratic Republic of Congo
ECHR	European Court of Human Rights
ECOSOC	Economic and Social Council
ERC	Emergency Relief Coordinator
EU	European Union
EXCOM	Executive Committee of the High Commissioner's Programme
FTLR	Fast-Track Land Reform
GA	General Assembly

HC	High Court
HIV	Human Immuno-Deficiency Virus
HRC	Human Rights Council
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Eliminations of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal of Rwanda
ICTY	International Criminal Tribunal of Former Yugoslavia
IDPs	Internally Displaced Persons
IDU	Internal Displacement Unit
IHRL	International Human Rights Law
IHL	International Humanitarian Law
IMF	International Monetary Fund
IOM	International Organisation for Migration
IRL	International Refugee Law
J	Judge
KLERP	Korle Lagoon Environmental Restoration Programme
LAA	Land Apportionment Act
MDC	Movement for Democratic Change
MSMEs	Micro, Small and Medium Enterprises
NGO	Non-Governmental Organisation

OAU	Organisation of African Unity
OCHA	Office for the Co-ordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
RTCPA	Regional Town and Country Planning Act
RUPA	Rural and Urban Planning Act
SAHRIT	Human Rights Trust of Southern African
SAPs	Structural Adjustment Programmes
SERAC	Social and Economic Rights Action Centre
TTLs	Tribal Trust Lands
UNDP	United Nations Development Programme
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCHS	United Nations Centre for Human Settlements Issues-HABITAT
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHCR	United Nations High Commissioner for Refugees
UNHCHR	United Nations High Commissioner for Human Rights
UNICEF	United Nations International Children's Educational Fund
UNHRC	United Nations Human Rights Council
UNSC	United Nations Security Council
UNTS	United Nations Treaty Series
USA	United States of America
WB	World Bank
WHO	World Health Organisation
WFP	World Food Programme

ZANU-PF	Zimbabwe African National Union-Patriotic Front
ZDERA	Zimbabwe Democracy and Economic Recovery Act
ZIMCODD	Zimbabwe Coalition on Debt and Development
ZLHR	Zimbabwe Lawyers for Human Rights
ZRP	Zimbabwe Republic Police

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ABSTRACT

This dissertation examines the situation of internally displaced persons (IDPs) in terms of international law, with the right to adequate housing as the main concern. The issue of internal displacement is very topical at present, as there are over 25 million IDPs in the world today and the number is not decreasing, quite on the contrary. First and foremost, the definition of IDPs is under examination. IDPs and refugees seem to be two fairly similar categories of persons who need protection; therefore the issue of eventual similarities and differences between these two groups will be studied. In this respect, the question whether IDPs should have a specific legal status under international law, like refugees have, is considered. The issue of who bears the responsibility for the protection of IDPs' rights leads to the question regarding whether displacement qualifies as a crime under international law. This dissertation discusses the international legal and institutional framework for the protection of IDPs in the context of international human rights law, international humanitarian law and international refugee law.

International law provides for rights for everyone, including IDPs, but there are certain rights relating to IDPs that need to be addressed more effectively. Such rights are the right to adequate housing and property restitution, which are essential for those, displaced attempting to return to their original areas of residence. The study notes that various types of human rights violations were committed against IDPs during Operation *Murambatsvina* and there seems to be a culture of impunity that is prevailing in Zimbabwe, as the perpetrators of such atrocities have not so far been brought to justice. Zimbabwe, no doubt, face difficulties with protecting housing and property rights of IDPs, as the destruction of houses and properties belonging to the weak and marginalised was overwhelming.

Chapter 1: General Introduction

1.1 Background to the Study

> ...build-up of slums and informal settlements occur in large part because of policies and exclusionary practices that deny public services the basic facilities-including water, sanitation, health, education-to informal settlements...the evictions and demolitions are not the answer to the challenges of rapid urbanisation. We must have pro-poor, participatory urban development...with respect for human rights and in accordance with international law.[1]

In its most recent land reform program to "clean-up" its cities-Operation *Murambatsvina*,[2] Zimbabwe displaced over 700, 000 men, women and children

[1] Former United Nations Secretary General Kofi Annan, World Habitat Day, 3 October, 2005.
[2] *Murambatsvina* is Shona word meaning "dirt, trash or filth." Operation *Murambatsvina* was a programme which the government of Zimbabwe embarked upon to clean up its cities.

who lived in informal housing.[3] These people are often referred to as Internally Displaced Persons (IDPs). By definition, IDPs are persons who have been forced or obliged to flee or leave their homes of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters., and who have not crossed an internationally recognised State border.[4]

The campaign started on 19 May, 2005 in Zimbabwe's capital city, Harare and quickly developed into a nationwide campaign of destroying so-called illegal vending sites, structures and other informal business structures and homes, literally displacing hundreds of thousands of people. The army and the police were mobilised to carry out the demolitions and evictions. As a result, hundreds of thousands of displaced men, women and children were denied basic protection and assistance, including shelter, food, sanitation and health services.[5]

The consequences of this campaign highlight the abuses sustained by IDPs. Amongst these IDPs were children and youth, people living with HIV/AIDS, the aged, widows and orphans, women and girls, refugees, the disabled, the chronically ill, and so on.[6] In the aftermath of Operation *Murambatsvina* over one hundred thousand families were rendered homeless.[7] Though the government of Zimbabwe has recognised "the right of every one to an adequate standard of living for himself and his family, including food, clothes and housing...,"[8] it did little to comply with its international obligations and rectify the humanitarian crisis

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[3] United Nations 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*, delivered to the U.N. Human Settlements Programme (22 July, 2005) (Anna Kajumulo Tibaijuka) *available at*: <http://www.unhabitat.org/documents/ZimbabweReport.pdf> [hereinafter U.N. Report] (last accessed on 06 April, 2008).

[4] The United Nations Guiding Principles on Internal Displacement [hereinafter United Nations Guiding Principles], UN Doc E/CN.4/1998/53/Add. 2, 11 February, 1998, para. 2.

[5] Human Rights Watch, "Zimbabwe: Evicted and Forsaken; Internally Displaced Persons in the Aftermath of Operation *Murambatsvina*," Vol.17, No.16 (A) (2005).

[6] *Ibid*.

[7] Theo R. G. van Banning, *The Human Right to Property*, 85 (2002).

[8] International Covenant on Economic, Social and Cultural Rights [hereinafter ICESCR] article 11 (1). G.A. Res. 2200 A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966). Zimbabwe acceded to this international instrument on 13 May, 1993.

now facing a vast sector of its population.[9] Despite the conflicting rhetoric, it is clear that the government failed to comply with domestic and international obligations prohibiting forced evictions including the right to adequate alternative housing, access to food, water and health care for the six percent of its IDPs population adversely affected.[10]

The United Nations (UN) Convention Relating to the Status of Refugees defines a refugee as

> someone who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside his or her country of nationality, and is unable, or by reason of that fear, unwilling, to avail him/herself of the protection of his or her country; or someone who, not having a country of nationality, is outside the country of his/her habitual residence, and is unable or, by reason of that fear, is unwilling to return to that country.[11]

According to the refugee definition, a person fleeing the consequences of a natural catastrophe would not qualify as a refugee if he would cross the border. Internal displacement can thus, be defined as such movement of persons that takes place against their own will inside their own country.[12] Internal displacement emerged in recent years as one of the most pressing humanitarian

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[9] 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.

[10] Human Rights Watch, "Clear the Filth, Mass Evictions" and Demolitions in Zimbabwe," A Human Rights Watch Briefing Paper 9 (2005), available at: http;//www.hrw.org/background/Africa/zimbabwe0905/zimbabwe0905.pdf [hereinafter Human Rights Watch].

[11] The United Nations Convention on the Status of Refugees, 1951, 189 UNTS 150, *adopted* 28 July, 1951, *entry into force* 22 April, 1954, 189 UNTS 150.

[12] Maria Stavropoulou, "Displacement and Human Rights: Reflections on UN Practice," *Human Rights Quarterly* Vol. 20 No. 3, p. 518. Stavropoulou has developed a glossary for the various terms used in the context of displacement related issues (1998).

and human rights issues facing the international community, affecting some 52 countries around the world.[13]

International public attention continues to focus more on refugees, i.e. people who crossed international borders after fleeing their homes. By comparison, IDPs have received much less attention by the international community, the media and the donors, although their number is nearly twice as high, and their plight is often even worse than that of refugees.[14] IDPs differ from refugees under international law in terms of protection mechanisms. Refugees are protected under the 1951 Refugee Convention, which grants them a special status under international law.[15]

No continent has been spared the scourge of internal displacement or the cruelty that is often associated with it, but one has suffered more grievously than others: namely, Africa.[16] The list of African countries with large numbers of internally displaced persons reads like the roaster of the continent's many civil wars.[17] The crisis of national identity often manipulated by governments and by opposition groups has been the major reason why Africa is worst hit by the phenomenon of internal displacement.[18]

Zimbabwe in recent years has also been affected by this crisis of internal displacement. The forced evictions and resultant displacement in 2005 infringed a number of basic human rights and fundamental freedoms. In addition to the

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[13] Francis Deng in foreword to Mark Vincent and Refslund Sorensen (eds.), *Caught Between Borders: Response Strategies of the Internally Displaced* (Oslo Geneva, Global IDP Survey/ Norwegian Refugee Council, 2001), p. xiii.

[14] The Global Internally Displaced Persons Project, *Internal Displacement, A Global Overview of Trends and Developments* (Oslo Geneva, Global IDP Survey/Norwegian Refugee Council, 2003), p. 4.

[15] Convention Relating to the Status of Refugee, article 1: "...the term refugee shall apply to any person who...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."

[16] David Korn, *Exodus within Borders: An Introduction to the Crisis of Internal Displacement* (Washington, DC: Brookings Institution Press, 1999).

[17] The United Nations Office for the Co-ordination of Humanitarian Affairs (OCHA) estimates the number of IDPs in the Sudan at around 6 million, the largest IDP population in the world. *See*, Kirsten Zaat, "The Protection of IDPs in the Sudan: Applying International Law at the Field Level," 2006, p. 2, para. 1.

[18] *Ibid.*

violation of the right to housing, other key rights including the right to life, property and freedom of movement were also violated.[19] The existence of slums is a clear indication of the government's failure to cope with the rapid urbanisation, characteristic of African cities. It also shows the government's inability to provide adequate housing and deal with associated problems. According to George Charamba, "the clearance of slums is an abiding feature and dynamic of urban settlement, in fact, as mundane as the slums themselves."[20]

Once uprooted from their habitual environment, the IDPs remain among the most vulnerable groups in most conflict areas.[21] Although the role of international organisations in providing humanitarian assistance to the IDPs has grown, the concept of sovereignty still poses a daunting barrier to assuring their safety and fundamental rights. IDPs remain under the formal protection of their own State, even though officials of that State may have deliberately caused their displacement.[22] The international legal enforcement mechanisms are not strong enough to stimulate State responsibility, and IDPs often fall in a vacuum where State responsibility for their welfare is neglected due to the loss of control of vast areas of a country.[23]

The overall purpose of this study is to examine the IDPs' right to adequate housing in terms of international law, with this right as the main concern. It is against this background, therefore, that this study seeks to make a case for fostering and reconciling the demands of human rights protection through provision of adequate housing for the IDPs in Zimbabwe.

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[19] Anna Tibaijuka, "Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation *Murambatsvina* by the UN Special Envoy on Human Settlements Issues in Zimbabwe," para. 6.5.1 (18 July, 2005), [hereinafter Tibaijuka].

[20] George Charamba, "Zimbabwe: Operation Restore Order," *New Africa*, No. 442, July, 2005.

[21] Human Rights Watch, *supra* note 10, 3.

[22] Joan Fitzpatrick (ed.), *Human Rights Protection for Refugees, Asylum Seekers and Internally Displaced Persons: A Guide to International Mechanisms and Procedures* (New York Transnational Publishers, Ardsley, 2002), p. 5.

[23] Jon Bennet, *Internal Displacement in Context: The Emergence of a New Politics* in Wendy Davies (ed.), *Rights Have No Borders* (Norwegian Refugee Council/Global IDP Survey, 1998), pp. 15-29.

1.2 Statement of the Research Problem

The rise in the number of IDPs in Zimbabwe is in no small part due not only to the State's incapacity to protect its own people through the provision of decent houses, but also to a direct attack by the State on selected communities. In Zimbabwe, there is a large amount of information pointing to the responsibility of the government to afford its citizens adequate accommodation. On the contrary, the government has on numerous occasions violated the human rights of its citizens through internal displacement.

The majority of the displaced persons harbour considerable anger towards the government for having forced them out of their "homes" and without providing alternative accommodation, and in many cases, out-rightly violating their rights. The application of the domestic laws governing towns and cities to carry out or implement Operation *Murambatsvina* exposed the clear conflict between these laws and human rights provisions under both national and international law.[24] The people of Zimbabwe are entitled to their right to adequate housing in terms of national, regional and international legal instruments binding on Zimbabwe.[25]

The concept of state sovereignty still takes centre stage, and IDPs remain under the "protection" of their own State, which in many cases, is responsible for their plight.[26] Currently, reliance is placed upon international humanitarian law and the existing international human rights law, but the former only applies in situations of armed conflict.[27] Consequently, this study proceeds from the presumption that the government of Zimbabwe has failed to fulfil its obligation to protect IDPs within its jurisdiction and hence the need for stronger international protection.

The study is aimed at examining the IDPs' right to adequate housing in terms of international law. The emphasis of the study is placed on displacement resulting from human rights violations by States because these are the most

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[24] Tibaijuka, *supra* note 19, 5.
[25] *Ibid*.
[26] Francis Deng, *Flocks without Shepherds: The International Dilemma of Internal Displacement* in Wendy Davies (ed.), *Rights have no Borders; Internal Displacement* Worldwide (Norwegian Refugee Council/Global IDP Survey, 1998).
[27] Roberta Cohen and Francis Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington DC: Brookings Institution Press, 1998).

rampant and most problematic in Africa. Zimbabwe is the particular focus of this study because the civilian population in this country has suffered from human rights violations, which have caused massive displacement.

1.3 Research Questions

The study is premised on the preliminary assumption that the government of Zimbabwe grossly violated the right to adequate housing for IDPs within its territory. The continued plight of this particular group is attributed to the lack of adequate international human rights protection. The following questions have guided the research process.

1. To what extent did the government of Zimbabwe violate the IDPs' right to alternative adequate housing?
2. Were there any measures that were put in place to safeguard the rights of IDPs in Zimbabwe before the implementation of Operation *Murambatsvina*?
3. Is international human rights law applicable in this context? If so, which aspects of human rights law should be applicable?
4. To what extent has regional and international community responded to the issue of forced evictions in Zimbabwe?
5. Who bears the responsibility for the protection of human rights of IDPs in Zimbabwe?
6. What is the way forward towards the plight of the IDPs in Zimbabwe?

This plethora of questions forms the basis upon which the wheels of this discourse rotate.

1.4 Aims of the Research Study

The research study seeks to pursue two broad aims. Firstly, to analyse the extent to which the IDPs' right to adequate housing was violated, and secondly, to examine, the extent to which the government of Zimbabwe could protect,

promote and fulfil the right to adequate housing as the most viable option for the protection of IDPs in Zimbabwe.

1.5 Objectives of the Research Study

This dissertation is the product of the research which was guided by the following objectives:

- To analyse the obligation of the government of Zimbabwe to respect, protect and fulfil the right to adequate housing for IDPs.
- To identify and discuss the international legal and institutional framework for the protection of IDPs in Zimbabwe.
- To critically analyse the international human rights instruments binding on Zimbabwe that address the right to adequate housing
- To make an appraisal of Operation *Murambatsvina* within a human rights framework, thereby assessing the adequacy of the existing international legal regime in the protection of IDPs.
- To examine critically the direct impact of internal displacement on the human rights of IDPs.
- To show that Zimbabwe has got peculiar problems that exacerbate the problem of IDPs, and therefore need specific attention, and
- To suggest and come up with possible conclusions and recommendations regarding the legal issues arising from the implementation of Operation *Murambatsvina*.

1.6 Hypothesis

On the basis of these questions, the major hypothesis guiding this research suggests is that, the right of IDPs to adequate alternative housing was violated during the implementation of Operation *Murambatsvina* in Zimbabwe.

1.7 Literature Review

The current literature review is limited to a few titles that the author has accessed among a growing number of publications on population displacement.

The literature on internal displacement is flourishing as the problem of involuntary displacement is raising global concern following the growing number of displaced people in the world. Because of its complexities and devastative effects, involuntary displacement has not been a preoccupation for only academic scholars but also for humanitarian and development practitioners, which makes the literature on the subject an open ground for both.

The promotion and protection of IDPs feature prominently in international human rights law. Many countries of the world have allegedly violated the rights of their citizens through internal displacement due to numerous reasons. Third world countries[28] have been branded as "theatres of human rights violations in their totality i.e. economic, social, cultural, civil and political rights."[29] Zimbabwe's Operation *Murambatsvina* is one of the recent incidences of forced eviction that has evoked criticism from both within and outside Zimbabwe. The UN Special Envoy's Report on a fact-finding Mission to Zimbabwe is particularly significant to this study. It alleges that human rights were massively and horrendously violated during the government campaign.[30] The report by the Zimbabwe Human Rights NGO Forum views the campaign as having created a huge humanitarian disaster, causing hardship and suffering, warranting humanitarian intervention.[31]

Scott Leckie remarks with regard to forced eviction that "The practice of forced eviction has reached epidemic proportions to the extent that comprehensively monitoring of the practice has become a virtual impossibility."[32] He stated that "despite the very wide recognition of the rights associated with housing throughout international, regional and national legal systems, few rights

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[28] COHRE, "Fact Sheet on Recent and Impending Forced Evictions" (2004). This fact sheet states that Kenya evicted over 330,000 from their homes in the Kibera slums, China evicted over 300,000 people in Beijing, India displaced about 150,000 in New Delhi in January 2004, South Africa displaced about 4,500 people from Johannesburg, Indonesia displaced 35,000 people, Ghana forcibly removed 30,000 people from their homes, Thailand evicted 100,000 people and Liberia displaced about 30,000 people.

[29] Shadrack Gutto, *Human and Peoples' Rights for the Oppressed: Critical Essays on Theory and Practice from Sociology of Law Perspectives* (Lund University Press, 1993).

[30] Tibaijuka, *supra* note 19, 5.

[31] Zimbabwe Human Rights Non-Governmental Organisation Forum, "Order out of Chaos or Chaos out of Order? A Preliminary Report on Operation *Murambatsvina*" (June, 2005).

[32] COHRE: *Media Release*, 25 February, 2004.

are violated on the scale or within the degree of intensity as the human right to adequate housing."[33]

Nevertheless, available literature on internal displacement as a whole cannot be completely ignored if a meaningful study of the problem of IDPs is to be made. Hence, the following is a study of the reviewed literature. Francis Deng makes a very important contribution to the study of internal displacement in the form of the Guiding Principles on Internal Displacement, which apart from being the most comprehensive document on the normative framework on internal displacement provides the definition of IDPs as seen earlier.[34]

Roberta Cohen is of the view that though not a legally binding document, the Guiding Principles reflect and are consistent with existing international human rights and humanitarian law, and that in restating existing norms, they also seek to address gray areas and gaps.[35] Walter Kalin[36] argues first that the preparation of a treaty or even a General Assembly Declaration would not have been a realistic option when it comes to protecting IDPs. Second, that despite their non-binding character, the Guiding Principles are not without legal significance.

Cohen and Deng together provide a comprehensive analysis of the causes, and consequences of internal displacement, and the current legal and institutional framework for addressing the problem of internal displacement. While discussing the legal framework, they particularly point out that although IDPs are entitled to the protection provided by international human rights and humanitarian law, it is often difficult for governments, organisations and the displaced themselves to identify the guarantees that apply in specific situations. Most importantly, the study defines "Protection" to mean taking measures to

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[33] Scott Leckie, "The Human Right to Adequate Housing" in Asbjørn Eide et al, *Economic, Social and Cultural Rights: A Textbook*, 2nd ed, 2001, p. 149.
[34] United Nations Guiding Principles, *supra* note 4, 2.
[35] Roberta Cohen, "The Guiding Principles on Internal Displacement: A New Instrument for International Organisations and Non-Governmental Organisations" (*Forced Migration Review* No. 2, 1998).
[36] Walter Kalin, *How hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework* (The Brookings-CUNY Project on Internal Displacement, 2002).

ensure respect for the basic human rights of the IDPs, particularly their safety and dignity.[37]

Daniel Helle[38] concludes that the widespread and grave violations of basic human rights that IDPs suffer reveal that adequate and consistent protection remains a major gap in the national and international response. The work that was edited by Marc Vincent and Birgitte Refslund Sorensen is also significant because in addition to exposing the plight of IDPs, it also provides an insight into the strategies employed by the IDPs in responding to the challenges that confront them from the time of their displacement.[39] The Global IDP Project also made an important contribution to the regional and global patterns of internal displacement in terms of figures of IDPs per region. It also considers the causes and impact of displacement on affected groups.[40]

This reviewed literature offers various and useful elements on internal displacement. However, there are still few publications dedicated to the analysis of the right to adequate housing which makes the object of this dissertation. What emerges from the above is a broad spectrum of views on the subject of IDPs and the responsibility of States to protect their people in situations of massive violations of human rights.

There is a need for a synchronised study of the Charters of rights with regard to IDPs as well as the provisions of national and international human rights law instruments. This conclusion is of significance to this study in as far as it affords the sanctity of the fundamental human right to adequate housing for IDPs.

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[37] Cohen and Deng, *supra* note 27, 6.
[38] Daniel Helle, *Enhancing the Protection of Internally Displaced Persons* in Wendy Davies (ed.), *Rights Have no Borders: Internal Displacement Worldwide* (Norwegian Refugee Council/Global IDP Project, 1998).
[39] Marc Vincent and Birgitte Refslund (eds.), *Caught Between Borders: Response Strategies of the Internally Displaced* (Oslo Geneva, Norwegian Refugee Council/Global IDP Survey, 2001).
[40] Global IDP Project, *supra* note 14, 4.

1.8 Definition of Key Concepts

For the purpose of the present research, the following concepts need to be clarified: IDPs, Adequate Housing, Policy Gaps and Operation *Murambatsvina*. Definitions are necessary for legal purposes.

- *Internally Displaced Persons*

IDPs have been defined in the Guiding Principles on Internal Displacement as "persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights, or natural or human-made disasters, and who have not crossed an internationally recognised State border."[41]

- *Adequate Housing*

The Committee on Economic, Social and Cultural Rights (CESCR) gives a definition of "adequate" stating that "[a]dequate shelter means...adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities-all at a reasonable cost."[42] The CESCR recognises that adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, and identifies certain aspects of the right that should always be taken into account in determining whether housing is "adequate."

- *Policy Gaps*

The term "policy" is variably used by politicians, civil society activists, journalists, academic scholars, and so on. Hogwood and Gunn in 1984 attempted a classification of different ways in which the term "policy" is used.

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[41] Guiding Principles on Internal Displacement, *supra* note 4, 2. Francis Deng served as the Representative of the Secretary-General on Internally Displaced Persons from 1992 until 2004.
[42] In giving this definition, the Committee cites a statement by both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000.

They came up with nine ways in which the word is used as following: policy is used as 1) a label for a field of activity, 2) an expression of general purpose or desired state of affairs, 3) a special proposal, 4) decisions of government, 5) a formal authorisation, 6) a programme, 7) an output, 8) an outcome, and 9) a theory or model.[43]

This classification has been quoted to show the complexity of the term "policy" before even referring to its "gaps." Within the boundaries of this dissertation, the use of the term "policy" refers to a set of objectives, guidelines or strategies aimed at changing the current situation. As such, policy-making is not limited to governments but can also be made by international organisations, Non-Governmental Organisations (NGOs), community groups and so forth. Therefore, policy gaps would be defined as gaps between what is intended and what is needed on one hand and between what is intended and what has been achieved on the other.

- *Operation Murambatsvina*

Operation *Murambatsvina* was a campaign of forcible evictions and demolitions that took place in urban areas throughout Zimbabwe. The campaign was carried out at the instigation of the government of Zimbabwe and targeted the urban poor and marginalised society. Houses, properties and thousands of informal business structures were destroyed without regard for the rights or welfare of the evictees.

1.9 Significance of the Study

Even though this study relates to Zimbabwe, its outcomes are of great significance to other States contending with forced evictions. The study is also of importance to policy makers as it attempts to show how policies with regard to internal displacement should be implemented. The study proposes the way forward for the promotion and protection of IDPs, which is through adequate

[43] See, Brian Hogwood and Lewis Gunn (1984:3-31) for further details about each type.

international human rights protection, specifically physical protection and respect for human rights.

1.10 Limitations of the Study

This study only highlights the most important issues relating to the need for international protection of the human right to adequate housing for the IDPs without exhausting all the details. Although the problem of internal displacement is widespread in Africa, only Zimbabwe is used as a case study. The fact that the issue of internal displacement in Zimbabwe, particularly in Harare, continued unabated placed a particular challenge because debates change, and there are new developments on a daily basis. Scarcity of current academic writings also served as a challenge.

1.11 Methodology of the Study

Reliance has been placed on the wealth of available literature in accomplishing this study. This has entailed the use of primary and secondary sources of information. The primary sources include international Conventions and treaties, legislation and other instruments relevant to IDPs, whereas secondary sources include textbooks, reports, electronic materials, and available statistics on IDPs and internet research. Case law has also been relied upon in this study.

1.12 Overview of the Chapters

The study is structured around eight chapters.

Chapter 1 introduces the theoretical and methodological framework. Under this chapter, the research problem, questions, aims and objectives are stated, the research methodology is presented and internal displacement related literature is reviewed.

Chapter 2 provides an overview of the international legal and institutional framework for the protection of IDPs. Its focus is on the role assumed by these

instruments in an attempt to show how human rights should be protected. The chapter makes a comparison of the tripartite law of international human rights, international humanitarian law and international refugee law with a view to ascertain which law is most applicable in the Zimbabwe case. The chapter concludes that international human rights law is most applicable to the situation under investigation in this study.

Chapter 3 discusses the existing international and regional human rights instruments on the right to adequate housing binding on Zimbabwe. The chapter makes reference to prominent international standards and statements addressing the practice of forced displacements from which authority could be drawn in the critical legal analysis of Operation *Murambatsvina* in Zimbabwe. It also discusses the housing rights situation in Zimbabwe as well as Zimbabwe's international obligations. The chapter concludes that the government's actions in Operation *Murambatsvina* were not in accord with either international treaties to which it is a party or its own national laws.

Chapter 4 forms the central theme of the research study. It introduces the subject under discussion, Operation *Murambatsvina* and extensively discusses the historical, economic and political background of the campaign. This chapter makes a legal analysis of the programme and analyses the core policy question identified in this study, namely: in carrying out Operation *Murambatsvina*, to what extent did the government of Zimbabwe prioritise its obligations under international human rights law particularly as regarding the right to adequate housing? In addition, the chapter draws case law authority from international and regional cases on the human right to adequate housing. The chapter concludes that Operation *Murambatsvina* violated both international law and domestic law since it was not carried out in compliance with either the spirit or the letter of the municipal regulations relied upon by the Zimbabwe government as the basis for its actions.

Chapter 5 examines in series the allegations of violations of human rights that took place when the government of Zimbabwe implemented Operation *Murambatsvina*. The chapter attempts to describe the effects of these violations on IDPs and the extent to which they were affected.

Chapter 6 sets out to determine a possibility of State or criminal responsibility on the part of the Zimbabwe government as a result of crimes allegedly committed under this programme. This chapter identifies these crimes and discusses the duty of States to prosecute as well as determining whether the International Criminal Court (ICC) has jurisdiction to try these offences in the event of evidence of inability or unwillingness to prosecute by the government of Zimbabwe.

Chapter 7 discusses possible legal remedies to the victims of Operation *Murambatsvina*, and suggests strategies aimed at preventing future forced displacements. Finally,

Chapter 8 reviews the major research findings of the research exercise and applies these findings in drawing conclusions and recommendations.

Chapter 2: The International Legal and Institutional Framework for the Protection of Internally Displaced Persons

2.1 Introduction

The international protection of IDPs is an emerging area of International law.[44] The issue of protection encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (human rights, humanitarian and refugee law), without discrimination of any kind.[45] Protection is first and foremost the responsibility of the State. However, human rights and humanitarian actors also have protection responsibilities. Protection activities fall into three broad categories:

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[44] Kirsten Zaat, "The Protection of IDPs in the Sudan: Applying International Law at the Field Level," *at*: <http://www.reliefweb.int/library/documents/2006/jha-sdn-02oct.pdf> (last accessed on 24 October, 2007).

[45] Inter-Agency Standing Committee Gender Handbook, "Different Needs-Equal Opportunities" (2006), p. 1.

- Responsive action i.e. activities undertaken in the context of an emerging or established pattern of abuse and aimed at preventing its recurrence, putting a stop to it, and/or alleviating its immediate effects;
- Remedial action i.e. activities aimed at restoring peoples' dignity and ensuring adequate living conditions through effective remedy and reparation, including supporting due process of law and justice for victims while combating impunity; and
- Environmental building i.e. activities aimed at creating or consolidating an environment conducive to full respect for the rights of individuals.[46]

It is trite to note that the question of IDPs' protection under international law against human rights violations goes beyond academic interest due to the fact that internal displacement infracts upon basic human rights guarantees. The debate on IDPs' protection revolves around two sets of potentially contradictory concerns: (a) ensuring international protection of human rights and upholding State responsibilities, and (b) legal provisions for the protection of IDPs and States' capacity to comply with those provisions.[47]

Thus, this chapter examines the applicability of international human rights law, international humanitarian law and refugee law to internal displacement, and considers the extent to which each meets the protection needs of the IDPs. The chapter also gives an umbrella overview of the institutional framework for the protection of IDPs.

2.2 The International Legal Framework for the Protection of IDPs

The phenomenon of internal displacement occurs in particular during internal disturbances and upheavals, as well as during non-international armed conflicts. Notwithstanding the absence of specific guarantees for IDPs, the main basis for their international legal protection can be found in international and

[46] *Ibid.*
[47] Bennet, *supra* note 23, 5.

regional human rights law, as well as in humanitarian law applicable to non-international armed conflicts.[48]

The international legal framework for protection is primarily composed of three interrelated and mutually reinforcing bodies of treaty law: international human rights, humanitarian and refugee law. Customary international law is a consistent practice (rather than written law) of States that has become accepted as law and it prohibits acts such as prolonged arbitrary detention, executions, slavery and torture.[49]

IDPs are protected by various bodies of law, principally national law, and human rights law and, if they are in a State experiencing an armed conflict, international humanitarian law.[50] IDPs, even though uprooted from their homes, they still have rights and entitlements to which they have not lost by virtue of having been displaced.[51] IDPs are nationals of the State in which they are displaced; hence they are entitled to the full protection of the national law and the rights it grants nationals without any adverse distinction.[52] However, because governments frequently cause or tolerate internal displacement and are unwilling or unable to guarantee basic rights and meet the needs of their internally displaced citizens, it is important to ascertain whether international law provides adequate protection for these persons.[53]

International Human Rights Law (IHRL)

The international human rights movement is based on the concept that every nation has an obligation to respect the human rights of its citizens and that

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[48] Geissler, *supra* note 24, 6.
[49] *Ibid.*
[50] International Committee of the Red Cross (ICRC), "Legal Protection of Internally Displaced Persons" (2002), *at*:
<http://www.icrc.org> (last accessed on 25 November, 2007).
[51] Helle, *supra* note 38, 11.
[52] Geissler, *supra* note 24, 6.
[53] Roberta Cohen and Francis Deng (eds.), *The Forsaken People: Case Studies of the Internally Displaced* (Washington DC: Brookings Institution Press, 1998).

other nations and the international community have a right, and responsibility, to protest if States do not adhere to this obligation.[54]

Article 1 of the Universal Declaration of Human Rights (UDHR) states: "All human beings are born free and equal in dignity and rights." Human rights such as the right to life are inherent and inalienable in human beings simply by the fact of their being human. Individuals and groups cannot voluntarily give up their human rights, nor can others take them away.

International Human Rights Law (IHRL), which is applicable both in times of peace and in situations of armed conflict, provides protection for IDPs. Its aim is to prevent displacement and to ensure basic rights. The prevention of displacement is the main concern of this study. The rights to personal safety, food, shelter, education and access to work afford vital protection during displacement.

At present, IHRL is embroiled in the International Bill of Rights which essentially comprises of the UDHR[55] and several international human rights instruments primarily including, the International Covenant on Civil and Political Rights (ICCPR),[56] International Covenant on Economic, Social and Cultural Rights (ICESCR),[57] the Convention Against Torture (CAT),[58] the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),[59] and

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[54] Richard Bilder, *An Overview of International Human Rights Law* in Hurst Hannum (ed.), *Guide to International Human Rights Practice* (2nd ed) (Philadelphia: University of Pennsylvania Press, 1994).

[55] Universal Declaration of Human Rights [hereinafter UDHR) *adopted* and proclaimed by the General Assembly resolution 217 A (III) of 10 December, 1948. Zimbabwe became Party to the UDHR at independence in 1980.

[56] International Covenant on Civil and Political Rights [hereinafter ICCPR] *adopted* and opened for signature, ratification and accession by UN General Assembly Resolution 2200 A (XX1), 16 December, 1966, *entered into force* on 23 March, 1976 in accordance with Article 49. Zimbabwe ratified this Convention on 13 August, 1991.

[57] The International Convention on Economic, Social and Cultural Rights [hereinafter ICESCR] *adopted* by the General Assembly Resolution 2200A (XX1) of 16 December, 1966. This Convention explicitly affords details on socio-economic rights provided for under International Human Rights law. Zimbabwe ratified this international Convention on 13 August, 1991.

[58] Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, [hereinafter CAT], *adopted* by General Assembly Resolution 39/46 of 10 December, 1984. As of 9 June, 2004, Zimbabwe had not yet ratified this international treaty.

[59] Convention on the Elimination of All Forms of Discrimination Against Women [hereinafter CEDAW) *adopted* by General Assembly Resolution 34/180 of 18 December, 1979. Zimbabwe ratified this Convention on 12 June, 1991.

the Convention on the Rights of the Child (CRC).[60] Within the African region, the basic human rights instrument is the African Charter on Human and Peoples' Rights (ACHPR).[61]

It suffices to say, that there are no specific forms of legal protection that could be granted to IDPs that do not already exist in international law.[62] It is submitted that the existing internationally binding instruments fail to articulate rights like the right not to be forced to return or resettle, and the right to personal identification documents, which are essential for the protection of IDPs.[63] With such an important omission in the existing law, there is a need for a specific legally binding instrument for the protection of IDPs.

Under international human rights law, States have the obligation to respect, protect and fulfil human rights. The obligation to *respect* requires that a State, principally, refrain from interfering directly or indirectly with the enjoyment of the right; the obligation to *protect* means preventing third parties from interfering with the enjoyment of the right; and fulfilling human rights means taking steps progressively to realise the right in question.

In order to meet these obligations, States should, *inter-alia,* put in place appropriate policies; review and ensure (by amending, enacting or repealing) that national legislation is in conformity with international standards; ensure that an effective institutional framework (e.g. police, judicial system, prisons, and so on) exists to protect and claim rights, and offer possibilities for individuals and groups to seek remedy when their rights have been violated; implement programmes to give effect to rights; and seek international assistance and cooperation as needed.[64]

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[60] Convention on the Rights of the Child, [hereinafter CRC], *adopted* by General Assembly Resolution 44 /11/ 1989, *entered into force* 2 September, 1990 in accordance with Article 49. Zimbabwe ratified this treaty on 11 October, 1990.
[61] African Charter on Human and Peoples' Rights [hereinafter ACHPR] *adopted* by the Organisation of African Unity [hereinafter OAU] on 27 June, 1981.
[62] Michael Barutciski, "Tensions Between the Refugee Concept and the IDP Debate" (*Forced Migration Review*, No. 3, 1998).
[63] The United Nations Guiding Principles provided for these rights, however, these rights are not legally binding.
[64] *Ibid.*

Furthermore, IHRL as it stands today is dispersed in various instruments as seen above, each having a separate body to ensure its implementation.[65] This, therefore, makes the law difficult as a source of reference for the enforcement of IDPs rights, as one would need to have knowledge of all the instruments to know their rights, and appear before various bodies to have the rights enforced. IHRL generally binds only States, not non-State actors. This therefore means that non-States actors are not accountable under international human rights law even if they violate rights of IDPs.[66] This therefore makes the law inadequate for the protection of IDPs as many human rights abuses are committed by non-State actors. Accountability of non-State actors for human rights abuses therefore is of crucial importance in the protection of IDPs, and can only be achieved through new legislation.

It is often argued that a major weakness with IHRL is that it may be restricted or derogated from.[67] It should, however, be noted that non-observance of obligations may entail loss of credibility and support on part of other actors or the population itself, and that the relevant authorities often have an interest in discharging their obligations.[68]

2.2.2 International Humanitarian Law (IHL)

IHL is the body of international law which protects persons not or no longer taking part in hostilities, i.e. civilians, wounded, sick, shipwrecked and captured combatants, and which regulates means and methods of warfare. It is applicable in international and non-international armed conflicts and is binding on States, armed opposition groups, and troops participating in multi-lateral peacekeeping and peace enforcement operations if they take part in the hostilities.[69] Today, the principal instruments of IHL are the four Geneva

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[65] For example, the ICCPR under article 28 establishes the Human Rights Committee as its monitoring body, and the Committee on Economic, Social and Cultural Rights [hereinafter CESCR] established in 1987 is the monitoring body of the ICESCR.
[66] United Nations Guiding Principles, *supra* note 4, 2.
[67] *Ibid*.
[68] These obligations are provided for by the CESCR.
[69] International Committee of the Red Cross, "International Humanitarian Law" *at*: <http://www.icrc.org/doc> (last accessed on 25 October, 2007).

Conventions of 1949, their two Additional Protocols of 1977, which cover humanitarian issues directly arising from international and non-international armed conflict,[70] as well as numerous Conventions restricting or prohibiting the use of specific weapons.

Therefore, if IDPs are in a State that is involved in an armed conflict then, provided they are not taking an active part in the hostilities, they are considered civilians and as such, are entitled to protection afforded to civilians.[71] Once respected, the general rules of IHL can protect IDPs, for example those prohibiting parties to a conflict from targeting civilians, the prohibitions on starvation of the civilian population and on the destruction of objects indispensable to its survival, and the rules requiring parties to a conflict to allow relief consignments to reach civilian populations in need.[72]

A major weakness of IHL vis-à-vis the protection of IDPs is that in some situations of tensions and disturbances short of armed conflict, humanitarian law is not applicable. Consequently, IDPs who are not in areas of armed conflict cannot be protected by IHL. In this respect therefore, IHL cannot be said to be apposite for the protection of all IDPs.

2.2.3 International Refugee Law (IRL)

IRL is the branch of law that deals with the rights and protection of refugees. The main principles of refugee law are set out in the 1951 Convention relating to the Status of Refugees[73] and its 1967 Protocol.[74] Other important instruments include the Statute of United Nations High Commissioner for Refugees (UNHCR) and the Conclusions of its Executive Committee, as well as regional treaties and declarations. In the African region, the 1969 Convention

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[70] Protection of civilians is explicit in the twin Protocols Additional to the Geneva Convention *i.e.* Protocol Additional to the Geneva Conventions of 12 June, 1949 and Relating to the Protection of Victims of Armed Conflicts (Protocol I), and Protocol Additional to the Geneva Conventions of 12 August, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June, 1977 respectively.
[71] International Committee of the Red Cross, *supra* note 50, 19.
[72] Chapters II and III of Protocol I to the Four Geneva Conventions of 1949.
[73] United Nations Convention Relating to the Status of Refugees, *supra* note 11, 3.
[74] Protocol Relating to the Status of Refugees, 31 January, 1967, 19 UST 6223, 606 UNTS 267.

governs the specific aspects of refugee problems.[75] These instruments provide a general definition of a refugee, and guarantee refugees a number of rights specific to their status.

When dealing with IRL the assertion is that human rights violations have already occurred and that victims have already fled their country of origin. The objective is to convince an asylum State to respect minimal standards for certain foreigners who do not benefit from some other national protection. Although some principles of refugee law may be applicable by analogy, the strong and effective protection accorded to refugees under the refugee conventions cannot apply directly to IDPs even though their conditions are similar.[76] For example, a refugee is defined among other aspects, as a person who is outside the country of his nationality.[77] For this reason, IRL cannot be said to apply to IDPs because the latter have not left their country of origin.

2.2.4 The Guiding Principles on Internal Displacement

The Guiding Principles on Internal Displacement provide States, the United Nations and other human rights and humanitarian actors with important guidance relating to the protection of IDPs. They were prepared in response to a request of the former UN Commission on Human Rights (UNCHR) to the Representative of the Secretary-General on Internal Displacement to develop an appropriate normative framework for the protection and assistance on IDPs.[78]

Although the Guiding Principles are not binding as such, they are based upon and reflect the protection offered by international human rights, humanitarian and, by analogy, refugee law. There are many areas in which the law provides insufficient legal protection owing to inexplicit articulation or normative and other kinds of gaps.[79] One example of a normative gap is the fact

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[75] Convention Governing the Specific Aspects of Refugees Problems in Africa, 1001 UNTS, 45, 1969.
[76] *Ibid.*
[77] Article 1 (A) (2) of the Convention Relating to the Status of Refugees of 1951.
[78] United Nations Document E/CN. 4/1998/53/ AD. 2.
[79] Francis Deng, "Compilation and Analysis of Legal Norms". Report of the Representative of the Secretary-General on Internally Displaced Persons, E/CN/4/1996/52, Add. 2 (1996).

that no international instrument contains an express right not to be forced to return.[80]

The Guiding Principles constitute the only international instrument specific to the needs of IDPs, and they incorporate elements of three branches of public international law in a single document: humanitarian law, human rights law, and refugee law.[81] They thus consolidate in one document all the international norms relevant to IDPs, otherwise dispersed in many different instruments.[82] They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set out guarantees for safe return, resettlement and reintegration.[83] They apply to everyone who is internally displaced without discrimination of any kind, including sex or social status.

The introduction to the Guiding Principles provides a definition of IDPs as seen in Chapter One and according to Roberta Cohen that is the broadest definition of IDPs in use at the international or regional level.[84] The principles cover the three phases of the normative needs and rights of IDPs: to be protected from arbitrary displacement, to have access to protection and assistance during displacement, and to be assured of durable solutions through safe return and reintegration or alternative settlement.

They identify many human rights that IDPs have under existing international law and provide a few new ones.[85] Among the rights included are the rights to respect and dignity of person, life, food, health, recognition before the law, property, education, religion, thought, conscience, assembly, association, and some rights provided under IHL. New additions include the right

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[80] Robert Goldman, "Codification on International Rules on Internally Displaced Persons: An Area where both Human Rights and Humanitarian Law Considerations are Being Taken into Account" (International Review of the Red Cross, 1998, No. 324, pp. 467-480), *at*: <http://www/icrc.org> (last accessed on 26 November, 2007).
[81] Jean-Philippe Lavoyer, "Guiding Principles on Internal Displacement" (1998), *at*: <http://www.icrc.org> (last accessed on 26 October, 2007).
[82] Cohen, *supra* note 35, 10.
[83] Internal Displacement Monitoring Centre, "The Right of IDPs to return home and Property Restitution," *at*: <http://www.internal-dislacement.org/8025708F004B> (last accessed on 26 October, 2007).
[84] UN Document, *supra* note 78, 24.
[85] Curtis Doebbler, "The Human Rights of Internally Displaced Persons in Sudan" (1999), *at*: <http://dcreregistry.com/bbs/welcome.htm> (last accessed on 26 October, 2007).

not to be arbitrarily displaced, the right to personal identification documents, and the right not to be forced to return or resettle.[86]

Section I of the principles spells out the general principles. Principle 3, for example, restates the fact that States have the primary responsibility of protecting IDPs. Better still; the Principles are based on the principle of non-discrimination, which is a cornerstone of both human rights and humanitarian law.[87] Section II deals with protection against displacement, for example, under principle 5, States are required to prevent and avoid conditions that may lead to displacement. Of particular importance is the prohibition of arbitrary displacement, based on *inter-alia* unjustified large-scale development projects, or ethnic cleansing.[88] Section III deals with protection during displacement by restating the rights of IDPs. The Principles also place special emphasis on women and children as particularly vulnerable groups in the displacement phenomenon.[89]

A crucially important provision in the Guiding Principles is the stipulation of the right of all persons to leave their country, and seek asylum in another country.[90] Principle 15 reaffirms what is tantamount to the principle of non-refoulement, in as far as it specifically protects IDPs against forcible return to or resettlement in any place where their life, safety, liberty or health would be at risk.[91] The Guiding Principles cover humanitarian assistance under section IV, and emphasise that this is to be carried out with impartiality, and without discrimination. There is the right of international actors to provide such assistance, and under Principle 26, persons engaged in humanitarian assistance, their transport and supplies should be respected and protected. The last section of the Guiding Principles deals with return, resettlement and reintegration of

[86] Principles 6, 15 and 20 of the Guiding Principles.
[87] Lavoyer, *supra* note 81, 25.
[88] Principle 6 of the Guiding Principles.
[89] Principles 4, 13, 19 and 23 of the Guiding Principles.
[90] Principles 2 and 15 of the Guiding Principles.
[91] Principle 15 of the Guiding Principles.

IDPs.[92] Some of the reasons advanced for the preference for non-binding principles as opposed to a treaty include:

> (1) That treaty-making in the area of human rights has in general become very difficult today;
> (2) That there is no guarantee that the treaty will be successful, for example, States may fail to ratify the treaty;
> (3) That to draft a treaty that combines human rights and humanitarian law is probably premature; and
> (4) That to negotiate a new treaty was not really necessary as existing treaties already cover, at least implicitly the rights of IDPs to a large extent.[93]

It is, however, submitted that the above reasons reflect mere pessimism and speculation, and it is unfortunate that they form the basis for the failure to come up with a specific and legally binding international instrument for the protection of IDPs. An obvious disadvantage of the non-binding nature of the Guiding Principles is the fact that the States cannot be held accountable if they disregard them, and that they cannot be invoked in legal proceedings at the domestic level.[94] Therefore, States' compliance with the Guiding Principles is purely voluntary, and in my opinion, the principles are of insignificant importance to the IDPs for as long as they are not legally enforceable.

Referring to legally binding obligations also strengthens advocacy on behalf of the IDPs towards the authorities and, not least, empowers the IDPs themselves, rather than designating them as a group receiving charitable aid. Therefore, the need for a legally binding instrument specifically dealing with IDPs like the Guiding Principles need not be over-emphasised.

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[92] Principles 28, 29 and 30 of the Guiding Principles.
[93] *Ibid.*
[94] *Ibid.*

2.3 Complementarity of International Human Rights Law, Humanitarian Law and Refugee Law

International human rights law, humanitarian law and refugee law reveal a common goal in aiming to prevent and relieve suffering, and to protect the rights and freedoms of women and men, girls and boys. As such, they complement and reinforce each other, thus providing a comprehensive framework for the protection of IDPs. The three bodies of law are, however, different in both applicability and scope.

Humanitarian law is specific to armed conflict while refugee law only applies to refugees and asylum-seekers. Human rights law is broader and applies to all human beings during times of both peace and war.[95] Both human rights and humanitarian law have built-in constraints that influence their applicability and interpretation. The ICCPR, in article 4, permits States, in times of public emergency which threatens the life of the nation, to derogate from certain obligations subject to the following conditions: the emergency must be officially proclaimed; the measures must be strictly limited to the exigencies of the situation; they must not be inconsistent with other obligations under international law or discriminatory in nature.[96] It is important to note that article 4 does not permit States to derogate from the following rights:[97]

The guarantees offered by the different bodies of law are mutually reinforcing, thus enabling humanitarian and human rights actors to maximise the protection offered to people. In some situations, they will overlap and a determination should be made on how to apply them to secure the greatest protection for affected populations.[98]

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[95] Global Internal Displaced Persons Project, "Complementarity between Key Instruments of International law," *at*: <http://www.internal-displacement.org/$file/complementarity_%20 of HR> (last accessed on 26 October, 2007).

[96] *Ibid*.

[97] Right to life; freedom from torture or cruel, inhuman or degrading treatment or punishment; freedom from slavery, the slave trade and servitude; freedom from imprisonment because of the inability to fulfil a contractual obligation; prohibition of retroactive criminal laws; the recognition of everyone as a person before the law; and freedom of thought, conscience and religion.

[98] Global IDP Project, *supra* note 96, 29.

2.4 The Institutional Framework for the Protection of IDPs

Regarding the institutional aspects of the international response for providing protection and assistance to IDPs, the Representative of the Secretary-General on IDPs recalled that three options had been considered:

(a) The creation of a special agency for the internally displaced;

(b) The designation of an existing agency to assume full responsibility for the internally displaced; and

(c) Collaboration among the various relevant agencies.[99]

However, while UN officials in charge of internal displacement insist on the "collaborative approach,"[100] which aims for international bodies working on IDP issues to collaborate through existing structures, rather than handing responsibility for IDPs to an existing UN agency or a new agency in the provision of aid to IDPs, many NGOs are sceptical about the viability of this approach in practice.[101]

To implement the collaborative approach, a number of institutional mechanisms were put into place to facilitate inter-agency cooperation on behalf of the displaced with a view to addressing the persistent gaps in coordination and protection. At the country level, the humanitarian coordinator is charged with facilitating coordination among the UN agencies and the NGOs.

This official is often the same person appointed as the UN resident coordinator. At headquarters level, the Emergency Relief Coordinator, who is also the Under-Secretary-General for Humanitarian Affairs and the chairperson of the Inter-Agency Standing Committee (IASC), is charged with overseeing the humanitarian coordinators and ensuring that the collaborative approach is

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[99] Francis Deng, "Specific Groups and Individuals: Mass Exodus and Displaced Persons," Report of the Representative of the Secretary General on Internally Displaced Persons, submitted pursuant to Commission on Human Rights Resolution 2001/54.

[100] For example, the former emergency Relief Co-ordinator, Kenzo Oshima stated that the collaborative approach remains the only practical and realist approach.

[101] Global IDP Project, "Report on the Parallel Meeting on IDPs held in Geneva on 10 April, 2003, Internally Displaced Persons: Accountability, Co-ordination and Protection Seen as Challenges," 29 April, 2003, *at*: <http://idpproject.org> (last accessed on 27 October, 2007).

working worldwide. A number of other headquarters level institutions have had an important part to play, including the IASC and the IASC Working Group, the Senior Inter-Agency Network on internal displacement and the OCHA-IDPs Unit.

2.4.1 The Representative of the UN Secretary-General on IDPs

In response to the growing international concern about the large number of IDPs and their need for assistance and protection, the defunct Commission on Human Rights in 1992 requested the UN Secretary-General to appoint a representative on IDPs.[102] Accordingly, Mr. Francis Deng was appointed to this position during the same year.

The main elements of the representative's mandate included visits to countries affected by displacement and the review and evaluation of existing international institutions and international law to determine the degree to which they provide an adequate basis for the protection and assistance needs of those who are internally displaced. The representative was also mandated to formulate appropriate recommendations to improve the response to IDPs' needs.[103] Notably, the Representative of the Secretary-General is the only position within the UN system with a mandate from the Commission of Human Rights and the Secretary-General to focus exclusively on the problem of internal displacement and to address both protection and assistance.

The office has evolved into one of catalyst within the UN system, raising awareness of the human rights and protection problems of the IDPs.[104] However, the office is a voluntary one, expected to be carried out on a part-time basis. The office has no operational authority, and has limited staff support. Worse still, the resources placed at the Representative's disposal do not enable him to

[102] Commission on Human Rights Resolution 1992/73. This Commission was replaced by the Human Rights Council in 2006.
[103] *See*, Helle Daniel, *Enhancing the Protection of Internally Displaced Persons* in Wendy Davies (ed.), *Rights Have No Borders: Internal Displacement Worldwide* (Norwegian Refugee Council/ Global IDP Project, 1998).
[104] Cohen and Deng, *supra* note 53, 19.

undertake systematic monitoring of situations of internal displacement or frequent visits to countries with serious problems of internal displacement.[105]

2.4.2 The United Nations High Commission for Refugees (UNHCR)

UNHCR has an interest in the protection and welfare of persons who have been displaced by persecution, situations of generalised violence, conflict or massive violations of human rights: in other words, in all those who, had they crossed an international frontier, would have had a claim to international protection. This interest arises from the similarity between such IDPs and refugees, in terms of the causes and consequences of their displacement and their humanitarian needs. Like refugees, many IDPs have been forced to leave their homes because of fear of persecution, war and violence. Again, like refugees, they are in need of protection and assistance, as well as a solution to their plight.

Of all the UN agencies, UNHCR plays the broadest role in addressing the problems of the internally displaced. The UNHCR is not entrusted with specific legal competence for IDPs.[106] The UNHCR's Statute recognises in article 9 that the High Commissioner may, in addition to the work with refugees, "engage in such activities...as the General Assembly may determine, within the limits of the resources placed at (h)er disposal." This provision therefore has been the basis for UNHCR's intervention with IDPs, and the basis upon which the General Assembly has, on several occasions either authorised the High Commissioner to act on behalf of or expressed support for actions already taken by UNHCR in respect of IDPs.[107]

Note however, that the various authorisations to UNHCR by the General Assembly and the Executive Committee of the High Commissioner's Programme (EXCOM) do not amount to *carte blanche* for UNHCR involvement in issues of internal displacement. The approach taken by the General Assembly

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[105] *Ibid.*
[106] Dennis McNamara, *United Nations High Commissioner for Refugees' Protection Mandate in Relation to Internally Displaced Persons* in Wendy Davies (ed.), *Rights have no Borders*; *Internal Displacement Worldwide* (Norwegian Refugee Council/Global IDP Survey, 1998).
[107] *Ibid.*

underscores the need for flexible responses without providing UNHCR with any obligatory or automatic responsibility for IDPs.[108] Furthermore, UNHCR's involvement with IDPs is circumscribed by a combination of policy, legal and operational considerations which have served as benchmarks for its role in this area.

In essence, UNHCR will only get involved with IDPs in situations where there is a clear link with refugee or returnee populations, or where there is the potential for internal displacement to develop into external refugee movements. UNHCR's involvement also depends on the request of the UN Secretary-General or the General Assembly, the consent of the government and other parties to the conflict, and assurances of adequate funding, full access to the displaced, and staff security. However, UNHCR's involvement with IDPs should never undermine the right of IDPs to seek and enjoy asylum.[109]

The UN General Assembly resolution 48/116 (1993) set out important criteria to guide UNHCR's decision on when to intervene on behalf of internally displaced persons. These resolutions, together with article 9 of the Statute, provide the legal basis for UNHCR's interest in and action for IDPs. In addition to advocating on behalf of the IDPs and mobilising support for them, UNHCR provides protection and assistance to internally displaced persons when certain conditions and considerations are met.

2.4.3 The United Nations Office for the Coordination of Humanitarian Affairs (OCHA)

In December 1991, the General Assembly adopted Resolution 46/182, designed to strengthen the UN's response to both complex emergencies and natural disasters. In addition, it aimed at improving the overall effectiveness of the UN's humanitarian operations in the field, hence the creation of the OCHA office. Pursuant to a decision by the former Secretary-General, the Internal Displacement Unit (IDU) was established within the OCHA in 2002. The main

[108] *Ibid.*
[109] *Ibid.*

objective of the unit is to promote system-wide improvements in the response to the needs of the IDPs as well as to provide targeted support to specific country situations. The main areas of work focus on protection of IDPs, field support, capacity building/training and advocacy/public information.

The creation of an IDP Unit within the OCHA in 2002 was a small but positive step forward which "of course does not solve all problems."[110] The Unit's mandate is to promote system-wide improvement in response to IDPs through both enhancing institutional arrangements with the UN system and its partners. OCHA is also in close contact with the Representative of the Secretary-General on IDPs in order to keep him up to date on relevant policy developments, provide him with country specific information and proposals for his advocacy efforts on behalf of internally displaced persons.[111]

2.4.4 The Office of the Emergency Relief Coordinator

The former Secretary-General, in his report, "Renewing the UN: A Programme for Reform,"[112] emphasised that the international response to internal displacement needed to address both protection and assistance. The report underlined the role of the Emergency Relief Coordinator as one of ensuring that the protection and assistance needs of IDPs are addressed. The growing need to coordinate the UN humanitarian assistance led the General Assembly in 1991 to create the post of the Emergency Relief Coordinator at the Under-Secretary-General level.[113]

Following two international conferences on uprooted populations in 1988 and 1989, in 1990; the General Assembly assigned to resident coordinators the function of coordinating assistance to IDPs in the field. The following year, it created the post of the ERC to promote a more rapid and coherent response to

[110] Kenzo Oshima, *see*, a report by the Global IDP Project/Norwegian Refugee Council (2002).
[111] Inter- Agency Standing Committee Policy Paper, "Protection of Internally Displaced Persons," Annex A (1999).
[112] Kofi Annan, "Renewing the UN: A Programme for Reform" (2005).
[113] General Assembly, "Strengthening the Co-ordination of Humanitarian Emergency Assistance of the UN," A/Res/42/186, UN, December, 1991.

emergency solutions.[114] In his 1997 UN reform program, the Secretary-General reaffirmed the role of the Emergency Relief Coordinator as being responsible for ensuring that protection and assistance for IDPs are addressed.[115]

It is the responsibility of the Emergency Relief Coordinator to develop policy and advocate for humanitarian causes within the UN system, coordinate emergency response, and give counsel to the Secretary-General, particularly when human rights issues are before the Security Council. Other agencies involved in the protection of IDPs include the ICRC, United Nations Development Programme (UNDP), World Food Programme (WFP), United Nations International Children's Educational Fund (UNICEF), World Health Organisation (WHO) and International Organisation for Migration (IOM). However, in the absence of strong coordination among these agencies or clear responsibility for the internally displaced, the response has been highly uneven.[116]

2.4.5 The Office of the High Commissioner for Human Rights (OHCHR)

Protection of IDPs is at the core of the mandate of the OHCHR. Despite servicing the mandate of the representative of the Secretary-General on IDPs, OHCHR plays a protection role with IDPs in its own right. Thus, it has a field presence in several situations of internal displacement, which in a number of cases has specific responsibilities relating to promoting and protecting the rights of the internally displaced. Enhancing the human rights field presence in situations of internal displacement would help to ensure greater attention to human rights abuses and protection needs.[117]

In addition to human rights monitoring, this Office can contribute to addressing protection needs of IDPs through technical co-operation activities such as supporting the strengthening of the judiciary and the creation and effective functioning of national institutions for promoting and protecting human

[114] Annan, *supra* note 112, 33.
[115] Deng, *supra* note 13, 4.
[116] *Ibid.*
[117] *Ibid.*

rights, programmes of human rights education, providing training in human rights, and capacity-building for local non-governmental organisations.[118]

The defunct Commission on Human Rights called upon the OHCHR to develop, in co-operation with governments, international organisations and the Representative of the Secretary-General, technical co-operation projects specifically aimed at promoting the rights of IDPs.[119] The General Assembly, in its resolution on Human Rights and Mass Exoduses, requested the United Nations High Commissioner for Human Rights, in the exercise of her mandate:

> to pay particular attention to situations which cause or threaten to cause mass exoduses and to contribute to efforts to address such situations effectively through protection measures, emergency preparedness and response mechanisms, including information sharing with the United Nations early-warning mechanisms, and the provision of technical advice, expertise and co-operation in countries of origin as well as host countries.[120]

2. 5 Conclusion

While existing law provides substantial coverage for IDPs, it is clear that there are significant areas in which it fails to provide an adequate basis of protection and assistance. Besides, the provisions of the existing law are too diffuse and unfocused to be effective in providing adequate protection and assistance for IDPs.[121] Notwithstanding the formation of the formal structure for ensuring collaboration, the international community's response to internal displacement has remained problematic. The effectiveness of the international humanitarian response is severely limited by a lack of coordination and leadership among the UN agencies and other organisations on the ground. As a

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[118] *Ibid.*
[119] *Ibid.*
[120] Resolution on Human Rights and Mass Exoduses, *adopted* by the General Assembly on 24 February, 2000, Doc A/RES/54/180.
[121] UNHCR Division of the international protection, "International Legal Standards Applicable to the Protection of IDPs: A reference manual for UNHCR staff" (1996).

result, international efforts to address the assistance and protection needs of the internally displaced are often characterised by a piecemeal approach and a lack of strategy.[122]

The following chapter analyses prominent international and regional human rights instruments providing for the right to adequate housing binding on Zimbabwe. It also discusses International Standards and Statements of Principle that have got a bearing on this fundamental human right.

[122] The Refugee Law Project of the Faculty of Law, Makerere University in Kampala, Uganda was established in 1999 with the mandate of ensuring that the right of asylum–seekers and refugees are protected and promoted.

Chapter 3: Analysis of International and Regional Human Rights Instruments on the Right to Adequate Housing Binding on Zimbabwe

3.1 Introduction

> It is not only the dignity of the poor that is assailed when homeless people are driven from pillar to post in a desperate quest for a place where they and their families can rest their heads. Our society as a whole is demeaned when State action intensifies rather than mitigates their marginalisation. The integrity of the rights based vision of the constitution is punctured when governmental action augments rather than reduces denial of the claims of the desperately poor to the basic elements of a decent existence hence, the need for special judicial control of a process that is both socially stressful and potentially conflictual.[123]

There are a number of international legal standards that obligate States to prevent forced evictions or to ameliorate the consequences of past evictions. Additionally, there are numerous statements of principle, often adopted by the consensus of the international community. These statements not only condemn the practice of forced eviction generally, but also are intended to either prevent specific planned evictions, condemn specific past evictions or both.[124]

Over the years, several United Nations bodies, including the former UN Commission on Human Rights (now Human Rights Council), have developed consistent standards unequivocally stating that forced evictions constitute a grave violation of human rights, especially the right to adequate housing. Indeed, bodies such as the CESCR have increasingly developed the practice of declaring certain countries to have violated the rights of their residents because of forced evictions.[125]

Reliance on international standards and mechanisms has even resulted in preventing planned evictions. The following are some international and regional

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[123] Justice Albie Sachs in the Constitutional Court of South Africa, *Port Elizabeth Municipality* v *Various Occupiers*, 2004 BCLR 1280 (CC).
[124] Centre on Housing Rights and Evictions, "Information Sheet," 2004.
[125] *Ibid.*

human rights instruments binding on Zimbabwe as well as prominent international standards and statements of principle addressing the practice of forced evictions.

3.2 International Human Rights Instruments

The obligation of States to refrain from forced evictions from houses and land can be directly or indirectly read into a number of international legal instruments that protect the right to housing. These instruments include the UDHR, the ICESCR (article 11, para. 1), the CRC (article 27 para. 3), the non-discrimination provisions found in article 14, paragraph 2 (h), of the CEDAW, and article 5 (e) of the ICERD.[126]

The following is a detailed analysis of these international human rights instruments that have got a bearing on the human right to adequate housing. States that have ratified or acceded to these international instruments have got an obligation under international law to respect the rights provided therein. Zimbabwe as a State Party to these Conventions is therefore bound by its own Constitution and international treaties to observe and ensure the protection of human rights.

3.2.1 The Universal Declaration of Human Rights [127]

This is considered the cornerstone of international human rights law, applicable to all persons and all nations throughout the world. The UDHR states that, "All persons have the right to an adequate standard of living, adequate for the health and well-being of his family, including...housing."[128] The UDHR 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," stemming from the

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[126] *See*, also the initial report of the Special Rapporteur, E/CN.4/2001/51, paras. 13-17.
[127] UDHR, *supra* note 55, 20.
[128] Article 25 of the UDHR.

UN Charter, and therefore, enforceable by the UN Security Council.[129] Furthermore, the provisions of the UDHR have been interpreted as customary international law.[130] Zimbabwe is a Party to this declaration.

3.2.2 The International Covenant on Economic, Social and Cultural Rights

The right to housing is found in Article 11(1) of the ICESCR which recognises "the right of everyone to an adequate standard of living for himself and his family, including...housing...and to continuous improvement of living conditions." The Covenant is supported by General Comment No. 4 (1994, right to adequate housing), which expands the right to housing to include the right to security of tenure, right to basic services such as clean water and sanitation and the right to a habitable and accessible residence. Furthermore, Article 2 obligates all States to ensure the "progressive realisation"[131] of all economic, social and cultural rights.

Under the general obligations clause of article 2 (1) of the ICESCR, a State Party is required to take legislative and other steps to the "maximum of its available resource," with a view to achieving "progressively" the full realisation of the rights recognised in the Covenant, including the right to housing. This means that the government of Zimbabwe has a legal obligation to all its citizens to be concerned about their shelter needs, and to accept the fundamental obligation to protect and improve houses rather than destroy them. More importantly, any member State to the United Nations or the African Union (AU) has a right to

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[129] Hersch Lauterpacht, *International Law and Human Rights*, in Henry Steiner and Philip Alston (eds.), *International Human Rights in Context: Law Politics and Morals*, 147, 151 (2000).

[130] *See*, *Filartiga* v *Pena-Irala*, 630 F. 2D 876, 882 (2d Cir. 1980) (The Second Circuit recognised 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.").

[131] The right to adequate housing obligates States Parties to endeavour by all appropriate means to facilitate access to affordable and acceptable housing: to undertake a series of measures which indicate policy and legislative recognition of the constituent aspects of the right; and to protect and improve houses and neighbourhoods rather than damage and destroy them. The right to an adequate housing is a composite right comprising an interrelated bundle of entitlements. The CESCR's General Comment No. 4 identifies eight of these rights as follows: security of tenure, equal right to public goods and services, equal right to environmental goods and services, including land and water, affordable *housing*, habitability of *housing*, accessibility of *housing*, and cultural appropriateness of *housing*.

voice concern on any breaches of the international and human rights instruments which Zimbabwe voluntarily signed.[132]

Furthermore, the 1998 *Maastricht* Guidelines on Violations of Economic, Social and Cultural Rights notes in Guideline No. 10 that "resource scarcity does not relieve States of certain minimum obligations in respect of their implementation of economic, social and cultural rights." Thus, if the Zimbabwe government should argue that it is unable to meet its minimum obligations to the right to housing for its citizens because of a lack of resources, it must at least be able to demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy those obligations.[133]

It is clear from the prevailing dire economic situation in Zimbabwe that the government cannot be expected to build a house free, for every Zimbabwean. However, the government of Zimbabwe is obligated to fulfil its duty to provide housing by undertaking measures necessary for guaranteeing for each person under its jurisdiction opportunities to access the entitlements of housing rights which cannot be obtained or secured through exclusively personal efforts.[134]

3.2.3 The International Covenant on Civil and Political Rights.[135]

This international instrument guarantees individual freedom against "arbitrary or unlawful interference"[136] with the home, and provides also that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law...." Other rights congruent with the right to housing which have also been envisaged in international law include the right to life, right to health, right to property, right to development, right to food, right to

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[132] In ratifying the ICESCR, Zimbabwe agreed, among other things, to be bound to promote and protect the rights enshrined therein. Of particular interest are the rights elaborated on in the General Comment No. 4 of 1991 of the CESCR, which states that the right to adequate *housing* applies to everyone regardless of age, economic status, and affiliation. It further states that the right should be seen as entitling people to live in security, peace and dignity and that it can not be viewed in isolation of other rights such as the right not to be subjected to arbitrary interference with one's privacy, family and home.

[133] Human Rights Monthly No. 37, July, 2005, para. 6.

[134] *Ibid*.

[135] ICCPR, *supra* note 56, 20.

[136] Article 17 (1) of the ICCPR, para. 9.

privacy and family life, right to employment, right to culture, and freedom from dispossession, damage and destruction of property.

Article 17 of the ICCPR states "(n)o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence," and further that "(e)veryone has the right to the protection of the law against such interference or attacks." Article 16 (1) of the CRC contains a similar provision. Article 14 provides for the right to a fair and public hearing before an independent and impartial court or tribunal.

The ICCPR[137] 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 UN Human Rights Committee by signing the Optional Protocol specified in article 41. Zimbabwe acceded to the ICCPR on 13 August, 1991. It has not, however, signed the first or second Optional Protocols and therefore does not "recognise the competence" of Human Rights Committee to receive and consider individual complaints.[138]

3.2.4 The Convention on the Elimination of All Forms of Racial Discrimination

The Committee on the Elimination of Racial Discrimination has often highlighted the issue of adequate housing as being an area in which discrimination occurs. The ICERD guarantees "the right to everyone, without distinction as to race, colour or national or ethnic origin, equality before the law, notably in the enjoyment of the following rights…the right to adequate housing."

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[137] ICCPR, *supra* note 56, 20. Article 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.").

[138] *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, *at*: <http://www.unhchr.ch/pdf/report.pdf> (last accessed on 20 October, 2007).

3.2.5 The Convention on the Elimination of All Forms of Discrimination Against Women[139]

Article 14 of CEDAW states that States must "ensure that women enjoy the right to adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply."[140] In addition, States Parties shall take all appropriate measures to eliminate discrimination against women. The principle of non-discrimination runs through the entire provisions of the UDHR.[141] The provisions speak of human rights for "everyone" and "all." Gender equality is also a binding and overriding principle in Common Article 3 of the ICESCR and the ICCPR, which states that the "States Parties undertake to ensure the equal right of men and women to the enjoyment of all...rights set forth in the Covenants."

Under the CEDAW, the rights of women to land and property are protected, including a prohibition of discrimination against women in rural areas. Women are also entitled to equal treatment in land and agrarian reform and have equal rights in terms of the ownership of property. The CESCR addressed adequate housing for women in general, and women's equal right to own and inherit land and the situation on rural women in this respect. Such a lack of this equal right on the part of women explains why women, particularly female-headed households, are at a constant risk of being forcibly evicted.

3.2.6 The Convention on the Rights of the Child[142]

This Convention recognises the "right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social

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[139] CEDAW, *supra* note 59, 20.

[140] Article 14, para. 2 of CEDAW. Other important articles of the Convention include the following: Article 13, which obligates States to take all appropriate measures to eliminate discrimination against women in all areas of economic and social life, in particular in relation to bank loans, mortgages and other forms of social credit, land and agrarian reforms, and land resettlement schemes; article 15, which addresses women's right to conclude contracts, and to hold and dispose of property; and article 16, which guarantees the equal rights and responsibilities of women and men during marriage and the dissolution of marriage.

[141] *See, e.g.*, article 2 of the UDHR.

[142] CRC, *supra* note 60, 21. Not to be confused with the UN Declaration on the Rights of the Child, *adopted* in 1959, G.A.Res.1368 (XIV), 14 UN GAOR Supp. (No.16) at 19, UN Doc. A/4354. Principles 1 and 2 of the declaration are especially relevant to the subject of discussion.

development."[143] Article 19 obligates all States to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, mal-treatment or exploitation...," while article 28 recognises every child's right to education. Article 27 (3) obligates States to provide assistance and support to uphold a child's right to housing.

3.2.7 The Convention Relating to the Status of Refugees[144]

The Convention accords persons seeking refuge in a country the right to housing equal to aliens lawfully abiding in that same country. It is an international Convention that defines who a refugee is, and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum. It also sets out which people do not qualify as refugees, such as war criminals. The Convention also provides for some visa-free travel for holders of travel documents issued under the Convention.

3.2.8 The Convention on the Protection of the Rights of all Migrant Workers and Members of their Families[145]

This international Convention protects the right to housing of migrants. It is a comprehensive international treaty which sets out standards that are applicable in individual States Parties. It reflects existing principles established by previous human rights instruments. The treaty defines the rights of migrant workers before departure, in transit, and in the country of employment.

Article 2, (1) defines a migrant worker as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he/she is not a national." Article 7 provides that "States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within

[143] Article 27 (1) of the CRC.
[144] Convention Relating to the Status of Refugees, *supra* note 11, 3.
[145] Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, *adopted* by the General Assembly resolution 45/158 of 18 December, 1990 and was opened for signature by all Member States, *entered into force* on 1 July, 2003.

their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind…."

3.3 Regional Human Rights Instruments

At the regional level, the ACHPR[146] prohibits discrimination in the enjoyment of human rights, guarantees the inviolability of human dignity, freedom from arbitrary deprivation of life and property, and all of the rights recognised as fundamental to the actualisation of the human being.[147] In addition to the binding obligations of States Parties under these international treaties, governments have also committed to ensuring all of the human rights identified above through on-binding international instruments. Article 5 of the ACHPR protects the right of every individual to respect of the dignity inherent in a human being. Article 7 states that "every individual shall have the right to an appeal to competent national organs against acts violating fundamental rights as recognised and guaranteed by Conventions, laws, regulations and customs in force."

These commitments are based on numerous resolutions, plans of action, and declarations of the United Nations General Assembly and its other specialised agencies and *fora*.[148] Among these are the Vancouver Declaration on Human Settlements,[149] which states that "[A]dequate shelter and services are a basic human right which places an obligation on governments to ensure their attainment by all people…, "the Declaration on the Right to Development[150] which enjoins all States to ensure "equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income…," and to carry out appropriate economic and social

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[146] ACHPR, *supra* note 61, 21.
[147] *See*, sections 1-26 of the ACHPR.
[148] Paul Ocheje, "In the Public Interest: Forced Evictions, Land Rights, and Human Development in Africa," *Journal of African Law* (2007), 51, 1, p. 203.
[149] Vancouver Declaration on Human Settlement *adopted* at the UN HABITAT Conference on Human Settlements, Vancouver, Canada (31 May-11 June, 1976). The declaration includes a Plan of Action which made 64 recommendations for national action: *at*: <http://habitat.igc.org/vancouver/van-decl.htm> (last accessed on 31 October, 2007).
[150] Declaration on the Right to Development *adopted* by UN General Assembly Resolution 41/128 of 4 December, 1986.

reforms "with a view to eradicating all social injustices,"[151] the Commission on Human Rights Resolution of 1993 on forced evictions,[152] which affirmed that "the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing," and the Vienna Declaration and Programme of Action.[153]

The Human Rights Council urges all States "to cease any practices which could or do result in the infringement of the human right to adequate housing, in particular, the practice of forced mass evictions...." *Agenda* 21[154] enjoins all countries to adopt or strengthen national shelter strategies, urging that people should be protected by law against unfair eviction from their homes or land; the Nairobi Forward-Looking Strategies for the Advancement of Women[155] and the Beijing Declaration and Platform of Action.[156] Forced evictions are, no doubt, clearly contrary to the binding obligations of States under international law. Such a conclusion flows from the provisions of the ICESCR and ICCPR, as well as from the emerging consensus which is developing globally around this illegality. In terms of international law, expropriations are illegal unless accompanied by compensation or restitution.[157]

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[151] Article 8 (1) of the Declaration on the Right to Development of 1986.
[152] Commission on Human Rights Resolution 1993/77. This Commission is now defunct with effect from 15 March, 2006 and has been replaced by the United Nations Human Rights Council established by General Assembly Resolution 60/251 of 2006.
[153] Vienna Declaration and Programme of Action *adopted* by the World Conference on Human Rights, Vienna, 23 June, 1993 (A/CONF.157/24 (Part 1), chap. III, Part 1, para.30): The World Conference also expresses its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include...poverty, hunger and other denials of economic, social and cultural rights....
[154] Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June, 1992 (United Nations publications, Sales No. E.93.1.8 and corrigenda), Vol.1: Resolutions *adopted* by the conference, resolution 1, annex II.
[155] Nairobi Forward-Looking Strategies for the Advancement of Women *adopted* at the 3rd World Conference on Women, Nairobi, Kenya, 15-26 July, 1985.
[156] Beijing Declaration and Platform of Action *adopted* at the 4th World Conference on Women (Action for Equality, Development and Peace), Beijing, China (4-15 September, 1995).
[157] *See, e.g.*, Samy Friedman, *Expropriation in International Law* (Portsmouth, NH: Greenwood Publishing Group, 1981); Rosalyn Higgins, *The Taking of Property by the State: Recent Developments in International Law* (Hague Academy *Recuiel des Cours*, Vol. 176, 259, 1982-III); Ben Atkinson Wortley, *Expropriation in Public International Law* (Cambridge: Cambridge University Press, 1959); and Bing Cheng, *The Rationale of Compensation for Expropriation* (The Grotius Society, 46, 1962).

Domestically, forced evictions run contrary to the constitutions of most African States. For example, in Chapter III of the Constitution of the Republic of Zimbabwe (Declaration of Rights), section 16 provides guarantees against arbitrary deprivation of property, while sections 15 and 18 provide guarantees against inhuman treatment and equal protection before the law. Approaching housing concerns from the point of view of human rights and the relationship between these rights and forced evictions puts a clear focus on the legal obligations of governments to respect, protect and fulfil housing rights. Such a perspective also provides clear criteria against which action, policies, practice and legislation can be monitored and regulated. It creates a systematic, common and universal framework relevant to all countries for developing appropriate legal and other measures leading to a substantial reduction in the practice of forced eviction. The housing rights approach promotes good governance, governmental accountability, transparency, democratic decision-making, popular participation and international responsibility.

3.4 Prominent International Standards and Statements of Principle Addressing Forced Evictions

3.4.1 General Comment No. 7 on Forced Eviction[158]

The most comprehensive interpretation of the scope of protection against forced eviction has been made by the CESCR in its General Comment No. 7, adopted in 1997. This General Comment represents the most far-reaching decision yet under international law on forced evictions and human rights, detailing what governments, landlords and institutions must do to prevent forced evictions.[159]

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[158] General Comment No. 7 *adopted* by the CESCR on 20 May, 1997, UN Doc: E/1998/22, annex IV.

[159] Economic and Social Council (ECOSOC), E/CN.4/2004/48, "Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari" (8 March, 2004).

General Comment No. 7[160] of the CESCR, the body of independent experts that monitors implementation of the Covenant by its States Parties, defines forced evictions as "the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."

However, the prohibition on forced evictions does not apply to evictions carried out by force in accordance with domestic law and in conformity with the provisions of international human rights law. Therefore, in cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international law and in accordance with general principles of reasonableness and proportionality.[161]

In its General Comment No. 7[162] the CESCR articulated that in those "exceptional circumstances" in which forced evictions could be carried out without violating international law, certain requirements must be adhered to. Firstly, States must ensure, prior to any evictions, and particularly those involving large groups, that "all feasible alternatives are explored in consultation with affected persons, with a view to avoiding, or at least minimising, the need to use force. Secondly, "evictions should not result in rendering individual homeless or vulnerable to the violation of other human rights." Governments must therefore, "ensure that adequate alternative housing is available…to affected persons."[163]

Paragraph 9 of General Comment No. 7 underlines that States Parties are obliged to use all appropriate means to protect the rights recognised in the Covenant and that "legislation against forced evictions is an essential basis upon which to build a system of effective protection." The CESCR acknowledged that women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer

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[160] E/C. 12/1997/4.
[161] *Ibid.*
[162] *Ibid.*
[163] In this respect, *see*, paragraph 15 of General Comment No. 7 which elaborates on the appropriate procedural protection and due process to be put in place to ensure that human rights are not violated in connection with forced evictions.

disproportionately from the practice of forced eviction. Accordingly, States should be strictly prohibited, in all cases, from intentionally making a person, family or community homeless following an eviction, whether forced or lawful.[164]

3.4.2 General Comment No. 4 on the Right to Adequate Housing

The UN Committee on Economic, Social and Cultural Rights, the body mandated by the international community to implement and enforce the Covenant, has expressly stated in its General Comment No. 4 (1991) that "forced evictions are *prima facie* incompatible with the provisions of the Covenant, and can only be carried out under exceptional circumstances and in accordance with the relevant principles of international law."[165]

In this General Comment on the right to adequate housing, the CESCR identified legal security of tenure including legal protection against forced evictions as one essential element to ensure "adequacy" of housing, together with availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility for disadvantaged groups; location, and cultural adequacy.[166]

According to the CESCR, "all persons should possess a degree of security of tenure, regardless of the type of tenure, which guarantees legal protection against forced eviction, harassment and other threats," including persons living in emergency housing or informal settlements. It further stated that "States Parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups."[167]

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[164] *Ibid.*
[165] Para. 18 of the CESCR.
[166] ECOSOC, *supra* note 159, 47.
[167] *Ibid.*

3.4.3 Country Review of the Dominican Republic by the CESCR[168]

The most comprehensive concluding observations relating to forced evictions by the CESCR relate to the Dominican Republic.[169] In a historic declaration, the CESCR declared for the first time that a State Party to the ICESCR had violated the housing rights provisions of article 11 (1), stating:

> The information that had reached the members of the Committee concerning the massive expulsion of nearly 15,000 families in the course of the last five years, the deplorable conditions in which the families had lived, and the conditions in which the expulsions had taken place were deemed sufficiently serious for it to be considered that the guarantees in article 11 of the Covenant had not been respected.[170]

3.4.4 United Nations Human Rights Council

The UN Human Rights Council (HRC) was established in 2006 by the General Assembly resolution 60/251 on 15 March, 2006. It is an international body within the UN System and its stated purpose is to address human rights violations. The Council is the successor to the UN Commission on Human Rights, which was often criticised for the high profile positions it gave to member States that did not guarantee the human rights of their own citizens.[171]

In addition to this, accusations of politicisation, double standards and lack of professionalism led many commentators to conclude that the Commission had lost its credibility and prompted calls for far-reaching reforms of its operation.[172] When the General Assembly resolution was passed, only the US, the Marshall Islands, Palau and Israel voted against the Council's creation, claiming that it

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[168] E/C.12/1990/8, para. 249.
[169] Concluding Observations of the CESCR: Dominican Republic, E/C.12/1994/15, 19 December, 1994, para. 11.
[170] *Ibid*.
[171] The Commission's abolition was technically carried out by the ECOSOC Res 2/2006, UN ESCOR, 62nd Sess, Annex, Agenda Item4, UN Doc E/RES/62/2 (22 March 2006).
[172] Philip Alston, "Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council," *Melbourne Journal of International Law* (2006), Vol. 7, pp. 187-188.

would have too little power and that there were insufficient safeguards to prevent human rights abusing nations from taking control.[173]

However, the US State Department spokesman, Sean McCormack, said, "We will work closely with partners in the international community to encourage the Council to address serious cases of human rights abuse in countries such as Iran, Cuba, *Zimbabwe*, Burma, Sudan and North Korea."[174] Belarus, Iran and Venezuela abstained from the vote, and a further seven countries were absent from the session.[175]

3.4.5 Sub-Commission on the Promotion and Protection of Human Rights Resolution 1998/9 on Forced Evictions[176]

This is the main subsidiary body of the HRC. It is composed of 26 elected human rights experts whose mandate is to conduct studies on discriminatory practices and make recommendations to ensure that racial, national, religious and linguistic minorities are protected by law. This resolution, inter-alia, urges governments to protect those currently threatened with forced evictions, repel existing plans for forced evictions and include in negotiations and consultation the affected persons or groups. Sub-Commission resolution 1991/12 provides guidance in determining the legal responsibilities of those who evict.

It stated that forced eviction can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a number of actors, including, but not limited to, occupation authorities, national governments, local governments, developers, planners, landlords, property speculators and bilateral and international financial institutions and aid agencies. In 2003, the Sub-Commission adopted a draft resolution[177] on the prohibition of forced evictions for action by the Commission at its sixtieth session.

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[173] "United Nations Human Rights Council," *at*: <http://www.ohchr.org/english/bodies/hrcouncil> (last accessed on 05 November, 2007).
[174] *Ibid*.
[175] These were Central African Republic, North Korea, Equatorial Guinea, Georgia, Kiribati, Liberia and Nauru.
[176] Sub-Commission on the Promotion and Protection of Human Rights Resolution 1998/9 on Forced Evictions, *adopted* on 20 August, 1998.
[177] *See*, E/CN.4/Sub.2/2003/43.

3.4.6 Conclusions and Recommendation of the Expert Group Meeting on the Right to Adequate Housing[178]

This meeting was convened in Geneva from the 18 to 19 January, 1996. It contributed to the accomplishment of a consensus on the existence and international recognition of the human right to adequate housing. The Conclusions and Recommendations of the Expert Group stated that:

> Among the core areas of the State role in realising the human right to adequate housing are provisions of security of tenure...prevention of illegal and mass evictions, elimination of homelessness and promotion of participatory processes for individuals and families in need of housing.[179]

3.4.7 Forced Evictions and Human Rights Fact Sheet No. 25

This fact sheet examines the issue of forced evictions from an international human rights framework, and outlines the distinct connections between forced evictions and human rights. It also outlines the relevant international, regional, national instruments and other developments addressing this topic.

3.5 Housing Rights and Zimbabwe's International Obligations

One of the purposes of the UN is the promotion and protection of human rights.[180] The UN Charter is binding on all Member States. Zimbabwe is a member of the UN, and has on numerous occasions reaffirmed its unconditional subscription to the Charter. Zimbabwe has also acceded to the ICESCR and the ICCPR.[181] The International Bill of Rights[182] therefore binds Zimbabwe.

The right to adequate housing finds explicit recognition within an array of other international instruments to which Zimbabwe is a State Party, including the

[178] This was convened by the United Nations Centre for Human Settlements (UNCHS-HABITAT).
[179] *See*, article 8 of the Conclusions and Recommendation of the Expert Group.
[180] *See*, article 1 (3) of the United Nations Charter as read with articles 55 and 56.
[181] Zimbabwe acceded to the ICCPR and the ICESCR on 13 August, 1991.
[182] The International Bill of Rights consists of the UDHR, the ICCPR and the ICESCR.

UDHR (article 25 (1)), and other international human rights instruments which go a step further in guaranteeing the housing rights of other groups such as migrant workers, disabled persons, the elderly, women and children.

International standards on economic, social and cultural rights, although universally applicable, take into account the differing resources available to each State. They allow for the fact that full realisation of these rights can only be achieved progressively over time, where sufficient human, technical and economic resources are available, including through international cooperation and assistance such as development aid.[183]

3.5.1 *Duties to Respect, Protect and Fulfil Rights*

Economic, social and cultural rights have often been seen as primarily "positive" obligations on States and derided as a "wish list."[184] In fact, being the "provider of last resort"[185] (stepping in where individuals and communities are otherwise unable to realise their rights) is only one element of the State's obligation. State obligations to realise all human rights are of three types: i.e. to respect; to protect; and to fulfil.[186]

The obligation to *respect* human rights requires States to refrain from interfering directly or indirectly with peoples' enjoyment of human rights.[187] This is an immediate obligation and it includes efforts that people themselves make to realise their rights. Governments must not carry out forced evictions without due process of law or providing alternative accommodation. Therefore, the State's

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[183] Human Rights Trust of Southern Africa (SAHRIT), "Operation *Murambatsvina*: Implications with Regard to Zimbabwe's Human Rights Obligations," *at:* <http://www.reliefweb.int/idp/docs/reports/Zimbabwerep.pdf> (last accessed on 29 October, 2007).

[184] For example, George Weigel, "Mrs. Roosevelt's Confusions Revisited," *American Purpose*, Issue 1, Vol. 9, 1995.

[185] Katarina Tomaševski, "Preliminary report of the Special Rapporteur on the right to education, UN Doc. E./CN.4/1999/49, para. 41.

[186] This typology has now been recognised by treaty monitoring bodies as well as regional human rights enforcement bodies. *See*, General Comments of the CESCR and, for example Inter-American Court of Human Rights, Case *Velazquez Rodriquez*, Judgment of 29 July, 1988, Series C, No. 4, and *SERAC* v *Nigeria*, African Commission on Human and Peoples' Rights, Communication No. 155/96 (2001).

[187] Articles 55 and 56 of the UN Charter provide that all members pledge themselves to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction.

duty to respect the right to adequate housing includes not evicting people without due process, warning or alternative accommodation.

Under the obligation to *protect* human rights, States must prevent, investigate, punish and ensure redress for the harm caused by abuses of human rights by third parties, private individuals, commercial enterprises or other non-State actors. Again, this is an immediate obligation imposed on States under international law.[188] In addition, States have got an obligation to *fulfil* human rights by taking legislative, administrative, budgetary, judicial and other steps towards the full realisation of human rights.

This obligation should be realised progressively. It includes duties to facilitate (increase access to resources and means of attaining rights) and provide (ensure that the whole population may realise their rights where they are unable to do so themselves). The authorities must, for example, provide defendants with any necessary interpretation so that they can understand court proceedings, or introduce meaningful vocational training to ensure that students benefit from education. Above all, governments must give priority to meeting the minimum essential levels of each right, especially for the most vulnerable.

3.5.2 Immediate Obligations and "Progressive Realisation"

The principal obligation on States under international human rights standards on economic, social and cultural rights is to achieve, progressively, the full realisation of these rights according to the maximum of available resources ("progressive realisation.").[189] States have a duty to take deliberate, concrete and targeted steps, as "expediously and effectively as possible," towards fulfilling these rights.[190]

Such measures might include adopting legislation or administrative, economic, financial, educational or social reforms, or establishing action

[188] The duty to protect applies to all human rights: Human Rights Committee, General Comment 31, article 2, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. HRI/GEN/1/Rev. 6, para. 8.
[189] Article 2 (1) of the ICESCR.
[190] CESCR's General Comment No. 3, "The Nature of States Parties' Obligations," UN Doc. E/1991/23.

programmes, appropriate oversight bodies or judicial procedures.[191] In addition to the duty of progressive realisation, States have various immediate obligations related to economic, social and cultural rights which are not dependent on the availability of resources.[192]

The duty to "take steps" is an immediate obligation. The concept of progressive realisation of rights does not justify government inaction on the grounds that a State has not reached a certain level of economic development. To rely on circumstances beyond its control to justify rolling back the realisation of rights, the State has to show that it could not reasonably have prevented the negative impact on the right. For example, the African Commission on Human and Peoples' Rights found that Zaire (as the DRC was then named) had violated the right to education when secondary schools and universities were closed for two years during a period of armed conflict.[193]

3.6 Conclusion

It is clear from the discussion above that the right to adequate housing is a fundamental right of individuals. States Parties should respect, protect, promote and fulfil their legal obligations in respect of this fundamental human right. This right is inherently contained and given status in a variety of domestic constitutions including Zimbabwe's as well as in international human rights treaties as observed above. It is the duty of any State to provide adequate shelter to its citizens within its area of jurisdiction. As has been noted, forced evictions are a violation of human rights and the human rights treaties that provide for this essential right. It is the duty of States to avoid forced evictions at all cost unless if they are carried out in accordance with principles or procedural protections guaranteed in the CESCR's General Comment No. 7.

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[191] *Ibid*, para. 4.
[192] *Ibid*.
[193] *African Commission on Human and Peoples' Rights, Free Legal Assistance Group. Lawyers Committee for Human Rights, Union Inteafricaine des Droits de l'Homme, Les Temoins de Jehovah* v *Zaire,* Communication Nos. 25/89, 47/90, 56/91 and 100/93 (joined), Ninth Annual Activity Report of the African Commission on Human and Peoples' Rights 1995/96, Assembly of Heads of State and Government, 32nd Ordinary Session, 7-10 July, Yaoundé, Cameroon.

The following chapter discusses Operation *Murambatsvina* in detail and attempts to show whether the evictions carried out in Zimbabwe met the principles or procedural protections guaranteed in the CESCR's General Comment No. 7. and whether they were in consonance with international human rights law governing forced evictions.

Chapter 4: Implications of Operation *Murambatsvina* for Zimbabwe's Human Rights Obligations

4.1 Introduction

This chapter forms the central theme of this study and as such, it seeks to make it clear and unequivocal that what is in issue are the human rights obligations on the government of Zimbabwe. The obligations referred to are of a legal nature and are binding on the State. More specifically, what is in issue is not just the status of legality of structures that were destroyed. Rather what is being oppugned as repugnant is the inappropriateness of national laws that were relied upon to carry out this exercise relative to the context of the obligations voluntarily assumed by the government under the UN Charter and various regional and international human rights instruments to which Zimbabwe is a State Party.[194]

It should be indicated at this stage that human rights are no longer the preserve of national governments; this now being a matter of legitimate

[194] SAHRIT, *supra* note 183, 53, para. 2.

international concern. The chapter therefore, argues that the argument put forward by the government that Operation *Murambatsvina* was purely an internal matter does not hold true. The concept of human rights, universal as the concept is, is anchored in respect for human dignity. The government cannot plead its national law to avoid peremptory obligations arising out of international law.[195] The government of Zimbabwe has got an obligation to provide decent accommodation to IDPs within its territory rather that destroying the structures IDPs call homes.

The chapter focuses on the abuse of the social, cultural, economic, political and civil rights of Zimbabwean IDPs under Operation *Murambatsvina*. It is hoped that by doing so, the legal protection of the IDPs will be furthered. The problem of internal displacement is thereby analysed within a politico-legal framework. The experiences of Zimbabwean IDPs are critiqued using current human rights discourses to determine whether the evictions were compatible with international law.

A comparative analysis of a plethora of regional and international case law on the right to housing will be made. The chapter concludes that Operation *Murambatsvina* violated both international law and domestic law since it was not carried out in compliance with either the spirit or the letter of the municipal regulations relied upon by the Zimbabwe government as the basis for its actions.

4.2 Background to Operation *Murambatsvina*

On 19 May, 2005, the government of Zimbabwe, in conjunction with the city of Harare and working through the Zimbabwe Republic Police (ZRP) and the army, launched Operation *Murambatsvina*,[196] a campaign of forcible evictions and demolitions in urban areas throughout Zimbabwe. Its avowed aim was to clear informal business and residential development of the city and rid it of illegal dwellings and criminal elements that were among other things accused of fuelling

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[195] *Ibid.*

[196] The official government translation for "Operation *Murambatsvina*" is "Operation Restore Order." However, the word "*Murambatsvina*" literally means "clear the filth or dirt" in the Shona language.

the foreign currency black market.[197] The Operation resulted in the destruction of the dwellings of the urban poor, the destruction of vending stalls and the confiscation of goods and property belonging to informal traders, and spread to other towns and cities in Zimbabwe, where basically the same *modus operandi* was employed, with devastating effects.[198]

Of particular concern, apart from the very fact of forced eviction, are the following issues: The State and its various arms, especially the police and the army, were instrumental in the operation. Operation *Murambatsvina* targeted the urban poor who were already overburdened by the harsh economic environment prevailing in the country. The operation increased the hardships experienced by special categories of people including people living with HIV or AIDS, a significant number of whom were already bedridden or receiving Anti-Retroviral Treatment (ARVs), children orphaned by AIDS, and women-headed households, people with disabilities and the elderly.

The affected people were left homeless and destitute, there being no alternative shelter and no alternative means of livelihood provided by the government. Those with no where else to go were rounded up and forcibly removed to holding or transit camps where living conditions were substandard and where for a long time civil society organisations have been denied access. The manner in which the operation was conducted could be said to amount to cruel, inhuman and degrading punishment or treatment.[199]

Operation *Murambatsvina* cost some 700,000 Zimbabweans their homes or livelihoods or both and otherwise affected nearly a fifth of the troubled country's population. The impact as documented in a UN Special Envoy's report produced a political shock that has returned Zimbabwe to the international spotlight and made the quality of its governance almost impossible for its regional neighbours to ignore, however, difficult they find it to be overtly critical.[200]

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[197] Ozias Tungwarara and Wole Olayele (eds.), "An Analysis of the Demolitions in Zimbabwe" (2005).
[198] *Ibid.*
[199] *Ibid.*
[200] Africa Report No. 97, 17 August, 2005.

According to the government of Zimbabwe, Operation *Murambatsvina* was launched to address a cock-tail of social, economic and security challenges that had come to negatively impact upon the country's economy and the populace.[201] The Zimbabwe government emphasised that it was exercising its legitimate responsibility to implement the country's laws, including local authority by-laws, with the support of the majority of ordinary Zimbabweans.[202]

4.3 Internal Displacement in Zimbabwe

The movement of populations in Zimbabwe has been widespread in the past few years. In 2004, a report by Global IDP Project of the Norwegian Refugee Council noted that "population movements [in Zimbabwe] have become an increasingly visible and common reality against a backdrop of political violence and a critical humanitarian situation."[203] Drawing back to the years 1999 and 2004, large numbers of people were forced to move from their places of residence due to an escalation in political violence and state-sponsored human rights violations throughout the country.[204] At the end of 2003, the US Committee for Refugees estimated that more than one hundred thousand people were internally displaced in Zimbabwe.[205]

Some of the violence that led to internal displacement was to a large extent linked to the government's "fast track" land reform program. The land reform program and resultant occupation of commercial farms led to a growing

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[201] Government of Zimbabwe, "Response by the Government of Zimbabwe to the Report of the UN Special Envoy on Operation M*urambatsvina*" [hereinafter Government of Zimbabwe Report], August, 2005, para. 1.3.
[202] *Ibid*.
[203] Global IDP Project, "Profile of Internal Displacement: Zimbabwe" (2004). Norwegian Refugee Council is the organisation working for the assistance and protection of the internally displaced populations worldwide.
[204] *See*, reports on political violence during this period including: Human Rights Watch, "Under A Shadow: Civil and Political Rights in Zimbabwe," A Human Rights Watch Background Briefing (2003), Amnesty International, "Zimbabwe: Toll of Impunity" (2002), AI Index: AFR 46/034/2002; and the Zimbabwe Human Rights NGO Forum Monthly political violence report *at*: <http://www.hrforumzim.com/frames/inside_frame_monthly.htm> (last accessed on 27 October, 2007).
[205] US Committee for Refugees and Immigrants, "World Refugee Survey, Zimbabwe Country Report" (2003).

population of displaced farm workers.[206] In addition, large numbers of political activists were displaced when during election periods; ruling party supporters in the rural areas targeted and assaulted opposition activists.[207] Because of the political nature of the land reform program, the government of Zimbabwe denied that there was a problem of internal displacement in the country and restricted humanitarian assistance for former farm workers.[208] The Global IDP project reported that a draft UN IDP strategy for Zimbabwe could not be finalised because it was never approved by the government, and a revised UN Consolidated Appeals Process for Zimbabwe in April 2004 made no direct reference to IDPs.[209]

Protection and assistance for the displaced was therefore limited, and UN agencies found it particularly difficult to carry out humanitarian operations in the highly polarised political environment.[210] A UN report on the IDP situation in Zimbabwe in 2002, concluded that the physical and/or economic displacement of farm workers, together with the displacement resulting from political violence…has created a serious problem of internally displaced population in the country.[211]

Response to this dilemma was frustrated by the government of Zimbabwe's reluctance to admit that there was a crisis and the belated mobilisation of the international community in addressing the needs of the IDPs.[212] During an assessment mission in June 2004, Refugees International reported that they had found displaced populations effectively abandoned due to

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[206] For a detailed discussion of Zimbabwe's land reform programme and its consequences, see "Fast-Track Land Reform in Zimbabwe," A Human Rights Watch Report, Vol.13 no.1 (A), March 2002; IDP Unit, UN Organisation for the Co-ordination of Humanitarian Assistance "The IDP Situation in Zimbabwe: Current Trends and a Strategy for the UN System", 27 May, 2002 *at*: <http://www.reliefweb.int/idp/docs/reports/zimbabwe.pdf> (last accessed on 27 October, 2007).
[207] For more details on incidence of political violence in the rural areas during this period, *see*, Zimbabwe Human Rights NGO Forum Monthly Political Violence Report.
[208] Refugees International, "An Analysis of Displaced Farm Workers in Zimbabwe," August 13, 2004.
[209] Global IDP Project, *supra* note 203, 60.
[210] *Ibid*.
[211] UN Report, "The IDP Situation in Zimbabwe," *at:* <http://www.reliefweb.int/idp/docs/reports/Zimbabwerep.pdf> (last accessed on 25 October, 2007).
[212] Internal Displacement Persons Unit: OCHA, "The IDP Situation in Zimbabwe" (2005).

Zimbabwean government's obstruction of assistance efforts by international agencies and local NGOs.[213] In the context of egregious government obstruction of programs for IDPs, Operation *Murambatsvina* brought the problem of internal displacement in Zimbabwe to a critical level, having caused hundreds of thousands of people to join the ranks of the country's "abandoned" IDPs.[214]

In Zimbabwe, however, IDPs are regularly denied their basic human rights and although the displaced are frequently forced to flee their homes for the same reasons as do refugees, the fact that they remain within national territory means that they cannot seek to qualify as *bona fide* "refugees" entitled to the special protection accorded to refugees under international law. Moreover, their presence within national territory means that their own government bears primary responsibility for meeting their protection and assistance needs.[215]

4.4 Reasons Proffered by Governments for Internal Displacement

In order to comprehend Operation *Murambatsvina*, it is critical to discuss the causes of internal displacement at this stage. There is a growing conviction among governments that development inevitably requires large groups of people, in most cases the poorest to be moved out of the way. As has been asserted above, this process is often described in chilling language, the poor being likened to "rubbish" or "filth," who "move only when they see a government bulldozer," and who need to be "swept away" so that development can take place.[216]

Forced evictions are invariably associated with violence and violations of human rights.[217] They are often carried out "unavoidably" for a number of

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[213] Human Rights Monthly, *supra* note 133, 41.
[214] *Ibid*.
[215] UN Commission on Human Rights, "Compilation and Analysis of Legal Norms," Commission on Human Rights Fifty-first Session, E/CN.4/1996/52/Add 2, 5 December, 1995.
[216] These increasingly prevalent practices in urban areas all over Africa, including Harare, Johannesburg, Luanda, Nairobi, Addis Abbaba, Accra and Abuja-are disturbing echoes of similar, yet even larger-scale and more brutal processes in two of the world's leading emerging economies: India and China.
[217] *See*, e.g., Amnesty International, "The African Commission: Amnesty International's Oral Statement on Forced Evictions" (AI Index: AFR 01/013/2006 (public), November 15, 2006): "the practice of forced evictions has reached epidemic proportions in Africa, with more than three million Africans reportedly forcibly evicted from their homes since 2000. Amnesty International

reasons, associated ostensibly with the furtherance of "the public interest."[218] Some of the official justifications have included the following: (a) to carry out development and infrastructure projects,[219] (b) large international events including global conferences and international sporting events such as the Olympic Games,[220] and (c) to implement urban redevelopment and "beautification" initiatives.[221]

Other reasons for forced evictions include: political strife resulting in ethnic cleansing of entire communities and groups,[222] to prevent evictees from becoming victims of natural hazards which are sometimes neither proven nor convincingly documented (e.g., floods);[223] to protect public safety,[224] health or hygiene,[225] and to redistribute and make landholdings more equitable, and to increase arable land for agriculture.

believes forced evictions constitute one of the most widespread and unrecognised human rights violations in Africa."

[218] *See, e.g.*, Office of the High Commissioner for Human Rights, Fact Sheet No. 25 (1999).

[219] For example, China has evicted, since 1990, 2. 5 million people in Shanghai "to make way for office blocks and highly priced apartment buildings," while India evicted over 300,000 in 2005, in a bid "to become the next Shanghai": *Evictions Monitor* (Newsletter of the Geneva –based Centre on Housing Rights and Evictions, Vol. 1, No. 3, 6, August, 2005.

[220] For example, in preparation for the 2008 Olympics, the host, China has evicted over 400,000 in Beijing: *See* in this regard, COHRE: *Evictions Monitor*, Housing Rights for Everyone, Everywhere, Vol. 1 No. 3, August, 2005, p. 13.

[221] For example, thousands of residents of Agbogbloshie/ Old Fadama settlement in Accra, Ghana, were served with eviction notice by the Accra Metropolitan Authority in May, 2002, because the land was needed "to make way for the Korle Lagoon Environmental Restoration Project (KLERP)."

[222] Nearly 600 people were made homeless in January, 2004 due to Israel military incursions into Palestinian controlled areas in Gaza.

[223] For example, studies commissioned by COHRE found that, although the living conditions in Agbogbloshie were horrendous, the settlement could be developed in situ and could easily co-exist with KLERP, thereby exploding one of the official justifications for the eviction.

[224] In carrying out Operation *Murambatsvina*, a military-style operation in which 700,000 people were forcibly evicted from their homes and/or their sources of income, the government of Zimbabwe claimed that the eviction was necessary "to eradicate illegal, unhealthy homes and settlements and to stop illegal trading": *See*, *Evictions Monitor*, 2005.

[225] For example, the City of Johannesburg evicts people from "bad" buildings regularly for health and safety concerns, and as part of an overall Inner City Regeneration Strategy which aims to transform Johannesburg into "a world class city." It has been estimated that 25,000 people might be affected by these evictions. *See*, *Evictions Monitor*, 1991.

4.5 Zimbabwe's Justification for Internal Displacement under Operation *Murambatsvina*

The clean-up operation undertaken by the government of Zimbabwe is not the first of its kind in the world or indeed in Africa. Evictions have been taking place from time immemorial the world over.[226] The current condemnation of Zimbabwe and the reactions from the UK and its allies cannot be divorced from the onslaught the country has suffered for the past five years owing to its land reform programme.[227] The UN Special Envoy's report on Operation *Murambatsvina* indicated that at least 700,000 people were rendered homeless and left without a livelihood. A further 2, 4 million were indirectly affected by the Operation.[228]

The main official explanation for the campaign against the informal settlements and shanty dwellings was that the housing was erected illegally without proper permits and planning permission. There is no doubt that in most instances these settlements had no proper sanitation and posed a health hazard. However, what remains repugnant is not the illegality or otherwise of the homes but the total disregard that Operation *Murambatsvina* had for peoples' human rights to shelter, education, health, dignity and inherently to life.

The government of Zimbabwe advances that Operation *Murambatsvina* was launched to address a cocktail of social, economic and security challenges that had come to negatively impact upon the country's economy and the populace.[229] In her first encounter with government officials, the UN Special Envoy on Human Settlement Issues was informed that the operation had been undertaken for the following reasons:[230]

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[226] Evictions have taken place in Nigeria, Kenya, Sudan, Zambia, Ghana, SA, Botswana, Egypt, Ethiopia, Brazil, Peru, USA, Palestine, Iraq, India, Indonesia, Thailand, etc. *See*, also *Evictions Monitor*, Vol. 1, No. 2, December, 2004.

[227] *Ibid*.

[228] See, COHRE INFORMATION SHEET, "Eviction Case: Zimbabwe", p. 2. (May 2005-April 2006).

[229] Government of Zimbabwe Report, *supra* note 201, 60.

[230] To (a) stem disorderly or chaotic urbanisation and its attendant problems that hinder the government and local authorities from enforcing national and local authority by-laws and providing service delivery *e.g.* water, electricity, sewage and refuse removal; (b) minimise the threat of major disease outbreaks due to overcrowding and squalor; (c) stop economic crimes

Operation *Murambatsvina* was conceived not as an end in itself but as a precursor to Operation *Garikai* or *Hlalani Kuhle*[231] whose object was to provide decent and affordable accommodation as well as create an enabling and conducive environment that promotes small and medium scale business enterprises. This was in line with the government's stated policy objectives on housing delivery and MSMEs development as enunciated by the ruling party in its manifesto for 31 March, 2005 Parliamentary elections.

The official reasons for the demolitions i.e. cleaning up the cities and ridding them of illegal vendors, dwellings and criminal elements, were received with a great deal of scepticism. From the information gathered by the UN Special Envoy from individuals and organisations, it emerged that there were other motivations behind the government campaign. The unofficial reasons were predominantly political. Many people believe President Mugabe's plan of urban regeneration through the utilisation of Operation *Murambatsvina* was designed to force non-Zimbabwe African National Union-Patriotic Front (ZANU-PF) urban communities back into the country side, where his government has more control.[232]

The opposition party, the Movement for Democratic Change (MDC) said Operation *Murambatsvina* was a blatant attack on MDC supporters, most of who live in cities. There are other political agendas involved as Jonathan Moyo, a former high ranking government official, said "the clean-up operation was linked to a power struggle within the ruling ZANU-PF party over who would succeed the

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especially illegal black market transactions in foreign currency; (d) eliminate the parallel market and fight economic sabotage; (e) reorganise Micro, Small and Medium Enterprises (MSMEs); (f) reduce high crime levels by targeting organised crime syndicates; (g) arrest social ills among them prostitution which promotes the spread of Human Immuno-Deficiency Virus or Acquired Immuno-Deficiency Syndrome (HIV/AIDS) and other communicable diseases; (h) stop the hoarding of consumer commodities, and other commodities in short supply; and (i) reverse environmental damage and threat to water sources caused by inappropriate and unlawful urban settlements. *See*, in this regard, Government of Zimbabwe Report, *supra* note 201, 60.

[231] *Garikai* or *Hlalani Kuhle* is Shona and Ndebele words respectively, literally meaning "good life." Operation Garikai was a programme that was implemented by the government of Zimbabwe after Operation *Murambatsvina* with a view of providing "good life" to the victims through Reconstruction or Rebuilding of destroyed homes or properties. However, this programme was heavily criticised by UN Special Envoy since it took place in winter. In terms of procedural protections, "evictions should not take place in particularly bad weather or at night." *See*, in this respect, Tibaijuka, *supra* note 19, 5.

[232] *See*, in this regard, Tibaijuka, *supra* note 19, 5.

81-year old President Mugabe."[233] Many of the individuals holding the views above generally saw Operation *Murambatsvina* as a "smoke screen" for motives that had little to do with addressing the problem of informal structures and restoring order within urban areas.[234]

It is clear that Zimbabwe, like most other African countries, is confronted by serious and mounting challenges related to rapid urbanisation, including adequate shelter and rising pressure on urban infrastructure and services. Whatever the reasons behind it, it is clear that the campaign created a huge humanitarian disaster causing enormous hardship and suffering.[235]

Within the space of a few weeks, Operation *Murambatsvina* had produced a massive internal refugee population.[236] Although these justifications may appear reasonable at superficial level, they can hardly endure close scrutiny from a human rights perspective. In almost all cases, the evictees always emerge from evictions worse off in terms of living conditions than they were prior to the evictions.

4.6 Historical, Economic and Political Context of Operation *Murambatsvina*

Operation *Murambatsvina* must be understood in a historical context. While Zimbabwe entered independence in 1980 with promises for peace and prosperity, enlightened by President Mugabe's policy of reconciliation, several underlying and unresolved issues became the causes of future conflicts and, arguably, laid the grounds for the circumstances which allowed for a disastrous clean-up exercise to take place. Among such cases one could list the failure to meaningfully address the land question and governance problems.[237] The United

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[233] This view is shared by Barbra Slaughter who states that "there is factionalism in ZANU-PF over who will succeed the "aging" president when he steps down." *See*, Barbra Slaughter, "Zimbabwe: Mugabe's Operation *Murambatsvina*" (2005), *at*: <http://www.wsws.org/articles/2005/jul2005/zimb-j16.shtml> (last accessed on 29 November, 2007).

[234] Sean Romero, "Mass Forced Evictions and the Human Right to Adequate Housing in Zimbabwe," *Northwestern Journal of International Human Rights*, (2007), Vol. 5, Issue 2, p. 276.

[235] *Ibid*.

[236] The number of refugees created is even greater than when farm workers were thrown off the farms during the land invasions.

[237] Tibaijuka, *supra* note 19, 5.

Kingdom (UK) failed dismally in addressing Zimbabwe's land question. There is a closer link between the Fast-Track Land Reform (FTLR) with the current British government's refusal to honour the Lancaster House commitments to fund Zimbabwe's land reform.[238]

The land question has always been at the centre of the bilateral dispute between Zimbabwe and the UK. The UK sought to internationalise this bilateral dispute by mobilising the EU, US and the Commonwealth against Zimbabwe. The UK also waged a very harsh and sustainable campaign to vilify and demonise the President, the government and the ruling party of Zimbabwe. Historical inequity was embedded in the constitutional settlement (the Lancaster House Constitution) that preserved the colonial settler pattern of white ownership of most of the fertile land. Despite legislation in 1992 to address the inequities, the process of redistributing land remained slow and did not produce equitable results for the majority of the population.[239]

The Land Apportionment Act (LAA) of 1930 represented the most severe deprivation of African people from their land resources when all the fertile land was earmarked for white agriculture and settlement, while blacks were driven into the dry, unproductive and intensive Native Reserves, while the Native Land Husbandry Act (NLHA) of 1950 reinforced the unequal distribution of land.[240] The Urban Registration and Accommodation Act of 1954 was designed to ensure that Africans were restricted to townships and locations, which were zones of cheap industrial labour, often overpopulated. Pass laws regulated the movement of Africans in urban areas, as did the dehumanising "inspections" randomly carried out by the Colonial Municipal Police to determine the legality of dwellers in these urban communities.[241]

Forced removals, arrests and evictions were a common strategy for dealing with "over-populated" areas in an effort to control urban migration. Land

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[238] Government of Zimbabwe Report, *supra* note 201, 60.
[239] *Ibid*.
[240] For the elaboration on the politics of forced segregation, the impact of the Land Apportionment Act and other colonial legislation, *see*, Henry Moyana, *The Political Economy of Land in Zimbabwe* (Mambo Press, 1984).
[241] Tungwarara and Olayele, *supra* note 197, 59.

inequalities and land hunger, racist segregation over resources and opportunities, unfair wages, the denial of the right to vote, the restriction of various freedoms and the desire for self government led many Zimbabweans to rally behind the nationalists in the long and protracted struggle that led to independence in April 1980.

With regard to the economic situation, it had never been perceived that the Zimbabwean economy could one day share the features characteristic of African under-development, i.e. a rising debt burden, economic instability, persistent economic decline, the intensification of inflationary pressure, unstable export earnings and growing external dependency and mass poverty. The production base of the economy is now narrower than before, disarticulated and precariously dependent on external factors and the policy and institutional capabilities remain very poorly developed.[242]

At independence, Zimbabwe inherited a dual economy with the settler whites dominating the formal sector whilst the majority blacks were relegated to be the providers of cheap labour. Blacks were confined to a subsistence economy in the semi- arid "Tribal Trust Lands" (TTLs). Urban settlements for blacks were developed as dormitory towns to service white industries. They were required to live in the rural areas and only those who were employed were allowed into the cities and to reside in single-quarters and/or dormitories regardless of their marital status.[243]

Zimbabwe used to have an impressive social and economic programme with the highest standards of education and health delivery system in Africa. The first ten years of independence were generally a decade of prosperity. These were impugned by the World Bank's unpopular Structural Adjustment Programmes (SAPs) which finally failed dismally in its attempt to develop the economy, created massive dislocation in the economy, job retrenchments and poverty.[244]

[242] Zimbabwe Coalition on Debt and Development (ZIMCODD): Internal report on Policy and Advocacy, 2003.
[243] Government of Zimbabwe Report, *supra* note 201, 60.
[244] Tungwarara and Olayele, *supra* note 197, 59.

Zimbabwe is not the only country to have been negatively affected by the International Monetary Fund (IMF) or World Bank (WB) imposed SAPs. The main problems with SAPs have not been the implementing governments but the design weaknesses in the programmes. Persistent drought cycles have also impacted negatively on economic performance, especially in view of the fact that agriculture is the mainstay of the economy.[245]

Economic decline was also precipitated by the sanctions imposed on Zimbabwe mainly by the United States of America, the United Kingdom, the European Union and the white commonwealth countries.[246] The Zimbabwe Democracy and Economic Recovery Act (ZDERA) passed by the USA, *inter-alia*, blocks Zimbabwe's access to balance of payments support from the IMF and any financial assistance from the WB, and excludes Zimbabwe from benefiting from the Africa Growth and Opportunity Act (AGOA) facility.

EU sanctions have seen Zimbabwe being denied access to the African Caribbean and Pacific-European Union (ACP-EU)'s ninth European Development Fund. Zimbabwe's economic decline has been engineered by the proponents of regime-change who hoped that economic hardship would lead to riots and breakdown of law and order.

The status of the Zimbabwean economy should therefore be understood in the context of a government that has put in place deliberate policies to address issues of health, education, infrastructure development, land reform, etc. which are aimed at empowering the Zimbabwean people and giving them greater access to land ownership of their resources. Zimbabwe's economic turnaround is predicated on these attributes and the determination of its government and people to succeed.

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[245] Economic Structural Adjustment Programmes have had negatively economic impact on the economies of those countries of which Zimbabwe is not an exception.

[246] The government of Zimbabwe views these sanctions as illegitimate, imposed by the West in an attempt to effect illegal regime change of the present government in Zimbabwe. The government of Zimbabwe refused to give in to the pressures of the West with President Mugabe stressing that "Zimbabwe will never be a colony again." *See*, in this respect, Statement by His Excellency the President of the Republic of Zimbabwe, Comrade Robert Gabriel Mugabe, on the occasion of the 62nd Session of the United Nations General Assembly, New York, 26 September, 2007, *at*:
<http//www.newzimbabwe.com/pages/un34.16973.html> (last accessed on 16 December, 2007).

Furthermore, on the political context, Zimbabwe had been ruled by one political party for 20 years before a real opposition could emerge.[247] The country has been led by a Founding President, a towering and influential political personality viewed with respect in Zimbabwe and in all of Africa for his historical role in the colonial liberation struggle.[248] President Mugabe is part of that exclusive club of African statesmen[249] who fought colonialism and racial discrimination. A long-serving member on the defunct OAU Liberation Committee had contended that "President Mugabe's own contribution to South Africa's independence is especially important." Apparently, had it not been for South Africa's liberation, land acquisition might have come earlier in Zimbabwe and independently of MDC politics.[250]

However, former president of Tanzania, Nyerere, was reported to have prevailed over this issue, arguing that "a forced land take over in Zimbabwe would forever jeopardize the South African liberation project and that Zimbabweans must wait before they could get back their land." With Nelson Mandela free, South Africa out of apartheid and with promised donor assistance to buy back the land not forthcoming, a forced acquisition of land in Zimbabwe was inevitable. Land reform in Zimbabwe was aimed at redressing past land alienation through promoting equal access to land by the majority people with the objective of achieving political stability and acceptable land property rights.[251]

The redistribution of land to blacks, including war veterans was not a "pay-off for their electioneering role" in 2000 Parliamentary and 2002 Presidential elections. Land was the essence of the liberation struggle and the people of Zimbabwe lost more than 50,000 of their comrades during the war. In all countries, war veterans are given special status.[252] The context, in which the

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[247] More than 12 opposition parties were formed in the early 1990s but remained weak and small, poorly led and have almost no political impact.
[248] Tibaijuka, *supra* note 19, 5.
[249] Including the likes of Nelson Rolihlahla Mandela, Kwame Nkrumah, Julius Kambarage Nyerere, Kenneth Kaunda, Samora Moses Machel etc.
[250] Munyaradzi Saruchera, "The Land Conflict and Agrarian Reform Situation in Zimbabwe," submitted to *Wenderkreis*, a Swiss Catholic Newsletter, p.1, para. 1 (2002).
[251] *Ibid*.
[252] Tungwarara and Olayele, *supra* note 197, 59.

clean-up operation was conducted, therefore, shows a country with a history of iniquities that the national government has not been able to redress, a government that inherited difficult structural economic problems that are difficult to solve without support by the international community.[253]

4.7 The Negative Impact of Operation *Murambatsvina* on IDPs

The destruction of structures that housed thousands of people was one without providing any alternate accommodation whatsoever, apart from forcing some to go to transit camps in which the conditions were appalling. It is not known exactly how many people were rendered homeless as a result, but, Miloon Kothari, the UN Special Rapporteur on the Right to Adequate Housing, mentioned about a figure of 200,000 people having been left without accommodation. The impact of the campaign was devastating and far-reaching.[254]

The operation initially targeted street vendors and those operating in the informal urban economy. It rapidly extended to the demolition of informal and formal settlements, and small and medium enterprises countrywide. In social terms, the campaign rendered people homeless and destitute, and created humanitarian and developmental needs that will require significant investment and assistance over several years. Economically, substantial housing stock was destroyed, and the informal sector was virtually wiped out rendering individuals and households destitute.[255]

As far as the political process is concerned, Operation *Murambatsvina* saw the death of compassion and the death of a political programme grounded in ethics, values, ethos and norms of liberation. Law enforcement agencies were militarised, placing the police and probably the military leaders on a level with politicians, in a position where they were making policy statements.[256] Internally,

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[253] *Ibid*.
[254] COHRE: *Media Release*, 2004.
[255] Tibaijuka, *supra* note 19, 5.
[256] Patrick Chinamasa had to announce that "the police will no longer make policy statements," responding to a question from an opposition legislator, during question time in Parliament on Tuesday, 20 June, 2005.

this process tightened the political polarisation and tension that already existed. Former government spokesperson and now independent Member of Parliament, Professor Jonathan Moyo, had this to say about Operation *Murambatsvina*:

> This is an inhuman, barbaric demolition of properties belonging to the weak and poor in our society, who have been left homeless, jobless, penniless and hopeless under a clean-up slogan which is actually an unmitigated mess-up that has been badly formulated, badly implemented and badly communicated.[257]

The operation seems to have strengthened the resolve of the international community against the government of Zimbabwe as the former accused the latter of perpetrating human rights abuses under a controversial programme. It coincided with the EU's policy review of Zimbabwe, where a minority had advocated low level sanctions; however, after the operation, the policy review extended sanctions to cover key leaders of Operation *Murambatsvina*.[258]

In the same vein, workers were severely hit by the operation leading to calls for wage increases to deal with the higher cost of housing, reduced moral and diminishing productivity due to absenteeism. A security guard with a city security company walking from Caledonia Farm every morning to Tafara to access transport into town and back everyday said, "I am doing this for my family. I have three children and my husband is dead. I can not go home, because there is no home in the village, but I can tell you I will die for my family.... This is worse than colonialism....Is this what we fought for?"[259]

Furthermore, the elderly, orphaned children and homeless people, people living with HIV/AIDS (who were on ARV treatment which they could access near government hospitals, clinics and other support groups) were all forcibly removed from their places of residence, and prevented from accessing resources and

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[257] Felix Njini, "Moyo Gloats at Confusion in ZANU-PF," *at*: <http://www.fingaz.co.zw/2005/june/june23/8780.shtml> (last accessed on 30 November, 2007).
[258] Tungwarara and Olayele, *supra* note 197, 59.
[259] A woman who chose to remain anonymous for fear of victimisation. *See*, Ozias Tungwarara and Wole Olayele (eds.), "An Analysis of the Demolitions in Zimbabwe" (2005).

assistance from their support groups. Those living with HIV/AIDS were rendered vulnerable to opportunistic ailments, and death. At Porta Farm, four people were reported to have died while being evicted from their homes and of those, two were confirmed as suffering from AIDS.[260]

With regards to children, education was disrupted due to relocation with resultant malnutrition due to food shortages. Many children had to live in overcrowded homes with other relatives, which resulted in the spread of diseases.[261] With a population of 1.5 million orphaned children, the combination of being out of school, lacking homes and being away from social protection led to further exposure to crime, prostitution and mass poverty. Child-headed households were particularly vulnerable following the evictions. Many displaced children were denied access to their original school catchment areas due to displacement during forced evictions and they lacked affordable means of transportation.[262]

Operation *Murambatsvina* also had adverse effects on family life because it caused separation between couples. For example, children and women were separated from men at Caledonia Farm because of limited facilities and overcrowding. Children who witnessed the demolitions became traumatised.[263] In addition to this, more than 70% of the population is currently believed to be living in poverty; and over 40% cannot access clean water. In Bulawayo city, for example, regular reports of children and adults dying from starvation and malnutrition were recorded, though suppressed by central government. The dislocation from sources of constant and lawful income is one way of impoverishing people. New arrivals in rural areas will add to the burden on families already struggling as a result of chronic drought and the HIV/AIDS pandemic.[264]

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[260] Tungwarara and Olayele, *supra* note 197, 59.
[261] *Ibid.*
[262] *See*, an Interim United Nations Multi-Sectoral Response Plan to the Recent Evictions in Zimbabwe (2005).
[263] *Ibid.*
[264] *Ibid.*

4.8 Legal Analysis of Operation *Murambatsvina*

The legal analysis of the operation is intended to inform the assessment from the humanitarian and human rights perspective, and to provide a full appreciation of the responsibilities of both the government and the international community to provide assistance to the affected people. According to the UN Special Envoy's report, the human rights discourse in Zimbabwe is fraught with tension. The UN Special Envoy's report concluded that the Zimbabwe situation is both a humanitarian and a human rights issue. The legal context of the operation should be seen against a background of a general deterioration of the rule of law in Zimbabwe. The legal context is mixed and reflects a set of conflicting legislation i.e. the Regional, Town and Country Planning Act (RTCPA) on one hand and the international commitments and obligations requiring government to provide adequate shelter to all its citizens.[265]

4.9 The Compatibility of the Evictions with International Human Rights Law

It is now a settled point of international law that human rights create a multi-layered obligation on every State to *respect*, *protect* and *fulfil* the enjoyment of human rights by all those under their jurisdiction.[266] The forced evictions that were carried out in Zimbabwe were clearly in conflict with international law (as well as with domestic law). The prohibition against forced evictions derives from article 11 (1) of the ICESCR and article 17 (1) of the ICCPR.[267] The ICESCR provides that:

> The States Parties to the Present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect

[265] Tibaijuka, *supra* note 19, 5.
[266] SAHRIT, *supra* note 183, 53.
[267] CESCR's General Comment No. 7 para. 8.

the essential importance of international co-operation based on free consent.[268]

Similarly, article 17 (1) of the ICCPR provides that: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation." Forced eviction can only be justified in the most exceptional circumstances, and in accordance with the relevant principles under international law."[269] Those who cannot provide for themselves and their family because they have no jobs or if they are sick, disabled or elderly are entitled to support. Mothers and their children must be given special care and assistance. All children, whether born in or out of wedlock, have the same rights.[270] Other fundamental rights are the right to work and to choose where to work and that everyone must be given a fair salary so that they can support themselves and their family,[271] as well as the right to receive education.[272]

Article 22 of the CESCR recognises the right to adequate housing. Zimbabwe ratified the Convention in 1991, agreeing among other things, to be bound to promote and protect the rights enshrined therein. Of particular interest are the rights elaborated on in General Comment No. 4 of 1991 of the CESCR, which states that the right to adequate housing applies to everyone regardless of age, economic status, and affiliation. It further states that the right should be seen as entitling people to live in security, peace and dignity, and that it cannot be viewed in isolation from other rights such as the right not to be subjected to arbitrary interference with one's privacy, family and home.

The CESCR in its General Comment No. 7 of 1997 further elaborates on the issue of forced evictions, which issue is of particular relevance to Zimbabwe where forced evictions on a massive scale occurred. The General Comment further notes that forced evictions may also result in violations of civil and political

[268] Article 11 (1) of the ICESCR.
[269] CESCR's General Comment 4 para. 18.
[270] Article 25 of the UDHR.
[271] Article 23 of the UDHR.
[272] Article 26 of the UDHR.

rights, such as the right to life, right to security of the person, right to non-interference with family and home, and the right to peaceful enjoyment of one's possessions. The CESCR recognised particularly the vulnerability of special groups like women, the elderly and children who all suffer disproportionately in forced evictions. It further recommended that where evictions are unavoidable then certain procedural guarantees have to be effected.[273]

In Zimbabwe, each of these recommendations was violated. No opportunity for any consultation with the affected people was ever presented by the government before the destruction of homes and forced eviction took place. The High Court dismissed one case challenging the evictions and destruction of homes and livelihoods, while other cases have either been postponed several times or not set down.[274]

In *Batsirai Children's Care* v *Minister of Local Government, Public Works and Urban Development and Four Others*,[275] the case was postponed several times and despite the clear urgency of the matter, the judge declined to award interim relief. This is a clear indication of the non-responsiveness of the judicial system in Zimbabwe towards the plight of the affected persons. The decision in the *Dare Remusha* case flies in the face of the recommendation by the Human Rights Committee in its General Comment No. 16 where it makes the important and pertinent point that appropriate procedural and due process are essential aspects of all human rights, but more so where forced evictions are at issue.

The ICCPR which Zimbabwe ratified in 1991 provides for, among other things, the right to life, right to freedom from torture, inhuman and degrading treatment or punishment, right to freedom of movement and freedom to choose one's residence. The Convention in article 14 provides for the right to a fair and public hearing before an independent and impartial court or tribunal. Article 17

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[273] CESCR's General Comment No. 7 on the Right to Adequate Housing, article 11 (1), Forced Evictions.
[274] *Dare Remusha Co-operative* v *The Minister of Local Government, Public Works and Urban Development and Four Others*, HC 246/05 (Supreme Court of Appeal No. 169 / 05). This matter was dismissed by Karwi, J.
[275] High Court of Zimbabwe, Case No. HC 2566/05.

provides for the right to protection of the law against arbitrary and unlawful interference with privacy, family and home.

An analysis of the campaign shows that these rights were violated by the very State which ratified the Convention. Even worse, Zimbabwe sits on the International Commission on Human Rights. Most evictions were carried out in direct contravention of international law. The government of Zimbabwe did not pay attention to the protection of the right to housing and sanctity of the home enshrined in international treaties ratified by Zimbabwe including the CEDAW;[276] CRC;[277] ICCPR;[278] and the ICESCR.[279] The evictions also constitute a form of cruel and degrading treatment in direct violation of article 7 of the ICCPR.[280]

Pursuant to international human rights law binding upon the Republic of Zimbabwe, evictions can only occur in exceptional circumstances and must conform to a strict set of criteria. These criteria have been set out by the CESCR in General Comment No. 4 and No. 7 and were affirmed and found within the context of the ACHPR by the African Commission in the case of *Social and Economic Rights Action Centre and Centre for Economic and Social Rights-Nigeria* (*SERAC)* v *Nigeria.*[281] In determining liability for violation of the right to shelter and housing, the Commission stated in the *SERAC* decision, the following;

> At a very minimum, the right to shelter obliges the Nigerian government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes. The State's obligation to respect housing rights requires it, and thereby all its organs and agents, to abstain from carrying out,

[276] Article 14 (2) of CEDAW.
[277] Article 27 (3) of CRC.
[278] Article 17 of ICCPR.
[279] Article 11 (1) of ICESCR.
[280] COHRE, "Forced Evictions and Operation Restore Order" (2005).
[281] African Commission on Human and Peoples' Rights, Decision 155/96, The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights-Nigeria (27 May 2002), Fifteenth Annual Activity Report of the African Commission on Human and Peoples' Rights, 2001-2002, done at the 31st Ordinary Session of the African Commission (2-16 May, 2002) Pretoria, South Africa.

sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to him or her in a way he or she finds most appropriate to satisfy individual, family, household or community housing needs. Its obligation to protect obliges it to prevent the violation of any individual's right to housing by any other individual or non-State actors like landlords, property developers, and landowners, and where such infringement occurs, it should act to preclude further deprivation as well as guaranteeing access to legal remedies....[282]

Any evictions must be carried out humanely. The Republic of Zimbabwe's mass forced evictions fall drastically short of these criteria. In terms of IHRL, including the ACHPR as the *SERAC* v *Nigeria* case demonstrates, for forced evictions to be considered as lawful, they may only occur in very "exceptional circumstances" and only after "all feasible alternatives" have been explored "in consultation with the affected persons." If and only if such exceptional circumstances exist and there are no feasible alternatives, can evictions be deemed justified. However, certain requirements must still be adhered to.[283]

Finally, in those rare cases where eviction is considered justified, it must be carried out in strict compliance with additional relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.[284] The CESCR expressly enumerated relevant provisions of international human rights law by which States must abide.[285]

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[282] *Ibid.*
[283] *Ibid.*
[284] Key Requirements of International Human Rights Law Relating to Forced Evictions. *See*, COHRE: *Media Release* (2004).
[285] These include, *inter-alia;* an opportunity for genuine consultation with those affected; adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; information on the proposed evictions, and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; especially where groups of people are involved, government officials or their representatives to be present during an eviction; all persons carrying out the eviction to be properly identified; evictions should

Even if the above tests have been satisfied and the due process conditions have been met, evictions should not result in rendering individuals homeless or vulnerable to the violations of other human rights. Where those affected are unable to provide for themselves, the State must take all appropriate measures, to the maximum extent of its resources, to ensure that adequate housing, resettlement or access to productive land, as the case may be, is available.[286]

The government violated its legal obligations under international human rights law when it carried out Operation *Murambatsvina* for a number of reasons, including the following: (a) the evictions were not deemed to have met the "exceptional circumstances" threshold by an independent and impartial tribunal; (b) all feasible alternatives to the planned eviction were not explored in consultation with the affected persons; (c) the evictions were carried out by violent means; (d) there was no adequate notice; (e) no compensation was offered; (f) the affected communities had not been consulted throughout the whole process; (g) alternative housing or adequate resettlement sites have not been provided; (h) there were inadequate provision of legal remedies; and (i) evictees were rendered homeless.[287]

Article 5 of the ACHPR protects the right of every individual to respect of the dignity inherent in a human being. The manner in which the demolitions were conducted violated this tenet. Article 7 of the same Charter states that "every individual shall have the right to an appeal to competent national organs against acts violating fundamental rights as recognised and guaranteed by Conventions, laws, regulations and customs in force." The ZLHR observed that: "... the illegal action, which continued unabated by the ZRP and municipal police, is a clear

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not to take place in particularly bad weather or at night unless the affected persons consent otherwise; provision of legal remedies; and provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts, including adequate compensation for property affected.

[286] COHRE, "Operation *Murambatsvina*: Unlawful Forced Evictions; Crimes Against Humanity; and Cruel, Inhuman or Degrading Treatment of the Poorest of the Poor." A Submission to the African Commission on Human and Peoples' Rights 41st Session, *at*: <http://www.cohre.org/store/attachments/COHRE/Shadow/Report/Zimbabwe.pdf.> (last accessed on 25 October, 2007).

[287] CESCR's General Comment No. 7, para. 15.

violation of the constitutional right to protection from deprivation of property as guaranteed by section 16 of the Constitution of Zimbabwe."[288] The Crisis in Zimbabwe Coalition International noted that;

> In an economy where the informal sector employs 80% of the labour force, torching people's markets and arresting street kids will not help the economy let alone bring fuel, foreign currency or fill the granaries of Zimbabwe.... At a time when the people are hungry, it makes more sense for the government to use people's taxes to secure fuel and food, rather than using people's taxes to buy teargas.[289]

The Rural and Urban Planning Act (RUPA) provides for the right of appeal against the actions of the local planning authority. The authorities, however, moved in to destroy people's property without giving them the opportunity to appeal against these actions. In some instances, communities like Porta Farm residents obtained court orders interdicting the State from proceeding with evictions, but these were ignored by the responsible authorities.

The campaign also fragrantly violated a number of the rights proclaimed in the Administrative Justice Act (AJA),[290] particularly the provision requiring that all administrative authorities (which would include the city council and the police force) are obliged to act lawfully, reasonable and in a fair manner. The completely indiscriminate way in which the campaign was carried out was neither lawful nor reasonable. The manner in which the powers were exercised

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[288] ZLHR, "Unlawful Eviction of Flea Market vendors, Tuck Shop Operators and Street Vendors and Destruction of their Property," *Press Release*, (2005).
[289] Crisis in Zimbabwe Coalition, "Stop Waging War against the Poor" (2005).
[290] The law through the Administrative Justice Act (AJA), Chapter 10:28 in Section 3 thereof further enjoin any administrative authority to act in a manner that is lawful, reasonable and fair. Further, Section 3 (2) places an obligation on the administrative authority to give adequate notice of the nature and purpose of the proposed action, reasonable opportunity to make adequate representations and adequate notice of any right of review or appeal. The manner in which the police, the Commission running the affairs of Harare acted was unlawful, it was manifestly unreasonable, excessive and amounted to abuse of power. The actions of the responsible authorities were arbitrary and did not allow for appeal or review by the affected persons.

amounted to a breach of natural justice (by failing to give reasonable notice of the planned action and to give the one month's notice as required by the relevant act).

4.10 Applicability of International Conventions in Zimbabwean's Domestic Law

Section 111B of the Constitution of Zimbabwe[291] provides that international law remains at the international level unless and until domesticated through an act of parliament "except as otherwise provided by this Constitution or by or under an act of parliament, any Convention, treaty or agreement acceded to, concluded or executed by or under the authority of the President with one or more foreign States or governments or international organisations (a) shall be subject to approval by parliament; (b) shall not form part of the law of Zimbabwe unless it has been incorporated into the law by or under an act of parliament."

Rights contained in conventions are therefore, not generally speaking, justiciable. International human rights Conventions, however, do have an important role to play in the justice delivery system. Among other things, they provide the standard against which domestic law can be measured for compliance with international human rights, and they enable people to access relief on the international level where domestic remedies have either been exhausted or are not available or appropriate. They have persuasive authority in deciding on cases in domestic courts and can provide guidance where there is a lacuna or gap in the law, in which case the courts can then look to international law for guidance where domestic law is either silent or contradictory.[292]

4.11 International and Regional Case Law on the Right to Adequate Housing Applicable to Operation *Murambatsvina*

Cases decided on the international front are useful for courts to draw guidance from. One of the leading cases on housing rights is that of *Olga Tellis* v

[291] Constitution of Zimbabwe Act 16 (as amended) of 2000.
[292] Tungwarara and Olayele, *supra* note 197, 59.

Bombay Municipal Corporation and Others.[293] The State of Maharashtra and the Bombay Municipality in 1981 moved to evict all pavement and slum dwellers from Bombay. The pavement dwellers claimed that this was a violation of their right to livelihood, which is comprehended in the right guaranteed by article 21 of the Indian Constitution that no person shall be deprived of his life except according to procedure established by the law.

The Supreme Court held that the constitutionally enshrined right to life encompasses the right to livelihood and work. It was held that the authorities' action amounted to a deprivation of the citizens' right to livelihood as they required housing to secure their right to life. But the court also held that deprivation of the right to livelihood could occur if there was a just and fair procedure undertaken according to law. The court held:

> that the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The right to livelihood is an important facet of the right to life since no person can live without the means of living, i.e. the means of livelihood. Deprivation of this right would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. That which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall deprive him of his life.[294]

This decision was followed in the case of *Shant Star Builders* v *Naryan Khimali Tatome and Others*.[295] The Supreme Court used the right to life to show that the right to adequate housing is necessary for the achievement of the former

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[293] *Olga Tellis and Others* v *Bombay Municipal Corporation and Others*, 1985 (3) SCC 545.
[294] *Ibid*.
[295] *Shant Star Builders* v *Naryan Khimali Tatome and Others* (1) Supreme Court 106, Civil Appeal No.2598 of 1989.

right, which is guaranteed under article 21 of the Indian Constitution. The court stated that a reasonable residence is an indispensable necessity in order to fulfil the constitutional goal in man's development. Therefore, it should be taken as part of "life" as envisaged in article 21.

Again, in *Delhi Transport Corporation* v *DTC Mazdoor Congress and Others*,[296] Sawant J in a concurring judgment with the majority commended "the right to life includes right to livelihood...income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental...." In South Africa, the case of *Government of the RSA and Others* v *Grootboom and Others*[297] further advances the jurisprudence on the right to housing. In 2000, the Constitutional Court delivered a judgment in respect of the housing rights of persons who were forced to live in deplorable conditions while waiting to be allocated low cost housing. In the *Grootboom* case, 510 children and 390 adults were rendered homeless as a result of their eviction from their informal homes situated on private land earmarked for formal low cost housing.[298]

They applied to the High Court for an order requiring the government to provide them with adequate basic shelter on housing until they obtained permanent housing. Justice Yacoob for the Constitutional Court considered the import of section 26 of the South African Constitution[299] which provides for the right to housing. He stated that the issue is not whether these rights are justiciable or not, but how they could be enforced. He held that in considering these rights it may be difficult to say whether they cast a positive obligation on the State and if so, how much? But at the very least, section 26 of the South African Constitution places a negative obligation upon the State and all other entities to desist from impairing the right of access to adequate housing.[300]

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[296] *Delhi Transport Corporation* v *DTC Mazdoor Congress and Others* 1991 (1) SCC 600.
[297] *Government of the Republic of South Africa and Others* v *Grootboom and Others* (11) BCLR 1169 (CC).
[298] *Ibid*.
[299] Constitution of the Republic of South Africa Act 108 of 1996 [hereinafter Constitution of South Africa].
[300] *Grootboom*, *supra* note 297, 83.

While the above cases deal with the interpretation of constitutional clauses which provide for the right to housing, they are nonetheless important because in interpreting the Constitution, great reliance was placed on international covenants and norms.

4.12 Conclusion

It is beyond polemics that the State destroyed informal housing in high density residential areas of Zimbabwe's towns and cities without giving adequate notice to the occupants, without organising alternative accommodation for the thousands of affected women, children and men. While the demolitions were done in terms of the RTCPA, this action totally missed the spirit and purpose of good planning, which is life sustenance by creating life-threatening conditions that are counter to the intentions of civil law. Planning law is not the anti-thesis of livelihoods but rather a facilitator of human life. "To destroy the informal sector due to perceived criminal elements is tantamount to burning a house because a rat has entered in, one can as well burn down the whole country."[301]

The government failed to articulate any justifiable reasons why Operation *Murambatsvina* had to be undertaken in the manner that it was. The government needs to review its approaches to policy formulation and implementation and pay serious attention to the need to involve and take into account the expectations, needs and aspirations of ordinary citizens. The attitude of the Zimbabwean government's approach to governance and policy implementation in response to the myriad of problems that the country has to deal with is neither sustainable nor productive.

The following chapter discusses in detail the human rights violations that were sustained during the implementation of Operation *Murambatsvina*. The human right to adequate housing was violated and other congruent rights as shall be seen in the next chapter.

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[301] Southern Africa Humanitarian Crisis, "Burning down the House to kill a Rat?-An Analysis of the Demolitions in Zimbabwe" (Action-Aid International, 31 July, 2005) *at*: <http://reliefweb.int/rw/RWB.NSF/db900SID/EVIU-6FBDNT?OpenDoc> (last accessed on 27 October, 2007).

Chapter 5: Violations of the Rights of IDPs' during Operation *Murambatsvina*

5.1 Introduction

> A violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant.[302]

A violation occurs either when a State has omitted to act to overcome deprivation or, alternatively, when it has actively impeded, or allowed others to impede, the realisation of a right. Violations can be of duties to respect, protect or fulfil rights. Where denial of economic, social and cultural rights is a result of

[302] Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, UN Doc. E/C.12/2000/13, para. 11. *Human Rights Quarterly*, Vol. 20 (1998), pp. 691-705.

inability (where there are genuine resource constraints, or circumstances beyond the control or outside the knowledge of the State), a State cannot be said to have violated its international obligations. Violations are the result of unwillingness, negligence or discrimination.[303]

Focusing on internal displacement in Zimbabwe, this chapter looks at how the government of Zimbabwe violated a range of human rights through the forcible eviction and/or forcible displacement of people, and through its subsequent failures to ensure even minimal essential levels of numerous rights e.g. rights to water, food and housing of those who were internally displaced.[304]

5.2 What Constitutes a Violation?

A failure by a State Party to comply with an obligation contained in the ICESCR is, under international law, a violation of the Covenant.[305] In order to determine what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State Party a margin of discretion in selecting the means of carrying out its objects, and the factors beyond its reasonable control may adversely affect its capacity to implement particular rights.[306]

In terms of Principle 72, a State Party will be in violation of the Covenant, *inter-alia*, if:

- it fails to respect or protect a right or to remove obstacles to its immediate fulfilment (for example, through forced eviction or failing to adequately regulate private service providers);
- it employs policies or practices with the intent or effect of discriminating against certain groups or individuals on impermissible grounds (for example, where health care professionals speak only official languages, not minority languages);

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[303] Amnesty International, "Human Rights for Human Dignity: A Primer on Economic, Social and Cultural Rights" *at*: <http://web.amnesty.org/library/index/engPOL340092005> (last accessed on 29 October, 2007).
[304] *Ibid.*
[305] Principle 70 of the Limburg Principles on the Implementation of the ICESCR, UN doc. E/N. 4/1987/17, *Human Rights Quarterly*, Vol. 9 (1987), pp. 122-135.
[306] *Ibid.*, Principle 71.

- it fails to realise without delay a minimum core obligation (for example, failing to prioritise free and compulsory primary education);
- it fails to take prompt, concrete and targeted steps towards the full realisation of a right (for example, failing to plan for essential medicines to be affordable and available to all);
- it fails to adequately prioritise the realisation of minimum essential levels of each right, particularly for marginalised people, the excluded and the vulnerable (for example, investing heavily in improving the environment of wealthier districts and little on ensuring the safety of shanty towns);
- it places a limitation, not recognised in international law, on the exercise of a right,[307] (for example, restricting the right to security of tenure to citizens, and denying it to non-citizens); and
- it retards or halts the progressive realisation of a right, unless it is acting within a limitation permitted by international law (because it lacks resources).

In accordance with international law, each State Party to the Covenant has the right to express the view that another State Party is not complying with its obligations under the Covenant and to bring this to the attention of that State Party. Any dispute that may arise shall be settled in accordance with the relevant rules of international law relating to the peaceful settlement of disputes.[308]

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[307] The exercise of the rights in the ICESCR may be subject "only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society," *see*, article 4 of ICESCR. This article "was primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the State," Limburg Principles, UN Doc. E/CN.4/1987/17 (and in E/C.12/2000/13), para. 46.

[308] Principle 73 of the Limburg Principles.

5.3 Specific Human Rights Violations during Operation *Murambatsvina*

The full realisation of economic, social and cultural rights-including rights to food, housing, health, education and work requires significant human, economic, technological and other resources. Yet, limited resources are not the principal cause of widespread violations of economic, social and cultural rights, and cannot be used as an excuse to deny specific individuals and group these rights. Ethnic minorities, indigenous peoples, women, members of opposition or religious groups, people living with HIV/AIDS or mental disabilities and many others risk deprivation as a result of discrimination and injustice.[309]

The forced evictions under Operation *Murambatsvina* were carried out with total disregard for the welfare of the people who were evicted, and resulted in a humanitarian crisis of immense proportions.[310] The evictions took a particularly heavy toll on vulnerable groups notably; widows, orphans, the elderly, women and children-headed households and people living with HIV/AIDS.[311] Thousands of people were left destitute, sleeping in the open without shelter or basic services. The government of Zimbabwe took no measures to investigate allegations of human rights abuse during the operation, and to provide adequate remedies to those whose rights were violated.

The UN Special Envoy on Human Settlement Issues in Zimbabwe, Anna Tibaijuka reported that the Operation was carried out in an "indiscriminate and unjustified manner, with indifference to human suffering and, in repeated cases, with disregard to several provisions of national and international legal frameworks."[312] Despite condemnation from the international community and appeals from humanitarian organisations, the government of Zimbabwe

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[309] Amnesty International, *supra* note 303, 86.
[310] Although the government claimed that the demolished structures were "illegal," Human Rights Watch found out that many legal housing and business structures were also destroyed during the evictions campaign. *See*, Human Rights Watch, "Clear the Filth: Mass Evictions and Demolitions in Zimbabwe" (2005).
[311] Human Rights Watch, "Clear the Filth: Mass Evictions and Demolitions in Zimbabwe" (Background Briefing, 11 September, 2005).
[312] UN Special Envoy on Human Settlement Issues in Zimbabwe, Mrs. Anna Kajumulo Tibaijuka, "Report of the fact-finding Mission to Zimbabwe to Assess the Scope and Impact of Operation *Murambatsvina*," 22 July, 2005 *at*:
<http://www.unhabitat.org/documents/ZimReport.pdf > (last accessed on 27 October, 2007).

continued to defy its obligations under international law and it failed dismally to protect those affected by the evictions.[313] The government flatly refused to acknowledge the scale of the crisis precipitated by the evictions, and continued to blatantly violate the human rights of the people displaced by Operation *Murambatsvina*.[314]

5.3.1 The Right to Adequate Housing

The right to housing is provided for, *inter-alia*, in article 11 of the ICESCR; article 25 of the UDHR[315]; article 20 of the African Charter on the Rights and Welfare of the Child (ACRWC) (specifically in relation to children); article 27 (3) of the CRC (specifically in relation to children); and article 16 of the Protocol to the ACHPR on the Rights of Women in Africa (specifically in relation to women). General Comments 4 and 7 of the CESCR, elaborate on the scope and content of this right. In 2002, the Special Rapporteur on the Right to Housing in her report[316] addressed pertinent issues related to the right to housing.

The UN Committee on Human Rights has considered that "the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing."[317] The CESCR has defined forced evictions as "the permanent or temporary removal against their will of individuals, families and/or communities from their homes and/or land which they occupy, without the provision of and access to, appropriate forms of legal or other protection."[318]

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[313] *Ibid*.
[314] For more on further evictions of those displaced by the evictions, *see*, Amnesty International, "Zimbabwe: No Justice for Victims of Forced Evictions" (2006).
[315] In adopting the UDHR in 1948 the international community recognised that human beings can only achieve freedom from fear and want, as well as freedom of speech and belief, if conditions are created whereby all people can enjoy all human rights. Despite this commitment to the indivisibility of human rights, international attention has largely concentrated on certain violations of civil and political rights such as torture and ill-treatment, extra judicial killings, "disappearances" and abuses of the right to a fair trial. The UDHR is not a binding legal document but it has received universal acceptance to such an extent that it is now believed to have very strong and moral authoritative force. Some provisions of the UDHR reflect customary international law.
[316] E/CN.4/2002/59.
[317] United Nations Committee on Human Rights, Resolution 1993/77, para. 1.
[318] CESCR's General Comment No.7, "The Right to Adequate Housing" (Article 11 (1) of the Covenant): Forced Evictions, UN Doc. E/C.12/1997/4, para. 3.

The CESCR further noted 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."[319] The African Commission on Human and Peoples' Rights, in a decision in *SERAC* v *Nigeria* has similarly stated that: "[a]t the very minimum, the right to shelter obliges the Nigerian government not to destroy the housing of its citizens and not to obstruct efforts by individuals and communities to rebuild lost homes."[320]

In respect of Zimbabwe specifically, and in response to Zimbabwe's initial report on the implementation of the ICESCR, CESCR noted as one of the principal subjects of concern, the fact that:

> Despite the fact that the "extended family" provides a safety net for some of the homeless, the Committee noted that the situation in relation to the right to housing remains clearly inadequate. The Committee was particularly concerned about the precarious situation of persons living in illegal structures or unauthorised housing (para. 107 of the report). Persons should not be subjected to forced eviction unless this is done under conditions compatible with the Covenant.[321]

In its suggestions and recommendations, in respect of the right to housing, the CESCR recommended that appropriate measures should be taken in order to effectively guarantee the right to housing and, in particular, to ensure that no forced evictions are carried out without alternative housing being offered, in accordance with General Comment No. 4. It also liked to receive further information on the number of forced evictions that were carried out, and on the

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[319] CESCR's General Comment No. 4 on the Right to Adequate Housing (1991), para. 18.
[320] *Centre for Economic and Social Rights and Social and Economic Rights Action Centre ('SERAC')* v *Nigeria*, see, the decision done at the 30th Ordinary Session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October, 2001, *at*: <http://www.elaw.org/assets/pdf/ng.afr.commission.hrights.pdf> (last accessed on 2 November, 2007).
[321] *See*, paragraph 21 of the Concluding Observations of the CESCR.

application of article 11 of the Covenant in Zimbabwe, in particular with respect to the right to housing.[322]

The Zimbabwean government did not take into account any of these safeguards contained in the CESCR's General Comment No. 7[323] and it even failed to provide justification for its failure to do so. The notice served was inadequate, the community was not consulted about the process, and no alternative housing arrangements were considered or offered to people, resulting in the majority becoming homeless and vulnerable to further violations of their human rights.[324]

The *Murambatsvina* evictions were carried out in defiance of a court order *e.g.* in the case of the residents of Porta Farm, thus questing whether any effective remedy was available to them. One of the effects of Operation *Murambatsvina* is that many people were rendered homeless and destitute. The "illegal" houses were destroyed by the local authorities and the government without the provision of alternative accommodation. The government clearly acted in contravention of its obligations in terms of article 11 of the ICESCR.[325]

Forced evictions, where people are removed involuntarily from their homes without legal protection or the assurance of alternative accommodation, are a gross violation of a range of human rights. They often leave people at risk of damage to their health, unemployment and sexual abuse, and children unable to continue with their education. The CESCR[326] clarified that human rights law require that people be ensured the greatest possible security of tenure, and that strict controls be placed on the circumstances in which evictions can take place.

The inescapable conclusion is that the government violated this fundamental human right by rendering thousands of families homeless and also depriving the sick and children of access to health-care and education

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[322] *Ibid.*
[323] *See*, para. 15 of CESCR's General Comment No. 7 on the Right to Adequate Housing, Forced Evictions (1997).
[324] *Ibid.*
[325] Amnesty International and ZLHR, "Zimbabwe Shattered Lives-The Case of Porta Farm," AI Index: AFR 46/004/2006.
[326] *See*, article 11 (1) of CESCR's General Comment No. 7, the Right to Adequate Housing, 20 May, 1997.

respectively.[327] The government of Zimbabwe has an obligation to protect all those likely to be affected by third-party interference. This is now a moot point given the fact that the government claimed ownership of the Operation.[328]

5.3.2 Right to Protection from Forced Displacement

A basic protection against forced eviction is to take prompt steps to confer legal security of tenure on people who lack such protection and, as soon as possible, to develop legislation to prevent forced eviction which accords with human rights standards. The leading legal interpretation of the right to be protected against forced eviction is General Comment No. 7.[329] Forced evictions have routinely been labelled as human rights violations under international law. The practice of forced eviction is one of the most widespread forms of human rights violation in the world, yet it is largely overlooked by governments and the media as cause for concern.[330]

In Zimbabwe, the mass forced displacement of Operation *Murambatsvina* was accompanied by massive internal displacement of population. Many people were displaced to rural areas or to transit camps such as Caledonia Farm, or holding camps, such as Hopley Farm. This action alone, on the part of the government, violated the right to freedom of movement and the choice of residence as expressly provided for in article 12 of the ICCPR and article 12 of the ACHPR, which includes the right to protection from forced displacement.[331]

According to article 12 (3) of the ICCPR, a State may not impose any restrictions to the right to freedom of movement, "except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others." As far as the Zimbabwean situation is concerned, none of the grounds which could have justified restrictions to this right apply. The UN Committee on Human Rights has noted that "the right

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[327] SAHRIT, *supra* note 183, 53.
[328] *Ibid.*
[329] General Comment No. 7 on the Right to Adequate Housing (E/C.12/1997/4) *adopted* by the United Nations CESCR on 20 May, 1997.
[330] *Ibid.*
[331] Amnesty International and ZLHR, *supra* note 325, 91.

to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement."[332]

In addition, Principle 6 of the UN Guiding Principles states that "every person has the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence." The absence of due process throughout the evictions in Zimbabwe, including inadequate notice and inadequate alternative shelter, the cyclical nature of displacements and relocations without appropriate justification, make these displacements arbitrary or discriminatory.

5.3.3 Right to Life and to Physical and Mental Integrity

Foremost among rights is the right to life, from which flow other rights and freedoms. The right to life is not confined to mere physical or animal existence but includes the right to every limb or faculty through which life is enjoyed. It signifies the right to live with basic human dignity, the right to livelihood, the right to a habitat or home, the right to education and the right to a clean and healthy environment for without these there can be no real and effective exercise of the right to life. It should be remembered that during the attempted forced evictions on 2 September, 2004 at Porta Farm, at least eleven people were reported to have died after the police employed tear gas on unarmed civilians. It was apparent the police used excessive force and misused teargas, resulting in these deaths.[333]

IDPs are often faced with various types of violence; ranging from killings, torture, to rape. Therefore, it is necessary to examine the legal norms offering protection for their life and personal safety. The personal safety of IDPs is at risk when they flee from their homes and also when they are in camps. The right to life is the very basic human right that is obviously non-derogable by nature.

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[332] ICCPR's General Comment 27 (Sixty-seventh session, 1999): Article.12: Freedom of Movement, A/55/40 Vol. 1 (2000) 128 at para.7 [emphasis added].
[333] Amnesty International, AI Index: AFR 46/004/2006, 31 March, 2006.

Unfortunately, under Operation *Murambatsvina*, it was reported that at least three people perished at Porta Farm even though the government denied this.[334]

International human rights law and standards provide that whenever the use of force is unavoidable, law enforcement officials must "exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved."[335] Principle 8 of the UN Guiding Principles similarly provides that "displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected." In employing excessive force in a manner that violates the principles of necessity and proportionality, the police or other State agents pose a threat to the right to life of those persons being evicted. In relation to evictions, the CESCR has stated that:

> States Parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoid, or at least minimise, the need to use force.[336]

An effective review process should also be in place in case of reports of excessive use of force. In particular, in "cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to competent authorities responsible for administrative review and judicial control."[337] Notwithstanding the absence of official data in this regard, Operation *Murambatsvina* led to deaths, violating the right to integrity and the right to life. These rights are guaranteed in the UDHR[338] and the ICCPR,[339] among other international human rights instruments.

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[334] *Ibid.*, p. 20.
[335] Principle 5 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
[336] CESCR's General Comment No. 7, para. 13.
[337] Principle 22 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
[338] UDHR, *supra* note 55, 20. Article 3 provides: "Everyone has the right to life, liberty and security of the person."

5.3.4 Right to Privacy

The destruction of homes by the authorities without adequate notice and with inadequate or no provision of alternative housing, constitutes an arbitrary interference with privacy, family and the home.[340]

5.3.5 Right to an Effective Remedy

The victims of Operation *Murambatsvina* were denied the right to an effective remedy. This right is recognised in the ICCPR[341] and the African Charter.[342] The CESCR has also upheld the right to a remedy for violations of rights protected under the ICESCR,[343] and has called for legal remedies and procedures to be provided to those affected by eviction orders.[344] This is echoed in Principle 7 (3) of the United Nations Guiding Principles, which outlines the guarantees that need to be complied with if displacement occurs in situations other than during the emergency states of armed conflicts or disasters. They include "a specific decision by the States authority empowered by law to order such measures" and "the right to an effective remedy, including the review of such decisions by appropriate judicial authorities."[345]

Article 7 of the African Charter provides for the right to have one's cause heard. Despite the clear recommendations of the UN Special Envoy, and Zimbabwe's international obligations to provide effective remedies to the victims of human rights violations under the ACHPR, the government did not carry out any inquiries into the manner in which the evictions were carried out. It did not even investigate reports of excessive use of force by the police during and after

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[339] ICCPR, *supra* note 56, 20. Article 6 (1) provides for the right to life and Article 10 (1) provides for the right to dignity.
[340] *See*, article 17 of ICCPR, article 18 of ACHPR and also CESCR's General Comment No. 4.
[341] Article 2 (3) of ICCPR.
[342] Articles 2 and 26 of the African Charter.
[343] CESCR's, General Comment 3: Nature of States Parties Obligations, UN Doc. E/C.12/1991/23, para. 5; and General Comment 9: The domestic application of the Covenant, UN Doc, E/C.12/1998/24, para. 2.
[344] CESCR's General Comment No. 7, paras. 12 and 16.
[345] Amnesty International and ZLHR, *supra* note 325, 91.

evictions, and it took no steps to bring its legislation in conformity with international standards.[346]

The government also failed to provide access to effective legal remedies to the victims of Operation *Murambatsvina*. The Zimbabwean courts initially protected some of the people, for example, at Porta Farm, prohibiting evictions that did not include a proper relocation of those affected. However, in September 2004, the authorities ignored court orders and attempted unsuccessfully to forcibly evict the residents in clear defiance of a court order. In 2005, they succeeded in forcibly evicting the entire residents of Porta Farm acting in defiance of three separate court orders. The police officers who were made aware of these orders failed to act professionally and impartially on the basis that they were acting on "orders from above."[347]

According to lawyers representing the victims of the evictions, the courts, run by politically compliant judges, have to a large extent use delaying tactics in processing cases relating to Operation *Murambatsvina*.[348] In addition, few people have sought compensation as most do not believe that they would receive justice or effective remedy. This has left the people of Zimbabwe with no recourse to the courts for protection of their rights. The fact that the court orders prohibiting the evictions were heavily disregarded by the authorities and that this disregard was subsequently upheld by the courts, the people of Zimbabwe were left without access to an effective remedy.[349]

5.3.6 The Right to Freedom from Physical Violence

During the implementation of *Operation Murambatsvina* IDPs were forcibly detained in camps thereby, denying them freedom. In most cases, physical violence was used to implement the process. The Declaration on the Elimination

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[346] *Ibid*.
[347] Human Rights Watch, "Evicted and Forsaken: Internally Displaced in the Aftermath of Operation *Murambatsvina*" (2005).
[348] *Ibid*.
[349] *Ibid*.

of Violence against Women (DEVAW)[350] is the first document to expressly denounce violence against women, by highlighting its negative impact.

Article 1 of DEVAW states that "For the purposes of this Declaration, the term 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women...whether occurring in public or in private life." The problem with DEVAW is that it is a declaration and not a convention, making it a non-binding document. Thus there is a problem with its status, and this in turn presents problems regarding implementation. The government of Zimbabwe violated the right to freedom from physical violence during its campaign because force was employed in the whole process of eviction.

5.3.7 Right to Peace

In terms of the Asian Human Rights Charter,[351] "all persons have the right to live in peace so that they can fully develop all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence." The peoples of Zimbabwe suffered great hardships as a result of Operation *Murambatsvina* that caused many deaths, internal displacement of persons, break up of families, and in general, the denial of any prospects of a civilised and peaceful existence.[352]

Both the State and the civil society have in many countries become heavily militarised in which all scores are settled by force and citizens have no protection against the intimidation and terror of State or private armies. The right to live in peace requires that the political, economic or social activities of the State, the corporate sector and the civil society should respect the security of all peoples, especially the IDPs.[353] The IDPs were denied this right when the government carried out its campaign on mass forced evictions under Operation *Murambatsvina.*

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[350] Declaration on the Elimination of Violence Against Women [hereinafter DEVAW] proclaimed by the General Assembly resolution 48/104 of 20 December, 1993.
[351] Article 4 (1) of the Asian Human Rights Charter, updated on 30 March, 1998.
[352] Human Rights Watch, *supra* note 347, 96.
[353] Asian Human Rights Charter, *supra* note 351, 97.

5.3.8 The Right to Freedom from Torture

The CAT[354] defines "torture" as:

> any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidation or coercing him or a third person, or for any reason based on discrimination of any kind....[355]

The government of Zimbabwe's actions during Operation *Murambatsvina* constituted torture as well as cruel, inhuman and degrading treatment. This was in violation of the CAT and hence a violation of the international treaty that provides for protection against torture.[356]

5.3.9 The Right to Freedom from All Forms of Discrimination

The CEDAW[357] defines discrimination as:

> any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.[358]

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[354] CAT, *supra* note 58, 20.
[355] Article 1 of CAT.
[356] Zimbabwe Watch, "Possibilities for Criminal and State Responsibility in Relation to the Operation *Murambatsvina* Case" (2007).
[357] CEDAW, *supra* note 59, 20.
[358] *See*, Article 1 of CEDAW.

This is another essential human right which is also the fundamental requirement for the implementation of other human rights. The concepts of equality before the law, equal protection of the law and non-discrimination form the basis of international human rights law. IDPs, as they often live in alien surroundings and have lost their security, property and social status, are especially vulnerable to discriminatory practices.

Many of the international and regional human rights treaties require States Parties to respect the rights and freedoms enumerated in the treaties without discrimination. General provisions prohibiting discrimination can be found in several human rights treaties. An important provision is article 26 of the ICCPR, which guarantees equality before the law and freedom from discrimination and the equal protection of the law. The scope of this article extends to all rights, whether protected by the Covenant or not.[359]

This right was violated by the government of Zimbabwe during its implementation of Operation *Murambatsvina*. The IDPs were discriminated against when their rights to shelter, property and livelihood were overlooked by the government. Zimbabwe, in this respect, violated numerous human rights instruments to which it is a Party, for example, CEDAW.

5.3.10 The Right to Health

The right to health is a human right which is considered "indispensable for the enjoyment of other rights." This right is provided for in, among other instruments, article 12 of the ICESCR, article 24 of the CRC, article 14 of the ACRWC, article 12 of CEDAW, article 16 of the ACHPR, article 14 of the Protocol to the ACHPR on the Rights of Women in Africa, as well as the Constitution of WHO.

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[359] Human Rights Committee 1994, General Comment 23 (Article 27). Paragraph 4 reads: "In addition, there is a distinct right provided under article 26 for equality before the law, equal protection of the law, and non-discrimination in respect of rights granted and obligations imposed by the States. It governs the exercise of all rights, whether protected under the Covenant or not, which the State Party confers by law on individuals within its territory or under its jurisdiction, irrespective of whether they belong to the minorities specified in article 27 or not. Some States Parties who claim that they do not discriminate on grounds of ethnicity, language or religion, wrongly contend, on that basis alone, that they have minorities."

General Comment No. 14 of the CESCR has elaborated on the scope and content of the right to health. This comment should be read together with General Comment No. 3 which defines the nature of State obligations under the ICESCR. The UN Commission on Human Rights has specifically addressed the issue of access to medication in the context of pandemics such as HIV/AIDS.[360] The State should ensure access to medication by all those in need of it.

Numerous instruments provide for the right to health as a fundamental right. The ACHPR provides that: "Every individual shall have the right to enjoy the best attainable state of physical and mental health."[361] The UDHR provides: "everyone has the right to a standard of living adequate for the health and well-being of himself and his family."[362] The United Nations Fourth World Conference on Women[363] confirms this right and added that health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.[364]

The State must also take all possible measures to prevent infant mortality, eliminate malnutrition and epidemics, and increase life expectancy through a clean and healthy environment and adequate preventative as well as curative medical facilities. The right to integrity and dignity is generally regarded as the foundation upon which all other rights are based, and thus is interwoven with the right to life.

A number of people affected by Operation *Murambatsvina* were infected and affected by AIDS, some of whom were on Anti-Retro Viral programme. Arbitrary displacement of people affected numerous social programmes that were in place to deal with the issues of HIV/AIDS and the potential danger that was created by stopping access to drugs without following proper drug termination procedures for HIV/AIDS drugs treatment.

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[360] *See*, Resolution 2003/29.
[361] Article 16 of the African Charter.
[362] *See*, article 25 of the UDHR.
[363] United Nations Fourth World Conference on Women [hereinafter Beijing Platform of Action].
[364] Paragraph 89 of the Beijing Platform for Action.

5.3.11 The Right to Education

The right to education is provided for, *inter-alia*, in article 26 of the UDHR; articles 6, 13 and 14 of the ICESCR; articles 28 and 29 of the CRC; article 11 of the ACRWC. General Comments Nos. 11 and 13 of the CESCR has elaborated on the scope and content of this right in the context of Operation *Murambatsvina*. It is important to understand the centrality of education to a child's development. In this regard, the contents of the UNESCO Convention against Discrimination in Education (1960) as well as General Comment No. 1 of the Committee on the Rights of the Child provide useful insight on what is an appropriate policy to respect observance of the right of children to access education.[365]

This right encompasses the right to free and compulsory primary education, and increasing access to secondary, technical, vocational and higher education. The right cuts across the false divide between human rights, as it has civil, cultural, economic, political and social elements. The realisation of people's right to education reduces their vulnerability to child labour, early marriage, discrimination and many other human rights abuses. It also increases their opportunity to realise other human rights, including the right to health and the right to participate in public affairs.[366]

Given this scenario, it is imperative to highlight the fact that education as a human right, is considered so important to an extent that there is an obligation on every Member State to the ICESCR to provide for it free of charge and on a compulsory basis, particularly with regard to primary education. It is implicit in this obligation that the State should not interfere with access to education. It suffices to conclude that Operation *Murambatsvina* in its effect is a blatant violation of "accessibility and availability" of the right to education in respect of all young children who were internally displaced as a result of this operation.

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[365] The scope of the right to education has been clarified in CESCR, General Comment 13, the right to education, UN Doc. E/C.12/1999/10, and reports of the UN Special Rapporteur on the right to education.

[366] For more information, *see, e.g.*, the Right to Education Project, *at*: <http://www.right-to-education.org> (last accessed on 08 November, 2007).

5.4 Conclusion

The implementation of the fast-track land reform programme set a bad precedent and resulted in violations of numerous rights contained in the ACHPR. The right to property[367] was blatantly ignored since property was massively and horrendously destroyed during the Operation. The discriminatory and violent way in which the programme was implemented led to violations of the right to freedom from discrimination,[368] the right to life,[369] and the right to liberty[370]. The removal of land seizure cases from the jurisdiction of the courts led to violations of the right to equality before the law[371] and the right to have one's cause heard in terms of article 7 of the ACHPR.

Notably, the ACHPR does not specifically provide for protection against forced evictions, but has extensive provisions on the protection of human rights that are typically affected by the practice of forced evictions, such as the right to freedom of movement and residence[372], the right to enjoy the best attainable state of physical and mental health[373] and the right to education[374]. Decisions by the African Commission have articulated the obligations of States Parties in protecting these rights. This is particularly true when evictions are carried out by force or without procedural guarantees.

It is apparent from this discussion that the actions of the government of Zimbabwe in carrying out forced evictions resulted in the displacement of hundreds of thousands in its cities as part of Operation *Murambatsvina* violated a range of human rights, in particular the right to adequate housing (article 11 (1) of ICESCR,[375] article 14 of ACHPR,[376] and the right not to be subjected to arbitrary

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[367] Article 14 of ACHPR.
[368] Article 2 of ACHPR.
[369] Article 4 of ACHPR.
[370] Article 5 of ACHPR.
[371] Article 3 of ACHPR.
[372] Article 12 of ACHPR.
[373] Article 16 of ACHPR.
[374] Article 17 of ACHPR.
[375] Article 11 (1) of the ICESCR states: "The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right."

or unlawful interference with one's privacy, family and home (article 17 of ICCPR; article 18 of ACHPR). The manner in which the forced evictions were carried out also violated the right to life and the right to physical and mental integrity (articles 6, 7, and 9 of ICCPR; articles 4 and 5 of ACHPR) and the right to an effective remedy (article 2 (3) of ICCPR; and article 7 of ACHPR).

To this end, it should be noted that the government of Zimbabwe in implementing Operation *Murambatsvina*, caused serious human rights violations. It left hundred of thousands of persons without adequate housing. Many people lost property and livelihoods without compensation. The government forcibly displaced persons to unsatisfactory and uninhabitable sites, such as Hopley Farm where no or inadequate materials for ensuring even basic shelter were distributed. In addition, those who were evicted did not have a guarantee against evictions in future.

[376] The African Charter protects the right to property specifically. The right to housing has been recognised by the African Commission on Human and Peoples' Rights in a decision concerning a complaint against the Federal Republic of Nigeria, *SERAC* v *Nigeria*.

Chapter 6: Possibilities for Criminal and State Responsibilities in the Context of Operation *Murambatsvina*

6.1 Introduction

This chapter provides for an appraisal of the potentiality of a case being brought outside of the Republic of Zimbabwe for the violations that took place during the implementation of its campaign on forced evictions. The chapter examines two spheres of responsibility: (i) individual criminal responsibility, and (ii) the responsibility of Zimbabwe as a State. Operation *Murambatsvina* could be considered as amounting to crimes against humanity under the articles of the

Rome Statute of the ICC.[377] The Statute refers to (i) the forcible transfer of populations and (ii) other inhuman acts. The chapter concludes that prosecution of those crimes could take place through three avenues i.e. through national universal jurisdiction, prosecution by the ICC, or referral of this case to the ICC by the United Nations Security Council.[378]

6.2 International Crimes Allegedly Committed Under Operation *Murambatsvina*

The international responsibility could only be invoked for those responsible for Operation *Murambatsvina* if only it could be established that a crime has been committed. In order to establish this fact, it is incumbent to refer to the Rome Statute which provides a definition of those crimes that are considered to be "crimes against humanity."[379]

If a crime committed by a State or individual meets the definition contained in the Statute, then the perpetrators of that crime could be held responsible for their actions on the international plane. In the context of criminal law, it is, as a general rule, recognised that crimes comprise a physical (the *actus reus*) and a psychological element (the *mens rea*). These two essential elements differ for each crime. The burden of proof to establish the guilt on the part of the accused vests on the prosecutor as the accused is always presumed innocent until proven guilty.[380]

6.2.1 The Rome Statute and Crimes Against Humanity

Crimes against humanity are inhumane acts that attack, not just the individual, but, by their very nature, humanity itself. As the Trial Chamber of the

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[377] Rome Statute of the International Criminal Court [hereinafter Rome Statute or ICC Statute] *adopted* by the United Nations Diplomatic Conference on Plenipotentiaries on the establishment of an ICC on 17 July, 1998. The Statute *entered into force* on 1 July, 2002, in accordance with Art.126. UN Doc A/Conf 183/9; (1998) ILM 999 2187 UNTS.
[378] Zimbabwe Watch, *supra* note 356, 98, p. 1.
[379] Rome Statute, *supra* note 377, 105.
[380] Article 66 of the Rome Statute. The burden of proof is one beyond reasonable doubt.

International Criminal Tribunal for the Former Yugoslavia (ICTY) declared in *Prosecutor* v *Erdemovic*,[381] crimes against humanity:

> are serious acts of violence which harm human beings by striking what is most essential to them: their life, liberty, physical welfare, health, and or dignity. They are inhumane acts that by their very extent and gravity go beyond the limits tolerable to the international community, which must perforce demand their punishment. But crimes against humanity also transcend the individual because when the individual is assaulted, humanity comes under attack and is negated. It is therefore the concept of humanity as victim which essentially characterises crimes against humanity.[382]

The Rome Statute establishes a permanent ICC having jurisdiction over what are described as "the most serious crimes of concern to the international community as a whole."[383] The Statute specifies genocide in article 6, crimes against humanity in article 7, and war crimes under article 8. Zimbabwe is not a Party to the Statute. Nevertheless, the ICC would have jurisdiction under article 13 (b) if the United Nations Security Council acting under Chapter VII of the United Nations Charter referred to the prosecutor "[a] situation in which one or more [crimes against humanity] appears to have been committed." This may only be done if a "threat to the peace, breach of the peace or act of aggression exists."[384] This occurred in 2005 with regard to the situation in Sudan.[385]

The essential elements of crimes against humanity include deportation or forcible transfer of population, *actus res* and *mens rea*. Article 7 of the Rome

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[381] *Prosecutor* v *Erdemovic*, Sentencing Judgment, Case No. IT-96-22-T (Trial Chamber I, 29 November, 1996).
[382] *Ibid*, para. 28. *See*, also in this respect, Gerhard Werle, *Principles of International Criminal Law* (T.M.C Asser Press, 2005).
[383] Martin Westgate, "Operation *Murambatsvina*: A Crime Against Humanity?" A report containing the Independent Legal Opinion on the Question whether the 2005 Operation *Murambatsvina* Forced Evictions constituted a Crime Against Humanity within the meaning of Article 7 of the Rome Statute; prepared for COHRE and ZLHR (May, 2007), p. 24, para. 46.
[384] Article 39 of the United Nations Charter.
[385] UNSC Res 1593 (31 March, 2005) UN Doc S/RES/1593.

Statute lists a number of "crimes against humanity" which must involve widespread or systematic attack directed against any civilian population, with knowledge of the attack.

(a) Deportation or forcible transfer of population

It is imperative that the concepts of deportation and forced transfer of the population be properly distinguished: the former emphasises the "forced removal of people from one country to another," the latter, being the "compulsory movement of people from one area to another within the same State."[386] In article 7 (d) of the Rome Statute, deportation or forcible transfer of population is listed and defined as "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law. The international jurisprudence recognises that forced displacement can include forcible transfer within a State.[387]

The argument considered herein proceeds on the observation that nothing in the facts, discussed above, indicates that the people who were affected by the act in question were specifically transported across international boundaries. It is therefore the specific question of whether the act in question constitutes a forcible transfer that will be examined. In terms of the provisions of the Rome Statute, forcible transfer of a population when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, constitutes a crime against humanity.[388] Article 7 (2) (d) clarifies that the definition includes those transferred with expulsion or coercive acts despite being lawfully present, contrary to international law.

The scale of the actions of the Republic of Zimbabwe in forcibly transferring large parts of the population out of urban centres, through destruction of their homes and other means constitute forcible transfer, falling

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[386] Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law* (2nd ed) (The Hague: Kluwer Law International, 1999).
[387] *Ibid.*
[388] *See*, Article 7 (1) (d) of the Rome Statute.

within the ambit of this article. As outlined above, the destruction of homes and mass forced evictions were in clear violation of international law. Regarding the element of lawful presence, it is clear that almost all of the residents were lawfully present in Zimbabwe.[389]

The Statute of the ICC clearly prohibits the deportation and forcible transfer of population under certain conditions that appear to be present in the Zimbabwe campaign. In its Rule 61 Decision in *Prosecutor* v *Nikolic*,[390] rendered on 20 October, 1995, the Trial Chamber of the ICTY declared that deportation could be qualified as both a "grave breach of the Geneva Conventions and as a crime against humanity." The Trial Chamber held that,

> [u]nder the supervision and on the orders of the accused...a large number of detainees are said to have been transferred from Suzica camp to Batkovic during the summer of 1992. Dragan Nikolic is said to have organised the transfers, calling out detainees from a list of names and telling them that they were to be exchanged for Serbian prisoners. In actual fact, the detainees were transferred to Batkovic camp; they were forced to travel by bus with their heads down, their hands behind their heads. They were beaten and forced to sing 'patriotic Serbian' songs. At Batkovic camp conditions were similar to those at Suzica camp; if not worse...the Chamber considers that Dragan Nikolic may have committed grave breaches of the Geneva Conventions of 1949 - in particular of Convention IV- which falls under the Tribunal's jurisdiction pursuant to Article 2 of the Statute. [The] Chamber, however, also considered that the same set of facts could be characterised as deportation and, accordingly, come under Article 5 of the Statute.[391]

[389] International Law Opinion, "Are the Activities Conducted During Operation *Murambatsvina* Crimes Against Humanity within the Meaning of Article 7 of the Roma Statute?" (Oxford Pro Bono Publico Group: University of Oxford, November, 2005).
[390] *Prosecutor* v *Nikolic*, ICTY IT-94-2-R61 (20 October, 1995) Trial Chamber 1.
[391] Rome Statute, para. 23.

In the same vein, in *Prosecutor* v *Krstic*,[392] the Trial Chamber of the ICTY in its decision also stated that "deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacement within a State" under customary international law.[393] In that case, about 25,000 Bosnian Muslim civilians were forcibly bussed outside the enclave of Srebrenica to the territory under Bosnian Muslim control, but within Bosnia-Herzegovina. The transfer was compulsory and was carried out "in furtherance of a well organised policy whose purpose was to expel the Bosnian Muslim population from the enclave."[394] The Chamber concluded that the civilians transported from Srebrenica were not subjected to deportation but to forcible transfer, a crime against humanity.

(b) The Actus Reus

The violations alleged in Zimbabwe should be seen in the context of forcible transfer rather than deportation. Deportation involves an inter-State movement as distinct from forcible transfer which occurs within the territories of one State.[395] The four main definitional issues relevant to the *Murambatsvina* case may be summarised as follows: the extent to which the transfer was coercive; whether the population was "lawfully present;" the extent to which the forcible transfer was part of a "widespread and systematic" attack directed against the civilian population; and whether there exist any grounds under international law which would render such transfer lawful.

(i) The Extent to which the Transfer was Coercive

While it is clear that during Operation *Murambatsvina* many people destroyed their own homes, it should be conceded that they did so under threat that if they did not do so, then they would be destroyed by authorities. It must be evident on the facts that the transfer was indeed coerced. It is immaterial to ascertain who actually destroyed the properties. The facts would still seem to

[392] *Prosecutor* v *Krstic*, ICTY IT-98-33 (2 August, 2001) [531].
[393] *Ibid.*
[394] *Ibid.*, para. 527.
[395] Rome Statute, *supra* note 377, 105.

support a claim that a large section of the Zimbabwe's urban population was forcibly evicted from their properties and from their settlement areas. It is an undeniable fact that the Zimbabwean government's policy resulted in a widespread and systematic forcible transfer of population.[396]

(ii) Whether the Population was "Lawfully Present"

The phrase "the area in which they are lawfully present" describes physically being in a place - a geographical unit - and is not the same as residence or even possession, or other activities carried out on land.[397] The term "lawfully present" within the context of article 7 of the Rome Statute denotes the right of States to control entry into their territory. In order to fulfil the definitional requirements of the crime it must be established that the persons transferred were in fact "lawfully present." This interpretation provides for greater legal certainty and protects the rights of those affected from the whims of national legislators.[398]

The Zimbabwean government sought to justify its actions under Operation *Murambatsvina* on the grounds that the persons evicted were, "trading without a relevant consent or they were occupying structures erected illegally without the grant of planning consent."[399] It is clear that those affected were "lawfully present" despite a lack of legal title. The UN Report concluded that a strong case may be brought on the unlawfulness of the procedure of the Operation. Zimbabwean law requires that sufficient notice be given prior to an eviction. Although this notice was served, the evictions were actually instigated before the expiration of that notice period.[400] Therefore, it could be argued that the victims were in fact "lawfully present" until that notice period had lapsed. The Zimbabwean government also adopted policies that were in contradiction with

[396] Zimbabwe Watch, *supra* note 356, 98.
[397] *Ibid.*
[398] *ibid.*
[399] *Ibid.*
[400] Tibaijuka, *supra* note 19, 5.

the domestic statutes that were at a later stage, relied upon to justify the evictions.[401]

(iii) The Extent to which the Attacks were "Widespread and Systematic"

The question to be determined is whether Operation *Murambatsvina* was committed "as part of a widespread and systematic attack against any civilian population," as required by article 7. This is defined in article 7 (2) (a) as meaning "a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack."[402] In this case, there was a course of conduct involving the multiple commissions of acts: there were numerous occasions on which there was a forcible transfer of population or inhumane acts.

It should be noted that this need not be a military attack. The International Criminal Tribunal for Rwanda (ICTR) held in *Prosecutor* v *Akayesu*[403] that, "An attack may also be non-violent in nature, like imposing a system of apartheid…or exerting pressure on the population to act in a particular manner." The attack at issue in Operation *Murambatsvina* was pursuant to a "State or organisational policy." The operation was announced by government officials and was carried out by the police and the military. There can be no doubt that the State itself actively promoted and implemented it. The victims were clearly a civilian population. The attacks were also widespread or systematic. It was a large-scale action directed simultaneously at multiple victims. This reasoning holds well even if the government figures are adopted.

An ingredient of the offence is that the displacement must have taken place "without grounds permitted under international law." This requirement does not mean that the evictions should actually be lawful under international law, but rather that they be without grounds permitted under international law. The

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[401] *Ibid.*
[402] Rome Statute, *supra* note 377, 105. *See*, also in this respect, Gerhard Werle, *Principles of International Criminal Law* (T.M.C Asser Press, 2005).
[403] *Prosecutor* v *Jean-Paul Akayesu*, ICTR-96-4-T (2 September, 1998), para. 499.

question of forced eviction has generally arisen in the context of a claim that it violates human rights and therefore international human rights law is the most relevant branch of international law to consider.[404]

The facts demonstrate that the Republic of Zimbabwe failed to respect the due process protections found under both domestic and international law required to make such a determination, let alone attempt to meet its burden of proof. Moreover, the forced evictions amount to "inhumane acts" under article (7)(2)(k) of the Rome Statute since the evictions were clearly "serious and widespread manifestations of cruel or humiliating or degrading treatment with a discriminatory or persecutory intent."[405]

(iv) Whether there exists any ground under international law which would render such Transfer Lawful

It must also be considered whether any justification existed, under international law that would render the *Murambatsvina* evictions lawful.[406] International human rights law prescribes certain limited exceptions that can render lawful acts that would otherwise be deemed unlawful. The ICCPR provides that there are certain permissible reasons for an interference with a person's freedom of movement and the right to choose their own residence.[407]

Article 12 (1) of the ICCPR provides that everyone shall have the right to liberty and movement and freedom to choose his or her residence. Restrictions

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[404] International human rights law on the topic can be summarised in the following propositions: Forced transfer is *prima facie* a violation of international law. It interferes with a variety of universally recognised fundamental rights. Such transfer can be justified in some exceptional circumstances where it is necessary to fulfil a legitimate purpose. Any transfer must be proportionate to the aim sought to be achieved. Not only does this mean that the aim must be sufficiently serious to warrant the harm caused by the evictions, but also that the State must properly evaluate the alternatives and take adequate steps to mitigate or minimise the harm caused to that which is truly necessary. The force used must be proportionate. The State may not resort to torture or other violent methods or forms of cruel, inhuman and/or degrading treatment. The transfer must not be arbitrary or discriminatory. The evictions must be preceded by appropriate procedural safeguards adequately involving the affected persons, including but not limited to genuine consultation and due process of law.

[405] *Prosecutor* v *Kupreskic* et al (Judgment) ICTY-IT-16-T (14 January, 2000), para. 566.

[406] Article 7 (2) (d) of Rome Statute.

[407] Article 12 (3) of ICCPR.

may be placed on these rights only if they are provided by law and are necessary to protect national security, public order or public health.[408]

While the clearance of unauthorised development may be capable of being an aim, in principle justifying some forced displacement, the circumstances here are likely to have amounted to inhuman and degrading treatment. The government sought to justify the evictions based on political rhetoric to the effect that the evictions were necessary to fight public criminality and to tackle public health issues such as the spread of HIV/AIDS.[409]

However, the Zimbabwe government could not claim that the forced evictions are justifiable as they did not comply with the procedural protections required to legitimise an otherwise illegal act of forcible transfer.[410] The safeguards required under international customary and treaty law were not met and the evictions were not proportionate. It is important not to lose sight of the scale of evictions. Countervailing benefits of great weight will be necessary to justify the magnitude of suffering caused. Therefore, in consideration of the majority who were left homeless, jobless and helpless, the evictions are not justified under the ICESCR. The conclusion flowing from this is that, Operation *Murambatsvina* clearly failed to comply with the requirements of international law regarding forced evictions.

(c) The Mens Rea

In terms of article 7 (1) (d) of the Rome Statute the accused should have knowledge of the act. This is the psychological element required in order for the action to amount to a crime. It also stands to reason that the policymakers, against whom the charge had been made, had knowledge of the plan to transfer the urban population. Article 7 (1) (k) of the same statute articulated that it must be established that the perpetrator intended to cause great suffering. Within the Rome Statute, intent is defined in Article 30 as:

Mental element

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[408] *Ibid*.
[409] Tibaijuka, *supra* note 19, 5.
[410] CESCR's General Comment No. 7, para. 3.

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2. For the purposes of this article, a person has intent where:

(a) In relation to conduct, that person means to engage in that conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware it will occur in the ordinary course of events.

The government sought to justify the evictions based on the policy grounds pertaining to public order, morality and health.[411] The "Elements of Crimes"[412] of the ICC requires that the following elements be established:

- The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.
- Such act was of a character similar to any other act referred to in Article 7(1) of the Statute.
- The perpetrator was aware of the factual circumstances that established the character of the act.
- The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

It must be noted that the "Elements of Crimes" document is not in itself legally binding and does not modify the Statute. However, the Rome Statute provides that the Court may refer to the "Elements of Crimes" in its interpretation and implementation of the Statute.[413] In *Prosecutor* v *Kupreskic*,[414] it was held that "[i]nhumane acts under article 5 (i) of the Statute are intentional acts or omissions which infringe fundamental human rights causing serious or mental or physical suffering or injury of a gravity comparable to that of other crimes covered by article 5," and that the interpretation of "other inhumane acts" can "be

[411] *See*, Government of Zimbabwe, "Response by Government of Zimbabwe to the Report by the UN Special Envoy on Operation *Murambatsvina*" (2005).
[412] "Elements of Crimes" *adopted* by the Assembly of States Parties to the International Criminal Court (9 September, 2002), ICC Doc ICC-ASP/1/3,158.
[413] Article 9 of Rome Statute.
[414] *Kupreskic*, *supra* note 405, 112.

identified in international standards on human rights." From this assertion, it can be concluded that the requirement of an inhumane act causing great suffering or serious injury is likely to be met.

6.2.2 Torture, and Other Cruel, Inhuman or Degrading Punishment or Treatment

Article 5 of the ACHPR provides for prohibition on torture and cruel, inhuman or degrading punishment and treatment. The UN Committee Against Torture has recently held that forced evictions may amount to cruel, inhuman or degrading treatment in violation of article 16 of CAT.[415] In December 2002, CAT held that forced eviction and destruction of a Romani community in Serbia and Montenegro violated the Convention, even though the eviction was not perpetrated by public officials.

The case of *Hijrizi* v *Yugoslavia*[416] involved the forced eviction and destruction of the Bozova Glavica settlement in the city of Danilovgrad by private residents who lived nearby. The material facts of the case were that, the perpetrators threatened to "exterminate" the community and "burn down" their houses. The Danilovgrad Police Department reacted by telling the Romani community that they should evacuate the settlement immediately as they, the police, would be unable to protect them. Most of the Romani residents fled their homes, leaving a few behind to protect their housing and other possessions.

During the afternoon of 15 April, 1995, the non-Romani residents entered Bozova Glavica shouting slogans such as "we shall evict them" and "we shall burn down the settlement." The crowd soon began to break windows and set fire to the housing, resulting in the entire settlement being levelled and all properties belonging to its Roma residents completely destroyed. Several days later the debris of Bozova Glavica was completely cleared away by municipal construction equipment, leaving no trace of the community. Article 16 of CAT states in relevant part that

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[415] CAT, *supra* note 58, 20.

[416] *Hijrizi* v *Yugoslavia*, Communication No. 161/2000: Yugoslavia, UN Doc. CAT/C/29/D/161/2000 (2 December, 2002).

> Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[417]

In *Hijrizi v Yugoslavia*,[418] the Committee found that the Police Department did not take any appropriate steps in order to protect the residents of Bazova Glavia, thus implying acquiescence in the sense of article 16 of the Convention, and that the burning and destruction of their homes constituted acts of cruel, inhuman or degrading treatment or punishment within the meaning conferred by the same article. Consequently, the Committee held that the government of Serbia and Montenegro had violated article 16 of CAT by not protecting the rights of the residents of Bozova Glavica. For the first time, and although the right to compensation is not expressly provided in the Convention for victims of acts of ill-treatment other than torture, the Committee concluded that the State Party should compensate the victims of this violation.

By the same token, in its Concluding Observations on the periodic report of Israel, the Committee warned that Israel's policies of forced eviction and housing demolition may indeed amount to cruel, inhuman or degrading treatment or punishment in violations of article 16 of CAT. Consequently, given the brutality and scale of evictions carried out by the Republic of Zimbabwe during Operation *Murambatsvina*, the African Commission feels that the Republic of Zimbabwe violated article 5 of the ACHPR. There are good grounds to believe that offences may have been committed under both articles 7 (1) (d) and 7 (1) (k) of the Rome Statute. In my own opinion, the facts amounted to the infliction of great suffering, or serious injury to body or to mental or physical health.

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[417] *See*, COHRE, "Operation *Murambatsvina*: Unlawful Forced Evictions, Crimes Against Humanity; and Cruel, Inhuman or Degrading Treatment of the Poorest of the Poor." Report submitted to the African Commission on Human and Peoples' Rights' 41st Session.
[418] *Hijrizi v Yugoslavia*, *supra* note 416, 115.

6.3 The Scope of *Erga Omnes* Obligations

The prohibition of crimes against humanity in international law is *jus cogens* and is an obligation *erga omnes*. It stands to reason that States have limited choices if a person suspected of such crimes is found in their territory.[419] The State must investigate and, if there is sufficient admissible evidence, prosecute the suspect or to co-operate in the detection, arrest, extradition and punishment of persons responsible for these crimes, wherever they have occurred, just as they must with regard to war crimes. Sheltering perpetrators from justice by failing to initiate criminal investigations or failing to extradite them to a State able and willing to exercise jurisdiction would be inconsistent with the *erga omnes* obligation.[420]

6.4 International Criminal Jurisdiction

International criminal jurisdiction is the competence of an international criminal court to try a particular case of an international nature and to pass a competent verdict. It needs to be emphasised from the outset that it should be established that a crime has been committed before establishing under whose jurisdiction that crime may be prosecuted. A State or Court which may be vested with the exercise of jurisdiction must be found. The general rule with regard to jurisdiction of international crimes is that, the State on whose territory the crime has been committed has jurisdiction over that crime.[421] This is what is termed the territoriality principle.[422] It has been noted that to date, the Zimbabwean authorities have not attempted to prosecute those that were responsible for mass human rights abuses under Operation *Murambatsvina*.

Zimbabwe is not a State Party to the Rome Statute, therefore, its failure to prosecute cannot be utilised in order to establish the jurisdiction of the ICC. The Zimbabwe government failed to provide redress for the victims for example, in

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[419] *Ibid.*
[420] *Ibid.*
[421] Amsterdam International Law Clinic, "Possibilities of Criminal and State Responsibility in Relation to the Operation *Murambatsvina* Case". A Report prepared for Zimbabwe Watch (2007), p. 2.
[422] Antonio Cassese, *International Law* (Oxford University Press, 2005), p. 451.

the form of compensation to property that was destroyed during the forced evictions.[423] It is under such circumstances that States, other than the State in which the crime has been committed would be vested with the responsibility to exercise jurisdiction. As the alleged crimes refer to Zimbabwe, it is unlikely that a prosecution will be instigated in Zimbabwe.

6.5 Universal Jurisdiction: The Duty of States to Enact and Enforce Legislation

> [W]e consider that there exists a customary rule of international law, indeed *jus cogens*, recognising universal jurisdiction and authorising national authorities to prosecute and bring to justice, in all circumstances, persons suspected of crimes against humanity.[424]

Crimes against humanity are subject to universal jurisdiction. This principle has been in force under international law since the judgment of the International Military Tribunal of Nuremberg, which declared that any State could have established courts with jurisdiction over the crimes in the Nuremberg Charter regardless of where they had been committed. The principles enumerated in the Nuremberg Charter and Judgment were recognised as international law principles by the UN General Assembly in 1946.[425]

Moreover, there is growing support for the view that States may not harbour persons suspected of crimes against humanity, but instead that they must either exercise jurisdiction over persons in their territory suspected of crimes against humanity, no matter where such crimes took place, or extradite

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[423] Tibaijuka, *supra* note 19, 5.
[424] Decision of the Tribunal *de premiere* instance, Brussels, 6 November 1998 determining that it had jurisdiction over Augusto Pinochet, AI Index: IOR 53/008/2001, *at*: <http://web.amnesty.org/library/pdf/IOR 530082001/ENGLISH/$File/IOR 5300801.pdf> (last accessed on 28 October, 2007).
[425] In that resolution, *adopted* on 11 December, 1946, the General Assembly "Affirms the principles of international law recognised by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal." U.N.G.A. Res.95 (1) (1946).

those persons to States able and willing to do so or surrender them to an International Criminal Court with jurisdiction over the crimes and the suspects.[426]

The doctrine of universal jurisdiction allows national courts to try cases that are considered gravest crimes against humanity, even if these crimes are not committed in the national territory and even if they are committed by government leaders of other States.[427] The concept is not new in international circles, though States have shown an increasing willingness to enlarge the zone of their jurisdiction and to prosecute or extradite those in high places. Naturally, jurisdiction over a crime depends on a link, usually territorial, between the prosecuting and the crime itself. But, as one leading jurist said, "in the case of crimes against humanity that link may be found in the simple fact that we are all human beings."[428] To quote the words of Geoffrey Robertson, QC:

> The concept of universal jurisdiction for crimes against humanity is the solution that international law offers to the spectacle of impunity for tyrants and torturers who cover themselves with domestic immunities and amnesties and pardon. They can still hide, but in a world where jurisdiction over their crimes is universal, they can not run.[429]

But even when hiding in foreign countries, they can be assured of safety only when their host governments remain in power. A pragmatic reason that international law provides for universal jurisdiction is to ensure that there is no safe haven for those responsible for the most serious crimes.[430] Article 29 of the Rome Statute stipulates that the "crimes within the jurisdiction of the Court shall not be subject to any statutory limitation". While Zimbabwe has not ratified the

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[426] *Ibid.*
[427] Global Policy Forum: International Justice, *at*: <http://www.globalpolicy.org/int/justice/universal/univindex.htm> (last accessed on 4 November, 2007).
[428] Robert Monroe "Accountability or Impunity? Gross and Systematic Human Rights Violations in Zimbabwe and the Search for Justice," *Africa Rights* (2003).
[429] *Ibid.*
[430] *Ibid.*

Statute and is therefore not bound by it, ratification by any future government in Zimbabwe or jurisdiction granted through a UN Security Council resolution will mean that those responsible for human rights violations and like - crimes might well find themselves before a Court. The violations create objective responsibility; however, it is preferable to bring the case before the court.[431] As the crimes were entirely committed within Zimbabwe, it is legally uncertain whether an uninjured State could bring a claim.

The *Pinochet Case*[432] established a historic precedent that former heads of States and their officials are no longer immune from international prosecution for crimes against humanity committed whilst in power. This case signalled changing international norms in the late 1990s. The most striking feature of the *Pinochet* case was that under the rule of universal jurisdiction a Spanish judge had the authority to order Pinochet's arrest for crimes committed in Chile, and mostly against Chileans.

In terms of universal jurisdiction, every State has the interest in bringing to justice the perpetrators of particular crimes of international concern, no matter where they were committed, and regardless of the nationality of the perpetrator or the victims. This is primarily because, in international law, the perpetrators become *hostis humanis generis*, or "enemies of all mankind."[433]

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[431] Amsterdam International Law Clinic, *supra* note 421, 117.
[432] *Ex parte Pinochet Ugarte* (No.3) (1999).
[433] *See*, the Pinochet precedent: "How victims can pursue human rights criminals abroad", March 2000, Human Rights Watch, *at*: <http://www.hrw.org/campaigns/chile-98/brochfln.htrm> (last accessed on 14 November, 2007). Similarly, in the civil action brought by torture victims and relatives of the 'disappeared' against ex-President Marcos of Philippines, the court rejected, on the same grounds, his plea for immunity. Yet, we should point out that the prosecution of crimes against humanity is not a simple affair. AP Reeler has articulated the position as follows: "[T]here remains a very strong attitude amongst the political forces of the world, with the United States foremost in this view, that a certain amount of immunity is necessary for political action to take place. Means-ends analysis, in this view, requires that hard decisions must sometimes be made that contradict human rights considerations. This is clearly argued in the "war against terrorism," and has been argued for years by Israel in their conflicts with terrorism or guerrilla war. Torture has even been justified once by the Israeli Supreme Court, although it has now rescinded this view. Nevertheless, the *Pinochet* judgment gives us some guidance in this respect as it is clear from the Law Lords that the modern meaning of crimes against humanity is that such crimes offend against all peoples and can not be seen merely as domestic matters. Again, as Lord Millet stated, "Since the Second World War States have recognised that not all criminal conduct can be left to be dealt with as a domestic matter by the laws and the courts of the territories in which such conduct occurs. There

In the last ten years there have been remarkable developments in international justice, particularly in the application of international, conventional and customary laws regarding genocide, war crimes and crimes against humanity. The latter include torture and other crimes committed against civilians as part of a widespread or systematic process introduced by a State or government. The following events are particularly significant in the international human rights regime: The establishment in quick succession of international criminal tribunals for the former Yugoslavia, Rwanda, East Timor and Sierra Leone and the subsequent stream of indictments, trials and convictions under these tribunals;[434] the arrest of General Pinochet in 1998, under the principle of universal jurisdiction; and the establishment of the International Criminal Court in April 2002.

It has been advanced that the indictments in June 2003 of Charles Taylor for war crimes by a Sierra Leone Court and the subsequent request for his extradition from Ghana are not good omens for the perpetrators of gross human rights violations in Zimbabwe.[435]

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are some categories of crimes of such gravity that they shock the consciousness of mankind and can not be tolerated by the international community. Any individual who commits such a crime offends against international law. The nature of these crimes is such that they are likely to involve that concerted conduct of many and [is] liable to involve the complicity of the officials of the State in which they occur..., if not of the State itself. In these circumstances it is desirable that jurisdiction should exist to prosecute individuals for such conduct outside the territory in which such conduct occurs." (Millet, *Ex parte Pinochet* (3), 1999).

[434] Examples of successful use of the concept of international jurisdiction to prosecute heads of States is evident in the former Prime Minister of Rwanda, Jean Kambanda, who was sentenced to life imprisonment in 1998; ex-President Hissene Habre of Chad who was prosecuted in 2000; and Prime Minister Ariel Sharon, who was indicted by Belgium in 2001 for the Sabra and Shatila refugee camp massacres when he was defence Minister in 1982. Other prosecutions include senior military leaders such as Colonel Tharcisse Muvunyi of Rwanda, arrested in Britain in 2000 and extradited to face charges of crimes against humanity; and more lowly, militia leaders such as the Bosnian Serb Dusko Tadic, who was sentenced in 2000 to twenty years imprisonment.

[435] Monroe, *supra* note 429, 120.

6.5.1 States' Ability to Exercise Universal Jurisdiction over Crimes Against Humanity

The prohibition of crimes against humanity and the associated norms that regulate them form part of the *jus cogens*.[436] As such, they are peremptory norms of general international law which, as recognised in Article 53 of the Vienna Convention of the Law of Treaties (1969), cannot be modified or revoked by treaty. Suffice it to say, this prohibition on crimes against humanity is also an obligation *erga omnes* of all States, which is a duty all States owe to the international community as a whole to ensure that justice is respected.[437]

The legal obligation *erga omnes* with respect to the prohibition of crimes against humanity provides added - but not essential - support for the view that any State may fulfil that obligation by exercising universal jurisdiction over persons suspected of having committed crimes against humanity when other States are unable or unwilling to take effective steps to repress these crimes.[438] It is also worth noting that States may exercise universal jurisdiction over ordinary crimes under national law that are not contrary to *jus cogens* prohibitions or involve *erga omnes* obligations. The weight of scholarship, jurisprudence of international criminal courts and inter-governmental organisations, political bodies and experts demonstrates that international criminal law permits any State to exercise universal jurisdiction over crimes against humanity.[439] It is

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[436] Scholarly Authority: Restatement (Third) of the Foreign Relations Law of the United States, 702 comment n (prohibition on genocide is *jus cogens*); Cherif Bassiouni, *International Crimes*: *Jus Cogens* and *Obligatio Erga Omnes*, 59 Law & Contemp. Prob. 63, 68 (1996); Ian Brownlie, *Principles of Public International Law* , 515. (1998).

[437] Restatement (Third) of the Foreign Relations Law of the United States, 702 comment n (violations of certain rights falling within the concept of crimes against humanity (slavery and slave trade, murder as State policy, torture, prolonged arbitrary detention, systematic racial discrimination, systematic religious discrimination and gender discrimination) "are violations of obligations to all other states.").

[438] As the Belgian *juge d'instruction* (investigating magistrate) in the *Pinochet* case stated: "The struggle against impunity of persons responsible for crimes under international law is, therefore, a responsibility of all States. National authorities have, at least, the right to take such measures as are necessary for the prosecution and punishment of crimes against humanity.... [W]e find that as a matter of customary law, or even more strongly as a matter of *jus cogens*, universal jurisdiction over crimes against humanity exists, authorising national judicial authorities to prosecute and punish the perpetrators in all circumstances." *See*, *In re Pinochet*, 93 *American Journal of International Law*. 700, 702, 703 (1999).

[439] John Dugard Opinion, *Bouterse* Case, 7 July, 2000, para.4.6.2 ("That crimes against humanity, which form part of the corpus of customary international law, are crimes that may be

therefore imperative to note that any State may exercise universal jurisdiction over crimes against humanity.[440]

The International Court of Justice (ICJ) stated in the *Barcelona Traction*[441] case that certain obligations concerned with the core "rights of the human person" have an *erga omnes* status and that all States may act upon violations of these rights.[442] If States could not prosecute crimes against humanity, the violation of an obligation owed to them as members of the international community would go unpunished. This line of reasoning was applied by the French Court of Appeal when dispelling a challenge to the legitimacy of the capture of Klaus Barbie[443] by French Officials in Guyana.

Many scholars and other authorities who have addressed this question have come to the conclusion that any State may exercise universal jurisdiction over crimes against humanity.[444] The International Law Association endorsed the conclusion of its Committee on Human Rights Law and Practice that "[g]ross human rights offences in respect of which the States are entitled under international customary law to exercise universal jurisdiction include...crimes against humanity [as defined in article 7 of the Rome Statute]."[445]

The Commission of Experts appointed to investigate the human rights situation in the former Yugoslavia concluded in 1994 that universal jurisdiction over crimes against humanity existed under international law.[446] Subsequently, the Trial and Appeal Chambers of the International Criminal Tribunal for the former Yugoslavia have confirmed that international customary law permits any

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tried in accordance with the principle of universality accepted by judicial decisions, the International Law Commission and the writings of the jurists.").

[440] Cherif Bassiouni, *Crimes against Humanity in International Law* (2nd ed) (The Hague: Kluwer Law International, 1999) pp. 237-240 (review of the authorities demonstrates that crimes against humanity are subject to universal jurisdiction). "Customary international law permits States to exercise universal jurisdiction over...crimes against humanity...."

[441] *Barcelona Traction, Light and Power Company, Limited* (Second Phase) ICJ Reports 1970, p. 32 (para. 33).

[442] *Ibid*, para. 33.

[443] *Barbie* (1998), 89 ILR, pp 125-130.

[444] Bassiouni, *supra* note 440, 123.

[445] International Law Association, Res. 9/2000, *adopted* at the 69th Conference, London (25-29 July, 2000).

[446] Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992, U.N.Doc. S/1994/674, 27 May, 1994, para. 42 stating, in the context of an internal armed conflict, that there was universal jurisdiction over crimes against humanity).

State to exercise universal jurisdiction over crimes against humanity. In *Prosecutor* v *Tadic*,[447] a Trial Chamber stated the crimes within the Tribunal's jurisdiction, which include crimes against humanity. It stated that these crimes

> are not crimes of a purely domestic nature. They are really crimes which are universal in nature, well recognised in international law as serious breaches of international humanitarian law, and transcending the interest of any one State.[448]

The Trial Chamber agreed that in such circumstances, the sovereign rights of States cannot and should not take precedence over the right of the international community to act appropriately as they affect the whole of mankind and shock the conscience of all nations of the world. There can therefore be no objection to an international tribunal properly constituted trying these crimes on behalf of the international community. These views were confirmed in 1995, when the Security Council urged States to exercise universal jurisdiction over crimes against humanity over which the Rwanda Tribunal had jurisdiction. In Resolution 978, it

> [u]rges States to arrest and detainee, in accordance with their national law and relevant standards of international law, pending prosecution by the International Tribunal for Rwanda or by the appropriate national authorities, persons found within their territory against whom there is sufficient evidence that they were

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[447] *Prosecutor* v *Tadic*, Decision on the defence motion on jurisdiction, Case No. IT-94-1-T (Trial Chamber 10 August, 1995), para. 42. In discussing the principle of universal jurisdiction in the same case, the Appeals Chamber declared: "It would be a travesty of law and a betrayal of the universal need for justice, should the concept of State sovereignty be allowed to be raised successfully against human rights. Borders should not be considered as a shield against the reach of the law and as a protection for those who trample underfoot the most elementary rights of humanity." *Prosecutor* v *Tadic*, Decision on the defence motion for interlocutory appeal on jurisdiction, Case No. IT-94-1-AR72 (Appeals Chamber 2 October, 1995), para. 58.
[448] *Ibid.*

responsible for acts within the jurisdiction of the International Tribunal for Rwanda.[449]

Given this position of the Security Council, it is imperative to comprehend that any State Party to the Rome Statute vested with universal jurisdiction may try offences committed under Operation *Murambatsvina* that are tantamount to crimes against humanity under international law.[450]

6.5.2 The Implications of Universal Jurisdiction for the Government of Zimbabwe

Zimbabwe has historically been characterised by a culture of impunity that allows those in power to use it without restraint. This started during the colonial era, through the Smith regime, the *Gukurahundi*[451] atrocities in Matabeleland and Midlands in the 1980s, to the more recent wave of human rights violations under Operation *Murambatsvina*.[452] It has been advanced that the impartial application of justice will convey the message to present and future generations that perpetrators of politically motivated acts of torture and assault will be held accountable and punished.[453] Such a message could presage an end to the

[449] UNSC. Res.978 (1995) of 27 February, 1995. Since the phrase "appropriate national authorities" is not limited to Rwandan authorities, it is clear that the Security Council envisaged prosecution by the courts of other States based on universal jurisdiction.

[450] Examples of these countries could be drawn form Senegal. In 2002 a Senegalese court tried to bring charges of torture and crimes against humanity against Hissene Habre, Chad's former dictator. *See*, in this respect, Dustin Sharp, "Prosecutions, Development and Justice: The Trial of Hissene Habre" (2003) 13 *Havard Human Rights Journal*, p. 147. Germany's 2002 Code of Crimes against International Law establishes universal jurisdiction over war crimes and crimes against humanity. The universal jurisdiction of Germany is dependent on the State that has "primary jurisdiction" but unwilling to investigate the case. The State in which the crimes were committed would be considered to have primary jurisdiction, which in this case, is Zimbabwe. Therefore, the continued unwillingness of Zimbabwe to prosecute those responsible helps to strengthen the case that Germany may exercise this jurisdiction or even refer the matter to the ICC. Belgium, Netherlands, South Africa and Spain can also exercise universal jurisdiction in respect of crimes committed in Zimbabwe.

[451] *Gukurahundi* is a Shona word literally meaning "wipe all." The Gukurahundi atrocities took place between 1982 and 1987 in the Midlands and Matabeleland Provinces of Zimbabwe resulting in the loss of approximately 20,000 lives. The attack was on the ethnic Ndebele group and it has been arguably advanced that such atrocities could amount to genocide.

[452] Chris Maroleng, "Zimbabwe's Zezuru Sum Game: The Basis for the Security Dilemma in which the Political Elite Finds Itself," *African Security Review*, Vol. 14, No. 3 (2005), *at*: <http://www.iss.co.za/pubs/ASR/14No.3/CMaroleng.htm> (last accessed on 14 October, 2007). *See*, also Amnesty International, "Zimbabwe: The Toll of Impunity" (2002).

[453] *Ibid*.

cycles of political repression and violence that has afflicted Zimbabwe for decades.[454]

Very few countries have constitutional provisions that allow for the prosecution of sitting presidents. Furthermore, the international norm has tended to protect a head of State and, certain circumstances, government officials, giving them immunity from prosecution while in office. The modern trend seems to run contrary to this, especially when the State takes the dual principles of accountability and transparency seriously.[455]

6.6 States' Duty to Prosecute or Extradite Persons Responsible for Crimes Against Humanity

It is subject to argument that States have a duty to prosecute those responsible for crimes against humanity. There is some evidence that States not only are permitted to exercise universal jurisdiction over persons suspected of crimes against humanity, but also that they are under an obligation to exercise universal jurisdiction over persons found in their territory or to extradite persons suspected of committing crimes against humanity under the principle of *aut dedere aut judicare* (extradite or prosecute).[456]

6.6.1 Duty to Prosecute in Statute of the International Criminal Court

For a crime to be prosecuted under international law, consideration should be given to the Preamble to the ICC Statute. In this Preamble it is succinctly put that all States should exercise jurisdiction over those responsible for international crimes.[457] It should be noted that the Preamble does not create legally binding obligations for State Parties just like the Guiding Principles on Internal Displacement. The Preamble is merely hortatory. However, it may be cited as an

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[454] Robert Monroe, "Accountability or impunity? Gross and Systematic Human Rights Violations in Zimbabwe and the Search for Justice," *Africa Rights*, 14 July, 2003.
[455] *Ibid*.
[456] Amnesty International, "Universal Jurisdiction, The Duty of States to Enact and Implement Legislation," *at*:
<http//:web.amnesty.org/library/pdf/lior530082001/English> (last accessed on 17 October, 2005).
[457] Paragraph 6 of the Preamble to the ICC Statute.

authoritative source for the proposition that there exists a duty to prosecute, as was relied upon by Lord Hutton in the *Pinochet* case.[458]

6.6.2 Duty to Prosecute under Customary International Law

The duty to prosecute or extradite persons suspected of committing crimes against humanity is a rule of customary international law and therefore binding upon all States.[459] The UN General Assembly's Principles of International Co-operation in the Detection, Arrest, Extradition, and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity[460] emphasises that States are under a duty to prosecute or to extradite those accused of committing crimes against humanity. In order for a resolution to be passed by the General Assembly it must be voted for by a two-thirds majority.[461] A resolution passed by this body must be indicative of the attitude of the international community towards the duty to prosecute. It therefore stands to be regarded as evidence that the duty exists under customary international law.

6.6.3 Duty to Prosecute under Conventional International Law

Conventional international law may be supportive of the existence of the duty to prosecute international crimes.[462] There are certain treaty provisions that provide for the legal duty to prosecute international crimes.[463] In international law, crimes against humanity are considered international crimes, and hence a duty to prosecute such may be inferred by virtue of analogous reasoning.

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[458] *R* v *Bow Street Metropolitan Stipendiary Magistrate Ex p. Pinochet Ugarte* [2000] 1 AC 147 (HL).
[459] Cherif Bassiouni, *Crimes Against Humanity in International Criminal law* (2nd ed) (The Hague: Kluwer Law International, 1999) p.219, also citing Mueller "International Criminal Law: *Civitas Maxima*: An Overview" (1983) 15 Case W Res. J. Int'l L. 1; De Vattel The Law of Nations 54-55 (Joseph Chitty ed. 18550; Grotius De Jure Belli Ac Pacis Bk. 2 Ch. XXI (1624).
[460] UNGA Res. 3074 (XXVIII), 28 UN GAOR Supp. (No. 30) at 78, UN Doc. A/9030, 3 December, 1973.
[461] Charter of the United Nations, *adopted* 26 June, 1945, *entered into force* 24 October, 1945, 892 UNTS 119, Article 18.
[462] This duty in relation to other crimes is usually governed by the terms of extradition treaties. For international crimes, however, such treaties may not be required as no issue of double criminality arises. It can be argued that crimes against humanity are recognised as criminal by all States.
[463] *See*, for example, the Common Articles on Grave Breaches in the Four Geneva Conventions 12 August, 1949; Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 10 Dec 1984, 1465 UNTS 85, Article 5 (2).

6.6.4 Duty to Prosecute under Human Rights Treaties

Article 2 (3) of the ICCPR states that State Parties shall undertake to ensure that victims of violations "shall have an effective remedy." The Human Rights Committee has repeatedly held that this provision imposes a duty on States to investigate and prosecute rights violations.[464] It has been argued that in cases of crimes against humanity only prosecution can properly be regarded as an 'effective' remedy.[465] In the case of *Velasquez Rodriquez*[466] the Inter-American Court stated that the duty to ensure rights implied an affirmative obligation on States, and that this included a duty to investigate and prosecute those responsible for human rights violations.[467]

Therefore, if a State does not investigate and, where appropriate, prosecute; it is in breach of its obligations assumed under human rights treaties. Treaties can only create obligations for State Parties within their own territory; they cannot have extra-territorial effect. It follows that States must investigate those violations committed within their territories. If the example of South Africa should be employed in the Zimbabwe case, it must be evidenced that the victims of Operation *Murambatsvina* have since become ordinarily resident in the territory of South Africa. Once established, it can be shown that South Africa has an obligation to ensure the rights of those victims and this, in turn, might be said to create an obligation to investigate and prosecute.[468]

6.7 The Recognition by States of a Duty to bring to Justice Persons Responsible for Crimes Against Humanity, without any Geographical Limits

The international community reaffirmed in 1998 the fundamental obligations of every State to bring to justice at the national level those

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[464] *See*, *Bleier* v. *Uruguay* (1982), UN Doc A/37/40; *Baboeram* v. *Suriname* (1985), UN Doc A/40/40.
[465] Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (Penguin, 1999) p. 231.
[466] *Velasquez Rodriquez* Case (29 July, 1988), HRLJ 9, p. 212.
[467] *Ibid.*
[468] Amsterdam International Law Clinic, *supra* note 421, 117.

responsible for crimes against humanity, genocide and war crimes, and to exercise its jurisdiction over those responsible for these crimes.[469] These declarations in the Preamble of the Rome Statute are simply the latest in a series of affirmations by States that they have a duty to co-operate in bringing to justice persons responsible for crimes against humanity, including through extradition.[470]

The ICC Statute cannot create obligations for non-State parties.[471] Since Zimbabwe is not a Party to the ICC Statute, the ICC cannot be determined to have jurisdiction over the crimes by virtue of Zimbabwe's failure to prosecute. It is this unwillingness to prosecute that triggers the jurisdiction of the ICC.[472] A non-State Party to the ICC Statute can consent to the jurisdiction of the ICC on an *ad hoc* basis.[473] However, it is unlikely that Zimbabwe would consent to the ICC's jurisdiction since it is the current regime that stands accused of the alleged crimes against humanity. Another difficulty is that a State would have to bring the case against Zimbabwe and be prepared to act as the Applicant State. So far no non-injured State has ever brought a claim before the ICC based on this *erga omnes* violation principle.

6.8 The United Nations Security Council Referral

The ICC may exercise its jurisdiction in respect of international offences after a United Nations Security Council makes a referral of the case to the Court as happened in the case of Sudan in 2005.[474] This referral can only be taken under Chapter VII of the Charter of the United Nations of 1945 if it can be

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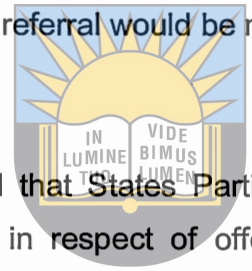
[469] In the Preamble of the Rome Statute, the States Parties affirm "that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international co-operation," determined to "put an end to impunity for the perpetrators of these crimes" and recalled "that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes."
[470] Rome Statute, Preamble, paras. 4-6.
[471] Vienna Convention on the Law of Treaties, 196, *adopted* 22 May 1969, *entered into force* 27 January 1980, 1155 UNTS 331 [hereinafter VCLT], Article 34.
[472] Article 17 (2) of ICC Statute.
[473] Article 12 (3) of ICC Statute.
[474] UNSC Res. 1593 (31 March, 2005) UN Doc S/RES/1593.

established that the ongoing situation constitutes a threat to international peace and security.[475]

If one of the five permanent members of the Security Council[476] vote against a motion for referral this acts as a veto and prevents any action being taken. It is trite to mention here that an abstention does not count as a veto and the motion can be carried. In the Darfur Case, China and the USA abstained from voting thereby allowing it to go ahead whilst maintaining their opposition to the Court. The Security Council is, without doubt, a highly politically charged organ so if any of the members have strong political or economic ties with Zimbabwe it is unlikely that the referral would be made.



6.9 Conclusion

It has been established that States Parties to the Rome Statute could exercise universal jurisdiction in respect of offences committed elsewhere in terms of extra-territorial jurisdiction. The ICC Statute places such obligations on State Parties to investigate and prosecute international crimes regardless of wherever they may have been committed. In the event of such State Parties unwilling or unable to prosecute they should consent to the jurisdiction of the ICC to exercise its jurisdiction. As has been noted above, Zimbabwe is not a State Party to the Rome Statute, and as such, it does not have an obligation under international law to prosecute those that are on its jurisdiction for crimes against humanity committed during Operation *Murambatsvina*.

The possibility of prosecution could only be made by a referral to the Court by the United Nations Security Council Resolution. However, there is no clear case in Zimbabwe posing a threat to international peace and security that may result in the invocation of a referral in terms of Chapter VII of the UN Charter as encapsulated in article 39 of the same Charter. The Rome Statute does not impose an obligation on non-State Parties and as such, Zimbabwe could only be prosecuted under the ICC's jurisdiction provided that it consents to this

[475] Article 39 of the UN Charter.
[476] The five permanent members of the UN Security Council are United Kingdom, United States of America, China, Russia and France.

jurisdiction which is highly unlikely. In addition to this assertion, those States that are Parties to the ICC Statute for example, South Africa, Germany, and the Netherlands can only assume jurisdiction only when the perpetrators of human rights violations are within their territories. A country that should bring a claim should be ready to act as an Applicant State provided that material injury is evident for a State to act as such. However, there is no precedent of a non-injured State bringing a claim to the ICJ.

From the authority and strength of the UN Special Envoy's Report on a fact-finding Mission to Zimbabwe, it is difficult to sustain whether crimes against humanity were committed. Therefore, the possibility of criminal and State responsibility arising out of Operation *Murambatsvina* remains in obscurity. However, be that as it may, the victims of Operation *Murambatsvina* are entitled to legal redress because without doubt, their homes were destroyed, their dignity suffered at the hands of the government's campaign, and they lost livelihood and property.

The government of Zimbabwe was factually and legally responsible for the violations of their rights. As such, the Zimbabwe government bears the responsibility to return the victims to the position they held before the implementation of the programme in terms of the *restitutio integrum* concept. This shall be seen in the next chapter that discusses possible remedies to the victims of Operation *Murambatsvina*.

Chapter 7: Possible Legal Remedies to IDPs as Victims of Human Rights Violations under Operation *Murambatsvina*

7.1 Introduction

The protection of human rights is generally recognised to be a fundamental aim of modern international law. The preceding years have seen international organisations, regional and global adopting human rights norms and responded to human rights violations by opening avenues of redress for individuals whose rights have been violated without remedy in domestic law.[477]

In the present world, no State can credibly claim that its treatment of those within its territory or jurisdiction is a matter solely of domestic jurisdiction. International human rights law is the first area of international law where individuals may bring actions against States in international tribunals, but the imbalance in respective power and juridical status between States and individuals affects the procedures and the perceived role of the human rights institutions in affording remedies.[478]

In summation, precedents from international and domestic law can be employed only with appropriate consideration given the unique characteristics of

[477] Dinah Shelton, *Remedies in International Human Rights Law* (2nd ed) (Oxford University Press, 2005).
[478] *Ibid.*

international human rights cases. Many questions stem from this: Who is entitled to remedies? What distinctions should be made between individual cases and situations of gross or systematic violations of human rights? Should compensation be favoured as a remedy, or are non-monetary remedies more important? What criteria should be applied to determine amounts of compensation and methods of payment? When does remedial justice demand the prosecution and punishment of those responsible for the violations? What part should the gravity of the offence play in the remedies afforded?[479]

This chapter reviews possible remedies that should be made available to victims of gross human rights violations as a result of Operation *Murambatsvina*. In addition, the chapter presents an overview of remedies in both national and international law. The aim, therefore, is to propose a theoretical foundation for human rights remedies, together with standards and principles upon which future remedies may be based.

7.2 Remedies against Forced Evictions

States Parties to human rights instruments of which Zimbabwe is a Party, are legally bound under international law to ensure the realisation of the rights guaranteed in those instruments.[480] Most of United Nations human rights texts have corresponding committees, commissions or other bodies designed to prove some recourse if any State Party fails to introduce adequate domestic measures or remedies or intentionally violates human rights of its citizens.[481]

The State reporting procedure is the most relied upon by States apart from the authority of the Committee in question to review such reports in order to determine whether States have complied with the obligations involved. Under the ICESCR, for example, all States Parties are required under articles 16 and 17 to submit comprehensive reports once every five years outlining all legislative, policy and other measures which they have taken to ensure compliance with the

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[479] *Ibid.*
[480] Human Rights Fact Sheet No. 25, 1996, p. 533, para. 1.
[481] *Ibid.*

rights set out in the Covenant.[482] Zimbabwe should not be an exception to this procedure since it ratified this international instrument in May 1991.

According to the Limburg Principles[483] on the implementation of the ICESCR, "States Parties shall provide for effective remedies, including, where appropriate judicial remedies."[484] At the national level, the judiciary must consider international human rights law as an interpretative aid to domestic law and ensure that domestic law is interpreted and applied in a manner consistent with the provisions of international human rights instruments ratified by the State, which in the present case is Zimbabwe. Drawing from international law perspective, the underlying principle is that courts should avoid placing their governments in violation of the terms of the treaty which it has voluntarily ratified.

It is a general rule under international human rights law that States undertake to ensure certain human rights to all individuals under their jurisdiction and to do so without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It is incumbent upon all States, as part of the international community to ensure, at minimum:

(a) that any person whose rights or freedoms are violated shall have an effective domestic remedy for such violation, even if the violation has been committed by persons acting in official capacity;
(b) that any person claiming such remedy shall have his or her rights determined by a competent judicial, administrative or legislative authority, or by any other competent authority provided for by the legal system of the State, with a view to developing the possibilities of judicial remedy; and
(c) that the competent authorities shall enforce such remedies when granted.[485]

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[482] *Ibid.*
[483] The Limburg Principles were approved by a Group of Experts in International Law meeting at Maastricht (Netherlands) from 2-6 June, 1986. *See*, *Human Rights Quarterly*, Vol. 9, No. 2 (May, 1987), p. 122. Text reproduced in United Nations document E/CN.4/1987/17, annex.
[484] *Ibid*, principle 19.
[485] Human Rights Fact Sheet No. 25, *supra* note 480, 133.

All persons threatened with forced eviction, notwithstanding the rationale or legal basis thereof, have the right to a fair hearing before a competent, impartial and independent court or tribunal; right to legal counsel, and where necessary sufficient legal aid; and the right to effective remedies.[486] The CESCR emphasised the importance of domestic legal remedies with respect to illegal evictions or discrimination in access to housing in its General Comment No. 4 on the right to adequate housing. It views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but not limited to:

(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 as is the present case of Zimbabwe;

(c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination;

(d) allegations of any form of discrimination in the allocation and availability of access to housing; and

(e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.[487]

It should be borne in mind that the necessity of implementing international human rights obligations through domestic legislation is consistent with article 27 of the Vienna Convention on the Law of Treaties,[488] which states that "a Party may not invoke the provisions of its internal law as justification for its failure to

[486] CESCR's General Comment No. 7 on Forced Evictions.
[487] CESCR's General Comment No. 4 (1991), para. 17.
[488] Vienna Convention on the Law of Treaties, *supra* note 472, 130.

perform a treaty." In any case, the ICESCR, for example, often requires legislative action to be taken in cases where existing laws are in violation of the obligations assumed under the Covenant. The following are some of the legal remedies that may be made available to victims of Operation *Murambatsvina*. It is within the jurisdiction of the government of Zimbabwe to see that these victims receive fair legal redress.

7.2.1 Compensation

Legal remedies for the victims of Operation *Murambatsvina* should include but not limited to adequate compensation for the harm and material injury sustained by IDPs. The CESCR, in paragraph 13 of General Comment No. 7 on Forced evictions, requires States Parties to "...see to it that all the individuals concerned have a right to adequate compensation for any property, both personal or real, which is affected."[489] The UN Special Rapporteur on adequate housing in paragraph 46 (c) of his 2002 report to the Commission on Human Rights, called on governments to "[g]uarantee access to judicial remedies for violations of the right, such as forced evictions, deliberate denial of civil services, including reparations for damages suffered...."[490]

The defunct UN Commission on Human Rights, in its Resolution 1993/77[491] on Forced Evictions, affirmed that "the practice of forced eviction constitutes a gross violation of human rights" and recommended that "all governments should provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups."[492]

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[489] The CESCR was referring to article 2, paragraph 3 of the ICCPR which requires States Parties to ensure an effective remedy for persons whose rights have been violated.
[490] Miloon Kothari, "Report of the Special Rapporteur on Adequate Housing as a component of the Right to an Adequate Standard of Living," E/CH.4/2002/59, 1 March, 2002.
[491] United Nations Commission on Human Rights Resolution 1993/77 *adopted* at the 67th meeting on 10 March, 1993.
[492] Amnesty International, "Angola: Forced Evictions and the Law: Angolan Law and International Human Rights law," *at*:

Compensation should include land and access to common property resources and should not be restricted to cash payments. Cash payments represent the most frequent form of compensation, although experience shows that the money offered is usually insufficient and it is argued that this type of indemnity by itself is an inadequate form of countering the problems involved in forced evictions.[493]

The Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power[494] outlines basic compensatory principles which could be applied in the case of illegal evictions to victims of violation of human rights. These include the following: (a) that victims are entitled to prompt redress for the harm they have suffered;[495] (b) that victims should be informed of their rights in seeking redress;[496] (c) that offenders or third-parties should make fair restitution to victims and their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimisation, the provision of services and the restoration of rights;[497] (d) that when compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation;[498] and (e) that victims should receive the necessary material, medical, psychological and social assistance and support through governmental, voluntary, community-based indigenous means.[499]

In the case of Zimbabwe, the IDPs suffered losses perpetrated by Operation *Murambatsvina*. Their "homes," properties and dwellings were destroyed and razed. They lost their livelihood and hence there is need for redress to the victims in the form of compensation.

<http://web.amnesty.org/library/index/ENGAFR/20072003> (last accessed on 3 November, 2007).

[493] E/CN.4/1994/20, para. 180.

[494] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power [hereinafter Declaration of Basic Principles] *adopted* by the General Assembly resolution 40/34 of 29 November, 1985, *at*:
<http://www.unhchr.ch/html/menu3/b/h_comp49.htm> (last accessed on 3 November, 2007).

[495] Principle 4 of the Declaration of Basic Principles.

[496] Principle 5 of the Declaration of Basic Principles.

[497] Principle 8 of the Declaration of Basic Principles.

[498] Principle 12 of the Declaration of Basic Principles.

[499] Principle 14 of the Declaration of Basic Principles.

7.2.2 Restitution and Return

In terms of Guideline No. 25 of the United Nations Comprehensive Human Rights Guidelines on Development-based Displacement,[500] all persons, groups and communities that have been subjected to forced evictions have the right to, but shall not be forced to return to their homes, lands or places of origin. The right to freedom of movement is linked to the right to return home, a difficult right to implement in practice. It clashes with refugee law in that asylum claims have in some cases been turned down on the grounds that the claimant has, according to the State of asylum, and "internal flight" alternative and therefore does not need asylum because it is possible to find a safe place in the State of origin.

Once persons are internally displaced, their right to return voluntarily and in safety to their place of residence must be guaranteed. There is, however, no general rule that would affirm such a right but it can be deduced from the right to freedom of movement and the right to choose one's residence. Internal displacement, by its very nature, restricts the fundamental right to move within the territory of a State and the corresponding right to choose one's residence. Freedom of movement and choosing a place of residence is affirmed as a basic human right in the UDHR and similarly explicitly guaranteed in the ICCPR.[501]

One of the key aspects of the right to return is the idea that it has to be voluntary. Voluntary return should also include involvement of the displaced in the process of decision-making regarding their return, resettlement and reintegration. There should also be other alternatives available, including the choice not to return but to stay in the place of current residence instead, and these alternatives should be made a real possibility. IDPs should be aware of the situation in the area where they wish to return, whether it is safe and what the conditions are in terms of infrastructure and housing, for instance. When considering return, truthful and realistic information regarding the conditions in

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[500] The Practice of Forced Evictions: UN Comprehensive Human Rights Guidelines on Development-Based Displacement [hereinafter UN Guidelines], *adopted* by the Expert Seminar on the Practice of Forced Evictions at Geneva, Switzerland (11-13 June, 1997).

[501] Article 13 (1) of UDHR and article 12 (1) of ICCPR provide that "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

the area of origin should be provided so that the decision to return is based on knowledge and genuine will to return.[502]

Principle 11 of the Declaration of Basic Principles provides that "where a public official or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted." This was the case in the campaign of mass forced evictions that took place in Zimbabwe. On the strength of this principle, it is clear that the victims should be entitled to restitution.

In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community. The Zimbabwean government should review its practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

7.2.3 Resettlements

In full cognisance of the contents of the UN Guidelines[503] there may be instances in which, in the public interest, or where the safety, health or enjoyment of human rights so demands, particular persons, groups and communities may be subject to resettlement.[504] A resettlement of that nature must occur in a just and equitable manner and in full accordance with the law of general application.

The right to sustainable resettlement which includes the right to alternative land and housing which is safe, secure, accessible, affordable and habitable should be made available to victims of human rights abuses.[505]

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[502] Tullio Santini, "North Caucasus: Upholding IDPs' right to 'voluntary' return," *Forced Migration Review* 21, p. 53 (2004).
[503] United Nations Guidelines, *supra* note 501, 139.
[504] *Ibid*, *see*, Guideline 26.
[505] Guideline 27.

In order to determine the compatibility of the UN Guidelines, States should ensure that in the context of any case of resettlement the following criteria are adhered to:

- No resettlement should take place until such a time that a full resettlement policy consistent with these Guidelines and internationally recognised human rights is in place.[506]
- Resettlement must ensure equal rights to women, children, indigenous populations and other vulnerable groups including the right to property ownership and access to resources.[507]
- The actor proposing and/or carrying out the resettlement shall be required by law to pay for any costs associated therewith, including all resettlement costs.[508]
- Affected persons should not suffer detriment in relation to their human rights and their right to continuous improvement of living conditions shall not be infringed.[509]
- The victims should consent to the relocation site.[510]
- Sufficient information shall be provided to affected persons.[511]
- The entire resettlement process should be carried out in full consultation and participation with those affected.[512]
- If after a full and fair public hearing, it is found that there is need to proceed with the resettlement, then the affected persons shall be given at least ninety (90) days notice prior to the date of the resettlement;[513] and
- Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved.[514]

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[506] Guideline 28 (a).
[507] Guideline 28 (b).
[508] Guideline 28 (c).
[509] Guideline 28 (d)
[510] Guideline 28 (e).
[511] Guideline 28 (f).
[512] Guideline 28 (g).
[513] Guideline 28 (h).
[514] Guideline 28 (i).

The government of Zimbabwe never thought of providing this remedy to the victims of Operation *Murambatsvina*. Instead, it intimated that the evictees were supposed to go to their rural homes regardless of the fact that many had no rural homes to go to.[515]

7.2.4 Prosecution as a Remedy

There are certain treaties in international law that provide for prosecution as a remedy to victims of violations of human rights.[516] Under conventional international law, States have got a duty to prosecute those suspected of having committed international crimes. Crimes against humanity are considered international crimes and therefore criminal. The duty to investigate, prosecute or extradite criminals is vested on all States.[517] Article 2 (3) of the ICCPR provides that in cases of crimes against humanity, only prosecution can be considered as an effective remedy. This view was supported in the case of *Bleier* v *Uruguay*[518] and was upheld in *Baboeram* v *Suriname*.[519]

Cherif Bassiouni[520] considered that prosecution of persons suspected of having committed international crimes is a rule of customary international law and as such States have an obligation to bring those perpetrators to justice. Therefore, if it could be established that crimes against humanity were committed under Operation *Murambatsvina*, it stands to reason that the perpetrators of such violations should be prosecuted for such international crimes.

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[515] Government of Zimbabwe Report, *supra* note 201, 60.
[516] *See*, for example, in this regard, The Common Article on Grave Breaches in the Four Geneva Conventions and The Convention Against Torture.
[517] *See*, UN General Assembly's 'Principles of International Co-operation in the Detection, Arrest, Extradition, and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity.
[518] *Bleier* v *Uruguay* Case No.30/1978, *adopted* on 24 March, 1980, para 13. 3.
[519] *Baboeram et al.* v *Suriname* Case Nos. 146148-154/1983. Views *adopted* on 4 April, 1985.
[520] Bassiouni, *supra* note 440, 124.

7.3 Towards New Measures of Prevention, Protection and Redress

The practice of forced displacement has not declined regardless of the attention that has been given to this phenomenon by the human rights community. This therefore calls for the compelling need to enact new legislation, as well as legislative guidelines and enforcement mechanisms geared towards eviction prevention.[521]

There is also a need to exploit and consider possible alternatives in situations that are considered under international law as "unavoidability of evictions." International initiatives would be of value in this respect and would help to eradicate forced evictions. Legislation to prevent eviction should seek to identify those areas of law which should be re-examined for their consistency with international legal interpretations of the right to adequate housing.[522]

Constitutional amendments would serve this purpose at a domestic level coupled with adoption of comprehensive and detailed legal provisions against forced evictions. There is also need to be precise on situations under which evictions could not be justified as well as the legal remedies available to those who are victims of forced evictions. In addition, the adoption of national housing acts could help to ensure full and comprehensive legal protection for everyone in the housing field.

Relocation, resettlement and the undertaking of fact-finding or assessment missions would be of pragmatic significance in seeking alternatives to planned evictions, and in indicating the seriousness attached by the international community to this practice. For effectiveness and efficacy, such missions could be organised under the auspices of the United Nations human rights programme and be sent to countries contemplating large scale relocations with a view to assisting the government in question to comply with its voluntary human rights and housing obligations by avoiding such evictions. The government of Zimbabwe should adopt and enforce such measures so as to mitigate, prevent, protect and redress the disastrous effects of forced evictions

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[521] UN Human Rights Fact Sheet No. 25, p. 537, para. 1.
[522] *Ibid.*

7.4 Zimbabwe's Obligations to Prevent Forced Evictions

Zimbabwe as a State Party that ratified the ICESCR is obligated to use "all appropriate means" to promote and protect the right to housing and to protect against forced evictions.[523] This can be achieved in a number of ways:

7.4.1 Review Legislation

Zimbabwe should review its controversial legislation with regard to housing to ensure that it conforms to international standards. According to the Committee on Economic, Social and Cultural Rights, such legislation should include measures which:

- guarantee security of tenure to occupiers of houses and land;
- conform to the Covenant on Economic, Social and Cultural Rights; and
- are designed to control the circumstances under which evictions may be carried out.

As States increasingly divest themselves of responsibility for housing, the Zimbabwean government must ensure that the legislative and other measures are adequate to prevent, and if appropriate, punish forced evictions carried out without appropriate safeguards, by private persons or bodies.

7.4.2 Procedural Protections

Procedural protections are required in those exceptional cases where there is no alternative to eviction. Procedural protection and due process are essential aspects of all human rights but are especially pertinent in a matter such as forced evictions which directly invokes a large number of the rights recognised in both the International Covenants on Human Rights.[524]

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[523] Article 2 (1) of ICESCR.
[524] For Procedural protections, *see*, General Comment No. 7 on the Right to Adequate Housing, Article. 11 (1), Forced Evictions.

7.4.3 Prevent Homelessness

The Zimbabwean government has got an obligation to ensure that no individual or family is rendered homeless as a result of the evictions. In turn, where those affected are unable to provide for themselves as happened in Operation *Murambatsvina*, the government must take all appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

7.5 Strategies to Prevent Forced Evictions

The government of Zimbabwe and NGOs can play an important role in preventing forced evictions. The following are some examples of possible activities:

- The government could enact and enforce legislation guaranteeing universal security of tenure. This would constitute the single most effective action government could undertake to curtail the practice of forced eviction. Security of tenure i.e. the legal right to protection from arbitrary or forced eviction from the home or land-plays a significant role in discouraging the evictions.
- Community-based and NGOs often undertake a number of activities to prevent forced eviction such as: the development of alternative plans in instances where evictions are planned; the establishment of housing rights campaigns or movements; and publicising and exposing planned evictions. These responses to threats of forced eviction have been successful in a number of circumstances, resulting in the prevention of the eviction as well as encouraging positive legislation aimed at reducing the prevalence or scale of evictions.
- Land sharing can provide an alternative to forced eviction. This involves the redistribution of the land in question into parts, some of which are reserved for housing the people who live on the site, others of which are

reserved for the landowner to develop. This has been used as a strategy to prevent forced eviction in India, Sri Lanka, and Thailand,[525] and

- Invoking international and regional legal remedies provides another avenue for eviction prevention. For example, human rights complaint mechanisms at the UN or at the regional level can be utilised. The CESCR, while lacking a formal petition procedure, has agreed to receive written submissions from NGOs and hear oral information from them in the context of its consideration of reports of States Parties on the implementation of particular articles of the Covenant, such as the right to housing.

While some of these mechanisms are only quasi-legal and more political in nature, if used in conjunction with strategies on the domestic front, they can contribute to the prevention of forced eviction.

7.6 Conclusion

Zimbabwe as a State Party to the ICESCR and other numerous human rights instruments has got a legal obligation to respect, protect and fulfil the human right to adequate housing. By inference, it should not sponsor, tolerate or carry out forced evictions since they are an affront to human dignity. The main objective of human rights law is to protect people from the frequent violence and despair associated with the eviction process. Forced evictions require a forthright attention from the international community, a focus which is distant at present. If governments and international organisations were to respond to the warning signals of forced evictions in a rapid and more concerted manner, perhaps, this destructive practice could be mitigated in an appreciable degree.

Forced evictions target the poor and most disadvantaged members of the community who are already vulnerable, i.e. the social group already disproportionately denied other rights relating to an adequate standard of living.

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[525] COHRE, "Forced Evictions," *at*:
<http://pdhre.org/rights/housing.html> (last accessed on 01 November, 2007).

The need for a renewed commitment by the international community and governments finally to abolish forced evictions is indisputable. These initiatives should materialise so that the basic human right to a place to live in peace and dignity would not continue to be actively denied to millions of people throughout the world. Under international law every State has the obligation to respect and ensure respect for human rights and humanitarian law, including obligations to prevent violations, to investigate violations, to take appropriate action against violators, and to afford remedies and reparation to victims.[526]

[526] *See*, Preamble of the UN Guidelines.

Chapter 8: Conclusions and Recommendations

8.1 Conclusions

It will meet the mission of this dissertation to conclude with the statement by Kofi Annan, that:

> The fact that the practice of forced evictions constitutes an act which violates the right to adequate housing, and other human rights by implication, leads to the conclusion that there exists a substantial gap between legal norms and practice. The involuntary removal of persons, families and groups from their homes is a current practice in many countries which, in most cases, is contradictory to, if not a blatant infringement of, fundamental, internationally recognised human rights law.[527]

This study has sought to examine IDPs' right to adequate housing and the extent to which this right and other associated rights was violated by the government of Zimbabwe's "clean-up" campaign programme. The study also highlighted the problems which the IDPs in Zimbabwe faced as a result of human rights violations and the effect of such problems on this particularly vulnerable

[527] E/CN. 4/1994/20, para. 143.

group. To attain this, the study proceeded from the hypothesis that the IDPs' right to adequate housing was grossly violated by the government of Zimbabwe during the implementation of its programme of mass-forced evictions-Operation *Murambatsvina*. The study has indicated that the government of Zimbabwe through its policy of forced evictions under Operation *Murambatsvina*, failed to exercise its obligation in the context of respecting, protecting and fulfilling the human right to adequate housing and this impacted negatively on the human rights of IDPs and hence a denial of these basic rights.

The unplanned and chaotic execution of Operation *Murambatsvina* caused avoidable and untold human suffering for more than half a million of Zimbabwe's vulnerable IDPs. Though international human rights law recognizes the right of individuals to protection from arbitrary deprivation of property by their State, the enforcement mechanisms are completely ineffective when a government is unwilling to adhere to its international obligations.

This dissertation contends that no measures were put in place to protect IDPs prior to mass forced evictions in Zimbabwe. IDPs were subjected to discrimination and inequality in almost all aspects of housing, including laws and policies which have discriminatory effects. Policies and programmes related to housing employed by the government of Zimbabwe during Operation *Murambatsvina* had an adverse effect on the rights of IDPs. The campaign was characterised by massive violations of human rights especially the right to adequate housing.

Mass displacements and the deprivation of property were the basic features of this notorious process, which shattered Zimbabwe's heterogeneity and which significantly altered the picture of the country up to today. The study has demonstrated that international human rights law, applicable in such situations, was violated by the government of Zimbabwe regardless of it being a Party to a variety of human rights instruments as noted in this dissertation.

Of course, much has been written on the theme of internal displacement and its implications on IDPs in various parts of the developing world, but the subject remains largely unexplored and under-theorised in Zimbabwe. All

stakeholders and NGOs in this country cannot afford to shy away from this subject and must embrace its challenges with the seriousness it deserves. The effort mustered here is a stimulant towards such responses. This dissertation is a modest attempt at stimulating intellectual discourses in this regard and would have achieved its purpose if it engenders further scholarly enquiry.

8.2 Recommendations

The following recommendations are based on the findings and proposals made by the researcher for the present study. They are intended to address the most prominent housing and displacement issues confronting IDPs as revealed in this study. The recommendations which have been narrowed to those that are specific to housing for IDPs are largely aimed at the government of Zimbabwe, though some are directed at other relevant stakeholders such as financial institutions, civil societies, NGOs, the African Union and the international community at large.

At both the international and national levels, a number of reports have been prepared by various actors offering some of the most pressing issues confronting IDPs, and which offer a variety of recommendations on how the government of Zimbabwe and other stakeholders can address issues of forced eviction. Examples could be drawn from the reports of the UN Special Envoy on Human Settlements Issues and that of the ZLHR respectively.

8.2.1 Recommendations for the Government of Zimbabwe

Recommendations have been grouped as follows: housing and living conditions, forced evictions and displacements, matters of legislation, and other matters.

(a) Recommendations on Housing and Living Conditions

- IDPs will continue to be marginalised if they are excluded from decision-making processes. The government must ensure that IDPs are included as equal partners in all decision making processes, particularly on housing

issues and living conditions. IDPs must participate freely and equally in the development of any legislation, policies or programmes that may have an impact on their housing conditions.

- In terms of the demands of human rights law, the government of Zimbabwe must address the discrimination, inequality and historical injustices experienced by IDPs. This call for the interpretation of rights and laws, policies and programmes must be designed in a way that takes IDPs' socially constructed disadvantage into account, and that secure equality of access and outcome for the displaced populations.
- Government should address poverty as a key to improving the housing conditions of IDPs. This is in keeping with the principle that the right to adequate housing is a constituent element of the right to an adequate standard of living as articulated in the ICESCR.
- With special reference to housing policy and programmes, the government and housing providers must take steps, to the maximum of their available resources, to achieve the full and progressive realisation of the right to adequate housing. Creative housing programmes and projects that ensure the availability and accessibility of affordable housing for the poorest segments of society, including IDPs, should be developed and implemented. For example, in the urban context, just like in the case of Operation *Murambatsvina*, the Zimbabwe government could explore how rental accommodation might be further developed and/or improved to meet the needs of IDPs.

(b) Recommendations on Forced Evictions and Forced Displacement

- The government, the private sector and financial institutions should do everything possible to avoid the eviction of IDPs from their homes and lands including the following: Government, in conjunction with international human rights impact assessments with IDPs prior to initiating developments projects should ensure the principle of free, prior and

informed consent. If the assessment reveals that violations of the rights of IDPs may result, such projects must be re-negotiated.

- International, regional and financial institutions and other organisations play a vital role in facilitating major development projects by providing various forms of financial and technical support. It is imperative that the internal policies regarding development projects and IDPs be revised and applied in a manner that ensures conformity with contemporary international human rights norms of general application such as the ICESCR, the CEDAW and the ICERD, as well as soft law instruments particular to IDPs such as General Comments No. 4 and 7 respectively and any relevant national laws, treaties, agreements or pending agreements regarding the rights of IDPs.
- The government of Zimbabwe should carry out evictions and relocations only when they are unavoidable and must be under-taken in a manner that conforms to international human rights standards as contained in CESCR General Comment No. 7 and the United Nations Comprehensive Human Rights Guidelines on Development-Based Displacement.
- The government should respect the rights of victims of Operation *Murambatsvina* to an effective remedy, including access to justice and the right to reparations, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.
- The government should also conduct a full, independent and impartial inquiry on the role of the police and other law enforcement officials in carrying out the evictions, including into the use of excessive force that resulted in deaths and bring to justice all those suspected of having committed human rights violations.

(c) Recommendations on Matters of Legislation

- Zimbabwe as a State Party that ratified the international legal instruments should incorporate the provisions of such instruments into its domestic law and jurisprudence and its application in the domestic

context should be ensured. Zimbabwe should, therefore, interpret and implement the legal obligations under these instruments in the light of IDPs' specific needs and circumstances.

- The government should guarantee the application of the principle of non-discrimination and to the equal exercise and enjoyment of housing rights by IDPs in appropriate domestic laws, such as national constitutions and human rights legislation, and in the interpretation of customary and civil law.
- Zimbabwe must enact and implement laws and policies that legally protect the housing rights of IDPs. It must also repeal and amend laws that were used during the colonial period for example, the Regional, Town and Country Planning Act of 1964 for the betterment of internally displaced persons.

8.2.2 Recommendations for the International Community

- The response of the international community to IDP situations should be rapid and effective and based on most current information. A specific reporting system should be developed to obligate countries with IDPs situations to give detailed reports on current developments. Quick response could also help to prevent further escalation of the conflict and ease the plight of IDPs.
- The Guiding Principles should be implemented and taken into account when protecting IDPs as the international legal framework does not cover all the essential rights of IDPs.
- IDPs need to be protected in all the phases of displacement; during flight, displacement and when they return or resettle. Their protection should not be dependent on definitions and legal status. IDPs are equally entitled to the same protection as any other citizens.
- There are special groups among IDPs that need more attention to their particular needs; such as women, children, the disabled, the elderly and people living with HIV/AIDS. The gender dimension of displacement

should be integrated into all phases of displacement because women are especially vulnerable in such cases.

- The international community should exert pressure on the government of Zimbabwe to meet its obligations under international law to respect, protect and fulfil the human rights in the country.
- Ensure that protection of the human rights of IDPs is integrated into the humanitarian assistance planned for Zimbabwe.

8.2.3 Recommendations for International NGOs and Inter-Governmental Organisations

- These organisations should work constructively with governments to ensure that relief is speedy, effective and consistent with the relevant international standards of care and to ensure that they meet their commitments set out in reconstruction programmes in a timely fashion.
- Mechanisms should be set up to ensure transparency and accountability in service delivery, including complaints procedures and to ensure redress to IDPs whose rights have been violated.
- The organisations should develop their projects and programmes of reconstruction in consultation with affected populations and their representatives.

8.2.4 Recommendations for the African Union

- The AU should publicly condemn the forced evictions that took place in Zimbabwe and call upon the government to take actions to address the human rights of these persons, in line with the recommendations of the UN Special Envoy on Human Settlements Issues in Zimbabwe.
- As a regional group, it should publicly urge the government of Zimbabwe to ensure the respect of the rights of IDPs and to allow and facilitate the provision of humanitarian assistance.

8.2.5 Recommendations for the African Commission on Human and Peoples' Rights

- The ACHPR must call on the government to take measures to provide assistance and protection to the internally displaced, and to allow unimpeded international assistance to the displaced.
- The Commission must strongly condemn the mass evictions and demolitions, and urge the government of Zimbabwe to take immediate action to address the plight of the hundreds of thousands of people made homeless by Operation *Murambatsvina*.
- The ACHPR must support the return to Zimbabwe of the Special Envoy of the African Commission and the Special Rapporteur on Refugees, Asylum Seekers and IDPs in Africa, Tom Nyanduga, so that he can fulfil his mandate to undertake a fact-finding mission to investigate the situation of IDPs in Zimbabwe.

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BIBLIOGRAPHY

INTERNATIONAL TREATIES AND DECLARATIONS

African Charter on Human and Peoples' Rights, *adopted* by the Organisation of African Unity on 27 June, 1981, *entered into force* 21 October, 1986, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

Beijing Declaration and Platform of Action *adopted* at the 4th World Conference on Women (Action for Equality, Development and Peace), Beijing, China (4-15 September, 1995).

Charter of the United Nations, *adopted* 26 June, 1945, *entered into force* 24 October, 1945, 892 UNTS 119.

Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, *adopted* by General Assembly Resolution 39/46 of 10 December, 1984.

Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* by General Assembly Resolution 34/180 of 18 December, 1979, *entered into force* 3 September, 1981, 1249 UNTS 45.

Convention Governing the Specific Aspects of Refugees Problems in Africa, *adopted* 10 September, 1969, *entered into force* 20 June, 1974, 1001 UNTS, 45.

Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* 2 September, 1990.

Common Articles on Grave Breaches in the Four Geneva Conventions 12 August, 1949; Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 10 December, 1984, 1465 UNTS 85.

Declaration on the Right to Development *adopted* by UN General Assembly Resolution 41/128 of 4 December, 1986.

International Covenant on Civil and Political Rights *adopted* and opened for signature, ratification and accession by UN General Assembly Resolution 2200 A (XX1), 16 December, 1966, *entered into force* on 23 March, 1976, 999 UNTS 171.

International Convention on Economic, Social and Cultural Rights, *adopted* by the General Assembly Resolution 2200A (XX1) of 16 December, 1966, *entered into force* 3 January, 1976, 993 UNTS 3.

Protocol Relating to the Status of Refugees, 31 January, 1967, 19 UST 6223, 606 UNTS 267.

Rome Statute of the International Criminal Court, *adopted* by the United Nations Diplomatic Conference on Plenipotentiaries on the establishment of an ICC on 17 July, 1998. The Statute *entered into force* on 1 July, 2002, in accordance with article.126. UN Doc A/Conf 183/9 (1998) ILM 999 2187 UNTS').

Universal Declaration of Human Rights *adopted* and proclaimed by the General Assembly resolution 217 A (III) of 10 December, 1948.

Vancouver Declaration on Human Settlement *adopted* at the UN HABITAT Conference on Human Settlements, Vancouver, Canada (31 May-11 June, 1976).

Vienna Convention on the Law of Treaties, 196, *adopted* 22 May, 1969, *entered into force* 27 January, 1980, 1155 UNTS 331.

Vienna Declaration and Programme of Action *adopted* by the World Conference on Human Rights, Vienna, 23 June, 1993 (A/CONF.157/24 (Part 1), chap. III, Part 1, para. 30).

STATUTES

Constitution of the Republic of India, Act 26 of 1949.

Constitution of the Republic of South Africa, Act 108 of 1996.

Constitution of the Republic of Zimbabwe, Act 16 of 2000.

JUDICIAL DECISIONS

African Commission on Human and Peoples' Rights, Free Legal Assistance Group. Lawyers Committee for Human Rights, *Union Inteafricaine des Droits de l'Homme, Les Temoins de Jehovah* v *Zaire*, Communication Nos. 25/89, 47/90, 56/91 and 100/93 (joined), Ninth Annual Activity Report of the African Commission on Human and Peoples' Rights 1995/96, Assembly of Heads of State and Government, 32nd Ordinary Session, 7-10 July, Yaoundé, Cameroon.

Baboeram et al. v *Suriname* Case Nos. 146148-154/1983, Views *adopted* on 4 April, 1985.

Baboeram v *Suriname* (1985), UN Doc A/40/40.

Barcelona Traction, Light and Power Company, Limited (*Belgium* v *Spain*) ICJ Reports 1970.

Barbie (1998), 89 ILR.

Bleier v *Uruguay* Case No.30/1978, *adopted* on 24 March, 1980, para 13. 3.

Centre for Economic and Social Rights and Social and Economic Rights Action Centre (*SERAC*) v *Nigeria*, see, the decision done at the 30th Ordinary Session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October, 2001

Dare Remusha Co-operative v *The Minister of Local Government, Public Works and Urban Development and Four Others*, HC 246/05 (Supreme Court of Appeal No. 169/05).

Delhi Transport Corporation v *DTC Mazdoor Congress and Others* 1991 (1) SCC 600.

Government of the Republic of South Africa and Others v *Grootboom and Others* (11) BCLR 1169 (CC).

Filartiga v *Pena-Irala*, 630 F. 2D 876, 882 (2d Cir. 1980)

Olga Tellis and Others v *Bombay Municipal Corporation and Others*, 1985 (3) SCC 545.

Prosecutor v *Erdemovic*, Sentencing Judgment, Case No. IT-96-22-T (Trial Chamber I, 29 November, 1996).

Prosecutor v *Jean-Paul Akayesu*, ICTR-96-4-T (2 September, 1998).

Prosecutor v *Krstic*, ICTY IT-98-33 (2 August, 2001) [531].

Prosecutor v *Kupreskic et al* (Judgment) ICTY-IT-16-T (14 January, 2000).

Prosecutor v *Nikolic*, ICTY IT-94-2-R61 (20 October, 1995) Trial Chamber 1.

Prosecutor v *Tadic*, Decision on the defence motion on jurisdiction, Case No. IT-94-1-T (Trial Chamber 10 August, 1995).

Prosecutor v *Tadic*, Decision on the defence motion for interlocutory appeal on jurisdiction, Case No. IT-94-1-AR72 (Appeals Chamber 2 October, 1995).

R v *Bow Street Metropolitan Stipendiary Magistrate Exp. Pinochet Ugarte* [2000] 1 AC 147 (HL).

Shant Star Builders v *Naryan Khimali Tatome and Others* (1) Supreme Court 106, Civil Appeal No. 2598 of 1989.

Velasquez Rodriquez v *Honduras* Inter-American Court of Human Rights (Ser. C) No. 4 (29 July, 1988), HRLJ 9.

BOOKS

Antonio Cassese, *International Law* (Oxford University Press, 2005).

Asbjørn Eide, et al, *Economic, Social and Cultural Rights*: *A Textbook*, 2nd Revised Edition (Martinus Nijhoff Publishers, 2001).

Ben Atkinson Wortley, *Expropriation in Public International Law* (Cambridge: Cambridge University Press, 1959).

Bing Cheng, *The Rationale of Compensation for Expropriation* (The Grotius Society, 46, 1962).

Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law* (2nd ed) (The Hague: Kluwer Law International, 1999).

COHRE, *Land, Housing and Property Rights in Zimbabwe* (COHRE Africa Programme Mission Report, September, 2001).

Daniel Helle, *Enhancing the Protection of Internally Displaced Persons* in Wendy Davies (ed.), *Rights Have no Borders: Internal Displacement Worldwide* (Norwegian Refugee Council/Global IDP Project, 1998).

David Korn, *Exodus within Borders: An Introduction to the Crisis of Internal Displacement* (Washington, DC: Brookings Institution Press, 1999).

Dennis McNamara, *United Nations High Commissioner for Refugees' Protection Mandate in Relation to Internally Displaced Persons* in Wendy Davies (ed.), *Rights have no Borders; Internal Displacement Worldwide* (Norwegian Refugee Council/Global IDP Survey, 1998).

Dinah Shelton, *Remedies in International Human Rights Law* (2nd ed) (Oxford University Press, 2005).

Francis Deng, Foreword, in Mark Vincent and Refslund Sorensen (eds.), *Caught Between Borders: Response Strategies of the Internally Displaced* (Oslo Geneva, Global IDP Survey/ Norwegian Refugee Council, 2001).

Francis Deng, Flocks without Shepherds: *The International Dilemma of Internal Displacement* in Wendy Davies (ed.), *Rights have no Borders; Internal Displacement Worldwide* (Norwegian Refugee Council/Global IDP Survey, 1998).

Geoffrey Robertson, *Crimes Against Humanity*: The Struggle for Global Justice (Penguin, 1999).

Gerhard Werle, *Principles of International Criminal Law* (T.M.C Asser Press, 2005).

Ian Brownlie, *Principles of Public International Law* (4th ed) (Oxford University Press, 1998).

Jennifer Hyndmann, *Managing Displacement: Refugees and the Politics of Humanitarianism* (University of Minnesota, 2000).

Joan Fitzpatrick (ed.), *Human Rights Protection for Refugees, Asylum Seekers and Internally Displaced Persons: A Guide to International Mechanisms and Procedures* (New York Transnational Publishers, Ardsley, 2002).

Jon Bennet, *Internal Displacement in Context: The Emergence of a New Politics* in Wendy Davies (ed.), *Rights Have No Borders* (Norwegian Refugee Council/Global IDP Survey, 1998).

Marc Vincent and Birgitte Refslund (eds.), *Caught Between Borders: Response Strategies of the Internally Displaced* (Oslo Geneva, Norwegian Refugee Council/Global IDP Survey, 2001).

Richard Bilder, *An Overview of International Human Rights Law* in Hurst Hannum (ed.), *Guide to International Human Rights Practice* (2nd ed) (Philadelphia: University of Pennsylvania Press, 1994).

Roberta Cohen and Francis Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington DC: Brookings Institution Press, 1998).

Roberta Cohen and Francis Deng (eds.), *The Forsaken People: Case Studies of the Internally Displaced* (Washington DC: Brookings Institution Press, 1998).

Rosalyn Higgins, *The Taking of Property by the State: Recent Developments in International Law* (Hague Academy *Recuiel des Cours*, Vol. 176, 259, 1982-III).

Samy Friedman, *Expropriation in International Law* (Portsmouth, NH: Greenwood Publishing Group, 1981).

Shadrack Gutto, *Human and Peoples' Rights for the Oppressed: Critical Essays on Theory and Practice from Sociology of Law Perspectives* (Lund University Press, 1993).

The Global Internally Displaced Persons Project, *Internal Displacement, A Global Overview of Trends and Developments* (Oslo Geneva, Global IDP Survey/Norwegian Refugee Council, 2003).

ARTICLES

Alexander Betts, "Human Rights and Refugees, Internally Displaced Persons and Migrant Workers," *Journal of Refugee Studies* (2007); Vol 20 No. 1, 149-151.

Amnesty International, "The African Commission: Amnesty International's Oral Statement on Forced Evictions" (AI Index: AFR 01/013/2006 (public) (2006).

Catherine Phuong, "The International Protection of IDPs," *Harvey International Journal of Refugee Law* (2005), Vol 17: 823-827.

Centre on Housing Rights and Evictions, "Eviction Case: Zimbabwe" (May 2005-April 2006).

COHRE, "Fact Sheet on Recent and Impending Forced Evictions" (2004).

COHRE, "Forced Evictions and Operation Restore Order" (2005).

COHRE, "Key Requirements of International Human Rights Law Relating to Forced Evictions," *Media Release* (2004).

Crisis in Zimbabwe Coalition, "Stop Waging War against the Poor" (2005).

Dustin Sharp, "Prosecutions, Development and Justice: The Trial of Hissene Habre," *Harvard Human Rights Journal* (2003), Vol. 16, 147-177.

George Charamba, "Zimbabwe: Operation Restore Order," *New African*, No. 442, (2005).

George Weigel, "Mrs. Roosevelt's Confusions Revisited," *American Purpose*, Issue 1, Vol. 9 (1995).

General Assembly, "Strengthening the Co-ordination of Humanitarian Emergency Assistance of the UN," by French Officials in Guyana. A/Res/42/186, UN (1991).

Government of Zimbabwe, "Response by the Government of Zimbabwe to the Report of the UN Special Envoy on Operation *Murambatsvina*" (2005).

Human Rights Trust for Southern Africa, "Operation '*Murambatsvina*': Implications with Regard to Zimbabwe's Human Rights Obligations" (2005).

Human Rights Watch, "Zimbabwe: Evicted and Forsaken; Internally Displaced Persons in the Aftermath of Operation *Murambatsvina,*" Vol. 17, No. 16 (A) (2005).

Inter- Agency Standing Committee Policy Paper, "Protection of Internally Displaced Persons," Annex A (1999).

Internal Displacement Persons Unit: OCHA, "The IDP Situation in Zimbabwe" (2005).

Kirsten Zaat, "The Protection of IDPs in the Sudan: Applying International Law at the Field Level" (2006). *Journal of Humanitarian Assistance*.

Roberta Cohen, "The Guiding Principles on Internal Displacement: A New Instrument for International Organisations and Non-Governmental Organisations" (*Forced Migration Review* No. 2, 1998).

Roht-Arriaza Naomi, "The Pinochet Precedent and Universal Jurisdiction," *American Journal of International Law* (2001) Vol. 93 No. 12, 12-22.

Michael Barutciski, "Tensions Between the Refugee Concept and the IDP Debate" (*Forced Migration Review*, No. 3, 1998).

Nils Geissler, "The International Protection of Internally Displaced Persons" (1998), *International Journal of Refugee Law* (1999), Vol. 11, No. 3.

Ozias Tungwarara and Wole Olayele (eds.), "An Analysis of the Demolitions in Zimbabwe" (2005).

Paul Ocheje, "In the Public Interest: Forced Evictions, Land Rights, and Human Development in Africa," *Journal of African Law* (2007), Vol. 51, No. 1.

Philip Alston, "Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council," *Melbourne Journal of International Law* (2006), Vol. 7, pp. 187-188.

Refugees International, "An Analysis of Displaced Farm Workers in Zimbabwe" (2004).

Robert Monroe, "Accountability or impunity? Gross and Systematic Human Rights Violations in Zimbabwe and the Search for Justice," *Africa Rights* (2003).

Sean Romero, "Mass Forced Evictions and The Human Right to Adequate Housing in Zimbabwe," *North-western Journal of International Human Rights Law*, (2007), Vol. 5, Issue 2.

Scott Leckie, "The Human Right to Adequate Housing," in Asbjørn Eide et al, *Economic, Social and Cultural Rights: A Textbook*, 2nd Revised Edition (2001).

Thomas Weiss, "Whither International Efforts for IDPs?" *Journal of Peace Research* (1999), Vol. 36, No. 3, 363-373.

UN Commission on Human Rights, "Compilation and Analysis of Legal Norms," Commission on Human Rights Fifty-first Session, E/CN.4/1996/52/Add2 (1995).

Walter Kalin, "How hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework" (The Brookings-CUNY Project on Internal Displacement, 2002).

Will Moore, "Refugees or IDPs? To Where Should One Flee?" *Comparative Political Studies* (2006) Vol 39, No. 5, 599-622.

Zimbabwe Lawyers for Human Rights, "Unlawful Eviction of Flea Market vendors, tuck shop operators and street vendors and destruction of their property," *Press Release* (2005).

Zimbabwe Human Rights NGO Forum, "Order out of Chaos, or Chaos out of Order? A Preliminary Report on Operation *Murambatsvina*" (2005).

Zimbabwe Watch, "Possibilities for Criminal and State Responsibility in Relation to the Operation *Murambatsvina* Case" (2005).

REPORTS

Africa Report No. 97, 17 August, 2005.

Amsterdam International Law Clinic, "Possibilities of Criminal and State Responsibility in Relation to the Operation *Murambatsvina* Case." A Report prepared for Zimbabwe Watch (May, 2007).

Anna Tibaijuka, "Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation *Murambatsvina* by the UN Special Envoy on Human Settlements Issues in Zimbabwe" (18 July, 2005).

Economic and Social Council, E/CN.4/2004/48, "Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari" (8 March, 2004).

Final Report of the Commission of Experts established pursuant to Security Council Resolution 780, 1992, U.N.Doc. S/1994/674 (27 May, 1994).

Francis Deng, "Compilation and Analysis of Legal Norms." Report of the Representative of the Secretary- General on Internally Displaced Persons, E/CN/4/1996/52, Add. 2 (1996).

Francis Deng, "Specific Groups and Individuals: Mass Exodus and Displaced Persons," Report of the Representative of the Secretary General on Internally Displaced Persons, submitted pursuant to Commission on Human Rights Resolution 2001/54.

Global IDP Project, "Report on the Parallel Meeting on IDPs held in Geneva on 10 April, 2003, Internally Displaced Persons: Accountability, Co-ordination and Protection Seen as Challenges," 29 April, 2003.

Government of Zimbabwe, "Response by Government of Zimbabwe to the Report of the UN Special Envoy on Operation Murambatsvina" (2005).

Inter-Agency Standing Committee Gender Handbook, "Different Needs-Equal Opportunities" (2006).

Katarina Tomaševski, "Preliminary report of the Special Rapporteur on the right to education," UN Doc. E./CN.4/1999/49.

Martin Westgate, "Operation *Murambatsvina*: A Crime Against Humanity?" A report containing the Independent Legal Opinion on the Question whether the 2005 Operation *Murambatsvina* Forced Evictions (May, 2007).

Miloon Kothari, "Report of the Special Rapporteur on Adequate Housing as a component of the Right to an Adequate Standard of Living," E/CH.4/2002/59, 10 October, 2002.

Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June, 1992 (United Nations publications, Sales No. E.93.1.8 and corrigenda), Vol. 1: Resolutions *adopted* by the conference, resolution 1, annex II.

Zimbabwe Human Rights Non-Governmental Organisation Forum, "Order out of Chaos or Chaos out of Order? A Preliminary Report on Operation *Murambatsvina*" (2005).

INTERNET-BASED RESOURCES

Amnesty International, "Angola: Forced Evictions and the Law: Angolan Law and International Human Rights law," *at*:
<http://web.amnesty.org/library/index/ENGAFR/20072003> (last accessed on 28 October, 2007).

Amnesty International and Zimbabwe Lawyers for Human Rights, "Zimbabwe: Shattered Lives-The Case of Porta Farm," AI Index: AFR 46/004/2006, 31 March, 2006, *at*:
<http://www.amnesty.ie/amnesty/upload/images/attachdocuments/Porta%20FarmReport.pdf> last accessed on 25 October, 2007.

Amnesty International, "Human Rights for Human Dignity: A Primer on Economic, Social and Cultural Rights," *at*:
<http://web.amnesty.org/library/index/engPOL340092005> (last accessed on 5 November, 2007).

Amnesty International, "Universal Jurisdiction, The Duty of States to Enact and Implement Legislation," *at*:
<http//:web.amnesty.org/library/pdf/lior530082001/English> (last accessed on 5 November, 2007).

Barbra Slaughter, "Mugabe's Operation Murambatsvina," *at*:
<http://www.wsws.org/articles/2005/jul2005/zimb-j16.shtml> (last accessed on 30 November, 2007)

Chris Maroleng, "Zimbabwe's Zezuru Sum Game: The Basis for the Security Dilemma in which the Political Elite Finds Itself," *African Security Review*, Vol. 14, No. 3, 2005, *at*:
<http://www.iss.co.za/pubs/ASR/14No3/CMaroleng.htm> (last accessed on 26 October, 2007).

COHRE, "Operation *Murambatsvina*: Unlawful Forced Evictions; Crimes Against Humanity; and Cruel, Inhuman or Degrading Treatment of the Poorest of the Poor". A Submission to the African Commission on Human and Peoples' Rights 41st Session," *at*:
<http://www.cohre.org/store/attachments/COHRE/Shadow/Report/Zimbabwe.pdf.> (last accessed on 26 October, 2007).

Curtis Doebbler, "The Human Rights of Internally Displaced Persons in Sudan" (1999), *at*:
<http://dcreregistry.com/bbs/welcome.htm> last accessed on 01 November, 2007).

Danish Refugee Council's IDP Project, *at*:
<http//www.idpproject.org/press/2005/Global_Overview> (last accessed on 27 October, 2007).

Decision of the Tribunal *de premiere* instance, Brussels, 6 November, 1998 determining that it had jurisdiction over Augusto Pinochet, AI Index: IOR 53/008/2001, *at*:

<http://web.amnesty.org/library/pdf/IOR530082001/ENGLISH/$File/IOR 5300801.pdf> (last accessed on 27 October, 2007).

Felix Njini, "Moyo Gloats at Confusion in ZANU-PF," *at*: <http://www.fingaz.co.zw/2005/june/june23/8780.shtml> (last accessed on 30 November, 2007).

Global Internal Displaced Persons Project, "Complementarity between Key Instruments of International law," *at*: <http://www.internal-displacement.org/$file/complementarity_%20 of HR> (last accessed on 27 October, 2007).

Global Policy Forum, "International Justice," *at*: <http://www.globalpolicy.org/int/justice/universal/univindex.htm> (last accessed on 27 October, 2007).

International Committee of the Red Cross, "Legal Protection of Internally Displaced Persons," (2002) *at*: < http://www.icrc.org> (last accessed on 27 October, 2007).

International Committee of the Red Cross, "International Humanitarian Law" *at*: <http://www.isrc.org/doc> (last accessed on 28 October, 2007).

Internal Displacement Monitoring Centre, The Right of IDPs to return home and Property Restitution, *at*: <http://www.internal-dislacement.org/8025708F004B> (last accessed on 28 October, 2007).

Jean-Philippe Lavoyer, "Guiding Principles on Internal Displacement" (1998), *at*: <http://www.icrc.org> (last accessed on 28 October, 2007).

Kirsten Zaat, "The Protection of IDPs in the Sudan: Applying International Law at the Field Level," *at*: <http://www.reliefweb.int/library/documents/2006/jha-sdn-02oct.pdf> (last accessed on 29 October, 2007).

Refugees International, "Human Rights and Displacement." (2003) *at*: <http://www.refugeesinternational.org> (last accessed on 29 October, 2007).

Right to Education Project, *at*: <http://www.right-to-education.org> (last accessed on 29 October, 2007).

Robert Goldman, "Codification on International Rules on Internally Displaced Persons: An Area where both Human Rights and Humanitarian Law Considerations are Being Taken into Account" (International Review of the Red Cross, 1998, No. 324, pp. 467-480), *at*:

<http://www/icrc.org> (last accessed on 29 October, 2007).

Southern Africa Humanitarian Crisis, "Burning down the House to Kill a Rat?-An Analysis of the Demolitions in Zimbabwe" (Action-Aid International, 31 July, 2005) *at*:
<http://reliefweb.int/rw/RWB.NSF/db900SID/EVIU-6FBDNT?OpenDoc> (last accessed on 29 October, 2007).

Text of President Robert Mugabe's speech at 62nd Session of UN General Assembly *at*:
<http://www.newzimbabwe.co.zw/pages/un34.16973.html> (last accessed on 16 December, 2007).

The Implementing of the Rome Statute of the International Criminal Court Act No. 27, Government Gazette, 18 July, 2002 No. 23642, *at*:
<http://www.info.gov.za/acts/2002/a27-02> (last accessed on 29 October, 2007).

United Nations Human Rights Council, *at*:
<http://www.ohchr.org/english/bodies/hrcouncil> (last accessed on 05 November, 2007).

UN Special Envoy on Human Settlement Issues in Zimbabwe, Mrs. Anna Kajumulo Tibaijuka, "Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation *Murambatsvina*," 22 July, 2005, *at*:
<http://www.unhabitat.org/documents/ZimReport.pdf> (last accessed on 05 November, 2007).

Zimbabwe Human Rights NGO Forum Monthly political violence report, *at*:
<http://www.hrforumzim.com/frames/inside_frame_monthly.htm> (last accessed on 29 October, 2007).