



*Operation Murambatsvina:*  
Unlawful Forced Evictions; Crimes against Humanity; and Cruel,  
Inhuman or Degrading Treatment of the Poorest of the Poor

Submission to the African Commission on Human and Peoples' Rights (ACHPR) 41<sup>st</sup>  
Session

*Relevant Pursuant to Article 62 of the African Charter on Human and Peoples'  
Rights*

**Submitted by:**

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## **1. Introduction**

1. The Centre on Housing Rights and Evictions (COHRE) respectfully submits this report concerning the forced evictions carried out by the Republic of Zimbabwe in the context of *Operation Murambatsvina* in order to assist the African Commission on Human and Peoples' Rights (African Commission) in its deliberations on the Periodic Report of the Republic of Zimbabwe.

2. COHRE is an international human rights non-governmental organisation based in Geneva, Switzerland with Observer Status with the African Commission and Consultative Status with the United Nations (UN). COHRE has offices around the world including Ghana and South Africa. COHRE works to promote and protect economic, social and cultural rights for everyone, everywhere, with a particular focus on the right to adequate housing, preventing or remedying forced evictions, and the right to water.

3. COHRE has found that the forced evictions in the context of *Operation Murambatsvina* constitute gross violations of human rights that amount to both a series of serious human rights violations and a massive violation of human rights protected by the African Charter on Human and Peoples' Rights (African Charter), in particular Articles 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22.

## **2. Facts**

4. The facts asserted are based on the *Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina, by the UN Special Envoy on Human Settlements Issues in Zimbabwe Mrs. Anna Kajumulo Tibaijuka* (UN Report).

5. In May 2005, the Republic of Zimbabwe embarked on *Operation Murambatsvina*. The UN Report found that this operation was not preceded by any process of consultation or debate at any level and on the basis there was none. There is no evidence of any attempt by the Republic of Zimbabwe to evaluate the seriousness of the housing situation, or to assess alternatives to forced eviction, or to discuss the situation with those who were later to become the victims of the operation.

6. The operation commenced on about 17 May 2005. Its avowed aim was to clear informal business and residential development; initially in Harare but later it spread to

other cities and 'urban areas' throughout the country. Arrests of traders took place between 21 and 24 May 2005. On 27 May evictions started in Harare and quickly spread elsewhere.

7. The operation was executed with great speed and brutality. It is described in the UN report as being carried out in "military style" and as executed in a "militaristic manner". It was conducted by central government authorities, including the military. It involved the bulldozing, smashing and burning of structures housing many thousands of poor urban dwellers. According to the UN Report, "substantial housing stock has been destroyed and the informal sector has been virtually wiped out, rendering individuals and households destitute." The operation destroyed the infrastructure for entire communities with all that that entails.

8. Some occupiers were made to demolish their own structures under the supervision of the police. There are reports that those who did not do so quickly enough were beaten.

9. Some individuals were swept up in the evictions despite the fact that they had licences to remain. In at least one case the evictions took place (Porta Farm) in breach of a Court Order granted in November 2004 and even though the authorities were reminded of the Order and the police were shown copies. About 12,000 people were evicted in this incident alone.

10. The bare facts of the operation are striking and give an indication of the scale. The Government's own figures, provided to the UN Special Envoy [UN Report Para 3.2.2] reveal that 92,460 housing structures were demolished directly affecting 133,534 households. A further 32,538 structures of small, micro and medium sized enterprises were demolished.

11. The true numbers dispossessed will never be known but extrapolating from 2002 census data about average household size 569,685 people were made homeless and 97,614 people lost their main source of livelihood. In fact there seems to have been a still greater overlap between loss of housing and loss of livelihood than is implied by this figure.

12. Of those affected, a large number were children (83,530 under age 4; 113,000 between aged 5 and 11; and 109,000 aged 12 to 18). Six people were killed [UN para.

6.5.1] and it is not known how many were seriously injured requiring hospital treatment if it had been available.

13. All this was achieved in a little over a month between about 17 May 2005 and 9 July 2005. The UN report summarises the situation as follows [para. 3.7]:

While arbitrary evictions are being documented and monitored worldwide by UN-HABITAT and its partners, and such evictions are underway in several African countries, Operation Restore Order [*Operation Murambatsvina*] has rendered people homeless and economically destitute on an unprecedented scale. Most of the victims were already among the most economically disadvantaged groups in society, and they have now been pushed deeper into poverty and have become even more vulnerable. The scale of suffering is immense, particularly among widows, single mothers, children, orphans, the elderly and the disabled persons. In addition to the already significant pre-existing humanitarian needs, additional needs have been generated on a large scale, particularly in the shelter, water, sanitation and health sectors.

14. And at paragraph 7.1:

[T]he unplanned and over-zealous manner in which the Operation was carried out has unleashed chaos and untold human suffering. It has created a state of emergency as tens of thousands of families and vulnerable women and children are left in the open without protection from the elements, without access to adequate water and sanitation or health care, and without food security. Such conditions are clearly life-threatening. In human settlements terms, the Operation has rendered over half a million people, previously housed in so-called substandard dwellings, either homeless or living with friends and relatives in overcrowded and health-threatening conditions. In economic terms, the Operation has destroyed and seriously disrupted the livelihoods of millions of people who were coping, however poorly, with the consequences of a prolonged economic crisis.

15. Aggravating elements include:

- The operation started with little or no warning. It seems to have taken place from about 17 May 2005. The first public announcement was on 19 May 2005 but even then no real detail was given. When the local authority in Harare issued a notice giving a semblance of compliance with the statutory provisions the authorities did not even wait for the notice to expire. At Porta Farm (see above) where the evictions were in breach of a Court Order, just over 24 hours notice was given to 12,000 people.
- The army was involved in the evictions.

- Many of those affected had been in occupation for many years. Whether or not the laws under which the action was purportedly taken have lapsed, the occupiers are likely to have had every expectation that they would not be enforced against them, at least not at such short notice. That expectation was further encouraged by the fact that many of them paid taxes and other bills.
- No adequate provision was made to allow for alternative accommodation or help for those evicted, not even for highly vulnerable groups including the elderly the sick or disabled, children and pregnant women. The foreseeable consequence was suffering on a huge scale. Voluntary services were overwhelmed and a substantial number of those affected did not have friends or family with whom they could stay. Even if they could those relatives or friends could ill afford to help them. By the time of the UN report some 114,000 (20 per cent) were thought still to be living in the open, often in the ruins of their former home. The remainder had been forced to move on: 20 per cent to rural areas, 30 per cent had moved to stay temporarily with family or friends and 30 per cent sought refuge in churches or elsewhere [UN Report para 3.3].
- The operation was planned to start at the onset of winter when it was known that the effect would be to expose many of the victims without shelter.

### 3. Law

#### 3.1 Prohibition on Forced Eviction

16. Pursuant to international human rights law binding upon the Republic of Zimbabwe, evictions can only occur in exceptional circumstances and must conform to a strict set of criteria. These criteria have been set out by the UN Committee on Economic, Social and Cultural Rights in General Comment No. 4 and No. 7 and were affirmed and found within the context of the African Charter by the African Commission in the case of *Social and Economic Rights Action Centre and Center for Economic and Social Rights – Nigeria (SERAC v. Nigeria)*.<sup>1</sup> The Republic of Zimbabwe’s mass-evictions fall drastically short of these criteria.

17. In terms of international human rights law, including the African Charter as the *SERAC v. Nigeria* case demonstrates, for forced evictions to be considered as lawful, they may only occur in very “exceptional circumstances” and only after “all feasible alternatives” have been explored “in consultation with the affected persons.” If and only if such exceptional circumstances exist and there are no feasible alternatives, can

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<sup>1</sup> African Commission on Human and Peoples’ Rights, Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights – Nigeria* (27 May 2002), Fifteenth Annual Activity Report of the African Commission on Human and Peoples’ Rights, 2001-2002, Done at the 31<sup>st</sup> Ordinary Session of the African Commission held from 2<sup>nd</sup> to 16<sup>th</sup> May 2002 in Pretoria, South Africa.

evictions be deemed justified. However, certain requirements must still be adhered to.

These requirements are:

- Genuine consultation with those affected;
- Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- Information on the proposed evictions, and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- Especially where groups of people are involved, government officials or their representatives to be present during an eviction;
- All persons carrying out the eviction to be properly identified;
- Evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- Provision of legal remedies; and
- Provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

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

19. The Republic of Zimbabwe violated its legal obligations under international human rights law when it carried out *Operation Murambatsvina* for a number of reasons, including:

- (1) the evictions had not been deemed to meet the “exceptional circumstances” threshold by an independent and impartial tribunal;
- (2) all feasible alternatives to the planned eviction were not explored in consultation with the affected persons;
- (3) the evictions were carried out by violence means;
- (4) there was no adequate notice;
- (5) no compensation was offered;
- (6) the affected communities had not been consulted throughout the process;
- (7) alternative housing or adequate resettlement sites have not been provided;
- (8) there were inadequate provision of legal remedies; and
- (9) evictees were rendered homeless.

### **3.2 Crimes against Humanity**

20. These violations also constitute a crime against humanity under the Rome Statute of the International Criminal Court.

21. Article 7(1)(d) of the Rome Statute establishing the International Criminal Court makes the forcible transfer of a population when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, a crime against humanity. Article 7(2)(d) clarifies that the definition includes those transferred with expulsion or coercive acts despite being lawfully present, contrary to international law. The scale of the actions of the Republic of Zimbabwe in forcibly transferring large parts of the population out of urban centres, through destruction of their homes and other means constitute forcible transfer, falling within the ambit of this Article. As outlined above, the destruction of homes and mass forced evictions are in clear violation of international law. Regarding the element of lawful presence, it is clear that almost all of the residents were lawfully in Zimbabwe. Even if the term 'lawfully present' was to be interpreted as lawful occupation of land or housing - which is not required under international criminal law jurisprudence - then the facts as found in the UN Report demonstrate that at least some of those evicted had legal title or license and informal occupation was tolerated, if not encouraged, for decades, and, the Republic of Zimbabwe had the burden in any case to prove such unlawful presence before resorting to eviction. The facts demonstrate that the Republic of Zimbabwe failed to respect the due process protections found under both domestic and international law required to make such a determination, let alone attempt meet its burden of proof. Moreover, the forced evictions amount to 'inhumane acts' under Section 1(k) of the Rome Statute since the evictions were clearly 'serious and widespread manifestations of cruel or humiliating or degrading treatment with a discriminatory or persecutory intent.'<sup>2</sup>

22. Consequently, the forced evictions carried out in the context of *Operation Murambatsvina* should be found by the African Commission to amount to a crime against humanity.

### **3.3. Torture and cruel, inhuman or degrading punishment and treatment**

23. With respect to Article 5 of the African Charter and the prohibition on torture and cruel, inhuman or degrading punishment and treatment, COHRE brings to your attention recent holdings of the United Nations Committee Against Torture (CAT). CAT has recently held that forced evictions may amount to cruel, inhuman or degrading

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<sup>2</sup> *Prosecutor v Kupreskić et al* (Judgment) ICTY-IT-9-16-T (14 January 2000), para. 566.

treatment in violation of Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture). On 2 December 2002, for instance, CAT held that the forced eviction and destruction of a Romani community in Serbia and Montenegro violated the Convention, even though the eviction was not perpetrated by public officials. The case, *Hijrizi v. Yugoslavia*,<sup>3</sup> involved the forced eviction and destruction of the Bozova Glavica settlement in the city of Danilovgrad by private residents who lived nearby. Earlier, the perpetrators threatened to “exterminate” the community and “burn down” their houses. The Danilovgrad Police Department reacted by telling the Romani community that they should evacuate the settlement immediately as they, the police, would be unable to protect them. Most of the Romani residents fled their homes, leaving a few behind to protect their housing and other possessions. During the afternoon of 15 April 1995, the non-Romani residents entered Bozova Glavica shouting slogans such as “we shall evict them” and “we shall burn down the settlement.” The crowd soon began to break windows and set fire to the housing, resulting in the entire settlement being leveled and all properties belonging to its Roma residents completely destroyed. Several days later the debris of Bozova Glavica was completely cleared away by municipal construction equipment, leaving no trace of the community.

24. Article 16 of the Convention Against Torture states in relevant part that “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

25. The Committee found that the Police Department did not take any appropriate steps in order to protect the residents of Bazova Glavica, thus implying acquiescence in the sense of Article 16 of the Convention, and that the burning and destruction of their homes constituted acts of cruel, inhuman or degrading treatment or punishment within the meaning of Article 16. Consequently, the Committee held that the Government of Serbia and Montenegro had violated Article 16 of the Torture Convention by not protecting the rights of the residents of Bozova Glavica. For the first time, and although the right to compensation is not expressly provided in the Convention for

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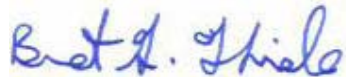
<sup>3</sup> Communication No. 161/2000: Yugoslavia, UN Doc. CAT/C/29/D/161/2000 (2 December 2002).

victims of acts of ill-treatment other than torture, the Committee concluded that the State Party should compensate the victims of this violation.

26. Similarly, in its Concluding Observations on the periodic report of Israel, the Committee warned that Israel's policies of forced eviction and housing demolition may indeed amount to cruel, inhuman or degrading treatment or punishment in violations of Article 16 of the Torture Convention. Some members of CAT also voiced that the intent behind such evictions may amount to a violation of the prohibition against torture as protected in the Convention.

27. Consequently, given the brutality and scale of the forced evictions carried out by the Republic of Zimbabwe during *Operation Murambatsvina*, the African Commission should find the Republic of Zimbabwe to have violated Article 5 of the African Charter.

Respectfully submitted,



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