

## **7 Conclusions and Recommendations of the Special Envoy**

### **7.1 Overview**

Operation Restore Order was presented as an attempt at implementing internationally agreed goals and objectives. Its stated purposes to “clean up the city”, to have “cities without slums”, and “to secure people’s long-term interests” resonate with the goals of the Habitat Agenda and of the Millennium Declaration, particularly Goal 7, target 10 on water and sanitation, and target 11 on slum upgrading. However, the unplanned and over-zealous manner in which the Operation was carried out has unleashed chaos and untold human suffering. It has created a state of emergency as tens of thousands of families and vulnerable women and children are left in the open without protection from the elements, without access to adequate water and sanitation or health care, and without food security. Such conditions are clearly life-threatening. In human settlements terms, the Operation has rendered over half a million people, previously housed in so-called sub-standard dwellings, either homeless or living with friends and relatives in overcrowded and health-threatening conditions. In economic terms, the Operation has destroyed and seriously disrupted the livelihoods of millions of people who were coping, however poorly, with the consequences of a prolonged economic crisis. Politically, the Operation has exacerbated an already tense and polarized climate characterized by mistrust and fear. It has resulted in a virtual breakdown in dialogue between different spheres of Government, between Government and civil society, and once again put Zimbabwe in the limelight of international scrutiny.

Efficiently executed in a militaristic manner, Operation Restore Order provides clear indications that the Government of Zimbabwe has the wherewithal to implement policies at a lightning speed when it has the political will. This political will should be used to advantage to redress the humanitarian crisis, so created, to embark on a sustainable reconstruction and rehabilitation effort, and to bring to account those who have acted, or caused others to act, with impunity and outside the framework of international and national law.

While there is an urgent and immediate need to address the humanitarian crisis resulting from Operation Restore Order, there is an equally urgent and compelling need to establish a strong link between the humanitarian response and longer-term human settlements and governance issues for the following reasons. Firstly, the humanitarian crisis resulting from the Operation was not caused by war or conflict. It was caused by a policy failure of the Government of Zimbabwe to come to terms with rapid urbanisation, its chaotic manifestations, and people’s “Right to the City”. Secondly, the human suffering resulting from the Operation was not caused by sheer negligence alone. It has its roots in a historical economic decline and a governance crisis evidenced by major gaps and overlaps between conflicting jurisdictions, and between central and local government. It also stems in part from a lack of respect for the rule of law by certain State actors and their apparent indifference to human suffering. Thirdly, the effectiveness of any humanitarian response, in terms of reaching those most in need and directly affected by the Operation, will depend almost entirely on instilling a climate of trust between different spheres of government and establishing dialogue and terms of engagement between government, civil society, the humanitarian community and the people affected themselves.

The international community cannot afford, however, to squander the biggest asset and opportunity that Zimbabwe has, namely that Zimbabwe is not in a state of conflict or war. Despite

the human suffering of the people of Zimbabwe, they are still patient and hopeful that human solidarity will prevail.

While the methods used by Operation Restore Order must be condemned, and the Government of Zimbabwe encouraged to take corrective measures to reform itself, the immediate concern of the international community should be to offer immediate and urgent assistance to those affected by the Operation. This should pave way for a frank dialogue with the Government of Zimbabwe concerning its human rights record.

## 7.2 Conclusions and Recommendations

The following conclusions and recommendations address the socio-economic and humanitarian consequences that have resulted from Operation Restore Order. They also propose a series of measures for tackling some of the underlying structural causes that need to be addressed for the humanitarian response to be sustainable.

### 7.2.1 Humanitarian Response

**There is an urgent need for the Government of Zimbabwe to facilitate humanitarian operations within a pro-poor, gender-sensitive policy framework that provides security of tenure, affordable housing, water and sanitation, and the pursuit of small-scale income-generating activities in a regulated and enabling environment.**

The most urgent issue at present is to help the people who have been evicted, estimated to be over half a million people. Many of these people are living in the open. Some have found alternative rental accommodation, while others have been taken in by their extended families in both urban and rural areas. Their immediate needs include food, water, blankets, temporary shelter and toilets. In the medium- to long-term, they will need to be provided with alternative housing and structures for their small-scale income generating activities sector activities. This will entail the design and implementation of low-income housing projects on properly surveyed plots, with security of tenure, all on the basis of revised and more appropriate planning standards. These housing projects will need to be close to the original homes of the evicted households, as children will need to continue in their old schools and adult household members will need to reconnect with their sources of livelihood. Parallel projects addressing the needs of small scale operators will also be necessary, probably involving the designation of central sites for markets and the establishment of an effective trade licensing system in which the rights of operators are fully protected. The UN has to play an important role with regard to these initiatives.

Entry points for the implementation of this recommendation include:

- a. The establishment of a joint Government of Zimbabwe/United Nations framework agreement establishing norms, priorities and roles governing humanitarian response;
- b. The immediate undertaking of a joint assessment exercise to determine the impact and the needs created by Operation Restore Order has created in both humanitarian and human settlements terms, and to ascertain the location of those who have been displaced;
- c. The Government of Zimbabwe should commit itself to a moratorium on all demolitions, evictions and displacements to facilitate this exercise;
- d. The immediate launch of a Joint Humanitarian Appeal and the assurance by the Government of Zimbabwe of unhindered access by the United Nations Country Team

- and by members of the international and humanitarian community to identify and provide emergency humanitarian assistance to those affected by Operation Restore Order;
- e. The implementation of an emergency Shelter Task Force and Operation to be coordinated and monitored by the UN Country Team. The Shelter Task Force and Operation will link the provision of tents, blankets and other basic needs with the provision of plots/stands, guarantees of secure tenure and an extended time frame for completion of structures pending a review of the Regional, Town and Country Planning Act and other relevant Acts. The Government of Zimbabwe should commit itself to allocating all plots/stands to be distributed under Operation Garikai, and any other similar land distribution exercises, to those who have lost their homes, dwellings and livelihood, in accordance with internationally accepted norms guiding resettlement, before allocating plots to anyone else. It should also allow the Shelter Task Force to monitor and assess progress.

**There is an immediate need for the Government of Zimbabwe to review the Regional, Town and Country Planning Act and other relevant Acts to align the substance and the procedures of these Acts with the social, economic and cultural realities facing the majority of the population, namely the poor.**

This alignment will necessarily result in the change of current norms, standards and bylaws governing high density, low-income settlements in general and to technical norms governing access roads, plot sizes, water and sanitation technology and building materials, in particular. It will also review and establish a clear definition of the roles and responsibilities between different spheres of government in ensuring compliance and enforcement with provisions of the law in the spirit of enablement of the people and the empowerment of local authorities, in accordance with the principle of subsidiarity. Key entry points for the implementation of this recommendation include:

- a. The immediate suspension of non-voluntary displacement of people to rural areas that will only exacerbate the humanitarian crisis; and
- b. The immediate convening of a multi-stakeholder Shelter Forum to come up with concrete proposals for fast track approval by the parliament within an agreed time frame for a new Regional, Town and Country Planning Act and other relevant Acts.

**There is an immediate need to restore a climate of trust and dialogue between different spheres of government and between Government and civil society. This process should emerge from a broad-based consultation among all Zimbabwean stakeholders. The United Nations could facilitate this process.**

The suggested entry points for implementing this recommendation include:

- a. The appointment of a credible mediator (e.g. a religious or spiritual leader) to help the Government establish confidence-building measures and to help establish terms of engagement and constructive dialogue between all national stakeholders, including local authorities, NGOs, professional associations, academics, the private and informal sector, trade unions, and political parties;
- b. The organization of city-wide consultations to help affected communities develop their own community-based reconstruction and livelihood restoration plans in close consultation with their respective local authorities. The Government should commit itself to respect the outcomes of these community-based participatory planning exercises;

- c. The establishment of a Compensation Trust Fund, including the funds earmarked for Operation Garikai, to assist those directly affected by the Operation to restore their livelihoods. Part of this fund should be allocated for grants, low-interest loans and special vehicle instruments to building societies and housing cooperatives to assist their respective affected members in reconstruction. Part of the fund should be devoted to strengthening community-based micro-credit instruments, thus assisting those affected in re-establishing their small scale income-generating activities.

### 7.2.2 Addressing socio-economic issues and reconstruction

**Operation Restore Order has precipitated a humanitarian crisis of immense proportions. In an apparent response, the Government of Zimbabwe has launched a counter programme, Operation Garikai (Rebuilding and Reconstruction). The Government itself, even with the best efforts, has limited capacity to fully address the needs of the affected population without the assistance of the international community. The United Nations should therefore work with the Government of Zimbabwe to mobilize immediate assistance from the international community to avert further suffering, and encourage the Government to create conditions for sustainable relief and reconstruction for those affected.**

The Government of Zimbabwe was not able to produce any written documentation showing that the Operation was planned. This means that evictions took place before alternatives could be provided, thereby violating human rights and several provisions of national and international law. The *International Covenant on Economic, Social and Cultural Rights*, to which Zimbabwe is a party, clearly states that a government cannot forcibly evict people without having made alternative plans to house them. Had this principle been observed, much suffering of the urban poor could have been avoided or minimized by offering alternative solutions for housing and informal businesses well in advance of the demolitions, within the context of a humane and well-planned urban renewal programme.

There is a belief among some of Zimbabwe's government leaders that what matters now is to focus on reconstruction. To this end, the Special Envoy received elaborate presentations and witnessed a launch of a USD 300 million follow-up programme meant to address the plight of households affected by the demolitions. The programme, Operation Garikai, intends to provide land for housing sites, rehabilitation of markets and trading stalls, including small micro-enterprise sites. It was inaugurated by the First Vice President, the Minister of Local Government and the Resident Minister of Harare.

Whilst the reconstruction intervention is much welcome, and a sign that the Government of Zimbabwe acknowledges the existence of the crisis it has created, and is willing to accept its responsibility to take corrective measures, it is the view of the Special Envoy that Operation Restore Order has precipitated a humanitarian crisis which the Government itself, even with the best of intentions and efforts, has limited capacity to fully address without the assistance of the international community. Firstly, the scale of announced expenditure (USD 300 million), was not foreseen in the 2005 budget, and if it were to somehow materialise, it could exacerbate the inflation rate which is running at over 140%. Secondly, as conceived, Operation Garikai is predominantly a developmental intervention. It does not address immediate needs, such as shelter, food, water, sanitation health and education. There is a concern about the top-down approach adopted by the Government for the programme implementation by the military. Operation Garikai continues to be premised on the false assumption that evictees would "return to their rural homes" while the majority in fact have not, or are not in a position to do so. In any case, transporting people to rural areas is problematic on two fronts: many rural areas are already

suffering from food shortages, and transport is constrained by a chronic shortage of fuel. At the same, time transport assistance from humanitarian actors poses a moral dilemma as it is tantamount to collaboration in forced expulsion of the poor out of cities. The UN will have to take a position on this matter.

Overall, the Government of Zimbabwe should be advised to stop any further demolitions and displacements forthwith, and to work with the UN to mobilize immediate assistance from the international community to avert further suffering, while creating conditions for sustainable relief and reconstruction for those affected. Furthermore, the Government of Zimbabwe should grant full citizenship to those former migrant workers and their descendants who have no such legal status. Mostly people of Malawian, Zambian and Mozambican origin, they are among the most vulnerable and adversely affected group. This group comprises every third person found sleeping out in the open by the team – a total of some 114,000 people. Yet, these are people who have given their best years to Zimbabwe's commercial farms. Most of them have never been to their so-called countries of origin and repeatedly told the Special Envoy they would not even know where to go if they were repatriated. However, those who are interested in pursuing agriculture should be given opportunities for resettlement to become smallholder farmers like other Zimbabweans under the Land Reform Programme – without discrimination. Similarly, many widows and divorcees have no rural homes to return to, as property often stays with the former husband's side of the family. Others are in need of medical care which is difficult to access in rural areas. They too deserve attention and priority under Operation Garikai in a joint effort by the Government of Zimbabwe, the UN and other partners.

### 7.2.3 Addressing the land issue, macro-economic reform and governance

**The wrecking of the informal sector by Operation Restore Order will have detrimental effects at a time that the economy remains in serious difficulties. Apart from drastically increasing unemployment, the Operation will have a knock-on effect on the formal economy including agriculture. The Government of Zimbabwe has to undertake corrective policy reforms in macro-economic management and governance issues, focusing on land reform and land tenure with a view to provide secure tenure for the poor, both in rural and urban areas.**

At the heart of Zimbabwe's current socio-economic problems is the issue of land reform and the related severe decline in agricultural production, which is also partly a result of recent successive droughts. Other problems cited in this report include: massive inflation; a significant drop in agricultural production; a serious shortage of foreign currency; a drying up of foreign direct investment; a very significant shrinkage of the entire economy, estimated by the IMF to have been 40% in recent years; serious periodic shortages of basic consumer commodities, including fuel, maize meal, milk, bread, cooking oil, soap etc; a massive rise in unemployment, estimated at present to be between 75% and 80%; and a significant increase in poverty – it is estimated that 70% of Zimbabwe's population now lives below the poverty line. Through Operation Garikai, the informal sector that employed 40% of the labour has been wiped out.

Key policy reforms include:

- a. Land reform, including a UN Trust Fund to offer meaningful compensation for commercial farmers who can demonstrate that their properties were either confiscated or that they were not adequately compensated, thereby contributing to the healing of the Zimbabwean Nation from historical factors. The Government should also accept to

- institute a transparent land allocation programme to full-time young and trained African commercial farmers, on the one hand, and to put in place effective agricultural support services for smallholder farmers who have been allocated land, on the other. Concerns were expressed over the present situation where land is occupied by absentee or part-time farmers, and the absence of tenure.
- b. Revival of the economy by appropriate macro-economic reforms more in line with a rapidly globalizing world economy; and
  - c. Good governance at both the national and local levels.

From all available evidence, Zimbabwe is currently experiencing severe socio-economic and political problems that were unimaginable ten years ago. From being a bread-basket of Southern Africa and a model of post-colonial, multiracial co-existence, Zimbabwe's economy has deteriorated very significantly and its relations with most donor countries have been fraught with tension and animosity in the last five years. The United Nations should engage the Government of Zimbabwe to help it deal with the consequences of Operation Restore Order, as well as its present socio-economic and political problems.

#### 7.2.4 Addressing the issue of accountability

**The Government of Zimbabwe is collectively responsible for what has happened. However, it appears that there was no collective decision-making with respect to both the conception and implementation of Operation Restore Order. Evidence suggests it was based on improper advice by a few architects of the operation. The people and Government of Zimbabwe should hold to account those responsible for the injury caused by the Operation.**

Oral evidence heard from senior Government officials, including Ministers, as well as subsequent reports in the local press and discussions in the Parliament of Zimbabwe, suggest that Operation Restore Order was neither conceived collectively in the Cabinet, nor in the ruling party's (ZANU PF) Politburo and Central Committee. It also appears that there is now a division in Zimbabwe's political leadership over Operation Restore Order, and that some of the leaders were caught by surprise when it was suddenly initiated as a police and military exercise. While the team was in Zimbabwe, one political leader, Mr. Pearson Mbalekwa, resigned in protest at the Operation from both the Parliament of Zimbabwe and ZANU-PF's Central Committee. Some senior ZANU-PF politicians were also reported to have expressed directly to President Mugabe their concern and objections to the manner in which the clean-up of cities was being conducted. It has also been reported in the press that the Minister of Local Government had written to the Minister of Home Affairs, under whose portfolio the Zimbabwe Republic Police falls, urging him to stop demolishing houses belonging to several cooperatives that had been established with the blessing of the Ministry of Local Government, and were, therefore, "legal". But this was to no avail. Except for Harare, now run by a Government-appointed City Commission following the dissolution of the elected MDC-controlled City Council, the mission confirmed that the local authorities of the affected cities and towns were not consulted. Yet, under Zimbabwean law, matters to do with the enforcement of planning standards and building regulations, and matters dealing with urban management and development, fall generally under the jurisdiction of local authorities. Whilst under the Urban Council Act the Minister of Local Government has powers to overrule local authorities, none of the Mayors met by the Special Envoy said they had been advised, orally or in writing, by the relevant Minister. The police simply moved in with demolition orders. Out of fear, local authorities either complied or watched helplessly as informal trades, businesses and homes were destroyed. A good number of businesses and houses torn down were legal and paying local council taxes.

It is the firm opinion of the Special Envoy that Operation Restore Order was, in all likelihood, implemented on the basis of improper advice and by over-zealous officials, each with their own agendas. The people and Government of Zimbabwe should hold those responsible for providing this disastrous advice accountable. This would have to be done within the context of Zimbabwe's laws, and in light of the international agreements to which the Government of Zimbabwe is signatory. There is also the need to redress all wrongs committed against evicted households, individuals and businesses. Those whose properties were destroyed unlawfully, and in some instances in contempt of court, should be compensated. This redress would also be consistent with Zimbabwean culture. The mission learned that justice, in local tradition, is premised on the concept of *Zvirikumbwa Nekutsuro*. Literally translated, this means "enjoy eating the rabbit while punishing the dog that helped kill the rabbit in the neighbour's fence, thereby disturbing good neighbourliness". This Shona logic implies that the cleaning up of cities is, in itself, not a bad thing and, in some respects, was even long overdue. However, the operation was ill-conceived, hardly planned and done in such an ad hoc and crude manner causing misery and precipitating a humanitarian crisis. As part of promoting good governance, those responsible must therefore be identified and punished to prevent them from engaging in procedural impropriety and violating human rights with impunity in the future.

#### 7.2.5 Addressing the issue of human rights

**Disregard for laws and court orders during the Fast Track land reform programme set a bad precedent. The Government of Zimbabwe should set a good example and adhere to the rule of law before it can credibly ask its citizens to do the same. The government also, having breached both national and international human rights law provisions on evictions, thereby precipitating a humanitarian crisis, should pay compensation where it is due for those whose property was unlawfully destroyed. Although a case for crime against humanity under the Rome Statute might be difficult to sustain, the Government of Zimbabwe clearly caused large sections of its population serious suffering that must now be redressed with the assistance of the international community. The government should prosecute all those who orchestrated this catastrophe and caused criminal negligence leading to deaths, if so confirmed by an independent inquiry/ inquest. The international community should then continue to be engaged with the human rights record in Zimbabwe in consensus building political forums such as the UN High Commission on Human Rights or its successor, and the African Union Peer Review Mechanism.**

The legal context for Operation Restore Order should be seen against a background of a general deterioration of the rule of law in Zimbabwe. Disregard for laws and court orders during the Fast Track land reform programme set a dangerous precedent. It also sent a signal that the rule of law could be subject to selective interpretation and application, paving way for the excesses now committed under the clean-up operation, including destruction of legal businesses and homes paying taxes to local authorities.

Under both relevant international law and national legislation, forced evictions can be justified under certain circumstances, viz: criminality; public health; public morality; and the rights of others. The Government of Zimbabwe appears to be relying on some of the above to justify its actions under international law. However, there is no indication that any of the procedural requirements were complied with: consultations were not undertaken; notices were not given in time, if at all; information was not given on the proposed evictions; government officials or their representatives were not present during the demolitions, which were conducted brutally as a national police and military exercise; the evictions took place during harsh weather; legal

remedies were not available; and evictions resulted in thousands of people being rendered homeless without being provided viable alternatives.

There is general concern over the failure of the High Court to safeguard the right of the victims of the Operation and the regrettable failure of some members of the Bench to remain independent from the national and local politics of the day.

With an estimated 700,000 people directly affected through loss of shelter and livelihoods, it has been established that while willing to protect those affected (eg. through Garikai), the Government has limited capacity to do so. Therefore, the international community has a responsibility to assist in the protection of those affected. The impact will not be easy to redress and requires immediate and adequate humanitarian assistance to protect those in need.

Several submissions received during the mission contend that the actions of the Government, in forcibly uprooting hundreds of thousands of its citizens from their homes, meets the criteria of a “crime against humanity”, as defined by Article 7 of the Rome Statute of the International Criminal Court. However, a preliminary legal opinion suggests that with available evidence it would be difficult to sustain that crimes against humanity were committed. In light of this, the Special Envoy believes that an international debate on whether the statute of Rome could be successfully invoked, is bound to be acrimonious and protracted. It would serve only to distract the attention of the international community from focusing on the humanitarian crisis facing the displaced who need immediate assistance.

Nevertheless, it remains the strong recommendation of the Special Envoy that the culprits who have caused this man-made disaster be brought to justice under Zimbabwean national laws. The international community would then continue to be engaged with the human rights record in Zimbabwe in consensus building political forums such as the UN Commission on Human Rights or its successor, the African Union Peer Review Mechanism, and SADC.

### 7.3 Lessons Learned

**Operation Restore Order has to be understood within the broader context of the urbanization crisis in Africa. It is recommended that the international community draws lessons from the Zimbabwe crisis for the entire African continent and actively support the implementation of the Habitat Agenda. It makes a clarion call to the international community that without a more concerted approach to promote urban environmental sustainability, Goal 7, targets 10 (on water and sanitation) and 11 (on slum upgrading and prevention) of the Millennium Declaration, the other countries in Africa could well experience another Operation Restore Order sooner than later.**

The Government of Zimbabwe has experienced negative coverage in the international media in recent years and has complained that it is being demonized because of the Fast-Track Land Reform Programme which commenced in 2000. It has been pointed out that Zimbabwe is not alone in arbitrarily evicting households in informal settlements and informal sector operators. It is argued that this is also happening in other African countries and elsewhere in the world. The Government of Zimbabwe may well be justified in asking why Zimbabwe is being singled out for criticism on this particular issue of arbitrary evictions. However, on the basis of the mission’s findings and the Zimbabwe Government’s own statistics, it is clear that what is different in the case of Operation Restore Order is the scale of the operation, which is unprecedented both in terms of its geographical coverage and the number of people affected. Apart from historical



factors of liberation struggle solidarity, the unwillingness of the neighbouring countries and of the African Union to publicly comment on the operation has to be understood within this broader context of their own policies and arbitrary eviction experiences. The current Global Campaigns on Secure Tenure and Good Urban Governance, which are spearheaded by UN-HABITAT, could play an important role in addressing the present problems in Zimbabwe, including principles of property restitution. The Campaigns are already doing this in some African countries, as well as in other developing countries in Asia, Latin America and the Caribbean. The following appendix presents an overview of the slum challenges facing other African countries.