

An Analysis of the Demolitions in Zimbabwe

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ActionAid International - Southern Africa Partnership Programme joins in solidarity with the many thousands of people who lost their livelihoods, dignity and security as a result of the operation. Their courage in the face of diversity is a challenge that the world cannot afford to remain silent about, but must join hands to act in urgency and solidarity with those affected.

List of People / Organisations Involved in the Compilation of Analysis Papers

Takura Zhangazha: The Media within the Context of the Government of Zimbabwe's Operation 'Clean Up.

Godfrey Kanyenze and Mlamleli Sibanda: The Economic Impact Of The Clampdown On The Informal Economy, Code Named *Operation Restore Order / Murambatsvina*

Douglas Gwatidzo: Operation "Murambatsvina" Restore Order. The public health perspective

Zvidzai Maburutse: Human Security: The way of ensuring poor and excluded people's right are protected and secured during conflict and emergencies: A Zimbabwe case study - Action Aid

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Zivanayi Manyika: The Spirit And Purpose Of Urban Planning: A Perspective On "Operation Murambatsvina" - The Physical Displacement Of The Informal Sector In Zimbabwe

Nancy Kachingwe: Policy and planning as if women mattered

Deprose Muchena: "Burning down the house to kill a rat": The Political Economy of "Operation Murambatsvina" and the emerging challenges of Governance

Elijah Chiwota: Anger over operation 'Reject Filth'

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Chapter 1

EXECUTIVE SUMMARY

Massive demolitions of informal housing and informal sector sites, including markets and production areas, were and continue to be carried out at the direction of the government of Zimbabwe in all urban areas of the country under the code names “Operation Murambatsvina” (“throw out the trash”) and “Operation Restore Order” (together, Operation Murambatsvina/Restore Order). It is estimated that close to a million people have been seriously affected with many rendered destitute overnight. They are now without shelter and sources of income. The capital city of Harare, perceived by many to have been the real target of this operation, was hardest hit. Thousands of those displaced are presently in a holding camp at Caledonia Farm; some are in overcrowded prisons; others have shifted to rural areas; while still many others are staying out in the open near rivers or streams. A fortunate few have found shelter with friends and relatives or have been squeezed into institutional housing.

Operation Murambatsvina/Restore Order which started in May 2005 took place against the background of a breakdown of the rule of law resulting in many cases of human rights abuse and denial of access to justice for the victims; promotion of the political culture of fear and the negation of democratic values and norms; humanitarian disasters of various kinds such as displacement of more than six thousand people from their rural homes during the 2000 election campaign and well over 70 000 during and after the presidential election in 2002; the collapse of the social sector with health and educational institutions failing to measure up to the expected standards of service



delivery; a chronic shortage of foreign currency, fuel and many other imports necessary for manufacturing, mining, commerce and agriculture; capital flight, withdrawal of official development assistance and the drying up of foreign investment, resulting in the rapid shrinking of the economy; and soaring unemployment currently estimated to be higher than 75%, which contributes to an already unfortunate and unacceptable level of poverty, with more than 70% of the population living below the poverty line. It is estimated that over 700 000 people have lost their homes, sources of livelihood and dignity as a result of the operation. Most affected are women and girls, including households with orphans, chronically ill persons, female-headed households, and elderly headed households.

This report is a collection of articles divided into four sections which discuss and analyze Operation Murambatsvina/Restore Order in the context of the political economy of Zimbabwe and emerging challenges of governance; the purpose and spirit of urban planning; the rights effected and legal issues raised; and finally, the impact of this operation on various sectors of Zimbabwean society as well as media response to the government’s actions. In addition, the report provides in Appendix One, certain empirical evidence of how the operation has affected the population on a household and a community level in twenty-six wards of Harare High Density Housing Areas.

The various analyses presented here were commissioned in response to what was increasingly becoming an impressionistic and anecdotal discussion about the reasons behind Operation

Murambatsvina/Restore Order and its impact, especially on ordinary citizens. Issues examined include the historical and political context, rights and legal perspectives, impact on women and girls, social reproduction and order in relation to urban land and housing, urban planning, the role of the media, economic implications, public health and human security dimensions. The papers confirm the reaction of most Zimbabweans, and members of the regional and international communities – a sense of shock and awe at the magnitude and rapidity of destruction and dislocation. Although the articles address different perspectives they are all unanimous in concluding that the operations were unjustified and resulted in severe suffering for the ordinary citizen that far outweighs, and is completely disproportionate to, the intended benefits.

The first section provides a background to the crisis by discussing the colonial roots of the government's attempt to control urban populations, destroy their means of economic support and remove them to rural areas. It also discusses the country's economic crisis, foreign currency shortages, widespread poverty and inequality, deepening crisis of governance and attack by the ruling ZANU-PF government on the rule of law. The government of Zimbabwe's stated reasons for the operations are analyzed and assessed from an economic and political perspective and possible alternative reasons for government action are presented. In addition, the article discusses the operations' negative impact on the political process, workers, vulnerable groups (including women, children and people with HIV-AIDS), family life, poverty and disease. The response of local and international actors is presented and specific recommendations are given to regional bodies, the Zimbabwe government and civil society as to how to react to Operation Murambatsvina/Restore Order and its outcomes and proceed in light of the political and economic crisis that continues to unfold in the country.

The second section evaluates Operation Murambatsvina/Restore Order in the context of the local urban planning law (the Regional Town and Country Planning (RTCP) Act) used by the government of Zimbabwe as the basis for its mass destruction of informal settlements and businesses. The article discusses the spirit and intent of urban planning law and practice generally

and gives a background of informal sector growth in Zimbabwe from pre-independence to the present day. The legal procedure provided for by the RTCP with respect to treatment of non-compliant structures built in urban areas is outlined and government action in Operation Murambatsvina/Restore Order is evaluated against such requirements. The article describes the demolition process and how it was carried out as well as the devastating effect it has had on urban communities. In addition, an analysis is made of what really prompted government to demolish and destroy the informal sector and what could have been done to avoid such an outcome. The article concludes that Operation Murambatsvina/Restore Order was not carried out in compliance with either the spirit or the letter of the municipal regulations relied upon by the Zimbabwean government as the basis for their actions. Further, the article encourages the displaced to organize themselves into relevant interest groups in order to better voice their concerns, become trained and informed of their rights and continue to be the target of humanitarian assistance. Finally, the article calls for pressure to be placed on local and central government to respect the human rights of the displaced, take a process driven approach to achieving sustainable economic development and amend the RTCP to properly ensure protection of human rights and avoid the occurrence of future en masse government demolitions and destruction.

The third section provides a discussion of the existing international human rights framework and the provisions of conventions to which Zimbabwe is a signatory, such as the International Convention on Economic, Social and Cultural Rights and the African Charter on Human and People's Rights, which provide, among other things, for the right to life, housing, freedom from inhumane and degrading treatment and to choose one's residence. The article also takes a comparative look at international and regional court cases which have interpreted constitutional rights to life as including a right to livelihood and an obligation on the part of government to provide its citizens which it has displaced with provisional housing. Further, the article outlines specific sections of the Zimbabwean constitution which provide for protection of the right to life, freedom from inhumane and degrading treatment, protection of property,

entitlement to the protection of the law and freedom of movement and then points out how the Zimbabwean government has systematically failed to uphold such provisions in the context of Operation Murambatsvina/Restore Order. The notice and other provisions of the RTCP are discussed in detail and the government's failure to follow these specific requirements is highlighted. The article concludes that the government's actions in Operation Murambatsvina/Restore Order were not in accord with either international treaties to which it is a party or its own national and local laws. In addition, the article points out that the existing legal framework in Zimbabwe, where the existence of legal rights is unclear and where enforcement machinery and judicial independence are weak, does not facilitate redress through the legal system by victims of government mis-conduct. Finally, the article provides recommendations from a legal perspective of how to address the current situation in Zimbabwe. Such recommendations include that free legal assistance be provided to the poor, the judiciary be made independent from the executive through a system of checks and balances, that there be a return to the rule of law and that constitutional and legislative reform be undertaken to ensure conformity with minimum standards of international conventions.

The last section discusses in a series of articles the negative impact of the operations on public health, women and girls, urban land and housing and on the Zimbabwean economy as well as the media's response to mass destruction and dislocation of people.

Health: With respect to health, this article presents the public health impact that Operation Murambatsvina/Restore Order has had in the form of death, the spread of infectious disease and epidemic disease due to lack of proper sanitation for the thousands displaced, exacerbation of the HIV/AIDS epidemic as people are forced away from their customary treatment center and made more vulnerable by being left homeless and exposed to the elements. Recommendations are made for addressing these health concerns, including providing immediate shelter to the homeless, counseling to the vulnerable and forcing the government to take full responsibility for its actions and the results thereof.

Women and Girls: This article discusses the disproportionate effect that Operation Murambatsvina/Restore Order has had on the lives of women and girls in Zimbabwe. The status of women in Zimbabwe, the economic context of the informal sector and the economic contribution of women are discussed in detail. The impact of Operation Murambatsvina/Restore Order on women including, destitution and displacement, health and safety concerns, the disruption of family units, increased vulnerability and insecurity and women's status and dignity and access to economic opportunity are outlined. Issues and challenges are analyzed with respect to the Beijing Platform Action and Gender Empowerment, HIV/AIDS, managing the complexities of economic informalisation, transparency and consistency in the policymaking process and changing the political environment in order to reinstitute a culture of tolerance.

Urban Land and Housing: In this article it is argued that the government of Zimbabwe, faced with critical problems of economic sustainability, social reproduction in the urban areas and in its domestic and international relations sought to address them through Operation Murambatsvina/Restore Order. However, the article concludes that the objectives set by the government were inadequate and/or inappropriate to deal with the country's fundamental urban socio-economic problems and the government's methods of executing its plan were inhumane and have in fact compounded the very social challenges it sought to address, creating new ones. The article discusses the official rationalization given by the government for carrying out the operations which are primarily focused on the need to restore legality and regulate towns and the economy but neglect to coherently critique the underlying economic problems or the efficacy of current government policies to deal with such problems. It presents analyses by different members of civil society of imperatives underlying Operation Murambatsvina/Restore Order and outlines limits in the civil society discourse with respect to government actions. In order to assess the validity of the Zimbabwean government's justification for Operation Murambatsvina/Restore Order its sources are placed in the context of relevant political and economic challenges, urban

planning technocracy and 'clean' town imperatives, historical urban conditions, the order of infrastructure and service provision, urban aesthetics and cleanliness technocracy culture, and the weakening of local state urban authority and urban politics. The outcomes of Operation Murambatsvina/Restore Order, including the nature, scope and extent of the social, economic and political outcomes as well as implications for the future and urban and national security are outlined. The article also discusses the main impact of Operation Murambatsvina/Restore Order in the form of state and civil society reactions and programmes and international reactions; interventions and programmes. Finally, recommendations are made for the reorientation of economic policy based on a new deal consensus and the development of a comprehensive urban renewal plan.

Economic Impacts: This article discusses how the Zimbabwean government's historically benign treatment of the strong informal sector abruptly changed with Operation Murambatsvina/Restore Order and resulted in a host of problems, including homelessness, starvation, exposure to disease and cold weather, loss of assets, transport woes and increased and urgent demand for accommodation. Government's promises of relocation for the displaced came after the mass removals had taken place and were inadequately supported financially or otherwise. The article provides a detailed discussion of the significance and impact of Operation Murambatsvina/Restore Order on the Zimbabwean economy.

The Media: This article discusses the role played by and response of the media in the context of Operation Murambatsvina/Restore Order. The article provides a background discussion of the difficult conditions for independent media in Zimbabwe and how government control and clamp downs have made it difficult for the media to play a true investigative role in Zimbabwe generally and with respect to Operation Murambatsvina/Restore Order in particular. The article provides recommendations as to how the media in Zimbabwe could have a more effective and independent voice through the promotion of public ownership of the media, the transformation of the main state owned

broadcaster into a public institution governed by a board independent of government, the expansion of community ownership of local media (local radio stations and newspapers, for example) and training of media professionals to investigate underlying causes of events and take a people-centered approach to the presentation of information.

The overall picture that emerges from the articles in this report is that of an unplanned process. The government of Zimbabwe failed to articulate any justifiable reasons why Operation Murambatsvina/Restore Order had to be undertaken in the manner that it was. Responses to both the government's conduct and the emerging impacts of the operation have largely been inadequate. The reasons for this inadequacy range from the current political environment in the country that restricts civic engagement to a limited capacity to carry out policy analysis. There is agreement that the most urgent need is resource mobilization to address the immediate hardships caused by the operation as well as to start tackling the urban question and attendant social problems. Pressure should be put on the Zimbabwean government 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 current "go it alone" attitude that underlies the 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 Zimbabwean government is encouraged to start addressing the political, social and economic fundamentals in an accountable way that will respect the basic rights of its citizens, and which will recognise the practical realities of managing modern-day nation states and economies.

Chapter 2

INTRODUCTION



Zimbabwe, one of southern Africa's most important countries, which gained its independence in 1980, has in recent months and years been gripped in a crisis over governance, the rule of law, and social injustice, most notably the demolition of houses and business premises, and the urban land question. The questions being asked in the five major cities of Zimbabwe affected by the demolition of houses are – why did the Government of Zimbabwe decided to turn against its own? Why now? Why is the government destroying our livelihoods and leaving us vulnerable? Where is it going and when is it going to stop? What positive outcome is expected to come out of Operation Murambatsvina/Restore Order? Why is the government turning us (informal traders) into criminals when all we are trying to do is earn an honest living? Why is the government killing us?

What are the origins of this crisis? Do the demolitions and the urban land question have common contemporary and historical origins? Do they both have internal and external causes? These and other related questions coming from the affected victims of inhuman and indiscriminate demolition actions lay the foundation for this report.

This report is the outcome of a series of initiatives which provides a diversity of views on the rationale behind the operation; it also provides a space for the voices of the poor and excluded people of Zimbabwe and makes recommendations for addressing the humanitarian crisis resulting from the operation. It is premised on the AAI-SAPP vision of a Southern Africa

without poverty and HIV and AIDS in which the rights of poor and excluded people are protected and realized. Within this context, AAI-SAPP embarked on an in-depth study on the demolition to establish:

- The possible reasons behind the government's actions
- The veracity of the justifications given by the government of Zimbabwe
- Indicate options of how else the process could have been carried out without bringing undue hardship to vulnerable groups, and also indicate possible alternatives given that the process has commenced
- The extent and impact of the operation on different constituencies disaggregated on the basis of gender, class, location and other considerations (e.g. informal traders, homeowners, those displaced during the 2000/2002 elections)
- The implications of government action on the affected people
- The implications of the operation at a personal and collective level, both in the short and in the long term
- That analysis must be placed within historical, contemporary and futuristic perspectives
- Documentation of the stories of those affected.

The various sections of this report present a vigorous analytical response to these questions and provide recommendations on what should be done to mitigate the impact of the operation on the affected population. The report is divided into four sections. Firstly, section one looks at the political economy of Operation Murambatsvina/Restore Order and the emerging challenges of governance in Zimbabwe. It is argued in this section that the operation must be understood within a historical context – a crisis of governance characterised by the serious erosion of citizens’ basic rights and policy failures of monumental proportions. Secondly, section two provides an analysis of the urban planning law in Zimbabwe which was used as the basis for the unprecedented demolitions. While the demolitions were carried out in terms of the Regional Town and Country Planning (RTCP) Act, the operation completely missed the spirit and purpose of good planning, which is life sustenance by creating life-threatening conditions contrary to the intentions of civil law. Thirdly, an analysis of the various legal frameworks – international and domestic instruments – was done in section three to determine the extent to which these instruments provide justification for the operation and the provisions that exist within the Zimbabwe constitution and legal framework to protect the rights of those affected. It is argued that the Zimbabwe government not only violated both domestic and international regulations ensuring the rights of forcibly displaced people but also presents potential challenges for litigants within a context where the judiciary is not only insensitive to the plight of the poor, but is a judiciary which has become a state instrument for the abusive use of power. Finally, section four provides a discussion of the operation’s impact on various sectors, including public health, women and girls, urban land and housing and the informal economy, as well as the media’s response to the operation. The overriding response emerging from all of these sectors is that of a failed attempt by the current economic, social and urban policies in addressing Zimbabwe’s fundamental urban socio-economic problems and creating new social, economic and political problems which there are neither capacity nor resources to rectify.

South Africa Church spokesperson, Esau Mathew puts it this way: “If what we saw is what the Zimbabwean government calls provision, then they should be ashamed of themselves. The conditions left by the clean-up operation are absolutely atrocious. Parents in the so-called transit camp are struggling to care for the young in addition to their own daily suffering. They live in make-shift shelters with no roof, no doors and they are totally exposed to the cold.

Chapter 3

THE POLITICAL ECONOMY OF DEMOLITION

In most places in Africa, government is perceived by the elite as a vehicle to rob and terrorize the people. What one observes in many African countries is an 'artificial government' - 'government by deception' run by a phalanx of degreed bandits sporting Ray-Ban sunglasses and bazookas. They are not only out of touch with the people, but perennially locked in combat with them.¹

INTRODUCTION

"Things are definitely falling apart; I cannot believe what I am seeing. I am old and have seen a lot, but I cannot believe what is happening to this country"². These were the words of a 75-year-old grandmother in the high-density suburb of Highfield as she watched her cottages being demolished. Her cottages built around her two-roomed house and tomatoes that she sold at a market stall (which had also been swept away in the current clean-up exercise) were the only basis of her income. She is taking care of four children orphaned by the HIV/AIDS pandemic and is herself in failing health. Zimbabwe's political leaders, once again, seem to have pressed the self-destruct button. In just under three months following the disputed March 2005

¹ Ayittey George, *Africa In Chaos*, New Jersey, 1998.

² Most people were forced to demolish their houses by police armed and in riot gear. Young people were forced to demolish structures against their will. The police did not consider their age, health or physical well-being.



elections, the government of Zimbabwe launched *Operation Murambatsvina/Restore Order*, the most controversial action in the post-colonial history of Zimbabwe.

This paper seeks to raise several issues that have surfaced since the operation began. What are the reasons behind the operation? Are there valid economic and political reasons for the operation? What is its impact on various sectors? What has the response been? What is the way forward?

HISTORICAL BACKGROUND

Operation Murambatsvina/Restore Order must be understood in a historical context. Zimbabwe currently faces a crisis of governance characterized by serious erosion of citizens' basic rights and policy failures of monumental proportions. This has resulted in reversal of post-independence gains in such areas as health, education and other social sectors. Determined to retain political and economic power at all costs, the current government has resorted to using colonial era measures of social control and repression. What emerges is a crisis of governance, a panicking government whose record of policy failure, reversal of the gains of independence and social progress is now so self-evident and has created so much paranoia in the government that it seeks to use what looks like colonial measures to deal with its unhappy population simply to retain power and sustain an otherwise unpopular rule.

On 25th April 2005, Zimbabwe celebrated 25 years of independence from British colonial rule. Political independence was attained after a thirteen year armed struggle during which black nationalist guerillas resisted domination and racial segregation by a minority white settler government. The colonial project established in 1890 was sustained by draconian laws that formed an institutional framework of racism, force, state-sponsored brutality, coercion, segregation, forced taxation, primitive accumulation of wealth by a landed white minority and an industrial bourgeoisie that, through successive minority governments, deprived Africans of all the means of production. 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 infertile Native Reserves, while the Native Land Husbandry Act of 1950 reinforced the unequal distribution of land.³ The pressure associated with the monetization of the economy saw a majority of Africans moving into mines and townships to sell their labor. This led the colonial government to protect poor whites against this urban influx, safeguard their jobs and push Africans into a pool of cheap labour. The Industrial Conciliation Act of 1934 served this purpose by creating a job colour bar. As the Reserves became unproductive, more Africans migrated to mining and urban areas and the pressures of industrialisation in the post-World War II period created a greater influx of Africans into the urban areas. Once again the response of the colonial government was to segregate residential areas and create institutional mechanisms that separated the two races rather than absorbing the African population and reflecting the new reality of urbanisation. 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. Forced removals, arrests, and evictions were a common strategy for dealing with "over-populated" areas in an effort to control urban migration. Land 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 liberation struggle that led to independence in 1980.

CONTEXTUAL FRAMEWORK

The desire on the part of the ZANU-PF government to reverse the logic of urbanisation, to impose some kind of "order and legality" in townships, destroy legitimate means of survival in an economy that is clearly exclusionary and use draconian laws to quell civic voices, undermine civic liberties and selectively apply the law, remain dominant features of post-colonial governance, and are a painful echo of the previous colonial government. The ZANU-PF government, just like the colonial government it replaced, has now entered an advanced stage of its obsolete phase. The neo-colonial ZANU-PF government has lost its moral standing among Zimbabweans and has lost most of the social connections with historical allies in civil society, students, workers, churches, journalists, women and youth.

Zimbabwe, a country once the envy of many, has become a potential failed state in every respect. Even Vladimir Putin of Russia describes Robert Mugabe as a dictator who should not receive aid from the international community⁴. Kofi Annan sent a Special Envoy, resulting in a series of desperate but well-calculated damage control exercises. The African Union, which earlier stated that the demolition of houses and forced evictions were an internal matter, sent its own representative on a "fact-finding mission".

3 For elaboration on the politics of land segregation the impact of the land apportionment act and other colonial legislation, read, H.V. Moyana, *The Political Economy of Land*.

4 Putin was cited by several international media organisations ahead of the G8 Summit in Gleneagles in July. Russia has historically supported Zimbabwe through the liberation struggle as part of the cold war politics.

AN ECONOMY IN CRISIS

At independence, Zimbabwe had an impressive social and economic programme with the highest standards of education and health delivery in Africa. The first ten years of independence were generally a decade of prosperity, followed by an unpopular World Bank-inspired Economic Structural Adjustment Program which failed dismally in its attempt to develop the economy, created massive dislocation in the economy, job retrenchments, and poverty. Halfway into 2005, there is no evidence of economic resolution. The IMF delegation, visiting Zimbabwe under the Article Four Consultation framework pointed out that the economy will decline by a further 7% this year, inflation will not be arrested to any significant extent, and foreign currency reserves are down to 3 days.⁵ The Zimbabwean economy has been on a downward trend for a long time, registering a growth rate of 0.9% in 1998, declining to 0.5% in 1999, and registering massive negative growth rates from 2000 onwards. Domestic debt is estimated at more than Z\$10 trillion. The economy has in the last five years declined by 40%, leading the Zimbabwe Coalition on Debt and Development, a local non-governmental organisation working in the area of debt and economic justice to observe that:

For a very long time, it had never been perceived that the Zimbabwean economy could one day share the features characteristic of African underdevelopment; 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.⁶

5 IMF Visiting Delegation, June 2005. The IMF is conducting consultations with various Zimbabwean stakeholders under the Article IV framework. It is possible that in August when the Board of Governors meets, they may recommend the expulsion of Zimbabwe from the IMF.

6 ZIMCODD internal report on Policy and Advocacy, 2003.

FOREIGN CURRENCY SHORTAGES

A serious foreign currency shortage has become the main symptom of this crisis, leading to shortages in imports needed for industrial activity, fuel, oils, electricity, and basic commodities such as salt, sugar and cooking oil. The foreign currency crisis has been for the most part three-pronged:

- The general problem of the availability of foreign currency in the country;
- The specific problem of availability of foreign exchange on the official market; and
- The specific challenge of availability of foreign currency on the parallel market which can be brought into the official system.

POVERTY AND INEQUALITY

Unemployment is at an all-time high, estimated at more than 75%. Joblessness increases poverty, which is now estimated as affecting more than 70% of the population. To compound this problem, Zimbabwe, alongside South Africa, Namibia and Cameroon, has a high degree of inequality within the populations, not just in terms of access to resources, but also with respect to consumption of resources. It is estimated that about 80% of the population is consuming only 20% of the national wealth and vice versa.⁷ Most people have found survival in the informal economy, which is a major source of people's livelihoods, contributing to a mutually reinforcing economic and political crisis, which has translated into a crisis of governance over time.

A DEEPENING CRISIS OF GOVERNANCE

Operation Murambatsvina/Restore Order clearly demonstrates the crisis of governance in Zimbabwe. A government paralysed by factionalism in the ruling party, policy failure and international isolation has resorted to undemocratic means to sustain its hold on power. The values and ethos of democracy and good governance, a system of government that all

7 SADC Human Development Report, 1999.

Zimbabweans fought to install, have been severely compromised. Zimbabwe still retains, in a very significant sense, a worrying degree of continuity rather than change with the colonial past and its institutional framework. The institutional framework of governance in post-colonial Zimbabwe remains sustained by laws similar to those used in Rhodesia, a political culture that views citizens as subjects.⁸

THE ONSLAUGHT AGAINST THE RULE OF LAW

Zimbabweans will remember the systematic undermining of the rule of law from 2000 onwards. Many will recall that on 14th February 2000, President Robert Mugabe's government suffered the first major defeat at the hands of the people, in a constitutional referendum.⁹ President Mugabe accepted defeat after the referendum but on 16th February, barely two days after Mugabe's statement, war veterans, ZANU-PF supporters and "landless people" invaded farms in Masvingo, and what followed was an orgy of violence on those farms that spread throughout the country. Two key features characterised the collapse in the rule of law during this period. One was the contempt of court and refusal to enforce court orders. The second was simply the selective application of the law by the executive.

Widespread violence, threats, intimidation and lawlessness characterised the year 2000. Many of the people affected by the violence were completely deprived of the protection of the law. In the aftermath of this violence, fear spread throughout the country. All was done in the name of the Third Chimurenga. The courts rendered the invasions illegal, chaotic and violent. But leaders of war veterans publicly proclaimed that they would not obey court orders but instead would intensify the programme of farm occupations. The police made no attempt to comply with the orders, claiming the issue was political, impossible,

dangerous and that it was counter-productive to do so.¹⁰ Despite several court orders ordering the eviction of farm invaders, on several occasions President Mugabe declared that government would not drive the farm invaders off the farms until the land issue was resolved. In his view, the invaders were the vanguard of a land revolution, necessary to complete the liberation war.

CHARACTER OF THE ZIMBABWEAN STATE

Operation Murambatsvina/Restore Order should be seen within the framework of the State's response to isolation, domestic and external pressure, perceived opponents and the need to renew itself under populist slogans mainly as a way of facilitating conquest of power and retention of power. Events of the last five years demonstrate that Zimbabwe is now an authoritarian neo-colonial state which has been radicalised. It has visible political contradictions; it sometimes adopts a right-wing ideology, for example by adopting neo-liberal policies such as the Economic Structural Adjustment Programme (ESAP), MERP, NERP, and sometimes acts left, by positioning itself as a nationalist developmental state, by appropriating popular struggles for its narrow benefit. The state finds itself in a position where its isolation and pariah status earned since 2000 has weakened it internationally although it remains very strong internally. The major argument of the State since 2000 was that its sovereignty was under attack from hostile external forces in collaboration with local proxies. In response, the State remodeled itself, renewed and repositioned itself through a vortex of repressive laws such as the Access to Information and Protection of Privacy Act (AIPPA), the Public Order and Security Act (POSA) and the Broadcasting Services Act (BSA), appropriating popular, long-standing land movement struggles, and land reform to its narrow benefit. Under this guise, the ruling party found an excuse to restructure the State, militarize it, and restructure the local government structures, which were militarized through

8 For elaboration, read Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the legacy of Late Colonialism*, Princeton University Press, New Jersey, 1996.

9 55% of the people rejected Government's draft constitution in February 2000.

10 The then Minister of Information said "I don't know what the Police would do on this issue. It is a very political matter." He questioned whether the courts would give orders to Mr. Mugabe or the Police Commissioner.

appointments of war veterans into local government structures, the police and army.

The government was further militarized through a new commandist policy framework. The shadowy national youth service, where thousands of unemployed youths were conscripted into camps and underwent national youth service training, was another example of a state that was remodeling and repositioning itself. Some of the results of the last five years of this new style of governance have been massive illegality, selective application of the law, primitive accumulation and rent-seeking. In addition, desperate for international support, the government of Zimbabwe is pushing normalisation politics and bringing back into urban governance those arguments of the rule of law that it rejected in 2000, when it embraced land grabs. Thus, what emerges is a contradictory state, where contradiction has become a feature of governance.

The state has become a vehicle used and abused by powerful elites, for patronage and accumulation as well as to resolve narrow party political issues, including the unresolved ZANU-PF succession question. It seems the State has become the most prized asset in a fierce competition within ZANU-PF, where various factions are vying for control. Unfortunately ordinary people are the victims of this fierce fight such as in the current operations.

JUSTIFICATION FOR OPERATION MURAMBATSVINA/RESTORE ORDER?

The City of Harare wishes to advise the public that in its efforts to improve the services within the city, it will embark on Operation Murambatsvina/Restore Order, in conjunction with the Zimbabwe Republic Police (ZRP). This is a program to enforce by laws, to stop all forms of illegal activities... Operation Murambatsvina/Restore Order is going to be a massive exercise in the CBD and the suburbs which will see the demolition of all illegal structures and removal of all activities at undesignated areas, among the prior mentioned activities..." (Chairperson of the City of Harare Commission speech printed in *The Herald*, 25 May, 2005).

The official reasons for the demolitions - cleaning up the cities and ridding them of illegal vendors, dwellings and criminal elements - have been received with a great deal of scepticism. While it is true that there is an active parallel economy in Zimbabwe, the presence of an active parallel economy is a statement on the failure of the so-called formal economy. The police arrested people in the early days of the Operation and boastfully announced quantities of seized items, including foreign currency. But it increasingly became clear that US \$1000 and in some cases, amounts such as 800 British pounds, 400 Euros are really not the kinds of amounts that can justify the government declaring that flea-markets and informal traders are involved in foreign currency dealings. Viewed in a context where Zimbabwe's import needs are in the region of US\$300 million a month, and four million litres of fuel are needed a day, clearly the foreign currency and fuel seized by police fell far short of import demand, and again it is a clear case of dealing with symptoms of the problem rather than the causes. As John Makumbe explained: "...you can intimidate people, but you can't intimidate the economy. It will go down whether the government wants it or not". It might be that the parallel market will go further underground and will bounce back.

THE GUKURAHUNDI CAMPAIGN

This campaign epitomizes the lengths to which the Zimbabwean government can go. Zimbabwe experienced a dark phase in its early independence era as a result of the Gukurahundi operation, which saw the Fifth Brigade flushing out dissidents in Matabeleland and Midlands and unleashed the most violent abuse of human rights in post-colonial Zimbabwe, that claimed around 20 000 innocent lives, destroyed housing, property, job opportunities, and incomes, leaving wounds yet to be healed. Government has done nothing to address the trauma suffered, or the destruction and loss of property, income, physical injury, poverty, disease, disability, death and other problems that resulted from this ill-advised government operation. Following the terrorizing of defenseless people in Matabeleland and the Midlands, ZAPU, a nationalist party under the leadership of Joshua Nkomo, which drew massive support in these areas, was

absorbed into a new formation under the Unity Accord in 1987, known as ZANU-PF. With the Unity Accord, the Gukurahundi Campaign ended and peace returned to Matabeleland.

THE LAND INVASIONS

The land invasions of 2000, together with factory invasions, constitute a similar state-sponsored campaign, which demonstrates the ZANU-PF government's propensity to use force whenever it feels its political objectives cannot be met in a civil manner. The stated objective was correcting historical injustices and inequalities.

A clean-up campaign that severely punishes citizens in the cruelest manner, that renders thousands of Zimbabweans homeless, that puts expectant mothers, children, infants, school children, the elderly, orphans and the sick out in the cold of winter, loses the essence of a clean-up. It should be challenged and exposed for what it really is. Conversations with various stakeholders, observers and analysts fail to ground the operation in the official reasons that are offered.

A VENDETTA AGAINST URBAN VOTERS

As urban areas developed into opposition strongholds, ZANU-PF's mistrust of urban areas also grew. Mugabe has attacked them as "people without totems" and in need of political orientation. In June 2000, virtually all the urban areas were won by the newly formed Movement for Democratic Change (MDC). The opposition followed this up by capturing virtually all urban local authorities. In 2002, the urbanites once again voted for the opposition candidate in a closely contested presidential election in which the MDC leader Morgan Tsvangirai rejected the outcome of the election. In June 2003, urban areas were sites of struggle, particularly the failed but politically significant "final push"¹¹, while in 2005, although ZANU-PF claims to have won

the election, most observers issued adverse reports. People in urban areas are clearly more informed on the causes and effects of the crisis and they blame the government.

The fact that some of the urban settlements demolished were in fact strongholds of ZANU-PF supporters needs to be understood in context. Urban settlements, which mushroomed through tacit approval from ZANU-PF, have seen lessening support of late. With the present fierce succession battles in the ruling party, some of the illegal urban settlements created by groups of war veterans were possible support bases for those factions unhappy with the current situation and it is possible that Mugabe, as is rumored, feared that these would become possible organizational zones for an urban-based revolution or would, in the event of an MDC-led uprising, join in for their own narrow political ends. "Mugabe no longer trusts anyone but the military loyalists", said one war veteran. Of course this does not fully exhaust the reasons for the entire operation, but inferences may be made.

PRE-EMPTIVE STRIKE AGAINST POSSIBLE MASS ACTION

Decongesting the Central Business District, and decongesting the suburbs seems to have been a strategic move on the part of Government. Many MDC activists, supporters and sympathisers expected the opposition party to adopt street actions in protest, particularly given statements that had been made by key MDC leaders before the elections. There was some talk of mass protests but the situation did not evolve as in Georgia, Ukraine or Kyrgyzstan. The possibility of a growing risk of spontaneous action is one that has concerned the government since the outcome of the March 2005 elections, although the MDC does not seem prepared to lead massive street protests, or if they were, there was no plan to execute such protests. Serious organisational and ideological challenges exist in the MDC at present which undermine their ability to organize. However, it is likely that the government does not wish to put this to the test

11 *Final Push* was the name given to the one week of democracy activism, through street marches and demonstrations that were meant to force the government to negotiate with opposition forces. For one week, most businesses were closed as people stayed away, and scores of people, opposition activists, and civil society activists were arrested, severely

beaten and tortured by state agents. Morgan Tsvangirai was arrested and charged with treason.

and challenge the MDC, given that the country is at breaking point.

The campaign has been extended to low density areas. The irony is that the Minister of Local Government actually commissioned stands to people and housing co-operatives in several of these places. However, ZANU-PF either lost in these areas, or won with disputed majorities. Therefore, it is argued, the ruling party wants to exact retribution against supporters of the ruling party, who, like most urbanites, were now suffering and would probably support a popular uprising against government.

DESTROYING THE EVIDENCE IN A POSSIBLE ELECTION CHALLENGE?

Most of the peri-urban areas that had become settlements were perceived as being populated by MDC supporters. Reports from the Zimbabwe Election Support Network showed unusually high voter turn-out in these outposts such as one in Harare South and this high voter turn out, almost all the time, tended to favor ZANU-PF. One of the arguments raised by the MDC is that most of these areas did not have the number of people living in the area equal to the numbers of people that had voted. If a physical audit of people living in those settlements versus people who voted could be commissioned, the results would embarrass the government. In order to pre-empt such a challenge by the MDC, the physical evidence has been destroyed, and it is now no longer possible to verify numbers of residents against the votes.

THE IMPACT OF OPERATION MURAMBATSVINA/RESTORE ORDER

The impact is devastating and far-reaching, in particular on the following six sectors.

On the political process: This signifies the death of compassion and the death of a political programme grounded in ethics, values, ethos and norms of liberation. Law enforcement agents have been militarised, placing the police and probably the military leaders on a level with politicians, in a position

where they were making policy statements.¹² As a political analyst observed, “*we seem to be descending into a low intensity military take-over*”. Internally, this process will further tighten the political polarization and tension that already exists. Former government spokesperson and now independent Member of Parliament Professor Jonathan Moyo:

*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.*¹³

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 European Union’s policy review of Zimbabwe, where a minority had advocated low level sanctions; however, after the Operation, the policy review extended smart sanctions to cover key leaders of *Operation Murambatsvina/Restore Order*. It is possible that other western governments will follow suit.

On Workers: Workers have been severely hit by the Operation, leading to calls for wage increases to deal with the higher cost of housing, reduced morale and diminishing productivity due to absenteeism. A Security Guard, with a City Security company, walks from Caledonia Farm every morning to Tafara, to access transport into town and back every day. “*I am doing this for my family. I have three children and my husband is dead. I can’t go home, because there is no home in the village, but I can tell you I will die for my family. I really hate this government to the bone. This is worse than colonialism. . . . Is this what we fought for?*”¹⁴

12 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, 20th June 2005.

13 Moyo gloats at confusion in ZANU-PF, Financial Gazette, p 31.

14 The woman chose to remain anonymous for fear of victimization.

On Vulnerable Groups: 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 have all been forcibly removed from their places of residence, and prevented from accessing resources and assistance from their support groups. Those living with HIV/AIDS have been rendered vulnerable to opportunistic ailments, and death. At Porta Farm, four people died while being evicted from their homes and of those two were confirmed as suffering from AIDS.

On Children: The Progressive Teachers Union and the Zimbabwe Teachers Union estimate that 300 000 school children have dropped out of school as a result of the forced removals, demolition of homes, evictions and displacements¹⁵. Some will be out of school for a longer time, affecting those who were sitting for exams and those who are orphaned children. With a population of 1,5 million orphaned children, the combination of being out of school, lacking homes and being away from social protection will lead to further exposure to crime, prostitution and mass poverty. Child-headed households are at the most risk, and the government's irrational action will contribute to the social repercussions of a lost generation.

On Family Life: The government has introduced forced separation between couples that will impact adversely on family life. At Caledonia Farm, a holding camp that has been condemned by many organisations, children and women are separated from the men because of limited facilities and overcrowding. Children who witnessed their houses being demolished are traumatised. Among those with no rural roots, the conditions of overcrowding and other social challenges will contribute to social dislocations with a long-term impact.

On Poverty and Disease: More than 70% of the population is currently believed to be living in poverty; over 40% cannot access clean water. In Bulawayo City, regular reports of children and adults dying from starvation and malnutrition have been 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. The government has a track record for doing nothing in those circumstances until towards elections, when "money for projects" suddenly becomes available.

RESPONSE TO THE OPERATION

Many organisations were caught unawares by the Operation, and were profoundly shocked. There have been three strategic levels of response to Operation Murambatsvina/Restore Order. The first and most immediate response has been the outcry of negative reaction, a chorus of condemnation that for the first time includes war veterans together with MDC and human rights groups. The MDC, which has been severely criticized for failing to mobilise its urban base, has attacked the Operation as government's retribution against urban voters. The second strategy has been relief and humanitarian aid from NGOs, churches, donors, ordinary people, across the country. The third strategy has been advocacy, diplomacy and policy dialogue. Several civic groups and churches have attempted to engage the government and its agencies to halt the operation. On 15th June, Silveira House convened a meeting attended by various NGOs, churches, activists and government ministers and officials. Participants denounced the ill-advised government policy and questioned its logic. Rev Kuchera reminded government officials that Operation Restore Order was both "unbelievable and barbaric": "It is like burning down the house to kill a rat".

CIVIL SOCIETY SPEAKS OUT

Non-Governmental Organisations

Importantly, civil society organisations have come together to maximize their efforts. NANGO has been active in co-ordinating the response of NGOs, engaging the media, networks and raising the profile of the problem locally, regionally and internationally. The Women's Coalition has counselled government to halt the demolitions, in a society where the feminisation of poverty is clear and where the HIV/AIDS pandemic has taken a heavy toll

¹⁵ As quoted in the Daily Mirror, in June 2005.

among Zimbabwean women. The Combined Harare Residents' Association has mobilized its members to respond to the need for assistance; and the Zimbabwe Lawyers for Human Rights has taken the lead in public interest litigation, helping defenseless people to access the law and seek protection from the law. Their efforts have been met with mixed success, particularly as the judiciary has become unhelpful in its interpretation of human rights¹⁶. Regional and international human rights and civic groups have extended solidarity to Zimbabweans. On June 23rd 2005, more than 200 organizations world-wide joined Zimbabwean human rights groups calling for the UN and AU to take action on Zimbabwe as it is in flagrant violation of several international human rights conventions and standards to which it is signatory.

Faith-Based Groups

Churches and church leaders spoke out boldly against the operation and called upon Christians to take a moral position in defence of the poor, the marginalised and the weak. The Zimbabwe Catholic Bishops Conference issued a press statement on 2nd June 2005, expressing its outrage at the suffering of the most vulnerable members of society. On 17th June, 2005, seeing no end in sight, it issued a Pastoral Letter, declaring that: *"Now almost four weeks since the operation started, countless numbers of men, women with babies, children of school age, the old and the sick, continue to sleep in the open air at winter temperatures near freezing. These people urgently need shelter, food clothing and medicines among other things. . . We condemn the gross injustice done to the poor. . . There has been no concern for the poor and needy in this operation."*¹⁷ The Catholic Bishops' letter brought home the message of God's preferential view of the poor, the weak and the vulnerable very clearly. *"Any claim to justify this operation in view of a desired orderly end becomes totally groundless in view of the cruel and*

*inhuman means that have been used."*¹⁸. The Zimbabwe Council of Churches expressed its outrage, emphasising its support for observance of the rule of law, but condemned the manner in which the Operation was carried out: *"...The clean up has resulted in untold suffering where families are left in the open air in this cold winter. The misery that this Operation has brought upon the affected people is unbearable. We are witnessing the total loss of livelihood for whole families, including for some people who were operating within the parameters of (City) bye-laws"*¹⁹. In the demolition of structures put up by housing co-operatives, the statement continued, *"people have lost whole life investments; some had sold their houses in established suburbs only to have this investment crumble at the push of a bulldozer. The excessive trauma that was suffered by the owners, particularly their children as they witnessed the demolition of their homes could have been avoided. Closely linked to the exercise is the disruption of children's education and exposure to unfavorable conditions experienced in the open"*²⁰

The Donor Community

Donors have been heavily involved in the provision of social assistance to the evicted families and communities, relief to those in holding camps and assisting local organisations with the necessary logistical capacity to implement humanitarian responses on the ground. In the first three weeks, USAID had reportedly rolled out US\$1,2 million worth of assistance, mainly through the Office for International Migration; a reported figure of 400,000 British Pounds was rolled out by DFID; the European Union has been a major player in providing humanitarian assistance; Christian Care and the Red Cross have been very active; and the UN sent a Special Envoy on Human Settlements to assess the impact and context of the Operation.

16 See Dare Remusha Co-operatives vs. Minister of Local Government & Others HC 2467/05 (Supreme Court Appeal No. 169/05).

17 See ZCBC Pastoral Letter issued on 17th June, 2005, as cited in *The Zimbabwe Independent*, page 15.

18 *ibid.*

19 Zimbabwe Council of Churches Statement, *"Churches' Response to Operation Murambatsvina"*, Sunday Mail, Page E2, 26th June 2005.

20 *Ibid.*

RECOMMENDATIONS

To SADC and the AU

These must apply peer pressure on Zimbabwe. The SADC region must not be afraid of embracing consistent human rights standards in applying peer pressure to the Zimbabwe government. South Africa in particular, whose quiet diplomacy has yielded nothing positive, must work with SADC to leverage domestic efforts to restore democratic governance to Zimbabwe. South Africa must not use its influence in the AU or the UN to block motions of censure motivated by the excesses of the Zimbabwe government. You cannot say, Zimbabwe must solve their own problems, and then proceed to block motions motivated by the experience of Zimbabwean citizens against their errant state. The African Commission on Human Rights must be made aware that domestic remedies for the defence of human rights are so thoroughly compromised, that they are almost non-existent.

To the Government of Zimbabwe

- The government must restore democratic governance. There is need to stop the operation and embrace dialogue, persuasion and other forms of engagement with citizens in addressing the various challenges that Zimbabwe faces. The Government must also embrace the rule of law to the fullest extent, desist from selective application of the law, protect human rights, and guarantee the independence of the judiciary, restoration of media freedoms and political tolerance. Absence of these is at the heart of the crisis.
- The Government of Zimbabwe is a state party to several international conventions at the SADC, AU, and UN levels. The state party to international human rights conventions has an obligation to guarantee the enjoyment of rights, freedoms for its citizens. In this spirit, the Government of Zimbabwe must co-operate with local and regional civil society groups, the AU, African Commission and the UN in restoring basic rights that have been severely undermined by Operation Restore Order.

- In this regard, the government must take positive measures to address poverty, education and health care needs of the population by putting in place a conducive economic and social policy framework, and a good governance framework that sees citizens as the ultimate beneficiaries of policy and therefore involve them seriously in the formulation of those policies.
- Government must fully compensate those who lost lives, property, savings, belongings that they had legitimately earned over many years. They must also bring to account the culprits among the police force who looted goods and property from helpless victims of the Operation. The police force faces a major crisis of confidence within the population.
- The housing delivery programme must be transparent and consistent with the objectives of ending poverty among the most vulnerable groups irrespective of their political affiliation.

To Civil Society

- There is need for a more robust, analytical and creative civil society.
- Civil Society needs to be united and continue with the efforts of advocacy and lobbying. There is need to comprehensively audit the real impact of Operation Murambatsvina/Restore Order particularly on the poor, women, children, the vulnerable groups, and the informal sector among others. There is a need for real human stories to come out.
- Civil society is the watchdog of democratic governance, observance of the rule of law, human rights. There is a strong need to synergise efforts across sectors, perspectives and experiences, so that the Zimbabwe government can be brought to account for its excesses. At the same time, however, where opportunities exist for dialogue, civil society must prepare for such dialogue and use it as an opportunity to restore democratic governance in Zimbabwe.

There is a real possibility for Zimbabwe descending into a situation of anarchy and ungovernability. The actions of government have demonstrated that once again government is ready to unleash unprecedented levels of violence and human rights abuse on its own citizens. An analysis of the range of potential reasons for launching an operation as insensitive as operation Murambatsvina/Restore Order leaves one to conclude that these are the actions of a desperate and vulnerable government that no longer has the capacity to address the monumental problems that Zimbabweans have to resolve.

The Zimbabwe Liberators Platform (ZLP), a group of war veterans not aligned to the ruling Zanu-PF party said the operation was unlawful, brutal and insensitive. "Even war veterans who were used as cannon fodder by the ruling party to invade farms in 2000 have become victims," said ZLP in a press statement. "Today they are being dumped and assaulted, their homes destroyed and pieces of land taken away from them. Their human rights are being violated with impunity."

Chapter 4

THE SPIRIT AND PURPOSE OF URBAN PLANNING: A PERSPECTIVE ON “OPERATION MURAMBATSVINA/RESTORE ORDER” – THE PHYSICAL DISPLACEMENT OF THE INFORMAL SECTOR IN ZIMBABWE

INTRODUCTION

The Regional Town and Country Planning (RTCP) Act (Chapter 29: 12, revised in 1996) which is the primary town planning law in Zimbabwe was used as the basis for the unprecedented demolitions carried out under Operation Murmbatsvina/Restore Order. An urban planning perspective is therefore necessary given the magnitude of the damage caused by Operation Murambatsvina/Restore Order in the major towns, especially Harare.

BACKGROUND

Plans are meant to facilitate the prosperity of human existence, and it is therefore important for us to have some insight into the spirit and intent of urban planning law and practice. A key assumption made about plans is that there is plan management by properly resourced and mandated institutions. Urban planning practice is legally founded on the 1976 RTCP Act (Chapter 29:12, revised in 1996) and its regulations. The same legislation defines Local Planning Authorities (LPAs) as distinct from Local Authorities (LAs). Technically not all LAs are necessarily LPAs. The minister who wields a lot of power over LA affairs has the power to withdraw this status as deemed appropriate. All cities, municipalities and towns in Zimbabwe are accorded such LPA status where they have a legal responsibility to discharge all urban planning powers. Elected ward councillors are headed by an elected executive mayor or chairperson to form

a council that represents the people and makes binding planning decisions guided by the RTCP Act.

Statutory spatial strategic plans become law when signed by the mayor and the minister for local government. Planning practice over the years has shifted from rigid planning schemes to more organic and flexible strategic plans, a shift due in practice to a number of factors that included schemes that were unresponsive to new needs and new challenges; and schemes that became more and more restrictive and inhibitive to economic development and new innovation because outdated planning choices enshrined in the schemes remained legally in force. Current strategic planning instruments used in Zimbabwe are more flexible and accommodating of new developmental requirements. These instruments are designed to meet changing human needs while taking into consideration concerns for safety, health, economy and good environment. Plans which incorporate the spatial and physical policy details that create the urban environment we see are themselves subject to review through amendments or changing applications. This is particularly important for a basic understanding of the spirit and purpose of urban planning practice.

Planning law and practice generally recognises its inability to fully approximate future societal requirements and is therefore flexible and accommodating as opposed to being merely restrictive and prohibitive. This is where the very important concept of regularization comes in. Developments that may have been carried out without a permit for whatever reason are

retroactively considered and granted retrospective approval. The RTCP Act provides for regularisation as the law recognises that due process with regard to development procedures may not always be followed, but that does not make the actual development so carried out unacceptable to the LPA. In terms of Zimbabwean law, the absence of a planning or development permit does not automatically mean demolition. Due process can become subservient to the interests of human life and economic development. This is why regularisation remains a legal option and is normally considered as a first option. The spirit and purpose of urban planning put simply is, therefore, human or public good, human livelihoods, sustainable economic development and good environment. The essence of good urban planning is not a pursuit of a lifeless and irrelevant spatial outlay that looks beautiful on paper, but rather a robust accommodation by physical space of real-life human expectations and activities. Effectively planning is not an end in itself but a means to an end. Plans are not sacrosanct, but are documents that can be amended and improved to reflect current needs. Unfortunately authorities can take plans that are out of touch with current needs and use them to repress progress. Planning by its nature is futuristic and common-sense dictates that there is no way the future can be precisely predicted on a piece of paper. Therefore plans, while they may have a legal status technically, remain mere guidelines or approximations of what society may desire at a future date. A key assumption here is that the LPAs themselves are institutionally capable of managing the plans they are custodians and implementers of.

There must be both the economic and political will to work the planning processes and ensure that agreed standards are attainable. In tandem with this, planning standards are amended over time as societal constraints change. For example, planning standards that affect housing estates were reduced in the last five years as they were making housing provision too expensive and unaffordable for the poor. The goal was to house the poor, and planning had to find a way of doing it. Similarly when planning was faced with an Economic Structural Adjustment Program (ESAP) in the early 1990s and the resultant recession, it responded with deregulation of its procedures and reduction of standards in order to meet new life challenges. This

effectively opened the gates for the growth of the informal sector. The Ministry of Local Government realised that its local government planning rules and regulations were hindering the entrance of new developers and they then set up a Deregulation Unit in 1992 whose purpose was to reduce barriers to development.

Planning principles are meant to enhance life but in general planning practice has tended to be elitist, following ideals that exclude the poor. The destruction of an informal sector that has left a new class of the homeless and destitute in Zimbabwe's towns should not be seen as an example of proper planning considerations. Placed in the context of the spirit and purpose of urban planning — people, public good, health, safety, sustainable economic development and environment — these actions are a mockery of such principles and an abuse of planning legislation. Good planning answers questions, understands impact and always takes a holistic view of issues.

GROWTH OF THE INFORMAL SECTOR

The informal sector in Zimbabwe has had at least three lives which are a reflection of both political and economical seasons experienced in the last century, with the fourth life currently unfolding:

- i. Pre-independence (1980) or colonial
- ii. First 10 years of independence
- iii. The 1990s (ESAP era) to 2004
- iv. 2005 and beyond (period under discussion).

The colonial period (inclusive of the Unilateral Declaration of Independence period from 1965 to 1979)

Before independence there was not much of an informal sector as planning controls were very tight. Repressive legislation like the Vagrancy Act and the Housing Control Act were effectively used by the government to keep all unwanted black people out of the towns, which were designed primarily for Europeans who also enjoyed the right to own property. Africans were geographically separated into areas where they lived in council-

owned houses. There were limited informal sector activities as tenants feared being evicted from their rented accommodation. Council controls through inspections and arrests led by the police were thorough. Because of limited rural to urban migration there was little competition for jobs and workers would often take jobs for part of the year and leave for the summer to prepare their fields, returning to the urban areas a few months later after key agricultural tasks were done, and then find a new job. Well over 80% of the total population, mostly Africans, lived in the rural areas. Those who lived in towns had strong economic and social linkages with their rural areas. The concept of the rural safety net was intact as African urbanites technically ran two homes. This is a key distinction of this era. At that time Africans accepted that they were “visitors” to urban settlements and that they would eventually return to their traditional lands. It was considered foolish to think that urban areas were a permanent home. Small informal sector activities were run by people who held other jobs and included tailoring, shoe repairs, tin-smithing, while home industries had designated sites at major high density shopping centres.

The first 10 years of independence

Major changes took place with the advent of independence. Africans could now own property in any part of town. Tenants were allowed to buy their leased houses with those with tenancy of more than 30 years paying nominal fees or getting houses for free. While Africans became urbanites, the links with the rural areas remained intact throughout this period but began to weaken because of home-ownership and a vibrant economy in the urban areas that generated a new sense of social security. Laws that prohibited rural to urban migration were relaxed and saw an influx of people to the urban areas. Competition for jobs increased, partly as a result of the increase in high school graduates as a result of the “Education for All” policy. The informal sector became institutionalized as the urban formal job market failed to absorb job-seekers. Designated spaces for the informal sector were set up, approved by the councils, where occupants paid council for the use of these areas on a monthly basis. During this period informal sector activities became widespread and accepted in towns and cities.

The 1990s ESAP and post- ESAP period to 2004

This period marked the beginning of a boom in the informal sector. By this time over 30% of the population lived in the urban areas. Government adopted ESAP which was neither home-grown nor a reflection of local conditions. ESAP resulted in massive retrenchments of skilled and unskilled employees, and thus began the collapse of the formal sector. In response to rising unemployment due to job losses, the government kick-started the ascendance of the informal sector by instituting a programme for deregulation that reduced regulatory bottlenecks to allow new players easy entry into the production and distribution of goods and services. Deregulation specifically promoted the informal sector by reducing planning barriers to developers. Statutory Instrument (SI) 216 of 1994, (Regional Town and Country Planning (Use Groups) Regulations, 1994) went a long way in seeking to accommodate non-residential uses in residential areas, such as hairdressing, dressmaker, knitter, book-binder, wood or stone carvers were accommodated under “uses which may be permitted in residential areas”. Permitted by special consent of council were occupations such as welder, carpenter, tin-smithing, shoe repair and small-scale car repairs, signaling the intention of government to promote the informal sector in residential areas.

Urban residents seized the opportunity to establish informal sector ventures in their homes. As formal sector opportunities decreased, residents intensified their informal sector activities. Since SI 216 was centrally driven through the Deregulation Unit in the Ministry of Local Government, some local authorities in protest decided to ignore informal sector activities, and in a way the deregulation process took away powers of local authority to fully control development process within their jurisdiction in the non-progressive way they wanted. Urban managers were ill-equipped to facilitate the growing informal sector and there was a lack of leadership to direct spatial accommodation of informal sector activities. Unfortunately, this governance crisis was never addressed and the informal sector literally grew without any guidance whatsoever in Harare and other areas. The country’s economy never recovered from the impact of ESAP. Political decisions that included war in the Congo, unbudgeted payouts to war veterans and land invasions further burdened the fiscus,

leading to fuelled inflation. The informal sector grew rapidly - furniture shops in Harare began placing orders with street producers who had been retrenched from the formal sector. Activities like car repairs, welding, timber distribution, and sale of second-hand goods of all types became the mainstay of the informal sector.

Rural to urban migration increased as economic decline affected rural areas, exacerbated by severe ongoing drought. The demand for housing in urban areas, especially Harare, could not be met. Councils could not build houses due to budgetary constraints and in some cases poor management. Only a few cities like Bulawayo remained active in housing provision. This gave rise to extensive informal housing in towns like Harare, Mutare and Victoria Falls.

The City of Bulawayo, however, became an exception to the nationwide indifference that characterised informal sector activities. A stakeholder process to resolve chaotic vending issues in the city's central business district was initiated by government minister John L Nkomo, and included the vendors who organised themselves as the Bulawayo Informal Traders Association. At the beginning of this process, *The Chronicle* of 23 October 1995 reported that "The Government is calling for urgent inter-sectoral consultations to seek ways of controlling vending in urban areas, the minister of Local Government, Rural and Urban Development, Comrade John Nkomo, has said." Further in the same report the minister is quoted as saying, "We have no time to place blame on anybody. We have to work together to come up with a solution that will suit all sectors. We as the Government want to ensure public safety while we also ensure that both formal and informal businesses benefit from the trading environment the nation as a whole will create". A year later, after many stakeholder meetings and public interaction, *The Chronicle* carried a comment on 6th September 1996 entitled "Bold Move on Vending", applauding council's resolve to designate eight vending sites in the central business district of Bulawayo. Council went on to successfully implement this policy with full co-operation of the vendors. Unfortunately this example was never replicated countrywide. At this time, the legal informal sector in Bulawayo has been razed to the ground by Operation Murambatsvina/Restore Order.

LEGAL PROCEDURE

Activities carried out without prior approval of the Local Planning Authority (LPA) are deemed as illegal and there are two instruments provided by the RTCP Act for dealing with such matters, the Enforcement Order (EO) and/or the Prohibition Order (PO) that are served on the developers of such activities. With the EO, a month is given to regularise the activity through application to the LPA or wind down the activities and cease operations after the month is over. The EO is the preferred route of most LPAs as there is a minimal chance of the LPA suffering losses through litigation. On the other hand, the PO requires that the developer stops activity with immediate effect and failure to do so means the LPA will move in and forcefully halt the activity at the cost of the developer. POs are used where an activity has very little reasonable chance of approval by the LPA and actually poses a real danger to the community. The city put out a general enforcement order together with a prohibition order in *The Herald* of May 24 and May 26 which meant that on those dates any illegal activity had to cease and illegal structures had to be removed immediately. The requirements of the RTCP Act were fulfilled and demolitions were, and are, being carried out on that basis.

Dare Remusha Co-operative, which lost its members' houses through demolition, appealed against this loss to the Administrative Court. The appeal could not be upheld because applicants had not obtained council approval for their developments. Their legal counsel "conceded that he was not questioning the lawfulness or otherwise of the action taken by respondents, but was questioning the manner in which the action was taken" notes Justice Karwi in his judgment of 3 June 2005. It is, however, important to note that Justice Karwi mentions that action taken by the respondents had caused untold suffering and that displaced people had nowhere to go. He laments that notice was inadequate for people to relocate and re-establish themselves. Put differently, satisfying the requirements of a particular law is inadequate if it leads to creation of a national crisis. This cannot be condoned from a human rights perspective. What is called for is not just rule of law but a responsible application of law.

The question to be posed from a humanitarian and a rights perspective is this: can we say what we are seeing in these demolitions is truly the purpose of the law? To destroy property and housing on such a massive scale without regard to environmental and social impact is a violation of human rights. While it may well be necessary to correct past failures, the present method of doing so must be seriously questioned. The authorities say this is not the first time it has been done, for example, South Africa and Zambia. However, those governments provided alternative accommodation before they demolished structures. The author in February 2004 personally observed in the old Alexandra Township of Johannesburg, South Africa, a well-organised clean-up operation where transit homes were built first and people moved from their illegal housing to these new homes for a set period of time. Suburbs were redeveloped and people brought back while those who could not be accommodated were taken to new housing schemes. No-one willing to be registered by the authorities was left in the open or homeless. Blocks of overcrowded flats were also dealt with in phases without disrupting the lives of the people involved. Clearly this would require a lot of planning, consultation with stakeholders and capital outlay.

THE DEMOLITION PROCESS

Residents with illegal structures on their properties were given 1-4 days notice to vacate and dismantle them; if they did not do so, the police with bulldozers, picks and hammers brought the structures down. Most people lost everything, except that which could be recovered from the rubble. The police took the lead in the demolition process, rather than local government officials. Jonathan Pindor, writing about demolitions in Victoria Falls in the *Cape Times*, 20 June 2005: "Armed with a council plan, the police began setting alight brick houses. When their owners protested that they had paid for and been given the stands and building rights by the council, police said they'd been illegally issued by a corrupt official and had to be demolished". In the front page story about demolitions continuing in St Mary's, Chitungwiza, *The Herald* of 20 June 2005 wrote: "In the ensuing demolitions toilets were also brought down raising the ire of

some residents. In St. Mary's, a group of women confronted a policeman demanding to know why toilets at their homes were demolished. Toilets in the suburb were built as outside structures and a genuine mistake could have easily been made by the police thinking that they were illegal buildings. Water gushed out from the damaged piping system of toilets while the residents watched in disbelief". Plans that required professional interpretation were used by the police; it is unlikely that these plans were correct or the most up-to-date.

THE IMPACT

Estimates of people affected by this operation range from 300 000 to 1 500 000 people. It is reported that the City of Harare did a count of doors to structures that were illegal around March 2005 and recorded 550 000 doors. Each door could practically represent at least two people, giving a population of at least 1 million people affected by the destruction of informal housing. It is understood that Harare was going to charge between \$65 000 and \$95 000 per door per month backdated, thus losing \$35,75 billion dollars a month from informal housing. In most towns there is more stock of informal housing than formal low cost housing. The City of Mutare has 21 900 low cost informal houses but had 32 500 informal houses. Victoria Falls has less than 4 000 low cost houses but had 5 523 informal housing structures. In smaller towns like Kariba and Karoi, 4 000 and 6 200 informal housing structures were destroyed respectively. In the last five years, only Bulawayo has made meaningful strides in building houses for its residents with their Millennium Housing Project which achieved 200 000 units.

It is reported that around 30 000 informal traders were arrested by police. Overnight, hardworking poor people were criminalised. The City of Bulawayo lost an estimated \$62-million dollars a month. Many people legally operating in their designated positions lost both their goods and the market stalls they operated from. Harare is said to have had 25 000 registered informal traders with an estimated 50 000 operating illegally; this implies a loss of at least half a billion dollars a month, assuming a minimum payment of \$20 000 per month.

Countrywide, 300 000 primary school children were reported as having dropped out of school (*Zimonline* (SA) 18 June 2005), and it is doubtful whether they will complete the year. Enrolment is said to have dropped by 50% in Mbare's primary schools (*News 24*, South Africa, June 25).

From physical inspections in Harare's high density areas of Mbare, Mabvuku and Tafara, no street was spared the agony of destruction. Whole communities were destabilised. Mbare, like Makokoba in Bulawayo, is the oldest suburb and is largely populated by Zimbabwean nationals of foreign origin who have no rural home to return to. Mabvuku and Tafara were suburbs created for domestic workers from the formerly white eastern and northern suburbs. Mutare's Sakubva high density area had arguably the highest number of wooden cabins in the country; with the cabins gone, so has set rental income for poor families. The inability of the government to provide adequate shelter for its citizens is in our view the sole cause of these informal housing structures. If an appropriate housing scheme had been implemented many of the homeless would have successfully participated. It is ironic here that the failure of government policy is squarely blamed on those who dare find a solution.

The expected reversal of rural-urban migration will be minimal and to a large extent temporary. Nowhere in the world has such reversal of migration worked. Many of those who lost their homes besides informal traders and producers include policemen, civil servants, soldiers, security guards, general workers, people who have jobs they will not easily give up. Reports indicate that mainly women and children have been forced to leave town for rural destinations, while the majority of the employed have either remained stranded or have moved in with friends, relatives, or been packed into institutional housing. Some have found new accommodation which is now very expensive as demand far outstrips supply. Those that went into the rural areas are expected to return eventually, in view of the difficult food situation there due to drought and a possibly hostile political reception. Thus, instead of the situation in the urban areas "improving" socially it will grow worse with greater congestion than before.

WHY THE DEMOLITION AND DESTRUCTION OF THE INFORMAL SECTOR?

Clearly this destruction was targeted at the poor and underprivileged who are the majority in the cities. The urban poor are not the same as the rural poor who have 'voice' and are 'invisible' according to Robert Chambers' characterisation of the rural poor. The urban poor have some measure of voice and are definitely visible on the urban-scape as their skills and innovations are shown on side-walks, flea markets, open spaces, and backyards of houses. These are women and men who have taken control of their lives through hard work. The overall intention is to drive out the poor from the urban areas, reflecting a view that "if we cannot control the informal sector let us formalise it so that the state can benefit "from a robust informal sector constituting over 60% of overall economic activity and employing more than 70% of total labour force" (*Daily Mirror* 6 June 2005, p.3). This thinking derives its logic from Reserve Bank Governor Gono's attack on the informal sector when he presented the monetary policy in mid-May 2005. The informal sector has become synonymous with the black market; it is viewed as the fuel for foreign currency deals, and shady activities, and it may be the view that if the informal sector is destroyed, then the circulation of foreign currency in the parallel market will be eradicated.

WHAT COULD HAVE BEEN DONE?

There are a number of local participatory stakeholder processes that involved local authorities in Zimbabwe that could have been harnessed to resolve the challenge of the informal sector and illegal structures/activities. Bulawayo's successful strategy to accommodate the informal sector after chaotic vending had taken up the central business district is a good case in point worth of study and replication. The good thing is that participatory strategies and process ownership are embraced in most local authorities especially those that have participated in donor-supported programmes that promote stakeholder engagement and dialogue. It is noteworthy that stakeholder participation is a known requirement for all Turnaround Strategic

Plans that local authorities are developing in order to access funds from the Reserve Bank.

The challenges that unfortunately led to these demolitions could have been addressed by adopting and launching a process approach that involves all concerned; beginning with problem identification and working through to strategy development with the stakeholders. Below are some possible steps:

- Define a reasonable time period, say one year, to resolve this matter
- Identify all the key stakeholders and group them according to their activities/interests
- Carry out a participatory problem and situation analysis (a before and after assessment)
- Develop participatory alternative solutions or strategies to alleviate the challenges, allowing the affected poor women and men to offer what they believe are workable solutions and allow them to define their role and contribution — this is key for sustainable development. Heavy top-down approaches are devoid of critical local knowledge, local sensitivities and local ownership.

WHAT SHOULD BE DONE NOW?

Observations on the Ongoing Destruction of the Informal Sector

What should be done now must be premised by some observations and views on the ongoing destruction or displacement of the informal sector activities. The following are considered important:

1. Moves to partially formalise some sections of the informal sector will succeed but generally the informal sector is here to stay, since by nature it will change its mode of operations to suit new constraints
2. Only those without meaningful incomes and who have rural homes (mainly women and children) will temporarily relocate to rural areas until the effects of drought and hunger drive them back to the urban areas

3. Some will remain totally homeless and jobless as they have lost on both fronts. These people need major humanitarian support
4. Those who lost homes but have relatives and friends in town have moved in with them. While the urban social security net has kicked in, the rural social safety net has been undermined by droughts and migration
5. The challenge for shelter will continue, as houses are expected to become more expensive and more congested
6. The local planning authorities' institutional capacity to do what they failed to do in the last ten years is not going to change overnight even if the Zimbabwean economy does begin to recover
7. While the LPAs will become more assertive in handling informal sector and illegal development matters, restoring the old governor- governed relationship will not solve the real urban problems
8. Clearly there is a lack of understanding of the informal sector in government institutions as government is likely to move towards greater control of the sector. Government needs to understand that the notion of the informal sector is firmly premised on survival and that failing economies will perpetually give birth to informalism
9. The rise of metropolitanism heralded by the appointment of governors for major cities should be viewed in terms of political mileage, increased bureaucracy, greater incidence of patronage and heightened nationalisation of local government operations
10. The \$3 trillion which government intends to use to set up the sector is inadequate, and is also unbudgeted and therefore unavailable. An amount of \$1 trillion may be available in reality. In the 2005 budget there is no allocation for Housing Development but the focus is on maintenance, which takes a large amount of the 2004 and 2003 budgets. In 2004 housing development was allocated a meagre 2.6% of total Ministry of Local

Government budget while in 2003 the allocation was 2.9%

11. The promised release of some 250 000 residential stands needs to be carefully monitored to ensure that those that truly were disadvantaged are those that benefit. There are fears that the said stands will actually go to beneficiaries on waiting lists that existed before the demolitions. Initially government had said it would develop houses for people but has since reneged on this commitment due to a lack of funds to do so.

ACTION

Action must be two-pronged; first to the displaced people and secondly to the displacing authorities at both central and local government levels.

Displaced People

- Displaced people must be organised: The most critical thing is for those in the informal sector whose livelihoods have been affected to organise themselves into interest groups/civil society organisations/community associations. In Bulawayo this was a prerequisite in the successful accommodation of informal traders in the CBD. The Bulawayo Informal Traders Association (BITA) was formed to negotiate with council and eventually had an equal voice with the formal business association ZNCC. Ideally the groups should be sector-specific i.e. those dealing with vegetable marketing or production of furniture. The poor and disadvantaged must have a co-ordinated voice. It is important for them to project their interests without being overawed by the authorities; for example, in South Africa there is the Homeless People's Federation.
- Displaced people must be trained and informed: Knowledge is power and ignorance is a curse. When people are organised it is easier to disseminate information. Many people were misled by political

gimmicks into investing their life savings in housing schemes that are now being demolished.

- Displaced people should continue to be targets of humanitarian assistance: Some have been thrown into extended destitution and will need support. Some who may be allocated new residential stands or new market or production space may need assistance if they are to take up these opportunities. The whole drive against the informal sector has as one of its motivations that they pay substantial sums of money to their LAs and the State. At the same time they have to rise from this major setback where some have lost everything.

Local and Central Government

- Should be engaged at a human rights level on what it intends to do for the displaced people. Developments might have been illegal but the people are not illegal. Capacity of government to meet its promises should be monitored and assessed to ensure that genuine cases of need are catered for.
- Government should be challenged and pressured into a paradigm shift that recognises that process approaches are the only route to sustainable development. Force has short-lived results.
- The RTCP Act must be amended to reflect human rights so that in future such acts as this operation are avoided. At a broader scale, it is ideal that Local Government be a constitutional establishment rather than a statutory establishment as it is presently.
- Document the success stories of participatory actions at community level for use by local and central government arms. Authorities appear unsure of how to deal with the poor and assist them on a path of life-long transformation.

CONCLUSION

In conclusion, it is clear that the state destroyed informal housing in high density residential areas of Zimbabwe's cities and towns without giving adequate notice to the occupants, without organising alternative accommodation for the thousands of affected women, children and men; the state gave no reasonable explanation why the matter of a clean-up and its destruction was so urgent and neither was there an environmental disaster that could have warranted such action; some of the people who lost their homes had actually been allowed to build by senior government and political party officials; the state destroyed the operations of the informal sector without due regard to its previous support for the informal sector development in the country and without a clearly conceived plan to properly accommodate the sector nor a budget to support new development; that the powers wielded by the minister appear excessive given the manner in which central government commandeered the destruction of even legal informal sector operations with police support. While the demolitions were done in terms of the RTCP Act 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. The extent of social and economic destabilisation that has resulted is completely unwarranted and cannot be justified. Planning law is not the antithesis 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 it – you can as well burn down the whole country. The loopholes in the RTCP Act have been taken advantage of as the authorities wage war against the poor - women and widows, destitute children and disadvantaged men, as well as many suffering from HIV/AIDS. The speed with which government moved on the demolitions effectively removed judicial discretion that would have required the state to be responsible for the impact of their actions. This is thus a human rights issue and its conclusion will lie in that domain rather than the planning law domain where it has been played out thus far.

Abese Andrea (38), her spouse, Faro Zuze (43), and their two children have been at Porta Farm for 14 years. They used all their resources to build a four-roomed brick house. "We were happy here and supplemented our incomes through catching and selling fish from Lake Chivero as well as casual work at nearby farms. But all that is gone. Who in their right mind would support a programme that destroys people's homes and relocates them to live in the open away from their source of livelihood?" she asks.

Chapter 5

THE LEGAL FRAMEWORK: OPERATION MURAMBATSVINA/ RESTORE ORDER FROM A RIGHTS AND LEGAL PERSPECTIVE

“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 marginalization. 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.”²¹

BACKGROUND

On May 19, 2005, the Government of Zimbabwe, in conjunction with the City of Harare and working through the Zimbabwe Republic police and the army, embarked on ‘Operation Murambatsvina/Restore Order’. The aim of the operation was given as being to clean up the city and rid it of illegal vendors, illegal dwellings and criminal elements who were, among other things, accused of fuelling the foreign currency black market. The operation, which is ongoing, has seen 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 has spread to other towns and cities in Zimbabwe, where basically the same *modus operandi* has been employed, with devastating effects. Of particular concern, apart from the very fact of the forced evictions, are the following issues

- The State and its various arms, especially the police and the army, have been instrumental in the operation
- The operation has been conducted without regard to the due process of the law and without regard to the various human rights conventions to which Zimbabwe is a signatory
- The operation has thus far targeted the urban poor, who are already overburdened by the harsh economic environment prevailing in the country
- The operation has increased the hardships experienced by special categories of people, including people living with HIV/AIDS, a significant number of whom were already bedridden or receiving anti-retroviral treatment, children orphaned by AIDS, women-headed households, people with disabilities and the elderly
- The affected people have been left homeless and destitute, there being no alternative shelter and no alternative means of livelihood provided by government
- Those with nowhere else to go have been rounded up and forcibly removed to holding/transit camps where living conditions are sub-standard and where for a long time civil society organisations have been denied access

21 Justice Albie Sachs in the Constitutional Court of South Africa, *Port Elizabeth vs. Various Occupiers*

- The grossly insensitive manner in which the operation has been conducted can be said to amount to cruel, inhuman and degrading punishment or treatment.

This paper will consider what the international framework provides for in such situations. It will also consider the Zimbabwean law in terms of which the evictions are purportedly being conducted. An analysis of a few cases in each section will be considered with a view to ascertaining whether any remedies exist for the affected and, if so, what these may be. It will also consider whether any of these remedies are accessible in the Zimbabwean context.

THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The International Convention on Economic, Social and Cultural Rights (ratified on 13 May 1991)

The Convention on Economic, Social and Cultural Rights 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 the General Comment No. 4 of 1991 of the Committee on Economic, Social and Cultural Rights, 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 of other rights such as the right not to be subjected to arbitrary interference with one's privacy, family and home. The Committee 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 are currently occurring. Forced evictions are defined as

“the permanent or temporary removal against their 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 and with or without State sanction.”

The General Comment further notes that forced evictions may also result in violations of civil and political 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 Committee recognised particularly the vulnerability of special groups like women, the elderly and children who all suffer disproportionately in forced evictions. The Committee further recommended that where evictions are unavoidable then certain procedural guarantees have to be effected and these include:

- An opportunity for genuine consultation with those affected
- Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction
- Evictions not taking place in especially 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
- Evictions should not result in individuals being rendered homeless or vulnerable to the violation 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.

In Zimbabwe, each of these recommendations has been violated. No opportunity for any consultation with the affected people was ever presented by government before the destruction of homes and forced evictions took place. The evictions continue to take place in the middle of Zimbabwe's winter season. It was raining in Epworth as the government destroyed people's homes. Legal assistance is being provided by non-governmental organisations (NGOs) but efforts to obtain relief for the affected are being hampered by a non-responsive judicial system. Thus far the High Court has 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.²² 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 processes are essential aspects of all human rights, but more so where forced evictions are at issue. Most importantly, the forced evictions have rendered thousands of people homeless and thus vulnerable to the violation of a number of other rights, including the right to security of the person, right to privacy and dignity and the right to life. Two children have already died as a result of the operation, killed by falling rubble as houses were being demolished. Two more people died at Porta Farm in incidents that can be linked to the operation.

The International Covenant on Civil and Political Rights

Zimbabwe again ratified this convention in 1991. The convention 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 his/her 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 provides for the right to protection of the law against arbitrary or unlawful interference with privacy, family and home. Again an analysis of the operation will show that all these rights have been violated by the very state which ratified the convention. Even worse, Zimbabwe sits on the International Commission on Human Rights.

²² Dare Remusha Cooperative vs. The Minister of Local Government, Public Works & Urban Development & 4 Ors HC 2467/05 (Supreme Court Appeal No. 169/05). Matter was dismissed by Karwi J. An appeal against this decision is pending before the Supreme Court. Batsirai Children's Care vs. The Minister of Local Government, Public Works & Urban Development & 4 Ors HC 2566/05- this case has been postponed several times and despite the clear urgency of the matter, the judge has declined to award interim relief.

The African Charter on Human and People's Rights

In Article 5 the Charter 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 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 State in Zimbabwe acting through its various agents did not afford the affected people this right. The Rural and Urban Planning Act 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.²³ Apart from these rights, the Charter also provides in Article 14 for the right to property. Article 18 provides the right to protection of the family unit and in addition, creates a duty on the part of the State to assist the family. The opposite is happening in Zimbabwe, where families have been split by the evictions, with men remaining in single quarters, while women and children move to rural areas. For those in Caledonia, women have been separated from their husbands.

Use of International Conventions in Domestic Law

The Constitution of Zimbabwe in Section 111B provides that international law remains at the international level unless and until domesticated through an act of parliament. Section 111B in pertinent part provides that:

1. *"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*

²³ The residents of Porta Farm have been to the High Court no less than 5 times. Orders were granted interdicting the State through the police and the local authority from evicting the residents, but these were ignored. Contempt of Court proceedings have been brought and judgment is pending. Case Number HC 3225/05.

more foreign states or governments or international organizations-

- 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, 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 they can provide guidance where there is a lacuna/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.

COMPARATIVE LOOK AT INTERNATIONAL AND REGIONAL CASES

In addition to the above, cases decided on the international front are useful for courts to draw guidance from. In the case of South Africa, such judgments have persuasive authority. This discussion will briefly highlight some important points arising out of certain international and regional cases. One of the leading cases on housing rights is that of *Olga Tellis and others v. Bombay Municipal Corporation and others* ((1985) 3 SCC 545). The State of Maharashtra and the Bombay Municipality in 1981 moved to evict all pavement and slum dwellers from Bombay City. The pavement dwellers claimed 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 in order 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 action must be reasonable and persons affected must be afforded an opportunity of being heard. The court also ordered that the evictions be delayed until one month after the end of the monsoon season in order to minimise hardship caused by the eviction. In a very important decision for human rights jurisprudence, the court held,

*"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 sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. *That which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life.....*" (emphasis added)*

This decision was followed in the case of *Shanti Star Builders v Naryan Khimali Tatome et al* [1] SC 106, Civil Appeal No. 2598 of 1989 (JT 1990). The Supreme Court used the right to life to show that the right to adequate housing is necessary for the achievement of the former 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 fulfill the constitutional goal in man's development. Therefore it should be taken as part of "life" as envisaged in Article 2.1. Again in *Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others* (1991 Aupp (1) SCC 600), Sawant. J. in a concurring judgment with the majority commented, "*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.....*" (emphasis added).

In South Africa, the case of *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC) further advanced 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. They applied to the High Court for an order requiring the government to provide them with adequate basic shelter or housing until they obtained permanent housing. Justice Yacoob for the Constitutional Court considered the import of Section 26 of the South African Constitution which provides for the right to housing. He stated that the issue is not whether these rights are justiciable or not, but how they can be enforced. He held that in considering these rights it may be difficult to say if 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.

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.

DOMESTIC LAW

The Constitution of Zimbabwe provides, among others, for the following rights: Section 12 provides protection of the right to life: but life was lost when children were crushed by falling rubble, and life was also lost when bedridden people were turned out into the cold, just as lives will be lost when people who were on ARV can no longer access treatment or adhere to their treatment governments. Section 15 provides for freedom from torture, inhuman and degrading punishment or other such treatment. It has been held that the process of forced evictions is tantamount to treatment of an inhuman and degrading nature. Section 16 provides for protection of property: property worth millions of dollars was lost and destroyed during the campaign. Section 18 provides for entitlement to protection of the law: however, the law even where legal rights were found to exist failed to protect right holders. Section 22 provides for freedom of movement: while this includes freedom to reside in any part of Zimbabwe, the government through its actions is forcibly repatriating people to the rural areas, saying that the cities and towns are for the monied.

While the Constitution makes provision for all these rights, derogations from the primary rights mean that in effect the rights are minimal. While the Constitution makes provision for all these rights, a lot of derogations and claw back clauses from the primary rights mean that in effect the constitution offers minimal protection for basic rights. The less than robust approach to human rights jurisprudence adopted by Zimbabwean courts has resulted in less protection of fundamental rights than would have been the case if such rights had been accorded the primacy they deserve in a constitutional democracy. Some of the rights stated above have been interpreted on the basis of public law/private law dichotomy. Where, for instance, the right to protection of the law is articulated, the cases that have been brought under this rubric have been cases involving, among other things, delays in prosecution in criminal trials. There is need for a paradigm shift if constitutional challenges are to have meaning for the wider populace.

Apart from the Constitution there are various laws of relevance to this analysis, including the Regional, Town and

Country Planning Act, Chapter 29:12, The Housing and Building Act, Chapter 22:07 as well as the various Statutory Instruments enacted in support of these pieces of legislation. Of particular importance to this analysis is the RTCP Act and this discussion will now turn to pertinent provisions of that Act.

THE REGIONAL TOWN AND PLANNING ACT CHAPTER 29:12

In the Preamble, the aim of the Act is given as being to

“Provide for the planning of regions, districts and local areas with the object of conserving and improving the physical environment and in particular promoting health, safety, order, amenity, convenience and general welfare, as well as efficiency and economy in the process of development and the improvement of communications;to provide for the protection of urban and rural amenities and the preservation of buildings and trees and generally to regulate the appearance of the townscape and landscape.and to provide for matters incidental to or connected with the foregoing.”

It is therefore clear that this is the main Act which governs the operations currently in progress. In terms of this Act, activities carried out without prior approval of the Local Planning Authority are deemed illegal. Section 32 provides that;

“ if it appears to the local planning authority that any development has been or is being carried out in contravention of this Act, it may, if it considers it expedient, having regard to the provisions of this Act, serve upon the owner of the land concerned and upon any other person who, in the opinion of the authority will be affected thereby an order which

- a. states the nature of the contravention
- b. specifies the action required to be taken by the person or persons specified in the order, the order shall have effect as though it specified any successor in title to the land.

It is also important to note for purposes of this discussion, that in terms of section 33(6), where an enforcement order will affect a substantial number of people, in a particular area, the local

planning authority may publish it in a newspaper operating in the area and such publication shall be deemed to constitute service of the enforcement order on the persons concerned. But what are the essential points to note with regard to Operation Murambatsvina/Restore Order?

Obligation to serve notice on affected persons

Of particular importance in this analysis is the Section 32 (3) which states that:

“Subject to section 34, an enforcement order shall not become operative until the expiry of such period not being less than one month from the date the order was served.”

What this means in practical terms is that the local planning authority in the event of breach of the law should have given people one month to regularise their operations or to remedy the breach. It also gives the affected person time within which to lodge an appeal with the Administrative Court. Section 38 provides for such appeals. It is clear in all instances that the law is aimed at giving affected people the right to be heard. This right is consistent with the *audi alteram partem* rule of common law, which simply means that every person has a right to be heard. This they were denied.

Administrative Procedure

It has already been noted that in terms of natural justice, every person has a right to be heard. The law through the Administrative Justice Act Chapter 10:28 in Section 3 thereof further enjoins 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.

Nature of Notice Served

The legislature does allow for publication of notice; however, publication has to meet the requirements of an enforcement order in terms of specifying the nature of the breach/illegality, specifying the remedy required and giving the affected persons time to remedy the breach. The notice published was unclear as it purported to cover a broad range of illegal activities in a large and unspecified area.

Date of Coming into Effect of Order

The notice that the Commission running the affairs of the City of Harare sought to rely on was published in *The Herald* on 24th May 2005. It clearly stated that the enforcement order would “come into effect on 20th June 2005” unless the affected people lodged an appeal to the Administrative Court in terms of section 38 of the Planning Act. This would have been in keeping with the requirements both of the Planning Act and the Administrative Justice Act, which entitles persons affected by administrative actions to procedural fairness. Barely two days later, demolition began, with flea market stalls destroyed and goods confiscated. In some areas the demolitions had already started 5 days earlier. There was therefore no notice in terms of the Act, and the operation was clearly illegal.

Prohibition Orders

Because an appeal suspends the operation of an enforcement order pending its hearing, and cognisant of the fact that it may be some time before the appeal is heard, the Act provides the local planning authority with some relief, in the form of prohibition orders. This is provided in Section 34. Its effect is to prohibit the activities that are the subject of the enforcement order, notwithstanding that an appeal has been lodged with the Administrative Court. Prohibition Orders are used where an activity has very little reasonable chance of approval by the LPA and actually poses a real danger to the community. It is doubtful that this justification can withstand the scrutiny of the courts, particularly when viewed in light of the fact that in respect of the flea markets and other informal traders, the Council not only knew about their activities, but actually levied rentals and rates

for the conduct of those businesses. Many vendors held licences to sell their products in areas designated by the relevant authority. A walk past a majority of the market places that were destroyed will reveal city council signs boldly stating that “this area has been designated a vending site...” The Council thus gave its consent to the conduct of these business enough to preclude it from relying on the excuse that the activities it was now complaining of were harmful or dangerous to the community as to warrant the very drastic measure of a prohibition order and consequent demolitions.

Statutory Instrument 216 of 1994

The actions of the authorities can further be challenged when viewed in light of this instrument which authorised the conduct of certain home-based industries. The regulations specifically provide for “non-residential uses in residential areas”. For instance, hairdressing salons or barber shops, tailoring or knitting shops, wood or stone carving are all permitted to be conducted from residential areas. It is therefore baffling that these activities were deemed “illegal” and the buildings they were operating from destroyed. The arguments by the authorities that the actions of wholesale demolition of different types of livelihood activities as well as homes were justified or justifiable on the grounds supplied can on various levels be challenged.

Position of Lease Holders

In a number of cases, the victims of the operation have been holders of lease agreements with the City of Harare, paying rentals and rates to the City for a number of years. In the only case to be heard before the High Court, *Dare Remusha Co-operative v The Minister of Local Government and Public Works and 4 Others*, HC 2467/0 (Supreme Court Appeal No. 169/05), the actions of the Respondents were deemed legal. One of the areas most affected by Operation Murambatsvina/Restore Order was Hatcliffe Extension where homes built on stands allocated to people in 2002 by the Ministry of Local Government, Public Works & Urban Development were declared illegal structures and destroyed by members of the ZRP. ZLHR responded to the affected people’s distress calls and filed an Urgent Chamber

Application in the High Court at Harare seeking a spoliation order and/or an interdict to get the evicted people back to their homes and to stop any further destruction and evictions. Justice Karwi heard the application on the 1st of June 2005. In his final judgment the Honourable Judge ruled that the evicted residents of Hatcliffe Extension had breached the lease agreements they had entered into with the Ministry by erecting non-approved structures, that they had been given adequate notice by the authorities and that the “public policy considerations” in destroying their homes and evicting them “far outweighed the interests of a few who had contravened the law”. The Judge neglected to consider the question of spoliation or the human rights that had been violated through the forced evictions. He only stated in passing that the forced evictions had caused “untold suffering to a number of people.” It is trite that the lease agreements are governed by the Act and in enforcing the provisions of the leases, the local authority is bound to follow the letter and spirit of the law. On this basis alone, the judgment in *Dare Remusha* was flawed.

ACTIONS IN AREAS OUTSIDE HARARE

Even accepting that the notice published in *The Herald* with all its flaws, as well as the attendant actions of the State were lawful, and they were not, the position in other towns and cities affected by the operations is palpably and manifestly unlawful. In Bulawayo, Beitbridge, Victoria Falls, Kariba, Mutare, among many others, there was not even a pretence of either an enforcement or a prohibition order. It is the responsibility of the urban council to enforce municipal by-laws, yet in most of these areas the police acted independently of the local authorities and in some instances, they acted against the expressed wishes of the local authorities. Bulawayo is a case in point. Bulawayo had by and large, a well-established and well-regulated system of informal traders. The over 3 000 vendors were operating from vending areas within the city that were properly designated and controlled. They were paying rentals to the city amounting to at least Z\$62 million per month. Vending sites that were destroyed or closed down by the State, acting through the police, include Unity Village in Main Street which a few years ago was officially

opened and proclaimed a successful small enterprise by Minister John Nkomo. To show the irrationality and excesses of the actions by the State, the demolitions in Bulawayo went ahead despite the attempted interventions by the Mayor of that city who strenuously and scrupulously informed the police that the markets they were planning to destroy were legal.

CHALLENGES OF LITIGATING

Litigating rights is premised on several important points which include:

Existence of a clear right

There should be a clear right or at least a putative right. The human rights framework in Zimbabwe particularly as embodied in the Constitution is deeply lacking in real and substantive rights. It is debatable whether any other Constitution has suffered as determined an assault as the Zimbabwean Constitution has. The result has been some 16 amendments over 25 years, each amendment progressively undermining the rights of the citizens. The result is a constitution which is woefully inadequate for use as an instrument to give effect to the human rights of its people. Even where clear rights exist, the absence of robust machinery for enforcing those rights militates against their realisation. In addition, lack of knowledge and lack of access to the justice delivery system means that few people will be able to use the law to protect their rights.

There should be a willing litigant or group of litigants, i.e. people who are willing to claim their rights

The perception among the people of Zimbabwe is that the judiciary has been compromised or at the very least rendered ineffectual. Over the last few years, Zimbabwe has witnessed an unprecedented attack on the judiciary by the Executive, culminating in the forced resignation/retirement of a number of judges including the former Chief Justice among a host of other judges from both the Supreme Court and the High Court. This era was characterised by the disregard of orders of the High and

Supreme Court especially in cases involving human rights or abuses and excesses on the part of the Executive.²⁴ They have been replaced by judges largely viewed as being sympathetic to the cause of the present government. Several of the judgments of these judges have done nothing to disabuse people of this notion. As a result, people are reluctant to pursue the legal route either for fear of victimization or because they view it as largely ineffectual and would therefore rather pursue other options.

There should be a justice delivery system which works

Justice should not only be done, but be seen to be done and done in a timely manner. The case of Batsirai is illustrative of this point - *Batsirai Children's Care vs. The Minister of Local Government, Public Works & Urban Development & 4 Ors HC 2566/05*. On 6th June 2005 an urgent application for a spoliation order seeking that BCC be allowed to return to its stand and carry on its business was filed with the High Court. On 10th June the parties appeared before Justice Hlatshwayo. The Judge postponed the matter to the 17th June 2005 to allow Respondents to file their Opposing Affidavits. On 17th June the Judge again postponed the matter to the 23rd June for filing of Heads of Argument. On 23rd June 2005, the matter was again postponed. While the Judge has been more than prepared to postpone the matter, he has not been willing to grant any provisional relief in the form of a spoliation order to BCC. The urgency of the matter is all but lost. As observed by Justice Albie Sachs in the case of *Grootboom and Ors v Government of RSA and Ors CCT 53/03* "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*" (emphasis added)

RECOMMENDATIONS

The need for condemnation of the operation is well-established. However, from a legal perspective, there is need for

- provision of free legal assistance especially to poor people who cannot afford legal costs, in this regard the interest of special groups of the vulnerable must be adequately represented
- The judiciary must serve its function of providing checks and balances against the excesses of the Executive and give effect to people's rights through speedy and impartial justice. Compensation for loss of life and property should be guaranteed
- There is need for a return to the rule of law, especially with regard to law enforcement agents who should not be agents of the violation of people's rights and who most importantly, should enforce judgments of the courts without fear or favour
- There is need for constitutional and legislative reform in order to ensure that the minimum standards guaranteed in international conventions are conformed with
- There is need on a practical level to ensure that the millions of affected people have knowledge of their rights and access to the legal assistance necessary
- There is need even in the face of apparent bias by the judiciary to continue prosecuting cases on behalf of the affected, in order to lay the basis for regional and international challenges in coming months.

CONCLUSION

The challenges facing the potential litigant in these matters are immense. They have to contend with a judiciary that is not only insensitive to the plight of the poor, they also have to contend with a judiciary that is showing all signs of being partisan. Further, they have to contend with a wholly inadequate constitutional and legal framework which does not adequately protect the rights of the people. Finally, even assuming the court awarded them the orders sought, they have to contend with

²⁴ See chronicle of the assault on the judiciary by Karla Saller. *The Judicial Institution in Zimbabwe*. University of Cape Town. 2004.

having to call upon the very police who are instrumental in the evictions, to effect the orders. As stated by Langa ACJ in the case of *The President of the Republic of South Africa and Another v Modderklip Broddery (Pvt) (Ltd) and 4 Ors CCT 20/04*, supremacy of the constitution and the rule of law are some of the values that are foundational to our constitutional order. The first aspect that flows from the rule of law is the obligation of the state to provide the necessary mechanisms for citizens to resolve disputes that arise between them. *This obligation has its corollary in the right or entitlement of every person to have access to the courts or other independent forums provided by the state for the settlement of such disputes.* (emphasis added). The learned judge states that the obligations of the state go further than merely providing the mechanisms referred to above, it is also obliged to take reasonable steps where possible, to ensure that large-scale disruptions in the social fabric do not occur in the wake of the execution of court orders. The State, through its various arms, has failed to do so.

Omega Viriri (45) got married after completing her O levels. She has four children. The youngest, Shelton is severely handicapped, paralysed by meningitis when only six months old. She moved to Harare after being deserted by her husband. "I moved to Harare from Mhondoro – a rural area, 100 km south of Harare - to be close to a hospital as Shelton needs regular medical attention. Despite accommodation being a constant problem for mothers of children with disabilities, I was fortunate to find a place I could afford. But now our home has been demolished and we have been living in the open for three weeks with no blankets and proper food," says a visibly pained Viriri.²⁵

25 Interview done on 29 June 2005.

Chapter 6

SECTORAL IMPACT OF OPERATION MURAMBATSVINA/ RESTORE ORDER

HEALTH

Introduction

Any Public Health worker knows that it is more difficult to reverse the damage caused by a problem already in place than a problem anticipated. In other words, being pro-active is easier than being reactive. This applies to both natural and man-made disasters. The response, in Zimbabwe, to disasters and catastrophes has been generally, if not entirely, reactive, and Operation Murambatsvina/Restore Order is but one such event to be dealt with.

Along with the increasing overcrowding of urban areas, there has been a marked increase in various illnesses such as dysentery and worm infestation, caused by urban water supplies not being properly treated, due to human resource shortages, treatment chemicals shortages, and machine breakdown as well as foreign currency shortages to acquire the necessary supplies. A further area of concern was the extent of overcrowding in some urban areas, leading to excessive waste that could not be adequately handled. The government had little choice but to react to an already catastrophic situation.

Analysis

When reacting to the bad planning which has led to disasters, the easiest targets are the illegal settlers who are also the vulnerable, exploited majority with little capacity to seek justice. People have now been removed from overcrowded urban areas to holding camps, which has further health implications, such as:

- the likelihood of further deaths due to arbitrary physical trauma, as incurred at Porta Farm, as a result of the thoughtless violence of the demolition methods
- deaths due to exposure and hypothermia among already vulnerable children, chronically ill adults and the elderly, forced to live through nights in the open at the coldest time of the year (a two week old baby died at Caledonia Farm on 2 July 2005 and a day old baby was being looked after in a tin and plastic shack)
- the spread of infectious diseases due to lack of proper sanitation or water supply for hundreds of thousands of displaced people (fibre-glass mobile latrines on trenches with inadequate disinfectants and water from tanks are ideal for the spread of infectious diseases)
- the creation of ideal conditions for the spread of epidemic diseases (e.g. cholera, typhoid and scabies; several cases of which were identified at Caledonia Farm) from those directly affected into the general population (there appears to be no control over the movement of people and there is nothing in place to ensure that people are examined before and after entry into the transit camp)
- the increase in malnutrition due to the breakdown of food supply as family income-generating projects are destroyed, especially when food is already in short supply (Care and UNICEF are currently giving humanitarian aid)

- the exacerbation of the HIV epidemic as community structures are fractured and dispersed, and the vulnerability of women, adolescents and children to sexual exploitation is magnified
- the emergence of widespread multi-drug resistant HIV, as treatment programmes are disrupted. The following analysis of the HIV/AIDS situation in Zimbabwe indicates that as of 2003 24.6% of 12 million Zimbabweans were living with HIV/AIDS; of the 1.8 million diagnosed 165 000 are children; of the 200 000 new infections per day 40 000 are children; of the 172 000 deaths each year 36 000 are children; people in need of ART number 342 000, of which 72 000 are children. As at May 2005, 15 000 patients were on ART.

This is a further manifestation of the insensitivity of the government which spares no thought for its citizenry. It is a fact that the country has been going from crisis to crisis since the mid-1980s. In the health sector, provision of Anti-Retroviral Therapy and home-based care for those infected and affected by HIV and AIDS has been disrupted.

Humanitarian aid will be very difficult to obtain in the future, especially if it has to be channeled through the same government which has created crisis after crisis with impunity. At the time of writing, more than 6 554 households (those in residential areas) had been demolished in Harare and Chitungwiza alone. Of these, 1 000 had been camped at Caledonia Farm in the open for close to two weeks before several humanitarian organisations started to assist. The whereabouts of residents of more than 5 000 households are unaccounted for. In particular, treatment of HIV/AIDS patients has been severely compromised, which will impact negatively on the gains made over the past few years of treatment provision.

Recommendations

The immediate needs of those affected have to be addressed in the shortest possible time, and include:

- a. Shelter, particularly for the vulnerable of society such as children, the elderly, women and those chronically ill.

Shelter should be in the following different forms: temporary but safe to take care of the crisis at hand (e.g. tents); prefabricated structures for the medium term to cater for those that fail to secure alternative accommodation within the year; and in the long term the national youth brigades should be urged to put the skills learnt through years of training to good use by engaging in construction projects nation-wide.

- b. The vulnerable of society need counselling in order to cope with the sudden disruption of their day-to-day routine. They should be made aware of the help available and how and where to access it.
- c. Transport in these days of chronic fuel shortages should be made readily available in order to travel the prohibitive distances involved. Where possible transport from those offering assistance should be easily and regularly available.
- d. Exploitation of those affected should be addressed. This may take various forms ranging from cheap labour, child labour, and gender exploitation in the form of assistance in exchange for sexual favours. Protection, food and shelter may be used as bait for sexual exploits by those in positions of power.
- e. A thorough and accurate health assessment of inhabitants of the camps as well as the destroyed structures should be conducted, particularly with regard to chronic diseases. This is particularly important in the case of HIV and AIDS and anti-retroviral therapy where any interruption or treatment governments may contribute to multi-drug resistant HIV.
- f. Efforts are needed to improve literacy levels towards 100% as this indirectly affects all community health-related projects, which depend on information dissemination.
- g. The donor community has to put all other considerations behind and come in with assistance at the earliest possible opportunity without any conditions attached.

- h. The government has to take full responsibility of its actions and the results thereof. It must present itself for scrutiny and sanctioning.
- i. A public apology and compensation for those affected is mandatory. Diverting people's attention from prevailing hardships is no answer to problems faced by government.

THE MEDIA WITHIN THE CONTEXT OF THE GOVERNMENT OF ZIMBABWE'S OPERATION 'CLEAN UP'

Introduction

The Zimbabwe government has demonstrated its callousness towards concepts of human rights such as the right to life, shelter and protection from torture.²⁶ The number of people streaming out of high density areas with cartloads of their furniture and their children in tow is reminiscent of scenes where people flee war-torn regions in search of security, except that, within Zimbabwe's context, these victims of state brutality do not have refugee status and neither do they have the evident sympathy of any external government that will allow them to camp on its state borders. Aid provided by both local and international Non Governmental Organisations has been blocked where possible by the government and has not reached the victims of the demolitions.²⁷ Where these are ZANU-PF supporters either in the form of the self-styled war veterans or those that were part of grandiose urban land distribution schemes five years ago, they have also been ignored by the state and the ruling party despite their claims to have voted for the ruling party during the March

31 parliamentary election.²⁸ The courts have also not been lenient in the matter, with a high court urgent application being turned down and the operation being effectively deemed legal.

While the call is not for an embedded media that loses focus on the importance of impartiality, questions arise as to what exactly the media has done during this clean up campaign? Has it taken sides? Have people acted on the basis of information that they have received from the press? And if yes, what has characterised their responses?

Background to the Media Environment in Zimbabwe

Zimbabwe's media has over the last four years been caught up in a political environment that is unfriendly to the internationally recognised principles of freedom of expression and freedom of information. The repressive media environment has largely been characterised by legislation in the form of the now infamous AIPPA, the POSA and the BSA. These pieces of legislation are only a part of the arsenal of repressive laws used by the present government and include the Defence Act and the Official Secrets Act. The ruling ZANU-PF party, has over the years, not hidden its desire to have a compliant media.

The print media presently comprises nine national newspapers: The Herald (state controlled daily), The Chronicle (state controlled daily), the Sunday Mail (state controlled weekly), the Sunday News (state controlled weekly), the Daily Mirror (private daily but with links to state officials), The Sunday Mirror (private weekly with links to the state), the Zimbabwe Independent (private weekly), The Sunday Standard (private weekly), and the Financial Gazette (private weekly). One of the most popular private newspapers, the Daily News was shut down in 2003 for not being registered under the AIPPA and a further two private weeklies, The Tribune and The Weekly Times were also shut down in the same year for violating sections of the AIPPA.

²⁶ The figure that is available from the United Nations places the estimated number of displaced people as over 320 000, see IRIN report, 1 July 2005. The BBC quotes a figure of 200 000 homes as being destroyed. See BBC story titled *What Lies Behind Zimbabwe's Demolitions?* 17 June 2005.

²⁷ See ZimOnline article *Government plants spies among evicted families* Mon 20 June 2005

²⁸ Personal conversation with a former resident of Whitecliffe farm who voted for the ruling ZANU-PF party candidate Patrick Zhuwawo in the Manyame constituency.

The electronic media remains the preserve of the government with one state broadcaster, Zimbabwe Broadcasting Holdings, that controls one national television station and four national radio stations. While there is provision in terms of the Broadcasting Services Act for the licensing of other broadcasting stations, there is also provision for government interference in the operations of any potential private broadcaster. 'Pirate' radio stations have begun to provide an alternative voice for Zimbabweans, and include Voice of America daily programme Studio 7, run from Washington DC in the United States, Radio Voice of the People run by Zimbabwean nationals in Harare but broadcast from Radio Netherlands; SW Radio Africa in London, have covered news events in Zimbabwe with a consistency and editorial stance that is very different from the state-owned broadcaster.

A new dimension to Zimbabwe's media is website news sites with a specific focus on Zimbabwe and its crisis of governance, including Zimonline, Zimnews, New Zimbabwe.com, Zvakwana and Zimbabwe Situation.com. The short-wave "pirate" radio stations and electronic media outlets, despite their outstanding work as alternative sources of information are still limited in their reach, leaving millions relying on the state-owned ZBH for news and information. Laws such as the AIPPA have seriously affected the work of journalists and covering stories involving the police, taking pictures or looking for interviews is a risky business that can result in instant arrest or a beating or harassment.

Overall Media Coverage of Operation Clean Up

When the operation commenced, there was no obvious breaking story to warn residents or informal traders that documents had leaked indicating that there was going to be such a far-reaching operation by the government. The media failed to play a pre-emptive role in raising public awareness over the government's intentions. In media parlance, had the print media played such a role, it would have undertaken the role of 'investigative journalism' in a much more serious manner. This is argued within the context of understanding that the role of the media as the fourth estate essentially entails being a watchdog for the whole of society and duly informing it of the potentially

damaging policies that a government or any specific sector of society might want to undertake. The receptive nature of Zimbabwe's media to the government operation not only indicates a complicity on its part, where it uses government language such as 'illegal' without placing into context the fact that there is a history behind the existence of the settlements and informal trade.

While investigative journalism could not have stopped the operation, it would most certainly have created an 'early warning system', either for potential victims to prepare their legal counters to the state directives or to find alternative accommodation and possibly different venues for their informal businesses to operate from. As it is, the government did not give people adequate notice about evictions or demolitions, neither did it postulate remedial solutions for the post-eviction environment. It would have been the media's role to bring this into the public arena.

The state media was even more complicit in promoting the "clean-up" campaign with quotations of people and 'analysts', stating that the exercise was both necessary and long overdue. In a story carried on its front page on Thursday 2 June 2005, titled 'State to relocate informal traders', the state-owned *Herald* newspaper wrote, without specifying a quotation,

The clean-up operation embarked upon by the government and local authorities was necessitated not only by the need to tidy up the central business district and residential areas in urban areas, but also by the need to bring orderliness.

The story neglects to mention the adverse effect that the campaign has had on the livelihoods of the young and its potential gender ramifications with women being returned to rural areas to a life without a sustainable livelihood or else abandoned altogether by husbands unable to cope with the pressure of being homeless.

The privately owned *Sunday Mirror* attempted to highlight the social consequences of the forced evictions by highlighting on 12 June 2005 that there was an increasing gap between rich and poor. Its story titled 'Gap between Rich and Poor Widens', highlights the plight of those previously in informal employment through vending and flea markets. It also quotes a Mr. Miloon

Kathari, a United Nations expert on the right to housing as saying that the operations of the government flew in the face of pledges it had made when it became a signatory of the Covenant on Economic, Social and Cultural Rights. The voices of those evicted are missing from the coverage of the mass evictions. The media participated without questioning the sudden change in meaning of such formerly encouraged self-help or self-employment activities.²⁹

The Standard also carried a story stating that the government action had left thousands of people homeless, a situation condemned by various civil society actors ranging from the Zimbabwe National Pastors Conference, the Catholic Commission for Justice and Peace, The Zimbabwe Lawyers for Human Rights and individual members of society such as one informal trader, Power Chipondwa, who did not understand 'what the Ministry of Small to Medium Enterprises Development stands for because it was not defending their interests'.³⁰

The state broadcast media, Zimbabwe Broadcasting Holdings, followed a similar pattern to that within the state controlled print media, with coverage of the demolitions but with limited coverage of the victims. The faces or voices that were most prevalent on state television or radio were largely those of the ministers responsible for the exercise as well as the police in action. The most striking coverage came from Voice of America that broadcast interviews with civil society leaders and direct victims of the clean-up campaign, with an interview on how those who had lost their accommodation tended to either return home to the rural areas or alternatively displace those renting accommodation from their relatives. The internet carried a number of stories on a regular basis with the international audience in mind, including not only Zimbabwean-oriented internet publishers such as NewZimbabwe.com, but also

mainstream newspapers in Europe and South Africa highlighting the plight of the displaced and jobless. The critical component of these internet publications that distinguished them from the Zimbabwean print media was their evident linkage of the matter with that of good governance and democracy.

Civil Society, Action and the Media

Civil society in the form of the newly-formed Broad Alliance called for a two-day mass stayaway from work,³¹ which was condemned by the *Daily Mirror* as doing more harm than good for the society whilst the less state-linked *The Standard* generally had a positive slant towards the idea of a stayaway. Civil society leaders had acted both on the basis of what they heard from their members as well as on the basis of press reports. The stayaway was not successful and the operation continued. Some sections of the print media argued that there were divisions within the press with the opposition political party Movement for Democratic Change being quoted as having never really been interested in the stay away.³² The media response to the stayaway was mixed and no media house openly supported it. In the aftermath, however, it was mainly the state media that took a front role in celebrating the failure of the mass action. The *Zimbabwe Independent* on 10 June blamed the failure of the stayaway on the failure of civil society leadership to mobilise disgruntled citizens. The privately owned media also attacked civil society for having political motives and hailed the people of Zimbabwe for refusing to be used as political fodder. It accused civil society leaders of seeking to enrich themselves over and above the needs of the victims of the Zimbabwean government's clean-up campaign, conveniently ignoring the repressive nature of the state against freedom of assembly, expression and association.

29 This is in relation the government's encouragement of informal trade and the setting up of a Ministry in the President's Office for Small to Medium Scale Enterprises. Moreover, there is the evident support of organizations that the government courted such as the Informal Traders Association of Zimbabwe as well as the black economic empowerment initiatives that were characteristic of the Economic Structural Adjustment policies. All of these encouraged informal trade.

30 See *The Standard*, 29 May 2005, Government Condemned, page 1.

31 The Broad Alliance comprises the main opposition Movement for Democratic Change party, the National Constitutional Assembly, the Crisis in Zimbabwe Coalition, the Zimbabwe National Students Union and the Zimbabwe Congress of Trade Unions.

32 See the *Sunday Mirror* 12 June 2005 where it has a headline, Tsvangirai Opposed Stay Away. The convener of the Broad Alliance, however, in the same article insists that there is no division within the alliance and that the next step would be street demonstrations.

Conclusion

The media in Zimbabwe has essentially operated in a repressive environment and as such does not produce either the most impartial of news or at least news that gives the public pointers as to the state of affairs in the country. The fact that the media failed to warn the public of the possible occurrence of the operation indicts it for its failure to act in the public interest as well as to foresee the consequences of such a drastic policy. Coverage in the print media either in support of the state, or occasionally having some sympathy towards the homeless and the young people that were now in danger of not attending school, was essentially determined by the actions of the state. The media merely reacted to what the state had already done or what it intended to do, leaving people with a vacuum for alternative and pre-emptive information. Further to this, the media in its coverage tended to seek more the voices of the state rather than those of the victims. The language did not adequately narrate the story of the victims, neither was there analysis of the government's actions. Action by civil society was treated with relative ambivalence by the media and as a result, the media failed to act as a critical tool for the advancement of freedom of expression, association and assembly, by not giving the organisers a fair chance of getting their message across to the public. The media has treated the operation as though it was an everyday news event and yet it has left hundreds of thousands of people homeless.

The Way Forward

There is a need to develop the ownership by the public of various forms of the media in Zimbabwe. The ZBH should be transformed from state broadcaster to public broadcaster, which will serve the public interest, and is managed by an Independent Board of Directors free from government interference. The current control that the government exerts over the ZBH is counter to freedom of expression as well as the public interest. The government appoints the members of the ZBH Board of Governors and has a Ministry of Information and Publicity that keeps constant checks on ZBH's broadcast output. In such a situation and to the

convenience of the government, the voices of the victims are rarely heard.

There is also need to expand the public ownership dimension to the media through community ownership of mediums of communication such as radio and print media. This would be in the form of community-based media outlets that would not be subject to the dictates of private owners or government officials. These would be in the form of community-owned radio stations, newspapers and community television. All of this would require an overhaul of the media laws currently in place in Zimbabwe as well as specific guarantees in the constitution that address issues of freedom of information and expression. As highlighted earlier, the media laws are not friendly to a free press; the BSA, AIPPA and the POSA limit the capacity of people to communicate amongst themselves without the government interfering and criminalising freedom of expression. If such media mechanisms had been in place prior to the clean-up operation, the affected communities would have been more empowered to address their problems first by communicating with each other through their chosen mediums and subsequently deciding on community-driven forms of action.

Where Zimbabwe faces a crisis of this nature the media lacks depth and a broader understanding of issues. In an age where information can be transmitted instantly through the Internet, mobile phones, radios, television and newspapers, news reporting must include the investigation of underlying causes as well as a people-centred approach to presenting information. Professionals within Zimbabwe's media are in dire need of training with regard to the aforementioned. If this does not happen, then Zimbabwe's media shall continue to cover victimised people's plights minus their voices and with the nonchalance of a profession that has ceased being the fourth estate it is meant to be.

Sheila Magara (40) of Mbare-based Tatambura Housing Scheme complains: "We were kicked out of our retail market and our stalls and cabins (wooden cottages) were destroyed. Police said we would undergo criminal checks. Only after the vetting would we be given stalls. This affected most single women and as a result we congest

whatever accommodation is available. We scatter in the morning and converge at night for fear of the police. We are poor but this does not mean we have no ideas on how to survive. Our savings clubs have collapsed because of the dispersals. Home-based care programmes have been hard hit. We are failing to trace the sick because we do not know where they are."

WOMEN AND GIRLS

Introduction

It is necessary to consider the issues arising from Operation Murambatsvina/Restore Order specific to the situation of affected women, and the gender impacts that various civil society groups have outlined so far, and to relate some of these issues to public policy, human and social development and gender empowerment.

Whether planned or unplanned, little if any evidence of consideration of gendered impacts and consequences of Operation Murambatsvina/Restore Order exists, whether prior to, during or after the implementation of the campaign. Statements from government on the reason for the campaign do not refer to women's situations, nor have indications been given about specific relief measures targeted at affected women of whichever category (elderly, widows, pregnant and nursing women, HIV/AIDS positive people, single mothers, the unemployed). Discussion on this issue is hampered because of disputes about the numbers of affected persons. Generally, public officials have insisted that figures that have appeared in the international and local independent media, as well as those given by various civil society groups are exaggerated and have insisted the provisions that it is making for the different groups (homeless, small scale traders) are adequate. Again, regardless of which figures are used, disaggregated data is not available to make quantitative judgements on the extent of Operation Murambatsvina/Restore Order's impact on women, although numerous accounts collected from various sources allow for a preliminary qualitative assessment.

Some initial questions that arise about the gender dimensions of Operation Murambatsvina/Restore Order are:

- to what extent were the particular situations of women, particularly vulnerable women, considered in planning Operation Murambatsvina/Restore Order? What categories of women were considered and what provisions were made to mitigate the impact of homelessness? Which offices are responsible and accountable for ensuring gender mainstreaming, and what was their input into the planning of the campaign?
- in what ways does Operation Murambatsvina/Restore Order seek to fulfil commitments on gender empowerment laid out in various documents such as the Beijing Platform for Action, the SADC Gender Declaration and the Government of Zimbabwe's own National Gender Policy? How did the government intend the Operation to address the problems and challenges faced by women in the affected communities?
- what programmes have been developed specifically for women who have been made homeless or lost livelihoods through Operation Murambatsvina/Restore Order? Are new reconstruction efforts considering women's particular needs, and what happens to the women who are not able to benefit from new programmes?

Women's Status in Zimbabwe

As in the rest of sub-Saharan Africa, women are a disadvantaged majority in terms of economic, social, civic and political empowerment. According to the Zimbabwe Human Development Report 2003 (ZHDR), rural and urban poverty has risen from 74% in 1995 to 80% in 2002, but women constitute the majority of the poor. In its introduction the government of Zimbabwe's National Gender Policy summarises the following points in relation to women's status:

- 31% percent of households headed by females have a greater incidence of poverty than those headed by males. Zimbabwe ranks only 109 in the global gender-

related development index. This is a reflection of the general low status of women with respect to access, control and ownership of economic resources and positions in decision making processes

- The rate of HIV infection is growing faster among women than men, thus demonstrating the unequal power relations between women and men with regard to control of one's sexuality
- While women constitute over 52% of the total population of Zimbabwe, their participation in the economy is confined largely to agricultural production for domestic consumption and labour-intensive tasks essential for household survival
- Women do not exercise the rights that laws specifically guarantee them, due to ignorance of the law and its administration, economic hardships that make it difficult to pursue their legal rights and cumbersome court procedures³³

Growing levels of domestic violence, abuse and exploitation can be added to this list of inequalities, with alarming rates of sexual assaults on girl children and teenagers and little by way of social protection to address women's vulnerabilities.

The situation of women is particularly relevant to Operation Murambatsvina/Restore Order because of the link between women's economic inequality and their overwhelming participation in the informal sector. A UN report on Women and the Informal Sector notes that 'the involvement of large numbers of women is a result of their low status in society and denial of opportunities in the formal sphere of employment.' According to a Central Statistics Office Report on Women and Men in Zimbabwe, 'The dominant aspect of the informal sector is self-employment and about 67% of small-scale enterprises in the informal sector are run by females (UNICEF, 1995)'.³⁴

Thus women are engaged in informal sector activities mainly because they are not able to access opportunities in the formal

sector. Statistics given by CSO indicate that in the category of 'own account workers' women constituted 57-66% depending on the categorisations used. Policy initiatives that target the informal sector in one way or another will affect more women than men – and usually these will be economically vulnerable women.

Economic Context and the Informal Sector

The economic context which has given rise to the informal sector in Zimbabwe is explained in the Zimbabwe Human Development Report of 2003³⁵

the economy under stress is ... experiencing unprecedented levels of informalisation or underground activities, as the vulnerable population tries to devise survival strategies. A large proportion of the structurally unemployed people, estimated at over 50% of the population are earning a living from generally insecure informal sector activities. These include cross-border trading, which is largely conducted by women, mineral panning in selected provinces with mineral resources, petty trading, currency trading and international migration (legal and illegal) among an endless list of survivalist options (p 11).

While the growth of the informal sector generally began with the implementation of structural adjustment programmes and liberalisation which saw large numbers of retrenchments, the emergence of the underground parallel market has been more recent, with the introduction of price controls and fixed currency rates aimed at bringing inflation and currency depreciation under control. It is important to note that contrary to the current stance adopted by government, 'people's initiatives' were actually encouraged by government, with constant exhortations from politicians to people 'not to wait for the government to provide for them', but to help themselves by initiating 'income generating' activities through one form or another of self-employment.

33 The National Gender Policy, Gender Department, Ministry of Youth Development, Gender and Employment Creation, Republic of Zimbabwe.

34 Women and Men in Zimbabwe, Central Statistics Office, December 2002.

35 *Zimbabwe Human Development Report 2003*: Redirecting our responses to HIV and AIDS, Poverty Reduction Forum, Institute for Development Studies, University of Zimbabwe.

Despite Zimbabwe's relatively good performance in critical areas such as literacy and education rates amongst women, the feminisation of poverty has been one distinctive consequence of economic policy as government lifted price controls, eliminated subsidies, liberalised and introduced 'cost recovery' programmes in health and education. Large numbers of women were forced to engage in trade and commerce, particularly cross-border trading as viable livelihoods through agriculture or formal employment decreased. It was in recognition of the need to cater for this new trend that the now infamous flea markets and 'people's markets' were opened up by government after lobbying to change the restrictive council regulations that hampered such economic activities.

Having opened up the space for the informal sector to operate, however, the actions undertaken to develop the micro, small and medium sized enterprise sector have been inadequate to cater for its rapid growth, particularly to eliminate the phenomenon of a dual economic structure where two economies – formal and informal – operate side by side. For the most part, public policy and the government and international partners have been concerned with the formal sector. As a result, women's marginalisation from the formal/mainstream economic life has persisted, further exacerbated by the limited priority given to such issues as land and property ownership by women.

The informal economy is by no means exceptional to Zimbabwe, nor is the absence of adequate measures to manage the growth of the informal sector. As noted in a UNESCO report,

In many developing countries, the informal sector is also equated with 'parallel or 'black market' activities, hence looked down upon by society. Consequently public policy toward the informal sector is as ambivalent as it is contradictory – usually oscillating between benign neglect to periodic harassment.³⁶

The same report notes that:

In spite of the popularization of the informal sector, a contradictory situation prevails. On the one hand, existing social

attitudes tend to look down upon informal sector activities; on the other hand these attitudes seem to be buttressed by an ambivalent public policy. The result is a policy framework that is largely ambiguous in support for informal sector activities. This is clearly demonstrated by:

- development policies that favour structural imbalance and promote large enterprises to the detriment of small ones;
- official tolerance of or inaction in regard to social and legal norms, particularly of exploitation, discrimination and even violence against certain vulnerable groups involved in informal sector activities (e.g. women and children).

While the informal sector has allowed the poor a means of livelihood, it cannot be said that informalisation is a desirable state of affairs. It is noted that incomes are often precarious, forms of social protection or labour standards within this sector are absent and the often very harsh working conditions that people have had to operate under are particularly uncomfortable for women.

The largely under-regulated informal sector is said to have facilitated black marketeering in currency and goods in short supply. However, without proper research it is equally valid to suggest that government policies would in any event have created a parallel market whether or not there was an informal sector, since it is government's imposition of price controls in a situation of rampant inflation that created the problem of shortages of basic commodities. This question aside, it is still the case that the state of affairs was in no way ideal and required corrective action, the impact of closing down the informal sector – without any economic alternative options at hand – under Operation Murambatsvina/Restore Order has for many already vulnerable people simply meant overnight destitution.

Recognising Women's Economic Contribution

It would be impossible to overstate the critical role that women have played in providing economically for families, maintaining the social fabric of communities through various solidarity and mutually supportive networks, and in caring for the sick.

³⁶ Meeting of Experts on Women in the Informal Sector, United National Centre, Gigiri, Kenya, 25-27 September 1995. www.unesco.org/most/wom-inf.htm accessed on 18/07/05.

Women's contribution to family and community welfare is so extensive that in reality it is they that have subsidised the public purse, as government has never put in programmes to provide remuneration for this public work. There is much evidence to show that the less the state does in terms of social provision, the more women have to do to fill the gap. Much of this has been possible only as a result of women's efforts to generate income in the informal economy. This contribution is not counted economically as it is seen as regular domestic duties, but in fact there is nothing 'regular' about women's domestic and economic workload, which if monetised would be enormous. In 1995, the UNDP calculated that

if these unpaid activities were treated as market transactions at the prevailing wages, they would yield huge monetary valuations – a staggering \$16 trillion, or about 70% more than the officially estimated \$23 trillion of global output. (...) of this \$16 trillion, \$11 trillion is the non-monetised, 'invisible' contribution of women. 37

Furthermore, women have carried society in the face of increasing gender-based violence, and dispossession in the face of death and disease. Yet again, public policy in the case of Operation Murambatsvina/Restore Order has completely overlooked the fact that women's earnings from the informal sector contributed substantially to the social welfare and economic well-being of the nation.

A case in point here is the different community care and home-based care initiatives that have been undertaken to care for HIV/AIDS patients and orphans. Operation Murambatsvina/Restore Order has disrupted many of these programmes, and left patients without care or access to drugs. It seems most unfair and unjust that the same people who are accused of disrupting the economy by operating extra-legally in the informal sector, are the same people who voluntarily (informally) and outside the public health system and infrastructure have cared for the sick and the orphaned. Money earned in the informal sector not only allowed women to feed their families, and care for the sick (constituting a considerable saving for the fiscus) but also to

educate children (social investment) and set up small businesses which generated employment for both women and men.

In spite of the many problems with the informal sector, one element that has been noted in relation to the point above is the benefits of collective self-organising that can emerge from women working together:

Experience shows that many of the women's groups organised around economic incentives soon develop social support services, such as child care, pre-school education, health centres and in some cases even roads and material centres, resulting in improved well-being, notably in the areas of health and nutrition.³⁸ Paternalistic interventions established to benefit women tend to ignore many of the ways in which women are organising collectively for community benefit.

Eviction campaigns which result in dislocations affect the social progress that women are able to achieve independently through self-organising, setting them back to situations of dependency and vulnerability as well as depriving communities of the benefits of such initiatives.

Impacts of Operation Murambatsvina/Restore Order on Women

There are many sources of information that outline the impact of Murambatsvina/Restore Order and these assessments are still being evaluated. The following summary is based on information that has come out in the media, through interviews and on-site visits.

Destitution and Displacement

The most urgent problem for many women is that their families are facing overnight destitution following the destruction of their homes or the loss of sources of income. Large numbers of families affected are female-headed households dependant on a

37 UNDP Global Human Development Report, Gender and Human Development (p. 97).

38 Rogers BL and Youssef N. *The importance of women's involvement in economic activities in the improvement of child nutrition and health.* Food and Nutrition Bulletin, Volume 10 Number 3 September 1988 www.unu.edu/unupress/food/8f103e/8F103E05.htm accessed on 18 July 05.

single source of income. There are particularly vulnerable groups such as widows and elderly women who were responsible for looking after orphaned grandchildren and earned money from renting out lodgings to tenants who can no longer even feed those under their care.

It has been assumed by the authorities that those who do not have jobs or homes can 'go back to where they came from' i.e. return to their rural homes and start their lives there. The assumption is that everyone has a rural home to return to, that they will be able to earn a livelihood in the rural areas, or have sufficient means with which to start a new life, none of which can be assumed to be true in a general way. The argument does not recognise the fact that many people – including women – leave their rural homes because they are not able to make a decent living anymore through agricultural production. In reality, many people will remain homeless and destitute in the urban areas. The situation for women becomes even more complex as by and large they do not own land in rural areas from which they can earn an independent livelihood. Household and family circumstances vary so widely – more particularly for women – that a 'one size fits all' quick fix to the problem will simply be ineffective and create new types of hardship, deprivation and suffering for many women. Where families do move back to the rural areas, this could also generate new tensions and problems in a context where resources and food in particular are in short supply.

Health and Safety

These concerns relate to the problems being created by exposure to disease through living in the open, both for parents and children, but also for HIV/AIDS patients whose health is compromised by displacement. Many evictees are pregnant women or women with small babies. Concerns have been raised about the unsanitary conditions in camps where many of the homeless have been moved. Many affected women are looking after disabled children and relatives and can no longer care for them properly. Home-based care programmes to distribute ART to patients have been disrupted so many patients are cut off from the medical care that they need. Also in relation to health

and safety issues is the ordering of people to pull down illegal structures themselves which has been fatal or caused injuries from falling debris. In addition to the multitude of health problems due to the lack of income and shelter and access to facilities, many people have suffered shock, trauma and depression as a result of their displacement and dispossession. It is difficult to see how many of the women can carry the burden of family care in these circumstances without experiencing high levels of stress and exhaustion.

Disruption of Family Units

As mentioned above, the expectation that families will return to their rural homes will in a large number of cases simply be a migration of women and children to rural areas, while men who are more mobile will remain in urban centres – or as has happened – try to find work across the border as a survival strategy. In any event, the situation will result in a large number of family break-ups and separations which will leave women with added responsibilities. Marriages are generally fragile; social and economic pressures have been singled out as one reason for marriage break-ups and domestic disputes and violence. Family separations will also be likely to contribute to further deterioration of public health and family welfare through the spread of HIV/AIDS as men prey on helpless women to provide sex in exchange for either accommodation, money or food, and as men take on new sexual partners in the absence of their wives.

Vulnerability and Insecurity

It is a concern of many women's groups that the loss of incomes and the lack of any other means of survival will make women more vulnerable to exploitation of many forms – particularly sexual exploitation, but also labour exploitation and abuse at the hands of those whom they will become dependent for livelihoods. Certainly, women's ability to earn an independent income – however small -- has helped to improve their bargaining position and strengthened their status, whether this is in family situations or in economic transactions. Economic independence has allowed women to opt out of abusive

relationships — which was not the case previously. As mentioned earlier, one can not underestimate the importance of women's income that contributed to community well being and solidarity networks enabling women to help each other in times of difficulty and distress. Without any meaningful social welfare programmes that allow women to get back on their feet economically, Operation Murambatsvina/Restore Order represents a step backwards rather than forwards from this perspective.

Women's Status and Dignity and Access to Economic Opportunities

Women's access to land and other factors of production has disadvantaged them economically, which in turn has lowered their social status. This makes it difficult for them to break through the many socio-cultural barriers put up by a patriarchy which would empower them. Government's overall neglect of women's economic situation, and inadequate protection of their property rights in matters such as inheritance, meant that the informal sector did allow women some access to economic opportunities. Even following the land redistribution programme, women continue to rely on this sector for their income as they were very much minority beneficiaries. Women's confidence and sense of self worth (a fundamental human right!) is derived very much from having an occupation and an independent income, and even women in full time employment are engaged in some activity that will generate some additional income. Clearly the informal sector has its pitfalls and problems but in the absence of better alternatives through public policy, for more secure and predictable income flows, this is the best there is so far for women.

Issues and Challenges

Beijing Platform for Action and Frameworks for Gender Empowerment

The UN Beijing Platform for Action (BPA) was an attempt to deal with this situation by providing governments with a broad policy framework that would ensure women's empowerment in economic, socio-cultural and political spheres. The BPA,

alongside a number of other 'gender mainstreaming' instruments such as the SADC Gender Declaration is therefore an important reference point to assess the 'gender friendliness' of government policies. Generally such documents have recognised the growth of the informal sector as a source of jobs and livelihoods, but the policy recommendations stress such elements as education and training for women, better access to credit, enforcement and promotion of women's land rights and so forth. Such frameworks also stress the need for decent low cost housing for women: the contradiction is that as a result of such an extensive demolition exercise, rentals will rise rather than fall until such time as the state is able to provide subsidised housing. The implication in these frameworks is that policy measures are needed to incorporate more women into the formal sector in order to give them alternatives to working in the informal sector.

Globally it can be said that very little has been done to achieve the aspirations of the BPA, due in part to a lack of political will to drive this agenda forward, but also because the policy frameworks in which governments now operate have focused primarily on the creation of free markets, macro-economic stability and other neo-liberal prescriptions ushered in through World Bank and International Monetary Fund structural adjustment programmes. The neo-liberal model has tended to favour those groups that are already well off, and reinforce patriarchal structures and social inequalities.

HIV/AIDS ... adding fuel to the fire?

A major feature of Zimbabwe's human development situation is the HIV/AIDS pandemic which has radically altered the socio-economic landscape of the country. The Zimbabwe Human Development Report points to a situation where

the interventions so far are weakest in reduction of vulnerability and risk. The core of the development challenge lies with addressing these two factors, failure of which will undermine effectiveness of even the current prevention, care, support and mitigation strategies. By addressing developmental issues of pro-poor economic growth, employment, health education, housing, safe water and sanitation, transport women empowerment, freedom of

participation, general vulnerability will be reduced and with it most likely, HIV and AIDS (p. 26).

The report also states that

the emergence of high levels of informalisation or underground economic activities, as the vulnerable population tries to devise survival strategies though economically cushioning the vulnerable groups in the short term creates by itself fertile ground for the continued propagation of the HIV and AIDS pandemic.

Managing Complexities of Informalisation

The wholesale banning of the informal sector (which includes the illegal structures built by many homeowners to generate income from lodgings) has been premised on this sector being a burden on the public purse, a threat to public health and a drain on national resources. The association has clearly been made between the informal sector and 'dirt' and 'disorder'. The government's clampdown on the sector is justified by a portrayal of informal sector activities and operators as being unruly, undisciplined and sabotaging the government's efforts at an economic turnaround. Statements from public officials have generally suggested that whatever hardships people are experiencing, they have brought on themselves by not obeying municipality rules and regulations and respecting law and order.

However, as shown in the excerpts from the ZHDR above, this is only one side of the story and it oversimplifies a situation which was clearly difficult and challenging from a regulatory angle, but where the blame cannot be laid only at the door of the victims. The ZHDR points to the problems that economic informalisation has brought about, but also stresses the need for 'pro-poor policies' to deal with the factors of vulnerability and risk that are fuelling the HIV epidemic. A consideration of women operating in the informal sector emphasises both of these points, and would also argue in favour of a different approach from that undertaken by Operation Murambatsvina/Restore Order.

Transparency and Consistency in Policy Making Processes

Operation Murambatsvina/Restore Order reflects a disturbing trend where policy is being made without adequate consideration of all dimensions of the problem and is itself being informalised. Formal policy processes — recovery programmes, legislation, budgets take place at one level, but many actions are undertaken without any apparent strategy document or policy plan. While most people have recognised the challenges of dealing with what one official dubbed 'the neo-liberal mess' drastic measures which fail to deal with the complex realities of people's circumstances create a situation where the harm outweighs the good. Generally there is a great deal of speculation about the real agenda behind Operation Murambatsvina/Restore Order where the high human cost — whose long term consequences are yet to be felt — seems excessive in relation to the objectives sought.

Women have been negatively affected because no thought is given to their circumstances and no value is attributed to the role they play in development. Documents such as the Beijing Platform for Action were drawn up precisely to guide governments to act in a manner that empowers rather than disempowers women. The question of women's consultation and involvement in policy planning is consistently raised in such documents, including in the Zimbabwe Government's own National Gender Policy.

It is important in our gender advocacy to insist on the point that women are demanding a fair return for their contribution which can only be achieved through policies and programmes that empower them. All too often, actions in favour of women are seen to be acts of generosity. Unfortunately, the limited consideration of gender dimensions (with an expectation that women will still cope under any circumstances) is also a reflection of the very little weight that the women's rights constituency carries in political life. Engagement with government officials, politicians and others must seek to strengthen that constituency within policy-making circles.

It is important also to stress the commitments that government has made under programmes such as the Beijing

Platform for Action, the SADC Gender Declaration and other national or intergovernmental processes and to point to the cost of non-implementation not only to women but to the nation as a whole. Unfortunately, 'back to the rural areas' has unfortunate parallels with pre-colonial situations where men lived in urban areas and women stayed in the rural areas to fit the specific purposes of the colonial agenda. Much of policy-making fails also to recognise the prevailing realities of gender demographics, where female-headed households are around 30% of households. The only two possibilities for this oversight is that it is deliberate as it allows for the continued exploitation of women as cheap labour, or it is a blind spot, either through lack of competence or lack of interest, in policy-making, either of which needs desperately to be rectified.

Changing the Political Environment : Reinstating a Culture of Tolerance

The overall political situation in the country presents a major obstacle for rebuilding the country and offering new hope for its citizens. There is a climate of polarisation between political tendencies which can be attributed to a general intolerance on the part of the government of any form of dissent or popular organising. Legislation such as the Public Order and Security Act limits the ability of women to mobilise to fight for their rights, or to collectively engage public policy-makers to promote policies that are in women's interests. Operation Murambatsvina/Restore Order can also be interpreted as being a show of force on the part of the government to show who is in control. Women cannot make their views heard in a situation where violence and force, rather than dialogue, consultation and consensus is used to implement government policy.

Whether intended or not, Operation Murambatsvina/Restore Order may well see the creation of new urban and rural under-classes populated by the weakest and most vulnerable who are women. The problems that this will generate go well beyond the direct victims themselves to society as a whole. Numerous programmes have been put in place since independence to generate economic development and growth. The overall results have been disappointing, and cannot be blamed on the informal sector operators. It is unlikely that any initiatives will succeed without the buy-in of the population and without their

participation and in a situation where the impression is that people are a nuisance rather than a resource.

Grace Ndlovu also (38), married with two children has also been living at the settlement for seven years. The police allegedly assaulted her for refusing to leave Porta Farm. "I was beaten up with baton sticks by 11 policemen for refusing to board one of the trucks. They forcibly took my ID, money and other personal documents. When I asked for my ID they refused to give it back saying it belonged to the government. My late sister's two children aged 11 and two were taken to Caledonia without my consent.. If they hate us so much why don't they just bomb us than to take us where we do not want to go," said a fuming Ndlovu. Residents who said they had nowhere to go were told to find out from their IDs where they came from. The IDs show the district where one's parents came from.

THE URBAN LAND AND HOUSING QUESTION

Introduction and Conceptual Framework

Overview of Operation 'Restore Order and its Implications

Zimbabwe faces real and critical problems of economic sustainability, social reproduction in the urban areas and in its domestic and external political relation. Current economic, social and urban policies are unable to address these contradictions in the short term. The paper argues that Operation Murambatsvina/Restore Order purported to address both these macro-level and local urban level problems, but that the objectives it set for itself were inappropriate and/or inadequate to deal with Zimbabwe's fundamental urban socio-economic problems. Furthermore the method used in its execution was not only 'inhuman' but its impact has been to compound the existing social challenges it sought to address and to create new social and political problems.

While the basic objectives of the subsequent reconstruction project (Operation Garikai/Hlanani Kuhle) are relevant and necessary, its planning has been weak, ill-timed and under-resourced. Government's efforts to reconstruct the cities needs

critical reflection, especially on the scale of resources required. The civil society response is not clear in its objective nor is it likely to address the core national and urban problems at hand, unless their interventions are also rationalised.

Although the various ‘humanitarian’ interventions being supported by the international community through some NGOs and churches are a necessary complement to Operation Garikai, they are themselves limited in coverage, under-resourced and ‘welfarist’ in focus. Although their co-ordination is improving, these interventions are not based on a strategic, long-term political-economic framework, which can address the underlying socio-economic problems faced at the national and urban level.

One of the responses has been to mobilise different forms of political capital around the methods and effects of Murambatsvina/Restore Order by some elements within the state, in civil society and in the international community. This approach has tended to sideline the need to address Zimbabwe’s fundamental policy problems, and has had the effect of further polarising society and perpetuating the existing political impasse over national economic policy, domestic politics and international re-engagement.

Yet for any intervention to be sustainable it needs to be backed by a more strategic policy framework, based on radical policy ‘adjustments’ at the macro-economic and political level, as well as at the urban planning (and regulations) level. The latter needs to be supported by an extensive urban land and resource redistribution programme, based on a well-co-ordinated medium- to long-term strategy. Rigorous policy analysis is required to understand the motives of Murambatsvina/Restore Order and to assess its effects, based upon clear contextual analysis.

Official Government of Zimbabwe Discourse on Murambatsvina/Restore Order

The dominant state discourses which rationalize Murambatsvina/Restore Order have focused primarily on the objective of restoring legality and the regulation of the towns and economy. This discourse has largely been focused on a critique of the criminal, disorderly, and unregulated behaviour of

private citizens and business people (including the formal and informal sector) and neglects critique of how economic stress; ‘shortages’ and poor regulations breed illegality or tend to criminalize large segments of the population. The state discourse stresses that some of the current economic problems are created by or exacerbated by this ‘disorder’ and ‘illegality’ in terms of a narrow paradigm of economic regulation (and incentives). In this vein the discourse lacks a coherent critique of the underlying economic problems and the profit logic (which neglects the urban social investment imperatives) of capital, or the efficacy of current policies to deal with the problems. There is little self-critique of central government policies and implementation practice, although the discourse entails a partial critique of the weaknesses of urban authorities.

Civil Society Discourses and Interventions

Current mainstream civil society discourses tend to be largely state-centric to the exclusion of a critique of the role of capital, civil society and external factors in the national development, urban and practical problems facing Zimbabwe. Mainstream dialogue tends to underplay the role of capital in general and of land, housing, labour and financial markets in addressing the current problems of urban social reproduction. There is a weak understanding of the nature of the state; historically and generically, compounded by weak analysis of critical economic and urban policies, and the context of their formulation. Thus, the strategic policy context which can inform current critiques and interventions is not analysed holistically. The relevant macro-economic and micro-economic environment and policies are inadequately addressed, and this deficiency in analysis has led to a focus on the social effects and morality of state actions and on weak or insufficient critique of state policies. Much of the discourse is not properly contextualised regarding long-term impacts of policy on the state’s capacity to deliver public goods and services, nor is an alternative macro-economic policy framework and development strategy seriously discussed. Civil society discourse also lacks a self-critique of its role in development, land and urban policy formulation and support to the poor. Most of the stakeholders who under normal circumstances could have been making an input into these

policies have not had adequate space to do so, partly because of the current polarization between the state and civil society organisations.

Some social analysts (Kanyenze and Sibanda, Gwisai, 2005) focus on economic factors as the main imperative underlying Murambatsvina/Restore Order, albeit on the basis of a narrow analytic framework. Correctly they base their observation on the fact that the Reserve Bank of Zimbabwe Governor had previously stated that government was contemplating a massive clampdown on the informal economy especially to deal with the foreign exchange parallel market, although without providing a systematic and holistic analysis of the nature of the economic and related policy problems. Indeed, Jonathan Moyo (2005) also purports the significance of this policy root in his remarks on the state's use of a 'law and order' approach to monetary policy albeit within a limited economic analytic framework. Others, however, see the whole operation Murambatsvina/Restore Order as a reflection of critical intra-ruling party conflicts over economic policy and political power contradictions (Gwisai, 2005) while the ascendancy of the old conservative faction centred around the elevation of Vice President Mujuru is identified as the source of operation Murambatsvina/Restore Order policy, given that it is assumed it is only re-establishment of 'rule of law' and creating a platform for re-engagement with the international economy. As Gwisai (2005) observes

In ZANU-PF we see the old guard winning a factional fight against the 'Young Turks', in a battle that is far less a case of age differences but more of an ideological fight between the right-wing neo-liberal faction of the party and the hardliner anti-imperialist faction. Mugabe ... swung his weight behind the old guard who have opportunistically used the gender cover through Mujuru to advance ... a neo-liberal agenda. Developments in ZANU-PF signal a big shift or preparation for a big shift to the right, i.e. a return to full blooded ESAP...

The debate on the merits and demerits of Operation Murambatsvina/Restore Order needs to be contextualised in terms of the scope and intensity of Zimbabwe's economic decline from 1997 to the present, including a better understanding of the relationship between this and the informalisation of the

economy, and of the politics of 'normalisation', within a context of international isolation. The analysis tends also to be limited by the weak empirical basis of the discourses on Operation Murambatsvina/Restore Order. Neither is the discourse well-informed empirically by the pre-operation Murambatsvina/Restore Order situation around urban and economic content.

Situational Analysis and Policy Context of Operation Murambatsvina/Restore Order (2000-2005)

A proper contextualisation of the sources of Operation Murambatsvina/Restore Order is necessary to assess the validity of its justification by the state, as well as to identify the underlying problems which could actually have motivated it.

Political Context and Challenges

Zimbabwe is in a protracted conflict situation characterised by a revolutionary situation (of rapid confrontations between the state, various institutions and social (including class) interests as well as between the state and the dominant international structures (western states, international institutions, governments/NGOs etc.) The domestic conflict situation has on the one hand entailed an internal critique or confrontation of intra-government (and ruling party) segments between certain radical elements which pursue land occupations (war veterans, and others) and 'dissident' elements (counteracting government policies) and on the other hand moderate leadership elements of the state and the ruling party. The radical elements have since 1997 challenged the state on land delivery policy through rural and urban land occupations, on the efficiency of the state institutions (the legislation, the courts, the administrative structure), on economic policy (against neo-liberalism in favour of the state interventionism, and over state authority, with exercise of coercive power and implementations of law and order including the planning technocracy in land reform and urban land delivery and services provision)

These developments radicalised the Zimbabwe state towards an economic redistributive strategy. However, this strategy brought along new opportunities for increased severe "rent-

seeking" corrupt practices at various levels in an economy short of foreign exchange, basic goods and services. This broad conflict over the contested legitimacy of the state held through confrontational and at times violent actions has been buttressed by repressive policies and concerted campaigns to isolate Zimbabwe.

Of relevance is the fact of the MDC/CSO dominance of the urban constituency (in votes, information and wider political reach) and the absence of collaboration in urban policy making and implementing activities, between the Government of Zimbabwe, MDC structures, and Government of Zimbabwe and the majority urban populace (besides ZANU-PF-related housing co-operatives and flea market associations). The lack of domestic political party dialogue and the international dis-engagement generated an economic and social policy-making vacuum in which the urban economy suffered most. The urban land (housing physical services and infrastructure) and social "livelihood" problems of Zimbabwe received scant attention, particularly during 2000-2005.

The many practical contextual challenges thus entail struggles within the state (intra-state struggles), vertical class struggles (between the poor, petit-bourgeoisie and capitalists, large and emerging) and horizontally, between classes (intra-elite and intra-semi-proletarian). Moreover these political struggles tended to be compounded by the negative confrontational (non-hegemonic) struggles between the state and civil society, with the former harnessing greater regulation of the latter (through laws on media, NGO association and right to demonstrate) and excluding them from joint programmatic actions, and the latter confronting the state at the level of an opposite ideological spectrum regulatory agenda seeking compliance with international/universalistic ideals and sanctions on the Government of Zimbabwe from the 'west' and African bodies, as well as pursuing the mobilization of non-engagement in civil society and critique of the state, regardless of the local and international contradictions.

The Economic Context and Challenges

The economic context of the current urban problems and the attempt by operation Operation Murambatsvina/Restore Order to address these can best be understood on the one hand in terms of the general trend of economic decline, as well as the various economic and social hardships faced in particular by various urban populations, including the complex nature of informalisation of the economy that arose. On the other hand, they need to be understood in terms of the economic policy environment, both through its domestic expression (macro-economic, wider sectoral economic and social policies) and in terms of its international expression, through formal and informal sanctions, economic isolation in general and the nature of development aid to Zimbabwe.

A key development of interest in this informalisation is the systematic linkages that emerged between large formal sector business interests in various sectors and the SMME and micro-enterprises of the informal sector. Here the informalisation through the creation of 'parallel' as opposed to black markets escalated dramatically from 2000/2001. Sectors affected included the finance sector, the mining sector, especially gold through illegal exports, the export sectors, the import sector (forex dealing), the household sector (remittances); the construction sector and the state 'sector' (abused for private accumulation). Thus the ownership of assets affected their location and these linkages affect recovery.

Economic policy focuses on control of the capital account (vis-à-vis foreign exchange shortages and the allocation of it to essential, basic and strategic needs); the regulation of the process of foreign exchange (exchange rate management), of basic commodities, utilities and services; the regulation of interest rates and selective application of subsidized rates to selected priority areas; the regulation of financial resource allocations (the use of private money for 'productive' activities) and services (especially urban services such as electricity, water, transport, fuel), and of basic commodities. Corruption has been widespread and the state has responded with a series of anti-corruption measures, including the appointment of extreme measures of arrest and trial of alleged transgressors, focused largely on foreign exchange externalisation. As has been

observed, many ZANU-PF members were also affected, and these charges continue.

The policy has generally not succeeded in turning around the economy to its pre-2000 level, although it had managed by late 2004 to stabilize some elements of the fundamentals to a limited degree. Nor could the key constraint of foreign exchange, a large gap of which is embedded in external financing (concessional loans, and private credit) be expected to be fulfilled by the policy without external engagement, just as much as the recovery of lost domestic export capacity has not been achievable in the short term. These policy constraints or challenges have been met by shifting strategies of economic informalisation and leakages (mainly foreign exchange), which affected the stability of inflation, foreign exchange supplies and commodity markets. The assumption that physical deregulation (through arrests and demolitions) could close the informalisation, instead of or in support of policy incentives, constitutes the key economic root of Operation Murambatsvina/Restore Order.

The Urban Planning Technocracy and 'Clean' Town Imperative

By far the least significant root and motivation on the part of central government is the search for urban physical space and infrastructure, hygiene and the reversal of 'underground' utilization of urban services (electricity, water, refuse/garbage). The contradictions of urban 'order' and public urban provisioning for social reproduction in a declining economy are in broad terms well-known. The key aspects are: the sustainability of the urban economy, the urban aesthetics culture, infrastructure and service planning order and the weakening of the local state or urban authorities in relation to the changing political environment.

Urban Conditions in the Pre-1998 Period

The colonial urban planning policies were informed by racist ideologies. The settler government sought to separate the black and white communities as far as possible in the organisation of urban space. This led to strongly divided towns, especially in the arrangement of residential areas and the commercial center.

Within the post-colonial era, the exclusionary laws, land tenure governments, and town planning policies within the urban areas that signified the segregation of colonial times, created inefficiencies that complicated the urban land question today and exclude the poor. Colonial town planners designed the urban areas to cater for the commercial and residential interests of a small white population with large plots set aside, and to marginalise the black majority. These built-in constraints affect the urban poor and their quest for affordable housing. The same top-down policy processes that limited participation in the establishment of town planning and policy have been maintained and continue to hamper urban land reform initiatives and policies.

Whilst rural land redistribution was and still remains the most critical redistribution issue confronting the country there has always been a growing concern with the urban land issue. Zimbabwe's urban population is growing at least twice as fast the rural population. Between 1982 and 1992 the number of people living in the urban areas grew from just under 2 million to 3.2 million and by 2000 the number was at 4.8 million.³⁹ As seen above, the population pressures in Harare were so intense and concentrated over a short period of time, the rural to urban migration put pressure on the capacities of the towns and cities to cope with such a massive population. The urban land question was therefore characterised by overcrowding, "squattling" (Shivji, *et al*, 1998), or "illegal" land occupations, and planning challenges (Butcher 1986, 1988, 1997), and competing land uses in the peripheries of the town or city boundaries and the attendant environmental challenges.

The increase in population of urban dwellers placed considerable strain on the existing infrastructure and increased the demand for land, housing and related services. Unlike many third world cities, Zimbabwe's urban settlements appeared to be free of large-scale "squatter" settlements (Tibaijuka, 2005), although the reality is that there has been growing urban

39 Population increase is the number of NEW people (population increase) between the periods in Harare. Housing capacity is the number of New Planned and Approved Residential units in Harare in each period multiplied by 4, which is the average number of people per household from the 2002 census report.

overcrowding and “squatter” settlements in the urban and peri-urban areas. Due to a combination of factors the urban homeless in Zimbabwe were increasingly accommodated within existing urban dwellings and plots through ‘extensions’ and “shacks”. This was possible because the quality of urban housing was sufficient to permit several households to share one dwelling or plot at the cost of comfort and privacy. In all the main towns and cities there are certain suburbs where the development of shacks within the yards of housing plots is highly visible. These “illegal” structures were at times denounced by the local authorities, which threatened to remove them, but did not do so for fear of the perceived consequences. Homeless overcrowding and unplanned settlements in the urban centres generated problems such as blocked sewerage systems, the absence of potable water.

Most of the urban settlements were surrounded by large-scale commercial farms on freehold land and privately held smallholdings, and while the local authority could acquire such land through compulsory acquisition, using either the Town and Country Planning Act or through the Urban Councils Act, the actual process was time-consuming and costly. Even as land was acquired, the cost of acquisition hindered the development of low-cost housing as the high costs of acquisition made investing in high cost housing more viable, where returns were greater.

The ‘Order’ of Infrastructure and Service Provision

The rapid growth of urban settlements in the city increased the demand for housing and business sites, as well as the need for urban services, and infrastructure (water, sewage, roads, garbage collection, electricity). Waiting lists and ‘illegal’ sites suggest that the city was unable to provide for more than 15% of the urban population. Overall government spending on approved projects decreased even as the demand grew leading to the creation of illegal structures. Self-provisioning of residential and business sites led to various infrastructural ‘inefficiencies’ and deficiencies and problems of insecurity (physical and health), arising from overloading, unavailability and high cost service provision demands.

Urban Aesthetics and Cleanliness Technocracy Culture

The technocratic mentality of urban aesthetics (cleanliness and beauty), based on the colonial legacy of the clean ‘city’ is derived from the combination of American urban and Apartheid Township planning standards, with hygiene and health standards set high, assuming the availability of low cost and affordable services (water, sewage), and of adequate health services supporting a controlled and slow growth of the urban populace. These demographic growth patterns have been contradicted by actual trends of growth in demand. Moreover, illegal urban land occupations and building challenged these assumptions through social and political struggles that the urban authorities were unable to contain.

The Weakening of Local State Urban Authority and Urban Politics

The authority of the local government to enforce urban plans and regulation was undermined by the power struggles with central government, with the latter increasingly asserting authority of the former. This coupled with the limited fiscal capacity of both central and local governments to provide urban social services and infrastructure, tended to undermine the legitimacy of reinforcement of regulations and plans. In particular, powers of urban local authority were undermined by the spread of several of socially organized and powerful urban land occupation movements, led in many cases by war veterans and ZANU-PF ‘supporters’, which capitalised on the general laxity in the enforcement of law and order, as well as on the ‘fear’ of the ruling party to unravel greater urban opposition, in these highly contested constituencies.

These problems of state capacity to provide alternatives, to collect revenue, to enforce regulations through the normal procedures (using the law and regular policing capacities), and to secure predictable co-operation from the urban constituency in the regulatory and service provision processes, suggests why militaristic tactics were used in Operation Murambatsvina/Restore Order. Efforts to bring order to illegal structures within dwellings in high density areas were conducted on a less

militaristic, but more 'self cleaning up' approach. Illegal structures in low-density areas, (i.e. the pursuit of the urban planning logic) were introduced much later to demonstrate to landowners on a class basis (application to the wealthy), and in an even less bombastic manner, based on self-led 'regularisation' and the imposition of financial penalties. To some degree these wider economic and social contradictions of managing the urban space, in the context of the wider political and economic contradictions facing Zimbabwe, provide part of the rationale of the Operation Murambatsvina/Restore Order, rather than the narrowly stated public justification of the operation.

Outcomes of Restore Order or Murambatsvina/ Restore Order: Nature and Scope of Issues

Nature, Scope and Extent of the Social Outcome

According to Government of Zimbabwe figures 50 193 illegal structures were destroyed and 40 000 people displaced; CSO sources put the figure at 190 000 homes translating to 1 million displaced. According to the UN (IOM, 2005) 74 319 households were demolished translating to 375 000 persons displaced. Such inconsistencies in figures are material and need to be thoroughly examined as they have a direct bearing on the design of effective and sustainable responses. The other weakness with this data is that it is not disaggregated to show important variables such as the number of housing units destroyed, commercial premises shut down and the number of informal traders affected. There is also a need to disaggregate further to demonstrate the number of adults (male and female), school children, and types of informal sector that have been shut down. Such a scientific approach would provide a basis for the framing of effective short term and long-term responses.

What we can infer from the data is that 140 000 adults out of the 70 000 affected households were displaced as were 210 000 school children, based on the assumption that the affected had a normal distribution of two adults per household. This translates to less than one per cent of the urban population. Another problem that arises from religiously following these figures is that CSOs and the media present Caledonia Farm as

the main centre for those displaced. According to independent sources there are only 5 000 people at Caledonia, which then begs the question of the missing 320 000 or so displaced people.

There are so many issues being ignored in the whole discourse of outcomes, as an investigation into the coping strategies adopted by the displaced. Mainstream discourse alludes negatively to massive urban to rural migration. This critique does not focus on the characterization of the worker who has since colonial days straddled the urban and the rural economy. Other coping strategies include securing lodging in legal structures, or temporary accommodation with the extended families. Such an analysis is necessary to inform the local authorities of the potential negative impact such coping strategies might cause *vis-a-vis* the objectives of Operation Murambatsvina/Restore Order.

Nature, Scope and Extent of the Economic Outcomes

The economic outcomes should be measured on two fronts; the micro level and whether government's intended objectives (of enforcing price controls and to stop hoarding of essential goods, ensuring that business operates legally and to destroy the foreign exchange parallel market) have been met. There is no doubt that informal sector trade was a major part of livelihood strategy among the urban population (World Bank, 2002) estimated that 59% of the urban population was engaged in informal trade). The immediate closure of flea markets and other traditional informal markets contributed negatively to the livelihoods of the affected and their extended families. The very nature of the informal sector in Zimbabwe (unregistered and unlicensed) makes it difficult to measure the incomes lost and also the revenue that has been lost to the licensing authorities. According to official government statistics, 50 193 structures were destroyed, however there is no indication of the types of structures (residential or commercial), or the value of the structures destroyed. The operation has also contributed to the increase of both commercial and housing property rentals. The international community response, led by the United Kingdom

and Australia, has been to further isolate the Zimbabwean government on the basis of human rights violations, leading to further economic isolation, which is the opposite of what was anticipated.

The Political Outcomes

Domestic political relations have been strained by Operation Murambatsvina/Restore Order, which has provided space for a renewed political critique of the ruling party and the government by various opposition forces in civil society. The social effects warrant a political critique, which however needs to be based more on accurate empirical evidence of the effects and a proper analysis of the context and the policy weaknesses

Implications for the Future of Urban and National Society

The shift towards normalisation and re-engagement with traditional development partners is centred around the monetary policy as designed and implemented by the Reserve Bank. However these policies are not being implemented in a vacuum, the Operation Murambatsvina/Restore Order is subordinate to the overall economic growth and recovery policies. The policy context requires the resurgence of planning supremacy in all spheres of life, and even in the rural areas there have been such moves of relocating people who had been allocated land in areas deemed unsuitable for resettlement albeit at a lower scale in comparison with the urban operation. Urban society has been sidelined to an observer status on such important issues. The underlying ideology behind Operation Murambatsvina/Restore Order is not clear but there are signs of reconsolidation of urban authority on the part of the state and enforcement of the rule of law (in terms of law and order, registration and licensing, enforcement of property rights). All these point towards creating a platform or framework for re-engagement with liberalization (east or west). Urban society is weak in terms of analyses and organization to challenge the state for policy dissemination. The current form of Operation Murambatsvina/Restore Order has been criticized for harshly targeting the low-income areas, whilst the medium to high-income areas are being served through

notices. The provision of decent low cost accommodation for the growing urban population is a challenge that most local authorities are facing. Also related to this is the need for formalization of the informal sector. It is incumbent upon urban society through civil society organization to radicalise the demand for more land for the urban poor.

Responses to Operation Murambatsvina/Restore Order Outcomes

Overview

The main impact of Operation Murambatsvina/Restore Order has been to reveal the depth of the urban crisis and raise issues of inadequacy in the provision of housing and other essential services in the urban areas over the years. The implementation of Operation Murambatsvina/Restore Order and the intervention of UN Habitat brought the issue of low-cost urban housing back onto the social policy agenda of Zimbabwe. The main critique of Civil Society is that it does not address the real long-term issues of urban housing. Civil Society is skeptical about government's commitment and capacity to implement the targets set under operation 'Garikayi/Hlalani Kuhle.' The feasibility of the official government estimate of Z\$3 trillion dollars for this rebuilding exercise has been questioned, considering it a glaring omission from the already strained proposed budget for 2005 and the implementation of Operation Murambatsvina/Restore Order prior to any announcements of Operation Garikayi/Hlalani Kuhle.

State Reactions to Operation Murambatsvina/Restore Order Impacts and Programmes

The government announced a reconstruction plan for regularisation of the informal market, thereby supporting its official rationale behind Operation Murambatsvina/Restore Order, which includes proper zoning of all informal sector activities, and the provision of land for housing, which will see the government engage in the construction of urban housing and business structures. The Housing Delivery Programme set a target of 1.5 millions stands but the financing is not clear. Government through the local authorities is in the process of allocating flea market stands after verification and licensing exercise.

Civil Society Reactions and Programmes

Civil society response beyond the immediate humanitarian interventions at Caledonia and other transit camps is not yet clear. Most of the recorded interventions include assistance to the displaced people through the provision of clothing, blankets, food and bus fare for those relocating to other areas. There is a new initiative being led by ActionAid International which involves co-ordinating the gathering of necessary data, and commissioning of study papers which will lead to policy advocacy, which has yet to be assessed as to whether it will have a positive impact on the policy environment.

International Reactions; Interventions and Programmes

International responses to Operation Murambatsvina/Restore Order have been predictable, and criticize the whole operation as a continued violation of human rights and governance and portraying it as a governance crisis in Zimbabwe thus sustaining the government change agenda. The most helpful response however was that of the UN which sent a special envoy and it is anticipated that the report will be objective and provide a platform for co-operation. The UN envoy managed to consult with government, civil society actors and the affected groups held in transit camps. While there is a widespread consensus on the need to remove urban slums, Operation Murambatsvina/Restore Order has been criticized from a process perspective as government failed to consult, did not give notice and also deployed security agents to carry out the operation. The international community's response has centered around condemning the processes and has mostly been informed by the opposition party and civil society opinions. Government's reconstruction plans have not been supported by any commitment from the international community, except by the UN Habitat office plans to establish a permanent office in Zimbabwe and partnership with the government. The UNDP indicated that there is already a process of consultation on possible areas of co-operation with the government.

The Way Forward

Economic Policy Reorientation Based on a New Deal Consensus

The current relatively incoherent heterodox economic policy framework needs to be dramatically adjusted to address more effectively the key problems that it seeks to solve. This is not to suggest that a big bang neo-liberal economic structural adjustment and liberalisation framework can be a viable alternative framework. A new domestic consensus deal over a pragmatic and transitional macro-economic policy framework is required, which includes a 'balanced' re-engagement with the international financial community and regional institutions within SADC. The objectives, strategies and programme elements of this economic policy framework can only be elaborated on the basis of substantial investments in appropriate domestic policy expertise, balanced international advice and other resources required for a thorough-going consultative process.

A Comprehensive Urban Renewal Plan

A major rethink of Zimbabwe's urban development strategy in the context of a revised economic policy framework and in relation to the reconstituted national land property rights needs to be developed. Such an integrated plan should include the following interrelated aspects:

- Urban land redistribution
- Reconstruction of the urban hierarchy and interlinked urban areas
- Development of informal and small enterprise linkages to the formal sector
- Urban social services
- Urban housing development strategies

In conclusion, a more participatory and inclusive approach should be pursued by government. Improving the central government's relations in urban renewal activities by involving the 'affected' and other concerned civil society (NGOs and political parties) in dialogue planning and the implementation of projects is a vital aspect of ensuring success. Improving political

debate on the national interest and on international re-engagement is also necessary.

Like many others whose incomes and livelihoods were destroyed by government's arbitrary action, Muvindi is extremely skeptical of government's intentions, as he had seen it all before. "In 1993 we were moved from Churu Farm to Hatcliffe Extension. Government promised us stands to build houses but nothing happened until 2002 when the Ministry of Local Government allocated us stands. We paid fees and rentals for the stands and were given lease agreements and permits to build. "We were surprised by the evictions and now do not trust government. We were told to pave way for low-density housing". He added: "I have been moved once more to the Whitecliff Scheme which is not serviced and yet Hatcliffe was serviced. This means I will have to wait another 20 years for the area to be serviced. Probably by then I will be dead".

ECONOMIC IMPACTS

Background

The 1991 International Labour Conference considered what it termed "The Dilemma of the Informal Sector," defined in terms of "... whether to promote the informal sector as a provider of employment and income; or to seek to extend regulation and social protection to it and thereby reduce its capacity to provide jobs and incomes for an ever expanding work-force." However, at the 2002 Session, there was a marked shift in position, with the perceived dilemma reduced to a false alarm because the jobs referred to were of the survivalist type. It was particularly pointed out that within the framework of decent work, 'quality is not divisible from quantity.' This issue had also been the subject of a trade union international symposium organised by the Bureau for Workers' Activities in 1999 (see also ILO, 1999b). In this regard, the position taken was that the informal economy has to be integrated into the mainstream economy by addressing the work deficits through provision of a legal and institutional framework for protection and ensuring the workers have 'voice'.

In fact, the Zimbabwean government adopted a strategy of integrating the 'sector' into the mainstream economy in 2000. A detailed programme of action was drawn up following consultations with stakeholders and was co-ordinated by the then Ministry of Youth, Gender and Employment Creation, with the ILO/SRO providing technical backstopping services.

The blitz on the informal economy started a day before the Governor of the Reserve Bank announced his Post Election and Drought Mitigating Monetary Policy Statement on 19 May 2005. No-one was prepared for the sudden, extensive and indiscriminate nature of the clean-up operation. At first, it was the informal traders and structures that were targeted. The exercise covered the whole country, including the rural areas. Almost a month after it started, the exercise moved into business premises. The operation was justified by government on the grounds that the informal economy was hiding criminals, people engaging in illegal activities and those who do not practise hygiene, thereby spoiling the image of the towns and country. While the reasons for the operation remain as hazy and unconvincing as ever, it is the manner in which the process was carried out that created mayhem. The attendant problems are multiple: homelessness, starvation, exposure to cold weather and diseases, loss of assets, wares and stocks, loss of income, wanton arrests, transport woes, rising rentals as a result of increased and urgent demand for accommodation,⁴⁰ and abject poverty. In Harare alone, government identified 24 illegal housing co-operatives.⁴¹ On 14 June 2005 alone, police reportedly

40 *The Herald* of 1 June 2005 observes that rentals in Mbare shot up from Z\$350,000 to Z\$800,000 – Z\$1 million per month for a full house, while in Hatcliffe Extension they rose from Z\$250,000 to Z\$750,000 per month (page 1).

41 The total number of housing co-operatives that took advantage of the land redistribution exercise to swindle home-seekers by allocating land and asking them to make monthly contributions ranging from Z\$300,000-15 million a month was put at more than 30 (*Zimbabwe Independent*, 10 June 2005, page 5). The majority of these appropriately bore names of national heroes such as Leopold Takawira, Simon Muzenda, Moven Mahachi, Chenjerai Hunzvi, Sally Mugabe and Joshua Nkomo which tricked many to join them. The Gwindingwi Housing cooperative, which many teachers had joined, contributing Z\$25,000 per month since 2002 without anything tangible coming out of it had been officially launched by the Minister of Education, Comrade

destroyed at least 500 'illegal' homesteads at Ngungunyana Housing Cooperative (*The Daily Mirror*, 15 June 2005, page 3). A Harare resident whose five-roomed house was demolished summarised the plight of many when he observed that "Words fail me. This has been a painful exercise. I feel like all my life has gone down the drain. I just don't know where to go from here," (*The Herald*, 14 June 2005, page 1). A carpenter in Harare (Mr. Maonga Masauso) who had his premises destroyed put it bluntly "I don't even know how I will pay back the customers, some of whom had almost completed paying for beds, kitchen units and sofas that I used to make," (*The Sunday Mail* of 22 May 2005, page 1).

Government stated that displaced people would be relocated to their original homes, while those of foreign origin but Zimbabwean citizens would be resettled on farms. As an afterthought, well into the operation, government indicated that it had drawn up an elaborate plan through the Ministry of Small and Medium Enterprises Development, to relocate Harare informal traders who were conducting business at illegal places and council had identified a number of sites where they would operate from (*The Herald*, 2 June 2005, page 1). The strategy seeks to regroup informal traders in accordance with their infrastructure needs such as factory shells and common service centres, artisans' hives, commercial centres, flea markets, vendor marts-people's markets and people's shops. The City of Harare proposed to introduce weekend flea markets in all suburbs and designate public car parks at shopping centres for use as flea markets.

In a clear case of putting the cart before the horse, the Ministry of Small and Medium Enterprises indicated that it was in the process of compiling a list of vendors, traders and manufacturers for vetting and allocating working space. The Ministry announced that it had facilitated the establishment of a call desk at the Harare Municipality's Remembrance Drive offices and throughout the country to answer queries from the affected entrepreneurs, and to register them for relocation. The Ministry of Youth Development and Employment Creation offered use of

youth brigades to build stalls for informal traders. Meanwhile, the Minister of Local Government, Public Works and Urban Development stressed that there was no going back on the clean-up exercise. On 1 June 2005, an inter-ministerial conference was held on urban local authorities' progress with respect to the clean-up operation where the above suggestions were made. As the UN special envoy on Human Settlements issues, Mrs. Anna Kajumulo Tibaijuka, and her delegation were arriving to assess the impact of the operation on 26 June 2005, government announced that the 'clean up' operation was winding up and was being replaced by a new one code named "Operation Garikai/Hlalani Kuhle."⁴² Under this initiative, government seeks to provide residential and business accommodation to deserving people under a comprehensive reconstruction programme. Housing tops the priority list, followed by factory shells and market stalls. The Ministry of Local Government, Public Works and Urban Development, the Ministry of Defence and the Ministry of Small and Medium Enterprises are reportedly spearheading the exercise, with a budget of Z\$3 trillion (*The Sunday Mail*, 26 June 2005, page 1). This reconstruction programme is scheduled to run until 30 August 2005, an unrealistic time-frame for a far-reaching programme.

Even legally operating vendors and structures were affected. As the Mayor of Bulawayo, Japhet Ndabeni Ncube observed "We were generating a lot of revenue from the vendors. Bulawayo was the most organised city throughout the country in as far as vendors were concerned. We had put up shelters for them and they paid rent and licence fees to us. They were legal vendors operating within the confines of council by-laws," (*Daily Mirror*, 25 June 2005, page 2). In any event, if it is an exercise in the national interest, consultations should have preceded the operation. The Mayor of Bulawayo made it clear that no consultations were held. The city was now in a dilemma as to how to deal with vendors who had paid rents and licence fees in

Aeneas Chigwedere at the City Sports Centre in Harare (*Zimbabwe Independent*, 10 June 2005, page 5).

42 The President rationalised the visit as follows: "I have agreed to receive the United Nations Secretary-General's special envoy in the country so as to enable them to understand and appreciate what we are trying to do for our people who deserve much better than the shacks that are now being romanticised as fitting habitats for them," (*The Herald*, 27 June 2005, page 1).

advance. The refusal by government to entertain the AU Commission chairperson's envoy who had come to assess the clean-up operation and his subsequent departure on 7 July 2005 raises doubts as to government's willingness to be exposed, especially to the AU (see *The Herald*, 8 July 2005, page 1-2).

The Significance and Impact of Operation Clean-Up on the Economy

The economy inherited at independence in 1980 had a dual and enclave structure. The communal sector was developed as a reservoir of cheap labour for the formal sector and to meet some of its food requirements. So in this sense the communal sector is partly linked to the formal sector through the labour and commodity markets. Yet it too is an enclave in that the majority of the households rely primarily on subsistence production and on traditional methods of allocating resources, while the formal sector relies predominantly on the market for resource allocation. So the non-formal sector, trapped in low productivity and a low-income cycle, is peripheral to the formal economy. The performance of the formal sector is determined by external market forces with regard to the export of primary goods and the importation of capital and intermediate goods for industry. Because of these external links, the formal sector does not depend on the non-formal sectors for its growth.⁴³

By focusing on the formal sector, which is male-dominated, past policies have neglected the non-formal sectors that accommodate the majority of the population, especially women. The point is that as long as the majority of Zimbabweans do not have entitlement to assets or means of production, whatever growth or recovery is achieved is exclusive. While land redistribution has occurred, it was not done in a manner that ensures productive utilisation of the land. Thus, the current structure of the economy has resulted in the exclusion of the majority of the population from benefiting from government policies. It is the continuation with this structure, and its

reinforcement during the implementation of market-led reforms (ESAP) that has created mass poverty, plunging the country into a crisis of governance.

CSO indicates that the 2001 Income Consumption and Expenditure Survey and the 2004 Indicator Monitoring Labour Force Survey have information on the informal economy covering economic activities, numbers employed, socio-demographic indicators, area of location and incomes (2005:40). The writer was informed that the documents and information will only be made public around October/November 2005. This therefore implies that any discussion on the informal economy post-1998 relies heavily on anecdotal evidence (see Kanyenze, 2004).

While at independence in 1980, the informal economy was relatively small, accounting for less than 10% of the labour force, it had grown to 40% by 1998. Manufacturing accounted for 70% of all activities in 1991, with trading representing 23% and services only 3%. Women accounted for 67% of all micro-enterprises (77% of the urban-based and 62% of the rural-based). Most of the participants were from the formal sector and were unemployed before starting their micro-enterprises. Whereas 54% of participants had completed primary education in 1985, by 1991, 60% had done so. In addition, the proprietors used very limited start-up capital, which was mainly obtained from formal sector savings from past employment or borrowed from relatives. Loans from savings institutions were largely insignificant. Participants in the urban informal economy worked for more than 8 hours a day for an average of six days a week, with more than 80% of participants sourcing the bulk of their inputs from the formal economy.

In terms of gender distribution, MSEs underwent a dramatic change during the period 1991-1998. Whereas 73% of all MSEs were owned by at least one woman in 1991, the level dropped to 71% in 1993 and 58% by 1998, a decline of 3.1% per annum during the period 1991-1998. A marked shift by female owners from manufacturing to trading occurred. Of the MSEs that closed between 1994 and 1998, more than 80% were female-owned. In terms of the constraints being faced by the manufacturing, commercial and service MSEs, Gemini (1998) found marketing, finance and inputs as the main ones, which are similar to those identified in 1993. Although no

43 A full discussion of the dual and enclave structure of the economy is in Mhone (1992, 1993 & 1999).

comprehensive survey has been carried out since 1998, anecdotal evidence suggests that the informal economy has grown since then as the economic crisis has deepened and unemployment has reached 70%.

According to a study by the Central Statistical Office (CSO, 1998), the number of households living in poverty increased from 40.4% on the eve of ESAP in 1990 to 63.3% by the end of the programme in 1995/96. It is currently estimated that no less than 80% of households in Zimbabwe are below the poverty line now. The Poverty Assessment Study Survey (PASS) of the Ministry of Public Service, Labour and Social Welfare (1995) found that 61% of households lived in poverty and 45% in extreme poverty. Levels of poverty were higher in rural areas (75% of households) compared to urban areas (39% of households). The incidence of poverty was found to be higher in female, as opposed to male-headed households with levels of poverty of 72% and 58% respectively, an issue generally referred to as the feminisation of poverty. In such a context, the informal economy has effectively become the economy. Formal sector employment now accounts for only 16% of the labour force, the informal economy for at least 40% and the communal sector for at least 44%.

With the ratio of savings to GDP of 1.7 in 2004, this implies the nation is dissaving, and therefore government will resort to domestic borrowing which will exacerbate the debt crisis as it entails the printing of money and accumulating short-term debt. Owing to the withdrawal of external sources of financing, government increasingly resorted to domestic borrowing to bridge its funding. This has resulted in total domestic debt rising substantially from Z\$24.7 million in 1995 to Z\$162.8 million by 2000, Z\$198.6 million by 2002, Z\$2.8 trillion by 2004 and Z\$10 trillion as at 17 June 2005. Much of this is going towards recurrent expenditures as opposed to capital investment. The share of expenditures going to capital investment has been below 10% until it was raised to 18% in the 2005 budget, which is still below the optimal level of 25%.

Since ESAP and the onset of the current crisis, social expenditures have experienced a sharp reduction in budgetary allocations. Since the onset of the crisis in 1997, allocations for housing were drastically reduced. As a share of central

government expenditure, allocations for housing and public works declined from a peak of 12.4% in 1992 to 1.9% in 2003 and 3.2% by 2005. With dwindling resources, the government resorted to individual contributions by the home-seekers, with the State constructing the houses. However, this scheme collapsed following its abuse by political heavyweights. In the 2003 national budget, Z\$1 billion was set aside for the Civil Service Housing Revolving Fund Scheme, which was increased in the 2004 budget to Z\$10 billion. However, the later amount is sufficient to construct only 20 houses. Realising the inadequacy of the allocations, the 2005 budget adopted a market approach to housing, indicating that the State would provide incentives for private sector participation in the provision of social services, including housing.

In the 2005 budget, an amount of Z\$1 trillion was set aside for the capitalisation of the proposed Energy, Housing and Infrastructure Bank, 20% of the capital budget. The housing market itself is in crisis as a result of high levels of inflation that have necessitated punitively high interest (mortgage) rates. Since the deepening of the crisis, most investors sought to hedge against it by investing in assets, of which housing was one of the most attractive. By engaging in speculative activities in the housing sector, the investors have largely crowded out of the market *bona fide* home seekers. The Monetary Policy Statement of January 2005 bemoans the fact that Building Societies have deserted their core business such that by end of 2004, only 19% (Z\$168.4 billion) of their asset base was in mortgages, with the remaining 81% (Z\$728.6 billion) in non-core business. With high levels of inflation, players seek to avoid the interest-risk factor associated with medium to longer term financing.

The housing backlog in 5 major towns and cities is seen below. At 900 000, Harare accounts for 85% of the backlog, with Bulawayo a distant second at 7%.

Housing list backlogs in major towns and cities

HARARE	900,000
BULAWAYO	72,000
MUTARE	35,000
GWERU	40,000
KWEKWE	8,000
TOTAL (5 major towns & cities only)	1,055,000

Source: Local Authorities estimates as reported in RBZ, 2005: Monetary Policy Interventions Focusing on the Youth and Middle Aged Population of Zimbabwe, 26 January, page 5.

As a result of the failure of the housing sector to meet demand for accommodation, home-seekers resorted to any means of shelter available, resulting in the mushrooming of backyard shacks and illegal structures. The Reserve Bank admits that the backlog would take years to correct. On the basis of the identified constraints facing the informal economy, the Ministry of Gender, Youth and Employment Creation which was responsible for the informal economy, in 2000 came up with a stakeholder-driven approach to mainstreaming the 'sector,' whose importance was recognised when a Minister was appointed with specific responsibilities for it. Clearly therefore, the clampdown on the informal economy falls flat in the face of its recognition by government and the adoption of a strategy to consciously mainstream it through a stakeholder approach. It is necessary to recognise that the informal economy is merely a symptom of a problem, which is in fact the failure of public policy to meet people's basic needs (food, health, education, shelter, public utilities like electricity, water and sanitation and decent work) and to create a truly inclusive national economy.

To implement the comprehensive development strategy adopted in 2000 to integrate the informal economy into the mainstream economy and to implement the National Housing Policy of 2000 will require resources beyond government's capacity.⁴⁴ Thus, outside help is required, a conclusion also

reached by the UN Secretary General's special envoy (*The Herald*, 9 July 2005, page 1). Speaking after a briefing by the Bulawayo Metropolitan Province Inter-Ministerial Reconstruction Committee, it was observed that the cleaning up of cities should be a process borne out of consultations (*The Herald*, 8 July 2005, page 2). *Ad hoc* or piecemeal efforts will not adequately achieve the intended objectives of integrating the non-formal sector into the mainstream economy and providing decent and affordable shelter for all.

44 With respect to housing, the President announced the National Housing Delivery Programme in his State of the Nation Address of 2 December 2003. The programme seeks to acquire 310,406.6 hectares of peri-urban land for housing, with 30% of the land to be allocated to low income earners. It hopes to clear the housing backlog by 2008 by building 250,000 units a year, giving a total of 1.2 million housing units.

Chapter 7

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APPENDIX ONE



**STUDY ON THE IMPACT OF
“OPERATION MURAMBATSVINA/RESTORE ORDER”
IN 26 WARDS OF HARARE HIGH DENSITY HOUSING AREAS
ACTIONAID INTERNATIONAL IN COLLABORATION WITH
COMBINED HARARE RESIDENTS ASSOCIATION (CHRA)
JULY 2005**

EXECUTIVE SUMMARY

The Operation Murambatsvina Survey represents a unique opportunity to gain insights into the impact of the Operation on communities and households where it was executed since 18 May 2005. This report attempts to give a factual account of the impact of Operation Murambatsvina/Restore Order, through analysis of the impact at both household level and community level.

A structured questionnaire was used in the collection of data from 14,137 respondents distributed in 26 affected high density suburbs. The quantitative household survey was designed to collect the following types of information from the interviewed households: 1) household demographics, 2) Livelihood activities affected by the operation, 3) household impact, 4) current coping mechanisms being employed by the communities in response to the operation, 5) assistance communities are currently receiving 6) assistance currently being offered and assistance perceived as required by the communities.

Initially 26 team leaders for each ward were trained on the administration of the questionnaire and sampling procedures. Thereafter, a further 9 researchers were trained by the team leaders at ward level. Therefore, 260 researchers collected this information over a two day period. At least 500 homesteads were visited during the course of the study. This represents a third of households per ward. Data collected was entered, stored and exported into Statistical Package for Social Science (SPSS) Version 13. Subsequently, analysis was done to generate frequencies, descriptive and derived variables.

Socio-demographic data of the sampled wards

Assumptions:

- At least 3 households stay at one homestead
- Average household size is 5.8
- Assume the remaining 4 high density residential wards are not different from the other sample wards.
- 97% of households affected by the operation

Calculation Process:

- 14,137 households were surveyed
- total population surveyed is 81,995

Based on these figures and assumptions, the following are projected households that were affected by the operation;

Adding the remaining 4 wards – $30/26 * 14,137 = 16,311$ households in all 30 wards

Total population affected, households sampled*average household size*average households per homestead*
 $16,311 * 5.8 * 3 = 283\ 811$

However the sample is only a third of the population in the wards. Therefore, the total population would be:

$283\ 811 * 3 = 851\ 434$

From the data generated from the survey, 97% (n = 13 712) of homesteads visited in the 26 wards were affected by the Operation in varying proportions and different ways. Demographic data for the general population is discussed below:

- Overall population sampled is 81,995 with an average household size of 5.8
- The majority of respondents and household heads were male (56% and 61% respectively)
- The total number of households affected by the operation (which includes; households that lost accommodation, had shelter lost, lost livelihoods, children not attending school as a result) was 97% (13,712) of sampled households.
- The average age of the head of household is 41 years, with the youngest reported as 12 years old and the oldest as 89 years old.
- Female household heads are slightly older than male household heads, 43 and 39 years old, respectively.
- Approximately 12% of homesteads visited are above 60 years (elderly headed) and only 1% (142) were headed by minors (commonly referred to as child headed, below 18 years).
- 32% of interviewed households were hosting orphans, whilst a further 13% were hosting at least a chronically ill individual. A minority of 6% were hosting at least a mentally/physically challenged person.
- As a measure of vulnerability, the analysis classified all households in five categories (see table below). Most households interviewed fall in 3 categories (39%), whilst in 1 category: 15%; 2 categories: 31%; 4 categories: 11% and only 4% in the 5 categories.

- Out of the 14,137 sampled homesteads, 22% of them reported that children were not attending school as a direct result of the Operation.

Livelihoods

The household survey inquired on primary sources of income of those affected by the Operation, since secondary information suggests that the Operation has had an adverse effect on livelihoods.

- A majority (73%) of urban dwellers were engaged in informal trading⁴⁵ prior to Operation Murambatsina/Restore Order from the sample.
- The primary sources of livelihood that were cited to have been disrupted (73%) as a result of the Operation from the sample include: tuck shop ownership (9%), flea market (11%), fruit and vegetable vending (17%), offering accommodation (18%), cross border trader (6%) and petty trade (5%) such as sale of firewood.
- Unfortunately, the vulnerable strata mentioned earlier were mainly engaged in the informal sector as captured below:

Proportions of people who were engaged informal and formal sectors

Strata	Informal sector	Formal sector
Female headed households	91%	9%
Child headed households	100%	0%
Households hosting orphans	92%	8%
Households hosting chronically ill members	91%	9%
Households hosting mentally/physically challenged persons	91%	9%

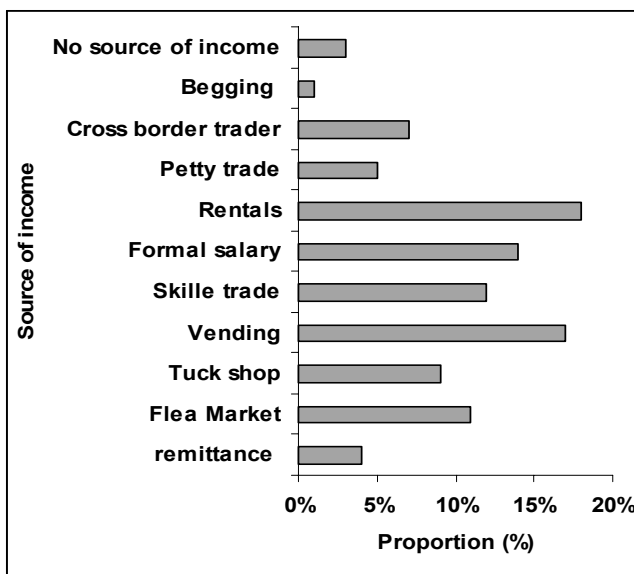
Currently, Zimbabwe is facing its worst economic crisis. Consequently unemployment is estimated at above 70%. The

⁴⁵ Informal trading includes; flea market, tuck shop, vending, skilled/artisan, offering accommodation, and petty trade.

respondents were asked what their primary source of income was before the *Operation*. Secondary information suggests that the *Operation* has had an adverse effect on the livelihoods.

A majority (73%) of urban dwellers were engaged in informal trading⁴⁶ prior to *Operation Murambatvsina/Restore Order* from the sample. Households derive income from a number of different sources. Figure 1 shows the proportion of households in the survey and their primary sources of income prior to the *Operation*. The primary sources of livelihood that have been cited to have been disrupted (73%) as a result of the *Operation* from the sample include: tuck shop ownership (9%), flea market (11%), fruit and vegetable vending (17%), offering accommodation (18%), cross border trader (6%) and petty trade (5%) such as sale of firewood. It is approximately 2 months since the *Operation* commenced and to date individuals are still waiting for police clearance, operating licenses from council, the construction and allocation of vending stalls. Considering that informal trading contributions towards the family are not large, one wonders how these people are currently managing with no income for the past two months in such a hyper-inflationary country.

Livelihoods before the operation



46 Informal trading includes; flea market, tuck shop, vending, skilled/artisan, offering accommodation, and petty trade.

A further in-depth analysis reveals that with a majority of the respondents in the 5 vulnerable categories, the primary source of income lies in the informal sector (range 91% - 100%). This gives credence to the claims that the *Operation* has had a massive negative impact on families that were relying on informal trading as a livelihood. Moreover, these would naturally have a high dependency ratio (fewer coping strategies, access to social protection and safety nets. Income sources vary somewhat by strata (Table 5). Male and female-headed households vary most in the percentage that receive income from the formal sector (18% vs. 9%). Households with chronically ill members mimic closely the general population, while households hosting orphans rely less on formal employment, slightly more on vending and petty trade.

Impact of the Operation at household level

The extent to which households or communities were affected has not been quantified. Scant, inconsistent and at times conflicting information is available on this issue.

Shelter

A majority (76%) of respondents reported that they had lost shelter. Loss of shelter was two-fold: 1) a tenant being evicted as a result of demolitions, and 2) a landlord losing a section of his home as a result of the demolitions.

Source of income

Overall, 79% of interviewed households reported that they had lost their sources of income. This figure is similar to the 73% that had lost sources of income (livelihoods) as a direct result of the *Operation*. The increase may be attributable to multiple sources of income that households are engaged in to ameliorate vulnerability. Strikingly this generally affected all households in the same proportion.

Education for children

The welfare of children especially in terms of their ability to attend school is a basic fundamental right, was affected by the operation. School drop-out was reported to be 22%. However, 45% of households interviewed reported that they were in a precarious position regarding funding and accessing schools for their children, currently and in future. This may be a clear indication of the future prospects of school enrolment for children in the near future.

Property

Forty-five per cent of homesteads visited reported that they had incurred losses of property. Unfortunately, the survey was not able to quantify in Zimbabwean dollar value what it was exactly the affected communities had lost and also the nature of the property.

Deterioration in health

It is sad to note that slightly over 20% of people interviewed, attributed the deterioration of health of their loved ones directly to the operation.

Food security

Approximately, 60% of households sampled claimed that they had become food insecure as a consequence of the Operation. Being urban areas, most of the food supply to the family is sourced from the market. Little or no food finds its way from the rural areas if a family has rural linkages.

Household safety and security

Household safety and security was defined as the family ability to protect and safeguard its assets (physical) and from exploitation. Almost half (49%) of the homesteads reported that this indicator had been compromised as a result of the operation.

Disruption of family units

Housing waiting lists run into hundreds of thousands in Harare and all other urban areas in Zimbabwe. Sharing of homesteads and extension of houses was a way in which residents of Harare sought to mitigate the accommodation problem. More than 75% of the respondents reported losing shelter. It is worrying to note that over 40% of homesteads visited reported that family units had been disrupted as a result of the operation. Mostly children and spouses had been relocated back to the rural homesteads if this was possible.

Women's status and dignity

Humiliation and loss of dignity as a direct result of the operation was also reported. Prior to the demolition exercise, it is reported that the authorities would move around marking what they deemed illegal structures using paint. The marked buildings were to be destroyed. Such actions resemble a war situation. This is witnessed by 39% of the interviewed homesteads claiming that they had lost their dignity as a result of the Operation.

Increased vulnerability for women and children

Thirty-seven per cent of the interviewed homesteads acknowledged that women and children had become more vulnerable to abuse as a consequence of the Operation. Furthermore, a high proportion of these were from female-headed households.

Psychologically affected (traumatised)

Almost 40% of respondents interviewed claimed that they had been traumatised by the aggressive implementation of the Operation, and this was widespread. Despite the low proportion of child-headed households, this was reported in 82% of child-headed households.

Coping mechanisms adopted by households

Currently, only 37% households reported that they were using their own resources to sustain the family. A further 22% claimed

to be getting assistance from relatives, whilst government, community-based organizations and non-governmental organizations accounted for a mere 6%. More important is the realisation that 35% of households were not managing at all. In this bracket, the majority were child- and women-headed households accounting for 76% of the responses.

Assistance currently being received

Of those that reported receiving assistance from the various sources, the following categories are the nature of assistance being received; food (17%), shelter (15%), monetary (8%), education for children (7%), relocation (5%), psycho-social support (5%) and legal help (4%). This clearly suggests that there are major gaps in the support that is being offered to the communities.

RECOMMENDATIONS

The range of recommendations presented in the report is mentioned in summary form below. These are aimed at those involved and responding to the crisis. Policy analysis is urgent and will be subsequent to this report.

General Recommendations

- There is urgent need to resolve the accommodation/shelter question for all affected families.
- Urgent restoration of livelihoods for affected families should be prioritised to ensure recovery and long term sustainability of income for affected communities.
- There is urgent need to grant and guarantee access to appropriate treatment and quality care for people living with HIV/AIDS.
- There is urgent need to conduct an in-depth national survey to better inform responses and to develop a commonly agreed national data set of the current situation.
- There is urgent need to scale up the national response and meet the needs of the affected families.

- There is need to consolidate the different co-ordination processes and ensure the meaningful sharing of information and activities by all stakeholders involved.
- Need for urgent donor commitment for additional support to affected communities.
- Urgent need to create awareness of the impact, extent and effects of the operation on affected communities.

Perceived assistance required

The table below clearly demonstrates the areas that were cited by respondents. From the preceding paragraphs, it has been documented that major support gaps exist in the 26 wards.

Proportion of assistance required

Area of need	Proportion (%)
Shelter	73%
Food	83%
Compensation	4%
Relocation	45%
Education	56%
Legal help	4%
Monetary (financial help)	74%
Psycho-social support	42%