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Zimbabwe

Shattered Lives - the case of Porta Farm

The Committee recommends that appropriate measures be taken in order more effectively to guarantee the right to housing and, in particular, to ensure that no forced evictions are carried out without alternative housing being offered, in accordance with the Committee's General Comment No. 4.

Concluding observations of the United Nations Committee on Economic, Social and Cultural Rights: Zimbabwe. 20/05/97. E/C.12/1/Add.12, 20 May 1997

1 Introduction

In May 2005 the government of Zimbabwe embarked on Operation Murambatsvina (Restore Order), a programme of mass forced evictions and the demolition of homes and informal businesses. The operation, which was carried out in winter and against a backdrop of severe food shortages, targeted poor urban and peri-urban areas countrywide. In a critical report released on 22 July 2005 the United Nations (UN) estimated that in the space of approximately six weeks some 700,000 people lost their homes, their livelihoods, or both.¹

The communities affected by Operation Murambatsvina were amongst the poorest and most vulnerable in Zimbabwe. In several cases they had been the victims of previous forced evictions carried out by the authorities.² They were given almost no notice before their homes were demolished and no alternative accommodation was provided.³ The government stated publicly that the evictees should go back to the rural areas.⁴

Forced evictions – a term used internationally to describe evictions that are carried out without due process of law – are a gross violation of human rights, particularly the right to adequate housing. Forced evictions almost always involve other human rights violations as well, including violations of the right to health, the right to education, the right to an effective remedy and the right to privacy.

Operation Murambatsvina has led to a serious humanitarian crisis. As a direct consequence of the operation hundreds of thousands of people were arbitrarily displaced; they are now living as internally displaced persons (IDPs), scattered across the country, in many

¹ Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlement Issues in Zimbabwe, 22 July 2005, page 33.

² Ibid, pages 26 and 61 (cases of Churu Farm, Porta Farm).

³ Operation Murambatsvina was announced in Harare by the Chairperson of the government-appointed Harare Commission on 19 May 2005. On 26 May the Harare Commission published a notice in *The Herald* newspaper which gave people in Harare until 20 June 2005 to demolish illegal structures. However, evictions and demolitions were already underway by the time it was published. Harare appears to have been the only area where a notice was published. In most cases people were given a few days or in some cases just a few hours notice by police officers before being evicted and having their homes or businesses demolished.

⁴ The admonition to return to the rural areas was made directly by police to those evicted and reported to human rights organisations by victims. Government officials and police officers were also quoted in the media. For examples see Media Log of 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 Settlement Issues in Zimbabwe, 22 July 2005, page 90.

cases without access to adequate shelter, food, water or sanitation. Despite compelling evidence of human suffering presented by the UN, churches and non-governmental organisations, the government of Zimbabwe has repeatedly denied the scale of the crisis and obstructed the delivery of humanitarian aid to victims.⁵

This report focuses on one community affected by Operation Murambatsvina. The informal settlement of Porta Farm was established 15 years ago following a series of forced evictions in Harare. While the experiences of the people of Porta Farm are similar in many respects to other communities affected by Operation Murambatsvina, the residents of Porta Farm have faced several previous attempts by local and national authorities to forcibly evict them and have fought to secure their right to housing, including through looking to the courts for protection. In separate rulings on planned evictions at Porta Farm in 1995 and again in 2004 the High Court of Zimbabwe clearly stated that the people of Porta Farm should not be evicted unless and until the authorities ensured the provision of suitable alternative accommodation. The case of Porta Farm highlights the government of Zimbabwe's increasing willingness to subvert the authority of the courts. This erosion of the rule of law has seriously undermined the role of the legal system in protecting human rights in Zimbabwe, leaving victims of violations with little choice but to seek justice at the international level.

1.1 About this report

This report has been jointly produced by Amnesty International and Zimbabwe Lawyers for Human Rights (ZLHR). ZLHR is a membership organisation consisting of over 170 legal practitioners and law students across Zimbabwe. It is a non-partisan organisation whose main objective is to foster a culture of the respect of human dignity and rights in Zimbabwe through litigation, training, research, lobbying and advocacy. Further information can be found on ZLHR's website at: www.zlhr.org.zw. ZLHR has worked with the community of Porta Farm since mid-2004, assisting the community in their legal battle to retain their homes and uphold their human rights. Amnesty International has monitored, investigated and reported on the case of Porta Farm since attempted evictions in September 2004.⁶ Information in this report is largely based on court records and other legal documents held by ZLHR and on interviews conducted by ZLHR and Amnesty International over the 18 months from mid-2004 to March 2006.

⁵ For further details see: Amnesty International, "Amnesty International's concerns at the 56th session of the Executive Committee of the United Nations High Commissioner for Refugees", AI Index: IOR 41/060/2005, 3 October 2005.

⁶ See: Amnesty International, "Zimbabwe: Ten dead following police misuse of tear gas", AI Index: AFR 46/027/20, 22 September 2004; "Zimbabwe: Another death at Porta Farm - 11 people now dead following police misuse of tear gas", AI Index: AFR 46/028/2004; Amnesty International Annual Report 2005; Urgent Action, Zimbabwe: Fear for safety/ Excessive use of force, AI Index: AFR 46/011/2005, 1 June 2005. Amnesty International researchers interviewed members of the Porta Farm community in September 2004 and members of the Porta Farm residents' committee again in February, August and December 2005.



High resolution satellite imagery of Porta Farm settlement in Zimbabwe showing the area “before” and “after” Operation Murambatsvina.

The top image was taken on 22 June 2002 and the bottom image on 6 April 2006.

The satellite images clearly show the full settlement in 2002 while only some of its streets remain in 2006.

Note that the significant difference in colour between the images is due to seasonality as the “before” image was captured during the dry season while the “after” image was acquired during the rainy season.

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Porta Farm settlement⁷

In 1991 thousands of people living in informal settlements around Harare were forcibly evicted by the Harare City Council, acting under the direction of Ministry of Local Government and Housing, and moved to Porta Farm, a plot of unused agricultural land on the outskirts of Harare owned by the City of Harare. The forcible relocation of people to Porta Farm was part of an exercise to “clean up” Harare ahead of a Commonwealth Heads of Government Meeting. Those relocated to Porta Farm were told by Harare City officials that their stay there would be temporary and Harare City Council, with the assistance of central government, would permanently resettle them elsewhere. While some were resettled by government at Dzivarasekwa Extension in 1992/3⁸, the population of Porta Farm grew over the years as new people – many made homeless as a result of other forced evictions around

⁷ Unless otherwise stated the information in this case study comes from court papers, including: Affidavit of Freddy Goronga in HC 4233/95 (marked in the court records with case reference HC 3177/91) in the matter of Freddy Goronga and 389 other residents at Porta Squatter Camp Area (applicants) and Harare City Council (respondent), 23 June 1995; Affidavit of Tawanda Nyambirai in HC 4233/95 in the matter of Freddy Goronga and 389 other residents at Porta Squatter Camp Area (applicants) and Harare City Council (respondent), 23 June 1995; Provisional Order, Harare High Court, HC 4233/95; Opposing affidavit of Edward Kanengoni, Town Clerk for Harare City Council in HC 4233/95 in the matter between Freddy Goronga and 389 others (applicants) and Harare City Council (respondents), 27 July 1995; Affidavit of Freddy Bosha in HC 4233/95 in the matter of Freddy Goronga and 389 other residents (applicants) and Harare City Council (respondent), October 1995; Opposing Affidavit of Freddy Goronga in HC 4233/95 in the matter of Freddy Goronga and 389 other residents at Porta Squatter Camp Area (applicants) and Harare City Council (respondent), undated; Respondents Heads of Argument, case number HC 4233/95 in the matter between Freddy Goronga and 389 others (applicants) and Harare City Council (respondent), 12 January 1996; Founding Affidavit of Felistus Chinyuku in case HC 10671/04 in the matter between Felistus Chinyuku and others and the Minister of Local Government, Public Works and National Housing, 27 August 2004; Supplementary Affidavit of Ignatius Morgan Chiminya Chombo, Minister of Local Government, Public Works and National Housing, reference case number HC 10671/04 in the matter between Felistus Chinyuku and others (applicants) and the Minister of Local Government, Public Works and National Housing, 22 November 2004; Supplementary Affidavit of Ignatius Morgan Chiminya Chombo, Minister of Local Government, Public Works and National Housing, reference case number HC 10671/04 in the matter between Felistus Chinyuku and others (applicants) and the Minister of Local Government, Public Works and National Housing, 21 December 2004; Founding Affidavit of Felistus Chinyuku in HC 3225/05 in the matter between Felistus Chinyuku and others (applicants) and Minister of Local Government, Public Work and Urban Development (1st respondent) and Minister of Home Affairs (2nd respondent) and the Commissioner of police (3rd respondent) and the Chairperson Harare City Council (4th respondent); 29 June 2005; 4th Respondent’s opposing affidavit in case number 3225/05 in the matter between Felistus Chinyuku and others (applicants) and Minister of Local Government, Public Work and Urban Development (1st respondent) and Minister of Home Affairs (2nd respondent) and the Commissioner of Police (3rd respondent) and the Chairperson Harare City Council (4th respondent), July 2005. Supplementary information comes from Amnesty International and ZLHR interviews with Porta Farm residents conducted between September 2004 and February 2006.

⁸ Reports from that time indicate that many of the housing structures provided by government were actually occupied by civil servants, mainly soldiers. In the court record Harare City Council maintains that some of the original settlers at Porta Farm did not take up the opportunity of housing at Dzivarasekwa Extension while the Porta Farm residents maintained that not all those placed at Porta Farm in 1991 were offered accommodation at Dzivarasekwa Extension. Moreover, Dzivarasekwa Extension was itself targeted during Operation Murambatsvina and amongst those reportedly subjected to forced evictions there were people who had once been at Porta Farm.

Harare – moved to the area.⁹ By 2005 the population of Porta Farm was in the region of 6,000 – 10,000 people.¹⁰

2.1 1995: Harare City Council attempts to evict the residents of Porta Farm

On 21 June 1995 Harare City Council notified residents of Porta Farm in writing that they had just 48 hours to leave the area or face forcible eviction and the demolition of their homes.¹¹ The land was to be used as a sewage disposal and treatment site. The Council did not attempt to offer any alternative accommodation to the thousands of men, women and children it wished to summarily evict.

With the aid of the Zimbabwe Human Rights Association (ZimRights) the community brought the case before the High Court. On 23 June 1995 the High Court of Zimbabwe granted a Provisional Order stating that “*the applicants are entitled to inhabit their dwellings until they are relocated to suitable permanent homes.*” Harare City Council was “*interdicted from demolishing or threatening to demolish and evicting or threatening to evict the Applicants from Porta Squatter Camp Area.*”¹² Harare City Council opposed the court order, but the matter was never concluded and the court order remains applicable, as confirmed by the High Court in 2004.¹³

No further action was taken, either to provide alternative accommodation to the residents of Porta Farm or to evict them. Instead the settlement grew and developed as more homeless people took up residence.

On 25 July 2003 the residents of Porta Farm were told by an official of the Ministry of Local Government, Public Works and National Housing that they were to be permanently settled where they were and the area would be renamed Porta Agricultural Village. They were shown a map of the area, on which Porta Agricultural Village was identified. The community

⁹ For example, in 1993 the government forcibly evicted several thousand people from Churu Farm, which was at the time owned by the leader of the political opposition Reverend Ndabaningi Sithole. The government made almost no provision for their alternative settlement. Many of those evicted were placed at a holding camp at Hatcliffe, while others – with nowhere to go – moved to Porta Farm.

¹⁰ The exact number of people at Porta Farm is unknown. The residents place the figure at approximately 10,000. A schedule of Porta Farm households submitted to the High Court by the Ministry of Local Government, Public Works and National Housing in November 2004 lists 1020 households. A report by Shack and Slum Dwellers International, an NGO that worked with the community suggests this list may not be complete (see note 14). A recent survey by ActionAid International & Combined Harare Residents’ Association on households affected by Operation Murambatsvina found the average size of a household was 5.8 persons, which would give an overall population of 6,000.

¹¹ Harare City Council was using the Urban Councils (Model) (Use and Occupation of Land and Buildings) By Laws R.G.N. 109/79.

¹² Case No HC 4233/95.

¹³ Following the initial court action in 1995 the case was not vigorously pursued by either party and court dates were missed. The matter was left unresolved and the terms of the provisional order remained standing as confirmed by the High Court in its decision in September 2004, see below.

was happy with this outcome. Although living conditions at the settlement were still relatively poor, with inadequate sanitation facilities, insufficient working water taps and many people living in poor housing conditions, the community believed that the facilities at Porta Farm were significantly better than nothing, and the result of their own efforts which they did not wish to lose. Over the years, with assistance of non-government organisations, the people of Porta Farm had invested in and developed the settlement and many of them had livelihoods associated with the area. They had a primary school and a secondary school, with government-supplied teachers, as well as a small orphanage.

3 2004: Forced eviction attempts by the Ministry of Housing and police misuse of force

Almost exactly one year after this announcement, on 24 July 2004, the Minister of Local Government, Public Works and National Housing, Ignatius Chombo, visited Porta Farm, accompanied by soldiers, police officers and government officials. He summarily informed the community that they were to leave Porta Farm by 15 August 2004. He did not say where they would go. The community was simply told that soldiers would take them to places decreed by the Minister and they were to offer no resistance. An NGO working with the community tried to negotiate with the government for more time to consult with the community and agree a proper relocation, but the Ministry of Local Government refused.¹⁴

A Ministry official subsequently told the residents that they were to be moved to Caledonia Farm, on the outskirts of Harare. However, when some of the Porta Farm residents visited the parts of Caledonia Farm where they were due to be resettled, they found bare land, without buildings, schools, sanitary facilities or sources of clean water. During a meeting at Caledonia Farm attended by government officials and Porta Farm residents, representatives of the Ministries of Health, Education and Defence are all reported to have raised concerns about the Ministry of Housing's plans to relocate the people of Porta Farm to Caledonia without access to adequate basic services. The total lack of facilities was, however, not the Porta Farm community's only concern. Caledonia Farm was occupied by war veterans¹⁵ who had established housing cooperatives in the aftermath of Zimbabwe's controversial land reform programme. Some of the war veterans told the Porta Farm residents that they did not want them at Caledonia and would not accept them there.

The community was subsequently told it was to be split up and families sent to a number of different farms around Harare, to join existing housing cooperatives. However,

¹⁴ Shack/Slum Dwellers International, "Porta Farm – the tragedy", no date. See: <http://www.sdinet.org/reports/r2.htm> [accessed 13 February 2006].

¹⁵ Many veterans of Zimbabwe's war of liberation became involved in the government's controversial land reform programme and were implicated in violent farm invasions and politically motivated human rights abuses. However, not all of those dubbed "war veterans" in the context of the land reform programme fought in the liberation war and not all war veterans became involved in the land reform programme and associated violence. In the aftermath of the land reform programme groups of war veterans were given farms on which they established housing cooperatives. See Amnesty International reports from 2000 onwards at: <http://web.amnesty.org/library/eng-zwe/index> for further information.

when Porta Farm residents went to see the housing cooperatives they were refused membership. In at least one case Porta Farm residents were told by war veterans that they could come to the housing cooperative as employees – not as members.

The 15 August deadline passed with no evictions, and the community was unsure what to expect next. They lived in a state of considerable tension, heightened by the presence of war veterans and members of the ruling party youth militia, who had started visiting Porta Farm and threatening the residents. In an affidavit Felistus Chinyuku, the Chairwoman of the Porta Farm residents' committee (a group elected by community members), stated:

"[The war veterans and youth militia] ...started threatening us that we should move or face the consequences. They said they would evict us as directed by [the Minister of Local Government]. They said they were doing so on the instructions of [the Minister of Local Government]. They further said that their mandate was simply to remove us from Porta Farm. They did not care where they would take us."'¹⁶

Then, on 27 August 2004, police accompanied by war veterans and ruling party youth arrived at Porta Farm and told the community that they had to move immediately. The police tried to force people into vehicles. Many people refused to leave Porta Farm as they had no idea where the police intended to take them. However, several families were taken by police to farms around Harare. Some of these families subsequently returned to Porta Farm and complained of having been forced to work for war veterans at the Cooperatives.

Fearing further attempts at forced eviction, the residents of Porta Farm returned to the High Court with the assistance of ZLHR and, on 31 August 2004, they obtained another court order - this time prohibiting the Minister of Local Government, Public Works and National Housing or anyone acting on his behalf from evicting people from Porta Farm unless and until the government offered them suitable alternative accommodation.¹⁷ This court order remains operative.

Despite the June 1995 and August 2004 court orders, on 2 September 2004, riot police and members of the youth militia descended on Porta Farm and attempted to forcibly evict the residents. Police officers ignored the residents' protestations that they had a court order prohibiting the eviction. When the community tried to prevent the police from demolishing their homes the situation became chaotic. During what witnesses described as "running battles" with the police, several residents and at least one police officer were injured and the police began firing tear gas. More than 50 tear gas canisters were subsequently recovered from the scene by human rights activists.¹⁸ According to eye-witness testimony, the police fired tear gas directly into the homes of some Porta Farm residents. Firing tear gas into a confined space is contrary to international human rights standards on the use of force by law enforcement officials due to the danger posed to those exposed. In the following hours, days

¹⁶ Founding Affidavit of Felistus Chinyuku in case number HC 10671/04 the matter between Felistus Chinyuku and others and the Minister of Local Government, Public Works and National Housing, 27 August 2004, paras 19 and 20.

¹⁷ Case No. HC 10671/04.

¹⁸ Amnesty International has video and still pictures of the tear gas canisters recovered from Porta Farm.

and weeks at least 11 people died, including five children under the age of one. Many relatives and eye-witnesses believe their deaths to be attributable to their exposure to the tear gas.¹⁹ Relatives of the dead described the events of 2 September to Amnesty International in affidavits.

Christine K. described the deaths of her daughter and five-month-old grandson:

“[T]he police fired ... tear gas canisters that landed in our yard thereby clouding the inside and outside of our huts with a pungent of choking smoke. Myself, my ... daughter and grandson inhaled the smoke, ... [my daughter] immediately collapsed. She complained to me that her chest was full of the smoke and [she] had difficulties in breathing...I dragged [my daughter] in the hut and from that time she never recovered until death. [My grandson] was taken to Parirenyatwa hospital...[and] was spitting blood until the time of his death...”²⁰

Midia C. the mother of a 32-year-old woman who died on 5 September stated:

“[My daughter] was at [home] when one tear gas canister was fired by Norton police and landed where she was sleeping. It exploded and the smoke clouded her. A neighbour pulled her from the smoke but she was already unconscious. She started having respiratory problems until her death on 5 September. I am convinced she died of the tear gas as she was healthy before the incident of 2 September.”²¹

Jesca D. who was six months pregnant at the time of the tear gas incident, described in an affidavit how she inhaled tear gas and was then assaulted by a police officer. She miscarried the following day.

Hundreds of other Porta Farm residents also reported suffering ill effects from the tear gas, including chest and stomach pains, nose bleeding and other health problems. Doctors who examined some of the Porta Farm residents told Amnesty International that they believed that those most seriously affected by the tear gas were particularly vulnerable due to pre-existing illnesses such as tuberculosis.²²

Following the events of 2 September 2004 the police withdrew from Porta Farm and the residents began to re-build the homes that had been destroyed.

¹⁹ Amnesty International press release, “Zimbabwe: Another death at Porta Farm - 11 people now dead following police misuse of tear gas”, AI Index: AFR 46/028/2004, 1 October 2004.

²⁰ In the weeks that followed the attempted forced evictions at Porta Farm Amnesty International interviewed relatives of the deceased who agreed to provide affidavits to the organisation and gave permission for Amnesty International to name the deceased publicly. Quoted from the affidavit of Christine K., 22 September 2004, Harare. See also: Amnesty International, “Zimbabwe: Another death at Porta Farm - 11 people now dead following police misuse of tear gas”, AI Index: AFR 46/028/2004, 1 October 2004.

²¹ Affidavit of Midia. C., 30 September 2004, Harare.

²² Amnesty International phone interviews and email communication with doctors and medical experts in Harare, London, September 2004.

On 20 September 2004 Harare City Council applied to the courts seeking to evict the Porta Farm residents. The court dismissed the application referring to the still valid 1995 order compelling Harare City Council to provide suitable alternative accommodation.²³

In November 2004 the Minister of Local Government, Public Works and National Housing filed a supplementary affidavit in the High Court.²⁴ The Minister alleged he had complied with the High Court orders and provided a schedule of the farms and housing cooperatives where Porta Farm residents would be relocated on designated housing stands (plots of land allocated for building a house). However, in April 2006 members of the Porta Farm community, in the company of lawyer Alec Muchadehama, visited the farms and cooperatives and were unable to find any such plots (stands). Moreover, housing cooperatives on many of the farms on which the Minister claimed the Porta community would be resettled were – less than two months later - targeted during Operation Murambatsvina and those already living there were evicted.

4 2005: Operation Murambatsvina at Porta Farm

In June 2005 the Secretary-General of the UN appointed Mrs. Anna Tibaijuka as Special Envoy on Human Settlement Issues in Zimbabwe. In her report on Operation Murambatsvina she stated:

*“Hundreds of thousands of women, men and children were made homeless, without access to food, water and sanitation, or health care. Education for thousands of school age children has been disrupted. Many of the sick, including those with HIV and AIDS, no longer have access to care. The vast majority of those directly and indirectly affected are the poor and disadvantaged segments of the population. They are, today, deeper in poverty, deprivation and destitution, and have been rendered more vulnerable”*²⁵

The reasons for implementing Operation Murambatsvina remain unclear, despite widespread speculation in the media. Official statements claimed the operation was intended to address problems of illegal street trading and widespread construction of houses without planning permission or sufficient regard to by-laws; unofficial explanations suggest the security and intelligence services were concerned about serious social unrest from discontented urban dwellers and used the operation to disperse the threat.²⁶ Whatever the reasons, Operation Murambatsvina - which rendered hundreds of thousands of people homeless - cannot be justified under international law.

²³ HC 11041/04.

²⁴ HC 10671/04.

²⁵ Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlement Issues in Zimbabwe, 22 July 2005.

²⁶ For a fuller discussion of the reasons for Operation Murambatsvina see: Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlement Issues in Zimbabwe, 22 July 2005 and International Crisis Group “Zimbabwe’s Operation Murambatsvina: The Tipping Point?”, Africa Report N°97, 17 August 2005.

On 27 June 2005, approximately one month after the start of Operation Murambatsvina, police officers came to Porta Farm and distributed fliers which read:

“You are requested to leave before law enforcement agents arrive. Pack up your property and carefully look after it. Failure to do so law enforcement agents will pull down all the illegal structures. You are being asked to comply.”

The police told the residents they would be back the following morning, giving them less than 24 hours to comply.

Early in the morning of 28 June a convoy of vehicles and police descended on Porta Farm.²⁷ The police were heavily armed. Residents also identified vehicles belonging to the City of Harare, and the Ministry of Local Government.

The police began destroying buildings. Residents watched helpless as bulldozers and police officers in riot gear reduced their homes to rubble. Many people lost personal possessions, including food stocks, during the demolitions. Police officers reportedly threatened the residents saying anyone who resisted eviction would be beaten. The destruction of Porta Farm went on all day – only ending when darkness fell. Thousands of people were forced to sleep outside in the rubble in mid-winter.

On 29 June the police returned to continue with the demolitions. They also began to forcibly remove people on the back of trucks. Many were obliged to leave furniture and other goods behind at Porta Farm because there was not room on the trucks for their possessions.²⁸

The Porta Farm evictions took place while the UN Special Envoy, Mrs. Anna Tibaijuka, was in Zimbabwe. On 29 June members of the Special Envoy’s team visited Porta Farm and witnessed demolitions and forced removal of people in police and government trucks. The subsequent report of the UN Special Envoy describes how the team was “shocked by the brutality” of what they witnessed.²⁹ Forced evictions and forced displacement from Porta Farm continued on 30 June. Local human rights monitors reported that during the chaos several deaths occurred, including those of two children.³⁰

²⁷ Residents identified both members of Zimbabwe Republic Police and Municipal Police.

²⁸ Amnesty International interview with Felistus Chinyuku, Chairwoman of Porta Farm residents’ committee, 1 August 2005.

²⁹ Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlement Issues in Zimbabwe, 22 July 2005, page 61.

³⁰ Local human rights monitors reported that during the attempted forced removals two women -- one pregnant and the other extremely ill -- fell off the trucks into which they were being herded. A four-year-old child was reportedly run over by a truck. There were unconfirmed reports of a second child dying. Amnesty International and ZLHR followed up on these allegations and are able to confirm the following: The Chairwoman of Porta Farm residents’ committee reports that she saw the pregnant woman fall as she was boarding a truck. After the fall, the pregnant woman was lifted onto the truck. Sometime later a police officer came and told the Chairwoman, and members of the woman’s family, their relative had died on the truck. The family was deeply upset and reported the death to human rights monitors. Days later it became clear that the pregnant woman had not, in fact, died but had fallen unconscious on the truck. Police believed her to be dead, and informed the relatives. She was taken first to a clinic and then to Parirenyatwa Hospital in Harare. She gave birth to twins. At the beginning of August the woman and her twins were reported to be living as IDPs at Hopley Farm. Neither ZLHR nor Amnesty International has been able to interview this woman. The death of the second woman, 38-year-old Lois Mandigora from exposure

When the police and government agents arrived at Porta Farm on 28 June and began forcibly evicting people and demolishing homes they were acting despite the existence of two court orders – the 1995 order directed at Harare City Council and the 2004 Court Order directed at the Ministry of Local Government, Public Works and National Housing.

As the forced evictions continued on 29 June 2005, ZLHR obtained an interim order from Norton Magistrates Court on behalf of the Porta Farm residents to the effect that the police or anyone else should not evict or forcibly move them or their property to any other location.³¹ Although this order was served on the officer in charge at the local police station and the Commissioner of Police on 29 and 30 June respectively, members of the Zimbabwe Republic Police continued to forcibly evict people from Porta Farm. The police were now acting in defiance of three separate court orders. Even when lawyers approached members of the Zimbabwe Republic Police and municipal police with copies of the three orders and expressed their concern that their actions were clearly in contempt of court, the response of the police officers was that they could not read and that they were acting on “powers from above” and would not stop their actions. In effect their response indicated their belief that they could not be bound by three court orders, including two from the High Court, and that there was some higher authority within the Ministry of Local Government, City of Harare or Ministry of Home Affairs that overshadowed any court order.

On 30 June 2005 ZLHR lawyers filed an urgent application for contempt of court in the High Court citing the Minister of Local Government, Public Works and Urban Development, the Minister of Home Affairs, the Commissioner of Police and the Chairperson of the Harare City Council.³² However the application was dismissed. The court provided no reason for its decision. ZLHR responded publicly to this decision, stating:

“With all due respect such a decision remains questionable considering it is common cause that members of the [Zimbabwe Republic Police] and municipal police, acting under the authority and instruction of the City of Harare, the Minister of Local Government, the Minister of Home Affairs and the Commissioner of Police destroyed the homes of Porta Farm residents and forcibly evicted them. Effectively what the honourable judge has done is to condone the disregard of judicial orders by state institutions, local authorities and their agents.”³³

(and not as the result of a fall) was verified by ZLHR. Lois Mandigora was reported to have been seriously ill at the time of the evictions. Four- year-old Fanandi Manyere died when he was run over by a truck on the main highway as he was fleeing from the demolitions. The driver of the vehicle is being charged under the Road Traffic Act. The reported death of an infant has not been confirmed.

³¹ Norton Magistrates Court Case No. 376/05.

³² Case No.HC3225/05.

³³ ZLHR, Press Release, “The judiciary condones the disregard of its own orders: Justice Karwi’s dismissal of the Porta Farm contempt of court application”, 20 July 2005.

ZLHR filed a complaint with the African Commission on Human and Peoples' Rights in August 2005 making specific reference to the fact that since the forcible evictions from Porta Farm the majority of the school-going children had dropped out of school and health-related programmes had been severely disrupted or discontinued, affecting extremely vulnerable individuals including those on daily observation treatment and anti-retroviral therapy.³⁴

³⁴ ZLHR, Human Rights Trust of Southern Africa vs. Government of Zimbabwe Communication 314/05



Porta Farm – detail, satellite images showing the settlement “before” (top) and “after” (below) Operation Murambatsvina.



5 2005 – 2006: Living as internally displaced persons at Hopley Farm

The demolition of the 15-year-old settlement of Porta Farm left thousands of people homeless and displaced. They joined the hundreds of thousands of other victims rendered destitute by Operation Murambatsvina. From the start of the operation the police and government authorities stated publicly that people should “return to their rural areas”. This was despite an acknowledged poor harvest and severe food shortages in the rural areas.³⁵ Throughout the operation the authorities forcibly displaced truckloads of people at a time to rural areas, often simply abandoning them at a bus stop or local authority office with no access to shelter and little or no food or water.³⁶

For many Porta Farm residents forced onto trucks on 29 and 30 June their destination was not clear. Some were taken to rural areas, others simply abandoned on the roadside outside Harare.³⁷ Those who were unable to name a rural area to which they could return were taken to Caledonia Farm Transit Camp, which had been established by the government to temporarily accommodate some of those internally displaced as a result of the mass evictions. Conditions at Caledonia were extremely poor – and little was actually provided by way of accommodation; people found themselves living under highly inadequate makeshift shelters or in the open in mid-winter.³⁸

In the weeks following the evictions a number of those evicted began to return to Porta Farm. When lawyers told them that the court orders were still valid, and they still had a legal right to live at Porta Farm, they began trying to rebuild their homes.

Between 23 and 25 July police and army surrounded Porta Farm for a second time.³⁹ Bulldozers and other heavy earth moving equipment literally began to plough Porta Farm. The remaining community members were placed on trucks and taken to Hopley Farm, on the outskirts of Harare, where they were left without any shelter, and with almost no means of accessing food. At Hopley Farm they found other former Porta Farm residents who had been taken there when Caledonia Farm Transit Camp was closed down.⁴⁰ While Caledonia had

³⁵ In June 2005 the government acknowledged the food shortage telling the UN World Food Programme (WFP) that it was planning to import food and would accept food aid, although it would not issue a food aid appeal. On 1 December the government and WFP reached agreement for WFP to distribute food aid to four million people in rural areas. This was the same number of people WFP had predicted that it would feed in rural areas before Operation Murambatsvina, but Operation Murambatsvina has forced tens of thousands of people back to the rural areas, in many cases people who have lost belongings and livelihoods.

³⁶ Amnesty International interviews with victims of Operation Murambatsvina, church workers and aid workers in Bulawayo, Mutare and Harare, July/August 2005.

³⁷ For example, see: Solidarity Peace Trust, “Crime of Poverty: Murambatsvina Part II”; 19 October 2005, page 48.

³⁸ Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlement Issues in Zimbabwe, 22 July 2005, page 36/37

³⁹ The evictions on 25 July 2005 were witnessed by ZLHR lawyers.

⁴⁰ The camps were closed in late July just prior to the public release of the report of the UN Special Envoy. The swift closure of the camps is believed by local observers to have been a reaction to the publication of the report by the UN Special Envoy – an apparent attempt to hide one of the most visible signs of the internal displacement

been an official camp for internally displaced persons (IDPs), with some, albeit highly inadequate facilities, Hopley Farm was simply bare land with no facilities. Having placed several thousand people at Hopley the government established a checkpoint at Hopley Farm and restricted access to the people living there only to government officials.

5.1 Denial of humanitarian aid and harassment of human rights defenders

At the end of July 2005 both ZLHR and Amnesty International researchers, who were visiting Zimbabwe at the time, received urgent messages from Porta Farm community members who had been forcibly displaced to Hopley Farm. The messages suggested that conditions at Hopley Farm were extremely poor and people were in desperate need of food.

On 1 August Amnesty International met with some of the residents on the outskirts of Hopley Farm. They described the extremely poor conditions at the camp: people were sleeping in the open or in makeshift tents or whatever shelter they could find. A few people had been given asbestos sheets by government to use as shelter, but these were reported to be highly inadequate. There were no toilets and the entire community was forced to defecate in the bush around the camp, creating a serious health risk. A government water bowser [a water tank] brought an irregular supply of clean water, which was not sufficient to ensure everyone had access to a minimum essential supply of clean water for drinking and sanitation. People were gravely concerned about how they would find sufficient food to survive. Amnesty International subsequently obtained video footage, shot on 4 August, which clearly showed the dire conditions at Hopley Farm.⁴¹

Despite the clear humanitarian needs at Hopley Farm, the government was providing almost no humanitarian aid beyond an inadequate supply of water. Nor had it alerted humanitarian organisations or the UN or requested their assistance. On the contrary, when news of the plight of those at Hopley Farm began to circulate in Harare, organisations – including the UN - that went to the camp seeking to help the people were turned away by police and military officers.⁴²

The UN has subsequently been able to negotiate some humanitarian access to Hopley Farm and provide water and sanitation and food aid. Welfare operations at the camp appear to be run by the Ministry of Social Welfare. Conditions remain very poor and many of the

problems caused by Operation Murambatsvina. Although numbering less than 6,000, the transit camp population was an identifiable concentration of IDPs.

⁴¹ Both ZLHR and Amnesty International raised the situation at Hopley Farm with UN agencies in Harare, during the week of 1 August. WFP personnel subsequently tried to visit the Farm on 4 August but were denied entry - see WFP Emergency Report No. 33, 12 August 2005.

⁴² When Amnesty International interviewed Hopley Farm residents on 1 August 2005 they reported that an NGO that had tried to provide some medical care to the displaced had been, “chased away by the police”. As noted above WFP personnel were denied entry to the Farm on 4 August 2005. The United States Ambassador to the UN Agencies for Food and Agriculture, Tony Hall, was also turned away from Hopley Farm by army officers on 13 August. ZLHR lawyers Otto Saki and Tafadzwa Mugabe were turned away an army officer during October 2005.

people there are wholly reliant on humanitarian aid to survive. The UN has been prevented from providing the homeless victims of Operation Murambatsvina – including those at Hopley Farm - with proper emergency shelter, and the majority of people at Hopley continue to live in makeshift shacks.⁴³

The Zimbabwe authorities reacted negatively when human rights groups exposed the humanitarian situation at Hopley Farm. Former Porta Farm community leaders, now at Hopley Farm, were singled out for threats and harassment by ruling party youth and government officials because they are believed to have given information on the situation to human rights organisations. Amongst these has been Felistus Chinyuku.

Felistus Chinyuku, a 65-year-old grandmother who looks after four orphans, came to Porta Farm in 1991 following evictions carried out in Mbare, a suburb of Harare. When Porta Farm was destroyed she lost her home of 14 years and her livelihood selling fish. Her grandchildren were forced out of school, and during the move to Hopley she lost many of her possessions. She has been a vocal advocate of human rights for her community, both at Porta Farm and since she was forcibly displaced, at Hopley Farm, raising concerns with human rights groups, with UN Special Envoy Mrs. Anna Tibaijuka and with the media.

On 17 October 2005 she was called to a meeting at Hopley Farm at which the Minister of Local Government, Public Works and Urban Development, Ignatius Chombo, and other government officials were present. During this meeting she was told that she had 'sold out' by giving information to human rights organisations. She was reportedly told she would not be allowed to stay at Hopley Farm if she continued to interact with human rights groups (she had been allocated a stand, but this was withdrawn). At this meeting Felistus Chinyuku alleges that her life was threatened by a government official in the presence of the Minister.

Following further harassment by ruling party youth, Felistus Chinyuku left Hopley Farm, fearing for her safety.

5.1.1 Operation Garikai/Hlalani Kuhle

On 29 June the government of Zimbabwe launched Operation Garikai/Hlalani Kuhle⁴⁴, a programme intended to provide new housing and premises for small business, ostensibly to address the needs of those affected by Operation Murambatsvina. However, only a few thousand houses have reportedly been constructed countrywide⁴⁵ and of those houses designated as “built”, many remained incomplete, un-serviced or appeared to be uninhabited. Moreover, the criteria for beneficiaries of the Operation Garikai/Hlalani Kuhle scheme are unclear. In some cases people have reportedly only been given plots of land on which they are

⁴³ Zimbabwe Independent, “UN rep slams Chombo over houses”, 1 January 2006.

⁴⁴ “Garikai” and “Hlalani Kuhle” mean “live well” in Shona, and Ndebele respectively.

⁴⁵ The Herald (Zimbabwe), “ZDF commends Operation Garikai”, 8 November 2005. The state-controlled paper quotes an army commander in charge of the work as saying that 3,208 houses had been built countrywide; The Herald (Zimbabwe), “Council fails to develop 120,000 stands, 26 January 2006.

expected to build their own homes. In other cases people have been told the government will build a “core” structure for which they will have to pay and they are expected to build the rest of their home with their own finances.⁴⁶ To qualify for a core house, beneficiaries are reportedly asked to prove they have an income. Given that Operation Murambatsvina has left the majority of its already poor victims destitute through loss of property and livelihood, this criterion would seem to disqualify them. Moreover, statements by government officials suggest that many of the newly built houses will be allocated to civil servants as a priority over the homeless.⁴⁷

The situation for those at Hopley Farm reflects the wider lack of clarity in Operation Garikai/Hlalani Kuhle. The government has indicated that those forcibly displaced to Hopley Farm are to be permanently resettled there, and many households have now been allocated small plots of land (stands). However, by February 2006, after more than six months at Hopley Farm, only a few houses had been completed. The majority of the residents are still living in makeshift structures of asbestos and plastic and it is unclear how or when sufficient housing and infrastructure for basic services such as water and sewerage will be provided.⁴⁸ Moreover, the stand allocation processes is not backed by any legal documents which would guarantee security of tenure, leaving people vulnerable to further evictions.⁴⁹

6 Zimbabwe’s international obligations to the people of Porta Farm

The Committee is particularly concerned about the precarious situation of persons living in illegal structures or unauthorized housing... Persons should not be subjected to forced eviction unless this is done under conditions compatible with the Covenant.

Concluding observations of the United Nations Committee on Economic, Social and Cultural Rights: Zimbabwe. 20/05/97. E/C.12/1/Add.12, 20 May 1997

The dire circumstances facing the people of Porta Farm have resulted from a cyclical failure on the part of the Zimbabwean government to respect, protect and fulfil human rights in accordance with their obligations under international human rights law. Even successful legal challenges at the domestic level have not been respected by the Zimbabwean government, leaving people with little hope of protection or for any future improvement in their situation.

⁴⁶ Zimbabwe Parliament debate on Operation Murambatsvina, Ministerial statement by the Minister of Local Government, Public Works and Urban Development, extracted from Hansard Vol. 32, No. 6, Parliament of Zimbabwe, 28 June, 2005.

⁴⁷ The Standard (Zimbabwe) “20% 'Garikai' houses for civil servants”, 19 March 2006.

⁴⁸ The Herald (Zimbabwe), “Council fails to develop 120,000 stands, 26 January 2006.

⁴⁹ Those allocated stands have only being given pieces of paper with their stand number printed on it.

Operation Murambatsvina and the government's subsequent treatment of vulnerable displaced persons must be located in the context of Zimbabwe's prolonged and well-documented human rights crisis. The past five years have seen repeated attacks by the government on human rights and a systematic dismantling of the human rights protection framework; this has included politicisation of the police force, a disregard for the authority of the courts and impunity for state agents who perpetrate human rights violations.

As a state party to a range of international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (African Charter), Zimbabwe is bound to uphold the rights guaranteed therein. The actions of the government of Zimbabwe in forcibly evicting thousands of persons from Porta Farm as part of Operation Murambatsvina violates a range of human rights, in particular the right to adequate housing (Article 11(1), ICESCR;⁵⁰ Article 14, African Charter⁵¹) and the right not to be subjected to arbitrary or unlawful interference with one's privacy, family and home (Article 17, ICCPR; Article 18, African Charter). The manner in which the forced evictions were carried out also violates the right to life and the right to physical and mental integrity (Articles 6, 7 & 9, ICCPR; Articles 4 & 5, African Charter) and the right to an effective remedy (Article 2(3), ICCPR; Article 7, African Charter). Subsequent forced displacement of those affected by forced evictions also violates the right to freedom of movement and choice of residence (Article 12, ICCPR; Article 12, African Charter). The government has also violated the right to an adequate standard of living (Article 11(1), ICESCR) by its failure to ensure even minimal essential levels of water, food, and housing of those who were internally displaced as a result of government action.

In addition to general human rights law, the UN's Guiding Principles on Internal Displacement are particularly relevant to the circumstances of those who are now displaced as a result of their forced eviction from Porta Farm. The Guiding Principles set out authoritative standards on the protection of internally displaced persons (IDPs) -- that is, those persons who have been forced or obliged to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, generalized violence, violations of human rights (such as forced evictions) or natural or other human-made disasters, but who have not crossed an international border.⁵² Moreover, the Guiding Principles reflect and are consistent with international human rights law and international humanitarian law.

⁵⁰ Article 11(1) of the ICESCR states: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right ...".

⁵¹ The African Charter protects the right to property specifically. The right to housing has been recognised by the African Commission on Human and Peoples' Rights in a decision concerning a complaint against the Federal Republic of Nigeria. See note 46, above.

⁵² Introduction, Guiding Principles on Internal Displacement.

6.1 Violations of human rights during the forced evictions

6.1.1 Forced evictions⁵³ and the right to housing

The UN Commission on Human Rights has considered that “the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing”.⁵⁴ Forced eviction has been defined by the UN Committee on Economic, Social and Cultural Rights (CESCR), 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.”⁵⁵ The CESCR has further noted that “instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”⁵⁶ The African Commission on Human and Peoples’ Rights, in a decision concerning a complaint against the Federal Republic of Nigeria, has similarly stated that “[a]t a very minimum, the right to shelter obliges the Nigerian government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes.”⁵⁷

The CESCR sets out a number of measures to be followed by States parties to the ICESCR to safeguard the rights of those persons subjected to evictions. The Zimbabwean government has not taken these into account and has provided no justification for its failure to do so.⁵⁸ First, notice given to the Porta Farm community was inadequate, being less than 24 hours before the evictions took place.⁵⁹ The community was not consulted about the process,

⁵³ The term “forced evictions” is used to refer to the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or lands which they occupy, without provision of, and access to, appropriate forms of legal or other protection. See, CESCR General Comment No. 7 on the right to adequate housing: forced evictions (1997), para. 3.

⁵⁴ UN Commission on Human Rights, Resolution 1993/77, para 1.

⁵⁵ UN Committee on Economic, Social and Cultural Rights, General Comment No. 7, *The Right to Adequate Housing (Art.11(1) of the Covenant): forced evictions*, UN Doc. E/C.12/1997/4, para 3.

⁵⁶ CESCR General Comment No. 4 on right to adequate housing (1991), para. 18.

⁵⁷ Center for Economic and Social Rights and Social and Economic Rights Action Center (SERAC) v. Nigeria, see the decision done at the 30th ordinary session of the African Commission of Human and Peoples’ Rights, Banjul, 13-27 October 2001, available on URL www.elaw.org/assets/pdf/ng.afr.commission.hrights.pdf, para. 61.

⁵⁸ See, CESCR General Comment No. 7 on right to adequate housing: forced evictions (1997), para. 15, which requires states to put in places the following procedural measures in relation to evictions:“(a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, 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; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”

⁵⁹ Although the Chairperson of the Harare Commission had announced the start of Operation Murambatsvina in Harare on 19 May and a notice had appeared in *The Herald* newspaper on 19 and 26 May, neither of these actions can be considered serving of notice on the community of Porta Farm. The community at Porta Farm was not identified specifically by the notice. Also, although Porta Farm is owned by the City of Harare it falls under the

and no alternative housing arrangements were considered or offered to people, making the majority homeless and vulnerable to further violations of their human rights. The evictions were carried out in defiance of the 1995 and 2004 court order, thus questioning whether any effective remedy is available to them.

6.1.2 Protection from forced displacement

In Zimbabwe the mass forced evictions of Operation Murambatsvina have been accompanied by mass forced displacement of people. People have on numerous occasions been forcibly displaced to rural areas or to transit camps, such as Caledonia Farm or IDP camps, such as Hopley Farm.

This action violated the right to freedom of movement and choice of residence, which includes the right to protection from forced displacement. According to Article 12(3) of the ICCPR, a state cannot impose any restrictions to the right to freedom of movement, “except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others”. None of the grounds which could have justified restriction to this right apply in this situation. The UN Human Rights Committee has noted, “the right to reside in a place of one’s choice within the territory includes protection against all forms of *forced internal displacement*.”⁶⁰ In addition, Principle 6 of the UN Guiding Principles states that every person has the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence. The lack of due process throughout the evictions process, including inadequate notice and inadequate alternative accommodation, the ongoing and cyclical nature of the forced evictions and relocations without appropriate justification, make these displacements arbitrary.

6.1.3 Rights to life and to physical and mental integrity

During the attempted forced evictions of 2 September 2004 at Porta Farm at least 11 people died after police used tear gas on unarmed civilians. Amnesty International and ZLHR believe there is sufficient evidence that police used excessive force and misused tear gas to warrant a full investigation into the reported deaths and the conduct of the police on 2 September 2004.

jurisdiction of a different local authority. Moreover, the enforcement notice published in the newspaper was made in terms of Section 32 of the Regional Town and Country Planning Act, (Chapter 29:12) Revised Edition 1996, and an Affidavit submitted to the High Court in HC 3225/05 by the Chairperson of the Harare Commission stated that the residents of Porta Farm were being evicted in terms of the Urban Councils (Model) (Use and Occupation of Land and Buildings) By Laws R.G.N. 109/79, which allows for just 48 hours notice. The period of 48 hours notice was challenged in the 1995 court action as being inconsistent with the Section 18(9) of the Constitution of Zimbabwe. A period of 48 hours notice before eviction is also inconsistent with international law. Furthermore, in the case of the June evictions the community was not given even 48 hours notice. Finally, the Porta Farm community was in possession of the 1995 High Court order directed at Harare City Council.

⁶⁰ ICCPR General Comment 27 (Sixty-seventh session, 1999): Article 12: Freedom of Movement, A/55/40 vol. I (2000) 128 at para. 7 (emphasis added).

At least three people are reported to have died at Porta Farm in June 2005 during the course of forcible eviction and forcible relocation. The government of Zimbabwe should also conduct a full, public investigation into these deaths.

International human rights law and standards provide that whenever the use of force is unavoidable, law enforcement officials must “exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved”.⁶¹ Principle 8 of the UN Guiding Principles similarly provides that “displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected”.

By using excessive force in a manner that violates the principles of necessity and proportionality, the police or other state agents pose a threat to the right to life of those persons being evicted. In relation to evictions, the CESCR has stated that:

*States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.*⁶²

An effective review process should also be in place in case of reports of excessive use of force. In particular, in “cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.”⁶³

6.1.4 Right to privacy

The destruction of homes by the authorities, without adequate notice and with inadequate or no provision of alternative housing, constitutes an arbitrary interference with privacy, family and the home.⁶⁴

6.1.5 Right to an effective remedy

The people of Porta Farm have been denied the right to an effective remedy. The right to an effective remedy is recognised in the ICCPR and the African Charter.⁶⁵ The CESCR has also upheld the right to a remedy for violations of rights protected under the ICESCR,⁶⁶ and has called for legal remedies and procedures to be provided to those affected by eviction

⁶¹ Principle 5, *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*

⁶² General Comment No. 7, para. 13.

⁶³ Principle 22, *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.

⁶⁴ Article 17 of the ICCPR. Article 18, African Charter. See, also, CESCR General Comment No. 4,

⁶⁵ Art. 2(3), ICCPR; Arts. 2 and 26, African Charter.

⁶⁶ UN Committee on Economic, Social and Cultural Rights, *General Comment 3: Nature of States Parties Obligations*, UN Doc. E/C.12/1991/23, para 5; and *General Comment 9: The domestic application of the Covenant*, UN Doc. E/C.12/1998/24, para 2.

orders.⁶⁷ This is echoed in Principle 7(3) of the UN Guiding Principles, which outlines the guarantees that need to be complied with if displacement occurs in situations other than during the emergency states of armed conflicts or disasters. They include “a specific decision by a State authority empowered by law to order such measures” and “the right to an effective remedy, including the review of such decisions by appropriate judicial authorities.”

The Zimbabwean courts initially protected the people of Porta Farm, prohibiting evictions that did not include a proper relocation of those affected. However, in September 2004 the authorities ignored court orders and attempted – ultimately unsuccessfully - to forcibly evict the residents in clear defiance of a court order. In 2005 the authorities succeeded in forcibly evicting the entire Porta Farm community, on this occasion acting in clear defiance of three separate court orders. Police officers, made aware of the court orders, failed to act impartially or professionally and told lawyers they were acting on “orders from above”.

Despite the fact that the police and government action at Porta Farm in June 2005 violated three court orders, the High Court of Zimbabwe dismissed a contempt of court action without giving a reason. This has left the people of Porta Farm with no recourse to the courts for protection of their rights. The fact that the court orders prohibiting the forced evictions of residents of Porta Farm were disregarded by the authorities and this disregard was subsequently upheld by the court itself has left the community of Porta Farm with no access to an effective remedy at law.

6.2 Violations of human rights of internally displaced persons as a result of the forced evictions

6.2.1 The right to an adequate standard of living

The right to an adequate standard of living including adequate food, clothing and housing is guaranteed in Article 11(1) of the ICESCR. Principle 18 of the UN Guiding Principles also emphasises that IDPs have the right to an adequate standard of living. The UN Guiding Principles provide that, at the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide IDPs with and ensure safe access to: (a) essential food and potable water; (b) basic shelter and housing; (c) appropriate clothing; and (d) essential medical services and sanitation.

Operation Murambatsvina has left hundreds of thousands of persons without adequate housing. In addition, many have lost property and livelihoods without compensation. The government has forcibly displaced people to unsatisfactory and uninhabitable sites, such as Hopley Farm, where no or inadequate materials for ensuring even basic shelter were distributed. The site had no toilets or other sanitation facilities, potable water, or other essential services, such as health or educational facilities. In addition, those relocated have no guarantee against evictions in the future. Almost no humanitarian assistance is being provided

⁶⁷ General Comment No. 7, paras 12 and 16.

by the government. In addition, the government of Zimbabwe cannot be said to have used all resources at its disposal. It has rejected humanitarian assistance from the UN and obstructed humanitarian efforts aimed at providing minimum essential levels of housing, food and water to people in need.⁶⁸

7 Recommendations

7.1 Recommendations on forced evictions and forced displacement

In respect of forced evictions and forced displacement the government should:

- Immediately halt the practice of forced evictions and forced displacement;
- Respect the rights of victims of Operation Murambatsvina to an effective remedy, including access to justice and the right to reparations, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.
- Conduct a full, independent and impartial inquiry on the role of the police and other law enforcement officials in carrying out the forced evictions, including into the excessive use of force and the deaths reported at Porta Farm on 2 September 2004 and 30 June 2005, and bring to justice all those suspected of having committed human rights violations.
- Make public the plans for Operation Garikai/Hlalani Kuhle, including beneficiary selection criteria, the costs to beneficiaries, time frames, budget allocations and ensure regular public and transparent reporting on progress.

In respect of those persons who remain internally displaced at Hopley Farm and elsewhere, as a direct result of forced evictions, the government should:

- Implement fully the UN Guiding Principles on Internal Displacement in their policy and practice towards these IDPs;
- Ensure the provision of adequate humanitarian assistance, including housing, food, water and sanitation to the IDPs, including through permitting access by independent and impartial humanitarian actors to all IDP populations;
- Immediately make an urgent appeal for humanitarian aid for the victims of Operation Murambatsvina and all other persons in Zimbabwe who are in need of humanitarian assistance, which reflects all of their needs, including emergency shelter.

⁶⁸ In violation of its obligations under international human rights law, including the ICESCR. See, also, Principle 25, UN Guiding Principles on Internal Displacement.

7.2 Other recommendations:

- Ensure that human rights defenders and others are able to exercise their rights without the risk of harassment, and that they are not subjected to human rights violations including intimidation, ill-treatment or attacks on their homes;
- Allow visits by and collaborate with the UN and African Commission Special Rapporteurs and the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons to investigate the human rights situation in the country;
- Prepare and submit its second periodic report to the Committee on Economic, Social and Cultural Rights, which was due on 30 June 1998.

7.3 Recommendations specifically on Porta Farm

- Uphold the existing court orders in respect of Porta Farm by ensuring that residents are offered the opportunity to return in safety and dignity to Porta Farm if they wish and are provided with adequate reparation, including compensation, for the destruction of their homes and livelihoods.
- Provide adequate reparation, including compensation, to all victims of the Porta Farm forced evictions.
- Ensure that any decisions taken by the authorities are taken on the basis of the genuine participation of those affected by the forced evictions at Porta Farm, and that they be allowed to make informed decisions about whether they wish to return to Porta Farm, remain at Hopley Farm, or resettle elsewhere. In all circumstances, the government must ensure respect for and protection of the right to an adequate standard of living, including particularly through security of tenure.

7.4 Recommendations to the African Union

- Publicly condemn the forced evictions in Zimbabwe and call on the government to take actions to address the human rights of these persons, in line with the recommendations of the UN Special Envoy on Human Settlement Issues in Zimbabwe.
- Publicly urge the Government of Zimbabwe to ensure the respect of the rights of IDPs and to allow and facilitate the provision of humanitarian assistance.

7.5 Recommendations to the United Nations

- Ensure that protection of the human rights of IDPs is integrated into the humanitarian assistance planned for Zimbabwe.
- Put pressure on the government of Zimbabwe to meet its obligations under international law to respect, protect and fulfil the human rights in the country.

- Ensure there is a clear human rights policy for addressing failure to allow humanitarian aid, with clearly spelt-out responsibilities for different UN agencies. Such a policy should comprise phased steps, moving from representations and advocacy by the UN country team to representations by the UN at the Headquarters level to public statements by the UN.