

ZIMBABWE: WHY THE UNITED NATIONS, STATE, AND NON-STATE ACTORS FAILED TO EFFECTIVELY REGULATE MUGABE'S POLICY OF INTERNAL DISPLACEMENT

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I. INTRODUCTION

“The thing about President Mugabe is he’s not a threat to anyone else, but he is a terrible threat to his own people.”¹

In 1992, the Secretary-General of the United Nations appointed Francis M. Deng as Representative of the Secretary-General on Internally Displaced Persons.² Deng’s assignments were to research relevant legal principles in international law and develop policy regarding the issue of persons forced from their homes within the borders of their home country.³ “The crisis of the internally displaced from the

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1. *Australia in Legal Attack on Mugabe*, DAILY TELEGRAPH (Sydney), Oct. 19, 2005, at 21.

2. Bruce MacLaury, *Foreword* to FRANCIS M. DENG, *PROTECTING THE DISPOSSESSED* at v, v (1993).

3. The U.N. Commission on Human Rights requested the secretary general to designate a representative to seek from all governments views and information on human rights issues related to internally displaced persons and to examine existing international human

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perspective of the international community is that they fall within the domestic jurisdiction and are therefore not covered by the protection normally accorded those who cross international borders and become refugees.”⁴ Subsequently, Deng submitted a document consisting of thirty principles to the U.N. Human Rights Commission, detailing the rights believed to be inherent for such individuals based on analogous relevant international customary law and treaties.⁵ These Guiding Principles on Internal Displacement describe the internally displaced

as persons or groups of persons who have been forced or obliged to flee or 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, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.⁶

The Guiding Principles are not binding on states in the manner of a treaty; however, “[t]heir acknowledgment in resolutions of the U.N. Commission on Human Rights and Economic and Social Council underscores the moral authority they have begun to command.”⁷

rights mechanisms, the applicability of humanitarian and refugee law and standards to the protection of displaced persons, and the provision of relief assistance to them.

DENG, *supra* note 2, at 2.

4. U.N. Econ. & Soc. Council [ECOSOC], Representative of the Secretary-General, *Comprehensive Study Prepared By Mr. Francis M. Deng, Representative Of The Secretary-General On The Human Rights Issues Related To Internally Displaced Persons, Pursuant To Commission On Human Rights Resolution 1992/73*, ¶ 3, U.N. Doc E/CN.4/1993/35 (Jan. 21, 1993).

5. Office of the High Commissioner of Human Rights, *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998).

6. *Id.* “The Annotations of the Principles make it clear . . . that this is not intended as a definition, but rather a ‘description’ of internally displaced persons, who do not gain special legal status as a result of being displaced.” Patrick L. Schmidt, *The Process and Prospects for the UN Guiding Principles on Internal Displacement to Become Customary International Law: A Preliminary Assessment*, 35 GEO. J. INT’L L. 483, 487 (2004).

7. Francis M. Deng, *Foreword to THE BROOKINGS INSTITUTION PROJECT ON INTERNAL DISPLACEMENT, HANDBOOK FOR APPLYING THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT* at i, i (1999), available at http://www.brookings.edu/fp/projects/idp/gp_page.htm.

In mid-2005, Robert Mugabe, President of Zimbabwe, initiated a slum clearance campaign, Operation Murambatsvina, translated as "clean up the rubbish" or "remove the filth."⁸ "The main features of the campaign are the bulldozing of townships, the burning and looting of property and the corralling of people in the clothes they stand up in to be trucked to unsanitary holding camps outside the cities."⁹ The government defended the operation as a clean up drive, "intended to clean up the black market in goods and services and the illegal trade in foreign currency . . . blame[d] for causing the downfall of the economy."¹⁰ However, the opposition party, Movement for Democratic Change, decried this policy as an attempt to "[break up] opposition strongholds among the urban poor."¹¹ Further, "[m]oving millions of people into the countryside ensures that they are utterly reliant on government-controlled food aid for survival."¹²

Despite a sharp rebuke by the United Nations,¹³ Mugabe reached out to South Africa by seeking assistance with his country's financial crisis, requesting a "billion-dollar loan in order to buy emergency food and fuel supplies."¹⁴ In response, South Africa's President Thabu Mbeki "sent his deputy to strongly advise Mugabe to stop persecuting his people and to start talking to his political opponents."¹⁵ Further, Mbeki conditioned the loan on Mugabe stopping his attacks on opposition supporters.¹⁶ Mbeki, however, faced a quandary; aid Zimbabwe and face Western criticism, or stand firm against Mugabe's policies

8. Roger Bate, *Mugabe's Last Stand; He's Destroyed His Country; Now He's Going Begging*, THE WEEKLY STANDARD, Aug. 1, 2005.

9. *Id.* "It is estimated that more than 700,000 people have lost their homes or businesses" *Mugabe's Operation to Clean Up the Trash is History Repeated*, N.Z. PRESS ASS'N, July 25, 2005.

10. Bate, *supra* note 8.

11. *Mugabe's Operation to Clean Up the Trash is History Repeated*, *supra* note 9.

12. Bate, *supra* note 8.

13. See Anna Kajumulo Tibaijuka, *Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlement Issues in Zimbabwe* (2005), available at http://www.sarpn.org.za/documents/d0001387/UN_Zimbabwe_July2005.pdf (denouncing Mugabe's policy as a grave violation of human rights).

14. Bate, *supra* note 8.

15. *Id.*

16. *Id.*

and watch Zimbabwe's economy further crumble. Mbeki stated, "[w]e engage them because we don't want Zimbabwe collapsing next door. South Africa would inherit all the consequences of Zimbabwe collapsing."¹⁷

Mugabe also looked East for another bail-out option. China was a potential provider of a loan free of South Africa's conditions, in "return for what remains of Zimbabwe's once highly profitable tobacco industry."¹⁸ Additionally, China secured agreements to allow mineral exploration in Zimbabwe.¹⁹ "China is neither troubled by human rights concerns nor allegations of corruption; it is only interested in promoting its economic interests with whoever is able and willing."²⁰

This Article will discuss the Guiding Principles for Internal Displacement, how the Principles were derived and their basis in international law. This Article will then apply the Principles to the situation in Zimbabwe, discussing how effective the Principles are to police such activity when they are only soft law. Could the United Nations effectively police Mugabe, especially when China would likely block any sanctions proposed by the Security Council? Could other state actors, such as South Africa, influence Mugabe to change his policies? Finally, could non-state actors such as Amnesty International and Human Rights Watch effectively intervene through shame and blame and public awareness techniques?

II. GUIDING PRINCIPLES FOR INTERNAL DISPLACEMENT

Worldwide estimates of the number of internally displaced persons (IDPs) hovers around 25 million, outnumbering refugees by a two-to-one ratio.²¹ However, the vast majority of relief efforts target

17. *Mbeki Indicates He May Pay Off Mugabe's IMF Debt*, AFR. NEWS (S. Afr.), July 31, 2005.

18. Bate, *supra* note 8.

19. Tajudeen Abdul-Raheem, *Why African Despots "Look East,"* ZIMB. STANDARD, Aug. 7, 2005.

20. *Id.*

21. Francis Deng, *A Decade in Human Rights Law: International Response to Internal Displacement: A Revolution in the Making*, 11 HUM. RTS. BR. 24, 24 (2004). "Africa . . . has more internally displaced persons than any other continent." Zachary A. Lomo, *The Struggle for Protection of the Rights of Refugees and IDPs in Africa: Making the Existing International Legal Regime Work*, 18 BERKELEY J. INT'L L. 268, 271 (2000).

refugees rather than IDPs, and there are no U.N. agencies or treaties that specifically target this population.²² This is a reflection of the inherent dilemma of assisting IDPs, who remain within the borders of their homeland and subject to state sovereignty, when it is frequently those same state actors engaging in the activities that trigger their displacement.²³ Refugee law, which is explicit in its recognition of state sovereignty, is of little assistance.²⁴ Conversely, human rights law provided richer fodder in the development of the Guiding Principles for Internal Displacement (GPID).²⁵

A. Grounded in International Law

The International Bill of Human Rights recognizes the “inherent dignity and equality of all human beings and set[s] a common standard for their rights.”²⁶ Comprised of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, these combined documents provide significant protection for the IDPs.²⁷ These rights include: freedom from arbitrary interfer-

22. DENG, *supra* note 2, at 2.

23. *Id.* at 13; Luke T. Lee, *Protection of Internally Displaced Persons in Internal Conflicts*, 3 ILSA J. INT'L & COMP. L. 529, 529 (1997).

24. Lomo states:

In contrast to refugees, internally displaced persons, who are also human beings worthy of human rights protection, are trapped within their countries of origin. For this reason, governments are reluctant to allow the international community to critically scrutinize the condition of IDPs under the pretext of sovereignty, as understood in traditional international law.

Lomo, *supra* note 21, at 271.

25. DENG, *supra* note 2, at 4-5. Deng adds:

We found that existing human rights and humanitarian law already provided a great many guarantees needed by the internally displaced, but that gray areas and gaps existed in this coverage, that the rules themselves were scattered among numerous instruments and not easily accessible to those who might most benefit from them, and that implementation of existing law was inadequate.

Deng, *supra* note 21, at 25.

26. DENG, *supra* note 2, at 5.

27. *Id.*; see also Sean Romero, *Mass Forced Evictions and the Human Right to Adequate Housing in Zimbabwe*, 5 NW. J. INT'L HUM. RTS. (forthcoming 2007) (including a more extended discussion of human rights law as applied to housing is-

ence with family, home, and privacy; freedom from arbitrary deprivation of property; and affirmative rights to adequate standards of living, liberty, and security of person.²⁸ Further rights afforded by these instruments that form the basis for current relief efforts directed towards IDPs include rights to basic necessities such as food, clothing, housing and medical treatment.²⁹

While human rights law provides a basis for asserting protection of IDPs, it does not address issues such as forcible displacement situations nor the inability to access humanitarian relief.³⁰ The Geneva Conventions assure the protection of civilians during armed conflict and “confers special status on the International Committee of the Red Cross . . . to protect and assist victims of armed conflict.”³¹ But the Convention is limited in that it applies only to those displaced by armed conflict, providing no protection for those who move because of generalized fear of violence or who are uprooted by state actors, such as in Zimbabwe.³² “Moreover, the justification for displacement based on the need to provide security is broadly construed.”³³

Finally, refugee law is of little assistance because the clarifying distinction between refugees and IDPs is the crossing of an international border, triggering the protections of asylum and *non-refoulement*; rights recognized under international law.³⁴ The status and rights of refugees developed during the Cold War, where the original 1951 Convention was prepared against the backdrop of individuals crossing the “Iron Curtain” amidst great fanfare and propa-

sues).

28. *Id.* These rights are all of specific relevance to the situation in Zimbabwe.

29. *Id.* The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the International Convention of the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and the International Conventions on the Protection of All Migrant Workers and Members of Their Families also contain relevant guarantees along with regional instruments such as the African Charter on Human and People’s Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights. *Id.* at 5-6.

30. *Id.* at 6.

31. *Id.* at 7.

32. *Id.*

33. *Id.*

34. *Id.* 7-8.

ganda.³⁵ Further, still fresh in the international consciousness was the experience of those fleeing Nazi persecution, often refused asylum at international borders and returned to death or concentration camp incarceration.³⁶ With the collapse of the Soviet Union and the end of the race for communist domination, “political ‘persecution’ of individuals by governments has been largely replaced by human rights abuses, ethnic conflicts, generalized violence, and other deprivations as the root causes of displacement from or within many countries, whatever their ideology.”³⁷

Consequently, applicable international law only provides a “patchwork” of imprecise human rights for IDPs:

[P]arts apply to all persons, parts only to certain subgroups of displaced persons, such as those displaced as a result of armed conflict, and parts may not apply in certain situations, such as an emergency threatening the life of the nation, or may apply only during a state of emergency.³⁸

B. Extending Protections to IDPs

There has been considerable debate over the degree to which international law should be extended to provide more concrete protections for IDPs.³⁹ One side of the debate expresses concern that if rights were articulated more clearly in a weak instrument or fail to be implemented, the minimum protections available now will be lost as

35. Luke T. Lee, *The London Declaration of International Law Principles on Internally Displaced Persons*, 95 AM. J. INT'L L. 454, 457 (2001). “The original goal of the UNHCR was to build a multilateral legal system designed to safeguard the rights of individuals displaced as a result of conflicts that had taken place in Europe and to coordinate international support for these populations.” Bemma Donkoh, *A Half-Century of International Refugee Protection: Who's Responsible, What's Ahead?*, 18 BERKELEY J. INT'L L. 260, 261 (2000).

36. Deng, *supra* note 21, at 24.

37. Lee, *supra* note 35, at 457. “[T]he end of the Cold War and the strategic withdrawal of the major powers, crises are perceived now in their proper national and regional contexts, instead of being distorted as part of the proxy confrontations of the Cold War era.” Frances M. Deng, *The Global Challenge of Internal Displacement*, 5 WASH. U. J.L. & POL'Y 141, 154 (2001).

38. DENG, *supra* note 2, at 9.

39. *Id.*

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well.⁴⁰ Alternatively, the argument is advanced that if the current protections are deemed inadequate, then it can be construed that there is no violation of human rights at all “because there are no clearly defined standards to violate.”⁴¹ The balance struck was the development of the GPID, a soft law document reiterating relevant human rights and humanitarian principles as they applied to IDPs.⁴²

International norms are based on standards. These norms are guides for state action and judging behavior and are “established by authority or gradually evolve by custom or consensus.”⁴³ Standards are categorized as either hard or soft law. The underlying treaties to the GPID constitute hard law, “binding legal rules established by international treaty or national legislation.”⁴⁴ Standards often move from soft to hard law through their acceptance as customary international law. Customary international law “results from a general and consistent practice followed by states out of a sense of legal obligation rather than for the sake of tradition or courtesy.”⁴⁵ This is usually a lengthy and involved process, where the standard evolves over time into hard law via a high standard of accepted practice. As the GPID was only promulgated in 1998, there is not a rich body of history to rely upon; however, several countries have already taken strong steps toward ap-

40. *Id.*

41. *Id.*

42. Schmidt states:

Soft law has been said to “operate in the grey zone between law and politics” and can be found in “treaties not yet in force or in resolutions of international conferences or organizations, which lack legally binding quality”. . . . [T]hey represent “neither strictly binding norms of law, nor completely irrelevant political maxims.”

Schmidt, *supra* note 6, at 514 (citing PETER MALANCZUK, AKEHURST’S MODERN INTRODUCTION TO INTERNATIONAL LAW 54 (7th ed. 1997)).

43. Herbert V. Morais, *The Quest for International Standards: Global Governance vs. Sovereignty*, 50 KAN. L. REV. 779, 780 (2002).

44. *Id.* at 781. Deng adds:

To the extent that they restate and/or correctly interpret existing binding instruments, the rules expressed by the Guiding Principles are undoubtedly binding on states party to the underlying instruments. More broadly, however, the growing acceptance of the Guiding Principles is helping them to grow more and more “as a standard”. . . .

Deng, *supra* note 21, at 26.

45. Schmidt, *supra* note 6, at 496.

plying the GPID in a manner that is moving the Principles down the path toward customary law. Angola, Burundi, and Columbia have all incorporated the GPID into their national laws through decrees or court cases, with several other states also moving towards applying the GPID in national legislation.⁴⁶

The GPID consists of thirty principles organized into five sections: general principles, protection from displacement; protection during displacement; humanitarian assistance and return; and resettlement and reintegration.⁴⁷ The general principles reiterate that the basis of the GPID is existing international law, explain that the principles should be applied indiscriminately, and that the initial responsibility for the protection of IDPs rests with national authorities.⁴⁸ The second set of principles, Principles Relating to Protection from Displacement, make it the responsibility of all authorities and international actors to prevent situations that lead to the development of IDPs.⁴⁹ These principles state that persons are to be protected from arbitrary displacement, that if displacement cannot be avoided the state is to provide adequate safety, nutrition, and hygiene, and that displacement shall not be carried out in a manner that violates the right to life, dignity, liberty, and security.⁵⁰

Section three provides every person has a right to life and protection from violence, liberty, and security in his or her person, to not be conscripted into civil violence, freedom of movement including seeking asylum, and the right to know the whereabouts of family members.⁵¹ Further, section three enumerates the rights of an adequate standard of living, access to medical care, recognition before the law, freedom of religion and expression of beliefs, and access to education.⁵² The right to humanitarian assistance includes not having relief measures diverted, that those engaged in relief efforts be protected, that the primary responsibility for providing relief rests with national authorities, and that offers of aid from other states or the international

46. *See id.* at 499-503.

47. *Guiding Principles*, *supra* note 5.

48. *Id.* § 1, Principles 1-4.

49. *Id.* § 2, Principles 5-9.

50. *Id.*

51. *Id.* § 3, Principles 10-23.

52. *Id.*

community be considered in good faith and consent “not be arbitrarily withheld.”⁵³ The final section details the manner in which IDPs should be allowed to return to their homes. IDPs “shall not be discriminated against” and should be assisted in the recovery of their possessions or with appropriate reparations, and international humanitarian agencies should be allowed to assist the resettlement of IDPs.⁵⁴

C. Assisting IDPs

The United Nations is not the only agency directing its attention to the IDP crisis. The Brookings Institution published a Guidebook for applying the GPID.⁵⁵ Amnesty International, Human Rights Watch, and other non-governmental agencies closely monitored the situation in Zimbabwe as well as other IDP crisis situations.⁵⁶ Additionally, in 2000, the International Law Association (ILA) approved the Declaration of International Law Principles on Internally Displaced Persons.⁵⁷ The ILA began looking at the IDP crisis in 1992, the same year U.N. Secretary-General Ghali appointed Francis Deng to investigate the issue. In 1998, also the same year the GPID was presented to the U.N. Commission on Human Rights, the ILA committee on IDPs presented the Draft Declaration to the ILA body. The Committee compared its Declaration with the GPID and concluded that while the GPID is “undoubtedly useful as a guide,” it must “nevertheless be put in [its] limited perspective.”⁵⁸ The criticism of the GPID centered on the lack of protections provided for IDPs by failing to create a separate legal

53. *Id.* § 4, Principles 24-27. “The single most difficult legal challenge is how the international community can provide humanitarian assistance to internally displaced persons if their state does not consent to such assistance.” Schmidt, *supra* note 6, at 490.

54. *Guiding Principles*, *supra* note 5, § 5, Principles 28-30.

55. BROOKINGS INSTITUTION, *supra* note 7. Deng was a fellow at Brookings prior to his appointment with the United Nations.

56. Amnesty International, *Mass Forced Evictions in Zimbabwe Continue* (2005), <http://web.amnesty.org/wire/August2005/Zimbabwe>; Human Rights Watch, “*Clear the Filth*”; *Mass Evictions and Demolitions in Zimbabwe* (2005), <http://www.hrw.org/background/africa/zimbabwe0905/>.

57. Lee, *supra* note 35, at 454.

58. LUKE T. LEE, REPORT AND DRAFT DECLARATION FOR CONSIDERATION AT 2000 CONFERENCE 5 (2000) (on file with the California Western International Law Journal).

status, as is provided for other human rights violations, and further, that the GPID is not comprehensive.⁵⁹ The ILA stated the Declaration's relationship to the GPID should be "characterized as mutually supportive and reinforcing."⁶⁰ The GPID provides "eighteen articles setting forth the rights and obligations pertaining to IDPs under general international law, human rights law, and humanitarian law"⁶¹

A significant difference between the ILA Declaration and the GPID is reflected in the definition of an IDP. The Declaration does not include those who have been forced from their homes due to natural or human-made disaster "on the ground that disaster-related problems pertain to the economic and social realm, rather than the civil and political sphere, and IDPs unencumbered by civil and political problems do not find themselves in a refugee-like situation."⁶² However, the Declaration later acknowledges that individuals who find themselves displaced through these means are also deserving of humanitarian rights and protections when states fail to provide the necessary supports.⁶³ The Declaration further asserts that the most significant right of IDPs is the protection and assistance of international and regional human rights, refugee and humanitarian law.⁶⁴ Chief among these protections is the "right to request and receive humanitarian assistance and protection from national and de facto authorities, as well as duly authorized international organizations."⁶⁵ The Declaration reiterates the GPID stance that the primary responsibility of protection rests with the state, and that there is an obligation to receive offers of humanitarian assistance "in good faith."⁶⁶

59. *Id.* at 2. It is unclear how an academic and research based organization of professionals can consider their document as carrying greater authority in the international community than a document created by U.N. officials, when a large majority of international hard and soft law generates from the United Nations. Further, in the face of state and U.N. acceptance of the GPID, it appears that the Declaration can only support the GPID rather than supplant it as the go-to document for agencies and states in an IDP crisis.

60. *Id.* at 3.

61. Lee, *supra* note 35, at 454.

62. *Id.* at 455

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* at 456.

D. Enforcement and Sovereignty

Enforcement of the GPID, however, raises significant concerns. Because IDPs remain in their home country, the responsibility to provide protection and services appropriately rests with that state.⁶⁷ Further, the U.N. Charter explicitly directs that the sovereignty of states be protected.⁶⁸ Deng, however, advances a liberal view of sovereignty, which he contends is shared by many state actors.⁶⁹ He asserts:

[W]here the government is not in control or the controlling authority is unable or unwilling to create the conditions necessary to ensure rights, and gross violations of the rights of masses of people result, sovereignty in the sense of responsible government is forfeited and the international community must provide the needed protection and assistance.⁷⁰

Other commentators have echoed his point of view: “[F]rom a liberal perspective, traditional conceptions of sovereignty and how it defines obligations in international law are not just changing but are an anachronism altogether, i.e., the ‘state is now widely understood to be the servant of the people and not vice-versa.’”⁷¹ What then is the appropriate situation for the international community to override state sovereignty and intercede when a state fails to protect its citizens? “The common assumption in international law is that to justify such action there must be a threat to international peace.”⁷² Additionally, the “weaknesses of international law and institutions as tools when political will wanes, or when States use a humanitarian response as a substitute for political action to solve the underlying causes of dis-

67. DENG, *supra* note 2, at 11.

68. The Charter prohibits “[intervening] in matters which are essentially within the domestic jurisdiction of any state.” U.N. Charter art. 2, para. 7.

69. DENG, *supra* note 2, at 14-15. “The concept of sovereignty . . . is becoming understood more in terms of conferring responsibilities on governments to assist and protect persons residing in their territories, so much so that if governments fail to meet their obligations, they risk undermining their legitimacy.” *Id.* at 15.

70. DENG, *supra* note 2, at 13.

71. Lomo, *supra* note 21, at 278 (quoting Kofi Annan, U.N. Sec’y-Gen., Address to the U.N. General Assembly (Sept. 20, 1999)).

72. DENG, *supra* note 2, at 18.

placement” demonstrate that reliance on civil society cannot solve the problem alone.⁷³

E. Preventing Internal Displacement

The greater challenge in protecting and servicing IDPs is preventing the situation from occurring at all. Deng states:

Viewing their problem in the context of nation building ultimately means addressing the causes of displacement, which in many instances should direct international efforts toward resolving conflicts, ensuring peace and security for all groups and individuals, and equal rights of citizenship without discrimination on the grounds of race, ethnicity, religion, culture, or gender.⁷⁴

Furthermore:

Much of the frustration with the failure to find long-term solutions . . . that have resulted in compassion fatigue would be better directed toward urging States to address the root causes of such movements Otherwise, the UNHCR and other humanitarian agencies . . . will continue to serve as salves to the consciences of the States who, knowing full well that the only cure for forced displacement is often aggressive pursuits of political solutions and commitment to conflict resolution and reconstruction initiatives, still prefer to insist on “humanitarian” solutions.⁷⁵

One scholar advances a three-pronged approach “to establish comprehensive conflict maintenance systems at the local, national, regional, and international level” in order “to prevent coerced population movements and protect displaced persons.”⁷⁶ His approach includes “conflict prevention, management, and resolution.”⁷⁷ Conflict prevention considers the “political aim” of averting or defusing con-

73. Donkoh, *supra* note 35, at 264.

74. DENG, *supra* note 2, at 13.

75. Donkoh, *supra* note 35, at 265.

76. Jeremy Levitt, *Conflict Prevention, Management, and Resolution: Africa – Regional Strategies for the Prevention of Displacement and Protection of Displaced Person: The Cases of the OAU, ECOWAS, SADC, and IGAD*, 11 DUKE J. COMP. & INT’L L. 39, 45 (2001).

77. *Id.* at 45-46.

flict through “trust building, coalition building, and negotiated settlements,” using “traditional and untraditional preventive diplomacy or preventive deployment” with an end goal of ensuring adequate protection for conflict affected populations.⁷⁸ The conflict management prong is considered “the one most integral to the physical and legal protection of displaced people” as it “works to prevent the escalation of refugee flows and IDPs.”⁷⁹ This is accomplished via “establish[ing] order through intense preventive diplomacy, coercive sanctions, peacekeeping, and peace-enforcement or humanitarian intervention” in an attempt to “ensure peace, security, and stability to allow for voluntary repatriation and internal replacement.”⁸⁰

Finally, conflict resolution is “the linchpin to sustainable peace.”⁸¹ This is the rebuilding stage, where IDPs are allowed to return, systems to ensure transparency and accountability are established, and monitoring of the situation begins “to allow for repatriation, demobilization, and the development of civil society and government structures, including political and judicial processes to bring about justice and reconciliation.”⁸² The proposed underlying goal of this system is to minimize the effect of conflict on civilian populations and attempt to avert large displaced populations as a result of internal or regional conflicts.⁸³

Essentially, a tool to guide international actors through the process of negotiating and resolving internal displacement crises exists due to considerable academic and social attention directed at developing this tool; a document promulgating derived rights for IDPs is available in the body of international soft law for application when appropriate situations arise. But will it prove effective?

78. *Id.* at 46.

79. *Id.*

80. *Id.* at 46-47.

81. *Id.* at 47.

82. *Id.*

83. *Id.* at 49.

III. ZIMBABWE

A. *Past Political History*

Cecil Rhodes, a British expatriate who cornered the South African diamond market, expanded his reach into Zimbabwe in 1888 when he obtained concessions to mineral rights from local chiefs.⁸⁴ Eventually, the area was declared a British protectorate and renamed Rhodesia.⁸⁵ White settlers soon followed, further exploiting mineral rights and developing large-scale agriculture ventures. By the 1950s the European settlers' demand for land clashed with Africans' demand for equality in a battle similarly waged across much of Africa. Ian Smith was elected Prime Minister in 1965 on a platform of resistance to the United Kingdom and a push for majority rule.⁸⁶ Smith promptly declared unilateral independence from Britain.⁸⁷

The movement for majority rule and freedom from colonial domination gathered momentum in the 1970s with the increase in antigovernment guerilla activity in Rhodesia and neighboring states.⁸⁸ The Zimbabwe African National Union (ZANU) was led by a dynamic young man, Robert Mugabe, the darling of Western efforts to use African resistance leaders to promote democracy and counteract attempts to spread communist ideals in Africa.⁸⁹ These efforts, combined with U.N. sanctions in force for ten years, culminated in an election in 1979 that saw the installation of an African prime minister.⁹⁰ Internal

84. *State Department Issues Background Note on Zimbabwe*, U.S. FED. NEWS, July 1, 2005.

85. *Id.* "Until 1980, Rhodesia was an internally self-governing colony with its own legislature, civil service, armed forces, and police. . . . [T]he United Kingdom always retained the right to intervene in the affairs of the colony, particularly in matters affecting Africans." *Id.*

86. *Id.*

87. *Id.* Britain made no effort to resist via force, but held the Unilateral Declaration of Independence to be unconstitutional and of no force, imposing sanctions on Rhodesia and calling for other nations to do so as well. The United Nations also held the Declaration illegal and refused to recognize the Smith regime. *Id.*

88. This era saw the rise of resistance leaders who would obtain legendary status on the continent, including Nelson Mandela, Govan Mbeki, and Robert Mugabe.

89. *State Department Issues Background Note on Zimbabwe*, *supra* note 84.

90. *Id.* Bishop Muzorewa was elected Prime Minister. *Id.*

strife continued until British leaders negotiated the Lancaster House Agreement, where the new Zimbabwe was transferred back to colonial rule and then ceremoniously granted sovereignty, culminating in elections where Mugabe's party won a majority and established the new government.⁹¹ Mugabe subsequently declared his intent to follow a policy of reconciliation.⁹²

The Lancaster House Agreement attempted to deal with the land disparity issue arising from colonial rule by requiring the prevailing policy over the next ten years to be that land was purchased from willing European settlers at fair market value.⁹³ Subsequently, Mugabe spent most of his first ten years in office dealing with the growing pains of a new government, including the continuance of strife in Parliament with Smith and other white officials and with leaders of the former ZANU party.⁹⁴ Elections in 1990 resulted in reelection for Mugabe, who used his resulting political will to amend the constitution, attempting to finally turn his attention to land redistribution, including a provision that "denied recourse to the courts in cases of compulsory purchase of land by the government."⁹⁵

B. Recent Political History

Resistance to Mugabe's policies during the 1990s swelled with student protests and trade union demonstrations leading to the rise of the Movement for Democratic Change (MDC) as a strong opposition party.⁹⁶ This culminated in the 2000 elections that allowed MDC to test its political strength, defeating constitutional referendums and capturing 57 of 120 Parliamentary seats.⁹⁷ However, these elections

91. *Id.* ZANU merged with Zimbabwe African Peoples Union (ZAPU) to form the Patriotic Front, which gave rise to ZANU-PF, the name of Mugabe's political party today. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* However, the elections were criticized by international observers as not free and fair. *Id.*

96. *Id.*

97. *Id.* The constitutional referendums, including changes that would allow Mugabe to seek two additional terms, granted government officials immunity from prosecution, and authorized government seizure of white-owned land. *Id.*

were marked by violence, corruption and intimidation, with the results widely criticized by the United Nations and Western governments.⁹⁸ “Shortly thereafter, the government, through a loosely organized group of war veterans, sanctioned an aggressive land redistribution program often characterized by forced expulsion of white farmers and violence against both farmers and farm employees.”⁹⁹

The land grab, combined with pension payments to army retirees, troop placement in the Democratic Republic of Congo and a sustained regional drought, led to serious economic downturns in Zimbabwe.¹⁰⁰ Land was redistributed to either absentee landlords or individuals incapable of sustaining the agricultural output potential of the land.¹⁰¹ Zimbabwe experienced severe food shortages and unemployment rates estimated as high as seventy percent.¹⁰² MDC gained further momentum in this volatile atmosphere, leading to a close presidential election between Mugabe and MDC challenger Morgan Tsvangirai in 2002, preceded by months of violence and turmoil.¹⁰³ In the face of

98. *Id.*

99. *Id.* The farm occupations that began in 2000 “were initially portrayed as an attempt by liberation war veterans and other militants to rectify racial imbalances in land ownership.” Moyiga Nduru, *Whither Civil Society?*, INTER PRESS SERVICE, Aug. 13, 2005.

100. *See generally State Department Issues Background Note on Zimbabwe, supra* note 84.

101. *See generally id.*

102. Simon Tisdall, *Zimbabwe Surrounded By Sound and Fury, but Little Action*, THE GUARDIAN (London) Nov. 8, 2005, at 22. “Various estimates suggest food shortages now affect half the population; 4 million people face famine. Average life expectancy has halved in a decade, the economy has contracted by 30% in six years, and unemployment is about 70%.” *Id.*

103. *State Department Issues Background Note on Zimbabwe, supra* note 84. As a result of this election, the United States and European Union imposed travel restrictions, and the Commonwealth of Nations suspended Zimbabwe from council meetings, leading to its eventual withdrawal.

The United States, however, imposed financial and investment sanctions under the Zimbabwe Democracy and Economic Recovery Act of 2001 in which it has instructed all its officials who sit on the boards of international financial institutions such as the World Bank and International Monetary Fund and others to oppose any financial assistance to Zimbabwe.

Zimbabwe Press Review for 5 November; BBC Worldwide Monitoring, THE HERALD (Zimb.), Nov. 5, 2005.

this, Mugabe tightened his control with repressive legislation limiting speech and assembly, and used controlled food distribution to sway a starving electorate in the run up to Parliamentary elections in March 2005.¹⁰⁴

C. Operation Murambatsvina

It was in this atmosphere that Operation Murambatsvina commenced on May 19, 2005. The stated governmental purpose was to “rid urban areas of illegal structures, illegal business enterprises, and criminal activities.”¹⁰⁵ There was little warning of the impending urban cleansing.¹⁰⁶ A speech by a governmental representative announced the intended effort but did not mention its method, other than it would be conducted in conjunction with the police force.¹⁰⁷ Five days later, notice was provided to the residents of Harare that individuals who had constructed illegal structures must voluntarily demolish them by June 20, 2005.¹⁰⁸ However, on May 25, bulldozers and police tore through shantytowns in Harare’s high-density suburbs, initially targeting vendor and flea markets, and “other informal market premises” before moving on to illegal dwellings.¹⁰⁹ Structures were demolished by any means, including burning.¹¹⁰ It is estimated that up to 700,000 people lost homes and livelihoods in the Operation, conducted on the verge of winter, leaving these individuals exposed to the

104. *State Department Issues Background Note on Zimbabwe*, *supra* note 84.

105. *Id.* Indeed,

[t]he Government of Zimbabwe has given the following main justifications for the Operation: arresting disorderly or chaotic urbanization, including its health consequences; stopping illegal, parallel market transactions, especially in foreign currency dealing and hoarding of consumer commodities in short supply; and reversing environmental damage caused by inappropriate urban agricultural practices.

Tibaijuka, *supra* note 13, at 20.

106. *Id.* at 12.

107. *Id.*

108. *Id.*

109. *Id.* It is disputed whether all of the structures destroyed were actually illegal. Jupiter Punungwe, *Why Murambatsvina is a Disaster*, ZIMB. STANDARD, July 31, 2005.

110. Tibaijuka, *supra* note 13, at 12.

elements.¹¹¹ Those displaced were ordered to return to their “rural origins,” which for many affected did not exist, as they were immigrants or had lived in urban areas so long there were no longer ties to rural communities.¹¹²

Several theories were advanced as to why the government instituted this action. The prevailing theory is that it was an attempt by Mugabe's regime to further clamp down on MDC supporters by dispersing power centers, as urban areas were enclaves for MDC support.¹¹³ However, in October 2005, a magazine published by a supporter of Mugabe revealed that the Operation was spearheaded by the Zimbabwe intelligence community, spurred by fears of a popular uprising on the scale of the Ukraine's “orange revolution.”¹¹⁴

Whatever the motive, the effect was disastrous. Surveys by non-governmental agencies of 81,955 residents of Harare revealed that seventy-six percent of those interviewed reported loss of shelter and income, in addition to a decrease in school attendance of twenty-two percent by children of affected parents.¹¹⁵ Residents were moved to holding camps to await dispersal into rural areas, however, several months later many were still sleeping on the ground in the open.¹¹⁶ There was no access to potable water, food provisions were scarce, women gave birth in the open, the disabled lost access to care provisions and disease was rampant.¹¹⁷

111. *Id.* at 33.

112. *Id.* at 13.

113. *Mugabe's Operation to Clean Up the Trash is History Repeated*, *supra* note 9.

114. *Murambatsvina CIO Brainchild*, FIN. GAZETTE (Zimb.), Oct. 6, 2005. This refutes earlier statements by government officials that “both Operation Murambatsvina [anti-filth] and Operation Garikai . . . were planned a long time ago.” *State's Demolition Programme “Beginning to Bear Fruit”* (text of report on ZTV1, Harare, July 28, 2005) BBC MONITORING INT'L REP., July 29, 2005.

115. *Impact of Demolitions Greater than Government's New Plan*, U.N. INTEGRATED REGIONAL INFO. NETWORKS, July 25, 2005.

116. *Get Thabo's Cash and Run*, ZIMB. STANDARD, Aug. 21, 2005. “We were living crammed like rats, the tents were inhabited by the police and not just anybody.” Thomas Kwaramba, *Government Admits Blunder on Hatcliffe*, ZIMB. STANDARD, Aug. 21, 2005.

117. Christina Lamb, *'Dust People' Forage for Food in Zimbabwe Ruins*, SUNDAY TIMES (London), Oct. 23, 2005, at 24.

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Additionally, the Operation exacerbated the AIDS crisis in Zimbabwe.¹¹⁸ With one of the highest infection rates in the world, many residents are in need of medical assistance and medications, already difficult for Zimbabweans to access.¹¹⁹ For those relocated to rural areas and holding camps, reaching these services became an impossibility, leading to greater symptomology and future resistance to anti-retroviral medications.¹²⁰ Finally, the potential added risks of increased sexual violence frequently observed in vulnerable populations and prostitution due to lack of other income sources could increase the spread of HIV.¹²¹

D. Operation Garikai

Following the international outcry against Operation Restore Order, the government attempted to back pedal and announced on June 29, 2005 the launching of Operation Garikai, a housing development plan to rebuild houses on state determined sites.¹²² Zimbabwe announced that 33,000 houses were to be built in the Harare area alone, with the equivalent of \$30 million allocated toward the project.¹²³ Further, determination of recipients of the homes would not be decided based upon political affiliation.¹²⁴ Coincidentally, Operation Garikai was announced during the United Nations' Special Envoy's ultimately highly critical tour of Zimbabwe.¹²⁵ Special Envoy Anna Kajumulo Tibaijuka determined in her report that the stated goals were implausible based upon the present capabilities of the Zimbabwean govern-

118. Paul Salopek, *Zimbabwe Policies Thwart HIV Victims Seeking Help*, CHI. TRIB., Nov. 7, 2005.

119. *Id.*

120. Tibaijuka, *supra* note 13, at 40.

121. *Id.*

122. *Msika Officially Launches Operation Garikai*, THE HERALD (Zimb.), June 30, 2005.

123. *Id.*

124. *Id.*

125. U.N. Secretary-General Kofi Annan appointed a Special Envoy to visit Zimbabwe in June 2005 and report on the conditions following Operation Murambatsvina. *See* discussion *infra* Part IV.A.

ment, including lack of resources, refusal of foreign assistance and its budgetary crisis.¹²⁶

It appears as if her reservations were well founded. The initial target completion date of August 30, 2005 came and went with few homes turned over to recipients.¹²⁷ By the end of July, the regime that had previously refused foreign aid requested assistance with the reconstruction.¹²⁸ The Minister of Local Government, Public Works and Urban Development, infuriated at the slow pace of the building, threatened to deploy soldiers in September.¹²⁹ Finally, the houses constructed were shells, requiring the new owner to outlay precious resources in order to finish construction; this on top of the initial cash deposit required to take possession.¹³⁰ These requirements functionally placed these new dwellings out of the financial reach of most of those displaced.

126. Tibaijuka, *supra* note 13, at 49, 74.

127. *Row Erupts Over 'Hlalani Kuhle' Houses in Gwanda*, ZIMB. STANDARD, Sept. 25, 2005. However, diplomats from the Non-Aligned Movement, including representatives from China and Russia, toured Zimbabwe in September and issued a favorable report on the progress of Operation Garikai, but made no statement about Operation Murambatsvina. *Non-aligned Diplomats Hail Progress of Zimbabwe's Rehousing Programme*, (ZTV1 television broadcast Sept. 12, 2005).

128. *Government Declares 'Clean Up' Operation Over*, THE HERALD (Zimb.), July 28, 2005. "I appeal to the international community to stop stone-throwing, but to join us in this noble effort to promote the good of our people." *Id.* Zimbabwe has requested help from the international community with the thousands of people made homeless by Operation Murambatsvina, despite initial insistence that it was capable of addressing the situation internally. Bill Corcoran, *Cruel To Be Kind*, SLATE MAGAZINE, July 1, 2005.

129. *Chombo Threatens Military Action*, ZIMB. STANDARD, Sept. 11, 2005. It was reported that of 200 houses targeted for completion at the end of August 2005, most would not be available. *Id.* However, it is unclear if this refers to a specific region only or the country in its entirety. The government reported that some houses had been completed.

130. Olly Owen, *Zimbabwe's Dispossessed Excluded from Housing Rebuild*, WORLD MARKETS ANALYSIS, Sept. 12, 2005. As a result, ninety-eight percent of the homes in Bulawayo were allocated to members of the army, police and security services. *Id.*

IV. MUGABE'S VIOLATIONS AND THE UNITED NATIONS'
DISAPPOINTING RESPONSE

A. *The Special Envoy's Report*

Secretary-General Annan appointed Anna Kajumulo Tibaijuka, Executive Director of U.N. Habitat, as Special Envoy on Human Settlement Issues. Her mandate was to report on the effects of Operation Murambatsvina and present recommendations.¹³¹ The authority of Special Envoys derives from the good offices of the Secretary-General. As early as 1946, Secretaries-General have made clear that the office has powers independent of the Security Council and General Assembly to investigate, mediate, and negotiate matters involving state actors.¹³² By the 1980s, Secretaries General “[h]ad created for themselves a dispute-settlement role separate and often different from the expressed policy of some, or even most, members. . . . [T]hey had been completely successful in drawing a line between their role and the role played by the political organs at the behest of member states.”¹³³ However, “[t]he Secretary-General cannot be everywhere at once,” and frequently must delegate such tasks, especially in the post-Cold War era where there has been a dramatic increase in the number of situations requiring good offices intervention.¹³⁴ Authority for good offices functions arises either by agreement of the parties, under the inherent power of the Secretary-General Office, or by Security Council or General Assembly resolution.¹³⁵ Therefore, a Secretary-General can appoint a Special Envoy to investigate or mediate a conflict or one can be appointed by resolution from the Security Council or General Assembly.

131. Tibaijuka, *supra* note 13, at 2.

132. Thomas M. Franck & Georg Nolte, *The Good Offices Function of the UN Secretary General*, in UNITED NATIONS, DIVIDED WORLD 143, 144 (Adam Roberts & Benedict Kingsbury eds., 1993).

133. *Id.* at 148.

134. *Id.* at 176-77.

135. *Id.* at 172-73.

The international acceptance of Special Envoys is interesting.¹³⁶ Marginal states such as Sudan, Iraq, Kosovo, and Zimbabwe all allowed Special Envoys to enter their sovereign borders and rarely restricted their access, providing access to parties that NGO's and other actors were denied and promoting the appearance that these envoys are afforded tremendous validity. On the other hand, why not allow them access? Special Envoys have no true authority. Did it really hurt President Mugabe to allow Tibaijuka free reign? Her report had no binding effect. Similarly, even if Secretary-General Annan himself traveled to Zimbabwe and wrote the report, it would have no binding effect. However, the Charter provides the Secretary-General with the authority to bring any matter before the Security Council he feels is a threat to international peace and security.¹³⁷ Because Tibaijuka was appointed directly by Annan, he could then bring her report before the Security Council, or alternatively, the Security Council could vote whether to have the report brought before it. President Mugabe likely rolled the dice, knowing he was not in violation of binding hard law and not directly threatening other states with his actions, counting on his allies to block any potential Security Council action.

The Special Envoy generated a 100-page report after meeting with President Mugabe, other government officials, displaced persons, NGO's, and civil society groups.¹³⁸ However, she did not apply the Guiding Principles in her report.¹³⁹ She expressed concerns that the

136. Much of how the good offices of the Secretary-General function is not in the U.N. Charter but all states acknowledge the Secretary-General has this role and respects it, now explicitly in the World Summit document. G.A. Res. 60/1, ¶ 76, U.N. Doc. A/RES/60/1 (Sept. 16, 2005).

137. U.N. Charter art. 99.

138. See Tibaijuka, *supra* note 13. Zimbabwe's national paper reported that Special Envoy Tibaijuka confessed to Mugabe that she was under pressure to generate a negative report from her observations. *Political Hand Grips Tibaijuka's Pen*, THE HERALD (Zimb.), July 28, 2005.

139. The GPID is mentioned only twice in her report. She states:

There is an urgent need to reach an understanding with the Government on the roles and responsibilities of all stakeholders, the status of people displaced by the Operation, and the policies and standards that will govern humanitarian response, including the SPHERE standards and the U.N. Guiding Principles on Internal Displacement.

Tibaijuka, *supra* note 13, at 52. "Furthermore, the organized transport of people to and from the camp was reported to be involuntary in many cases, which would not

scope of the problem was beyond the ability of the Zimbabwean government to correct, but hesitated to say that the Responsibility to Protect was triggered by the situation.¹⁴⁰ Finally, the Special Envoy concluded that, despite its actions, with the available evidence it would be difficult to prove that Zimbabwe has violated international hard law prohibiting “crimes against humanity.”¹⁴¹ Zimbabwe is not party to the Rome Statute, so any determination that Zimbabwe was in violation of Article 7 for crimes against humanity would require referral to the U.N. Security Council for a determination of action.¹⁴² The Special Envoy determined that Zimbabwe’s violations were predominantly of national law, but conversely “[t]he international community has a responsibility to protect those affected. The impact will not be easy to redress and requires immediate large-scale and unconditional humanitarian assistance to protect those in need.”¹⁴³

However, Operation Murambatsvina and its aftermath created a large population of IDPs within the borders of Zimbabwe, in addition

be in accordance with the U.N. Guiding Principles on Internal Displacement as well as other international instruments.” *Id.* at 53.

140. Tibaijuka, *supra* note 13, at 64. “The Responsibility to Protect published in December 2001 by the International Commission on Intervention and State Sovereignty, outlines the core principles of how the United Nations and the wider international community should react when nations are degenerating into chaos.” *Id.* This document is also soft law and has no binding effect on states, but was expressly accepted by resolution at the World Summit meeting in 2005. *See generally* G.A. Res. 60/1, ¶ 76, U.N. Doc. A/RES/60/1 (Sept. 16, 2005).

141. Tibaijuka, *supra* note 13, at 67.

142. *Id.* at 64. Russia, China and Tanzania have all indicated they would veto any Resolution against Zimbabwe. *China, Tanzania Thwart Efforts to Put Zimbabwe on UN Agenda*, (Zimbabwean Television broadcast July 26, 2005) (transcript available at www.redorbit.com/news/display/?id=187833 (last visited on Jan. 10, 2007)).

143. Tibaijuka, *supra* note 13, at 64.

[I]t remains the strong recommendation of the Envoy that the culprits who have caused this man-made disaster be brought to book under Zimbabwean national laws. The international community would then continue to be engaged with the dismal human rights record in Zimbabwe in consensus building political forums such as the U.N. High Commission for Human Rights, or its successor, the African Union Peer Review Mechanism, and the SADC [Southern African Development Community].

Id. at 67.

to those displaced in earlier operations.¹⁴⁴ In doing so, at least twelve of the Guiding Principles were clearly violated by the Mugabe regime in its effort to return Harare to its previous status as the "Sunshine City."¹⁴⁵ The GPID, as opposed to many soft law documents, explicitly details what constitutes a violation, with few of the Principles providing only vague aspirations. As a result, it is easy to run through a checklist of violations produced by the actions of the Mugabe government, which makes it only more puzzling that Tibaijuka failed to do so.

B. U.N. Failure

The United Nations' handling of the Zimbabwe situation raises several critical questions regarding how it will continue to address situations of internal displacement. Why was an employee of U.N. Habitat sent to Zimbabwe to report on the crisis rather than Walter Kälin, the current Representative of the Secretary-General on the Human Rights of Internally Displaced Persons? Why did the Special Envoy fail to explicitly enumerate the egregious violations of the GPID in her report? What was Kofi Annan's role in approaching Zimbabwe's human rights violations and what should have been his role?

In 2004, Walter Kälin replaced Frances Deng as Representative of the Secretary-General on the Human Rights of Internally Displaced Persons.¹⁴⁶ The current mandate of the position is to engage in coordinated advocacy in favor of the protection and respect of the human rights of IDPs; continue and enhance dialogues with governments as well as non-governmental organizations and other actors; and strengthen the international response to internal displacement and mainstream the human rights of IDPs into all relevant parts of the

144. See *Mugabe's Operation to Clean Up the Trash is History Repeated*, N.Z. PRESS ASS'N, July 25, 2005.

145. See table in the Appendix that enumerates those Principles most clearly violated. All excerpts utilized as evidence of a violation are taken directly from the observations of the Special Envoy in her report.

146. Office of the United Nations High Commissioner for Human rights, *Representative of the Secretary General on the Human Rights of Internally Displaced Persons* (1996-2006), available at <http://www.ohchr.org/english/issues/idp/man date.htm> (last visited Mar. 31, 2007).

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U.N. system.¹⁴⁷ This includes visiting countries with current internal displacement issues and promoting awareness and discussion regarding the GPID.¹⁴⁸ From the start of Deng's tenure to present, there have been twenty-eight country visits undertaken by a Representative on Internal Displacement, none of which was Zimbabwe.¹⁴⁹

If Kälin's mandate is to promote the rights of the internally displaced and strengthen international response and recognition of the GPID as a relevant tool, why did he not visit Zimbabwe himself?¹⁵⁰

147. *Id.* The U.N. representative also states:

He was also requested to build upon the work of his predecessor in raising awareness of IDP rights issues, promoting and disseminating the Guiding Principles on Internal Displacement at the national, regional and international levels, undertaking country missions, convening national and regional seminars, providing support for capacity building of non-governmental organizations and other relevant institutions, and conducting policy-oriented research.

Id. (citation omitted).

148. Office of the United Nations High Commissioner for Human rights, *Representative of the Secretary General on the Human Rights of Internally Displaced Persons: Country Visits (1996-2006)*, available at <http://www.ohchr.org/english/issues/idp/visits.htm> (last visited Mar. 31, 2007).

Country visits are a particularly important aspect of the mandate as they provide a means for assessing the extent to which the protection needs of the internally displaced are being met in specific situations and for engaging with Governments, non-state actors, international and local humanitarian agencies, local civil society, displaced persons, and other interested actors.

Id.

149. *See id.* Walter Kälin "has undertaken visits to Bosnia and Herzegovina (June 2005), Croatia (June 2005), Nepal (April 2005), [and] Serbia and Montenegro (June 2005) . . ." *Id.*

150. E-mail from Paul Oertly, representative to Walter Kälin, to Sarah Hager, author, (Nov. 30, 2005) (on file with author). A representative for Kälin was contacted via e-mail inquiring as to why Kälin did not conduct the country visit and why Tibaujuka did not discuss the GPID in her report. *Id.* His entire response follows:

Thank you for your inquiry. The position of Representative of the Secretary-General on the Human Rights of Internally Displaced Persons is an independent mandate, and as such the Representative was not involved in either the appointment decision of Ms. Tibaujuka or his [sic] report. You may have noted that he is on the public record with respect to the subject matter, see for example his press release of 29 July 2005.

Id.

Clearly, as executive director of U.N. Habitat, Tibaijuka is an expert on housing issues.¹⁵¹ But it raises the question as to whether she is an expert on displacement issues, evidenced by her lack of discussion of the GPID in her report. If Kälın has no say in who is sent to report on countries that appear to be violating the GPID, or what is discussed in the report, then why does his position exist? Alternatively, was the motivation political for appointing Tibaijuka as representative of human settlement issues rather than using stronger language regarding the internal displacement issue?¹⁵² Perhaps this was an attempt to make the envoy visit more palatable to President Mugabe by keeping the appointment focused on what appeared to be a less politically-charged level and to avoid the issue of state sovereignty raised by the GPID. If so, Annan's actions directly undercut both Kälın and the GPID's potential to gain acceptance as a standard.

Kälın appeared to delicately convey his irritation in a published a press release following the issuance of the Special Envoy report, where he expressly invoked the violation of the GPID by Zimbabwe.

What has been suspected has now become clear following the report of the Secretary-General's Special Envoy Anna Tibaijuka last Friday: in Zimbabwe we are facing a situation of massive internal displacement," Mr. Kälın said. . . . "Destruction of homes and forced movement of people on such a scale comes squarely within the definition of internal displacement, which covers people forced to leave their homes to avoid human rights violations and other disasters, whether human-made or natural". . . . The UN's Guiding Principles on Internal Displacement set forth the rights of internally displaced persons under international law and the obligations of States. "These Principles . . . are based upon and reflect human rights obligations also accepted by Zimbabwe." They protect against arbitrary displacement in the first place and require due process, adequate notice, appropriate relocation and minimisation

151. One wonders about potential political motivations in considering appointments. Kälın is a citizen of Switzerland, a Western country. Switzerland did not join the United Nations until 2002 and is famously neutral; alternatively, Tibaijuka is a citizen of Tanzania, a country that sits on the Security Council and is a close neighbor of Zimbabwe. Was Annan concerned with sending a representative that may have been viewed as more palatable to President Mugabe?

152. Tibaijuka's appointment appears to have been specific to Zimbabwe, not all issues of human settlement, as her mandate was only to investigate the situation in Zimbabwe.

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of adverse effects. They also require appropriate provision of the necessities of life to displaced persons, protection of their property, as well as offer voluntary choices to displaced persons as to where they will return. "On each and every of these points, the Government of Zimbabwe has fallen far short of its obligations."¹⁵³

This is the language that should have been in the Special Envoy report. Kälin reiterates the legitimacy of the GPID as based on binding documents Zimbabwe has ratified and applies the actualities of the situation to violations of the GPID. It seems an attempt to fill the holes left by Tibaijuka's analysis, further his mandate by promoting the GPID and validate the existence of his position. Sadly, for whatever reason, this was not done initially, leaving instead a glaring failure of opportunity on the part of the United Nations to advance the rights of IDPs through applying the Principles to a particularly egregious violation.¹⁵⁴

But is there another reason why Tibaijuka did not discuss the GPID? As soft law, there is no binding force for violations of the GPID. It is possible her reticence was colored by the same debate that informed the genesis of the GPID as soft law; whether to risk losing any rights for IDPs by having the instrument not enforced.¹⁵⁵ Alternatively, it can be argued that a valuable opportunity was missed to advance the GPID through using the report to generate discussions that could initiate a norm shift.

Cass Sunstein describes the process of norm shifting to advance societal change.¹⁵⁶ He states that a norm entrepreneur proposes a change in a current socially accepted status quo, such as stating that the policy of separate but equal is actually a policy of racism. Because there are many people who will not want to be perceived as racist,

153. Press Release, United Nations, U.N. Representative Calls Zimbabwe Crisis Massive Internal Displacement (July 29, 2005).

154. *See generally* HUMAN RIGHTS WATCH, II. RECOMMENDATIONS TO THE GOVERNMENT OF ZIMBABWE (2005), http://hrw.org/reports/2005/zim1205/2.htm#_Toc120427991. Human Rights Watch called Kälin to visit Zimbabwe "to raise awareness of and attention to the plight of the internally displaced, and work with the government and the U.N. to ensure the delivery of assistance and protection to the internally displaced persons." *Id.*

155. *See supra* text accompanying notes 39-46.

156. *See generally* Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903 (1996).

they will endorse this new norm. Others will follow, exiting the policy of separate schools, embracing desegregation, and generating a norm cascade. In order for this to work, there needs to be a societal norm that can be exited; if a person or policy is trapped in a norm cycle, the policy will stagnate and remain at status quo. Here, by using the public voice of the Secretary-General via the Special Envoy, there was the opportunity to name sovereign-dictated internal displacement as a violation of the GPID, worthy of international scorn as an infringement of an instrument that restates other accepted human rights violations, moving the GPID closer to acceptance as a standard.

There is evidence that the influence of the GPID is gaining speed which naming Operation Murambatsvina as violative of the Principles could have assisted. The resolutions adopted by the General Assembly at the U.N. World Summit in September 2005 explicitly endorsed the GPID as a vital document to assist in the protection of IDPs.¹⁵⁷ Additionally, other state actors expressed strong condemnation of Operation Murambatsvina. However, since the report concluded that the actions were only violations of national law, there is little force with which these other state actors could move forward and much force with which others could resist these efforts. Britain, Greece, Australia, and New Zealand all moved to have the Special Envoy report placed on the Security Council agenda, but were blocked in their efforts by China, Russia, and Tanzania.¹⁵⁸ Australia also pushed for Mugabe to be tried before the International Criminal Court.¹⁵⁹

157. G.A. Res. 60/1, ¶ 132, U.N. Doc. A/RES/60/1 (Sept. 16, 2005). "We recognize the Guiding Principles on Internal Displacement as an important international framework for the protection of internally displaced persons and resolve to take effective measures to increase the protection of internally displaced persons." *Id.*

158. Blessing Zulu, *Britain Requests Security Council Zimbabwe Briefing*, U.S. FED. NEWS, July 26, 2005.

Britain raised the issue of Zimbabwe in a closed session of the Security Council. Britain wanted the special envoy to detail her findings to the Council. Mugabe was in China seeking financial assistance and firming up diplomatic support with Beijing, which if it so inclined could shield him from Security Council sanctions.

Id.; see also Mbeki Indicates He May Pay Off Mugabe's IMF Debt, *supra* note 17. The countries that voted against Britain's request to bring the Special Envoy report before the Security Council were China, Russia, Algeria, Benin, and Tanzania. Nine voted in favor with one abstention, Brazil. *Id.*

159. "Australia is pressing the world's most powerful nations to put Zim-

Western states also appealed directly to Mugabe to cease his displacement actions and recognize the economic and social peril facing Zimbabwe.¹⁶⁰ However, Mugabe boldly faced down Western detractors and the United Nations, secure in knowing that, with the Special Envoy's conclusion that his recent actions only breached national laws, the international community is limited in its recourse. Mugabe addressed the Security Council while in New York in September 2005 for the World Summit, saying the Security Council "must not be used as a tool to score cheap political points, but should limit itself to its stated mandate."¹⁶¹ He further declared, "Zimbabwe was a country at peace with itself and its neighbours and posed absolutely no threat to international peace and security."¹⁶²

Additionally, Zimbabwe defended Operation Murambatsvina as no different than actions of other countries throughout the world.¹⁶³ In fact, this is not an entirely incorrect statement of what has occurred, and continues to occur, in other states. Zimbabwe is not alone in clearing its slums in an attempt to rejuvenate its cities. "[B]eautification projects immediately prior to international events are one of the most common justifications for slum clearance programs."¹⁶⁴ Prior to the

babwe's brutal dictator Robert Mugabe on trial in the International Criminal Court. . . . [T]he government was pushing the UN Security Council to refer Mr [sic] Mugabe and his henchmen to the global court." Zimbabwe is not a signatory of the court so Mugabe can only be prosecuted by a resolution of the Security Council. *Australia in Legal Attack on Mugabe*, DAILY TELEGRAPH (Sydney), Oct. 19, 2005.

160. "Thirteen western governments including Britain issued a joint statement in Harare at the weekend demanding Mr. Mugabe accept that Zimbabwe faced a deepening crisis, caused in part by the government's urban clearance operation . . ." Tisdall, *supra* note 102.

161. *Britain Abusing UN to Score Cheap Political Points, Says President*, THE HERALD (Zimb.), Sept. 19, 2005. Mugabe further stated that he did not "subscribe to the suggestion that all problems—social, cultural, economic, and health, among others—were necessarily threats to the maintenance of peace and security, and that they should, therefore, be referred to the Security Council." *Id.*

162. *Id.* "Mugabe said it was disheartening to note that Zimbabwe was being persecuted for improving the livelihoods of its people by forces that were behind massive human rights abuses and blatant disregard of the UN charter provisions typified by the invasion of Iraq by the US and Britain." *China, Tanzania Thwart Efforts to Put Zimbabwe on UN Agenda*, *supra* note 142.

163. *Mugabe Backed Into a Corner*, FIN. MAIL (S. Afr.), July 29, 2005, at 26.

164. Solomon J. Greene, Note, *Staged Cities: Mega-Events, Slum Clearance, and Global Capital*, 6 YALE HUM. RTS. & DEV. L.J. 161, 163 (2003).

IMF and World Bank conference in Bangkok in 1991, Thailand forcibly removed more than 2,000 slum dwellers from the area around the convention center.¹⁶⁵ When the same convention convened in 1976 in Manila, 400 families experienced the same forcible removal to obfuscate the existence of these slum residents.¹⁶⁶ In the five years preceding the 1988 Olympic Games in Seoul, 48,000 buildings that housed 720,000 people were demolished to make way for redevelopment.¹⁶⁷ "Ninety percent of the 720,000 evictees did not receive replacement housing within the redevelopment site."¹⁶⁸

Mega-events (large scale leisure and tourism events such as Olympic Games and World Fairs) are short-term events with long-term consequences for the cities that stage them. They are associated with the creation of infrastructure and event facilities often carrying long-term debts and always requiring long-term use programming. In addition, if successful, they project a new (or renewed) and perhaps persistent and positive image and identity for the host city through national and international media.¹⁶⁹

The significant difference between Zimbabwe and these other countries, however, is that Zimbabwe does not have a large-scale event planned now, or any time in the near future. Further, the slum clearances initiated for large-scale events tend to be isolated to those areas most near the event site. Operation Murambatsvina destroyed homes in twenty-nine urban centers across Zimbabwe. The limited economic benefit of a less congested city center does not balance against the loss of home and livelihood for more than half a million people.

Mugabe invited Secretary-General Annan to visit Zimbabwe to view the effects of Operation Murambatsvina and subsequent Operation Garikai.¹⁷⁰ However, Annan set conditions for the visit, "that the government allows aid groups into the country and gives them unfet-

165. *Id.* at 161.

166. *Id.* at 161-62.

167. *Id.* at 171.

168. *Id.* at 172.

169. *Id.* at 165.

170. Rangarirai Mberi, *Annan Sticks to Conditions for Zim Visit*, FIN. GAZETTE (Zimb.), Sept. 22, 2005.

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tered access to feed the hungry,” which Mugabe refused to meet.¹⁷¹ Annan also requested that his Chief Coordinator of Humanitarian Operations be allowed to visit Zimbabwe, with which Mugabe agreed.¹⁷² However, Zimbabwe continued to insist that Annan has no authority to interfere with its sovereignty.¹⁷³

The good offices of the Secretary-General are a concept that derived over the history of the United Nations but is not explicitly enumerated in the U.N. Charter.¹⁷⁴ However, broad support has developed for the role of the Secretary-General as a third party negotiator in disputes between states.¹⁷⁵ The success of the Secretary-General’s office at preventative diplomacy is well recognized, and yet the extent to which it is utilized is not fully known, as much of the efforts take place behind closed doors.¹⁷⁶

However, Secretaries-General also use the weight of their position to make policy statements regarding current issues.¹⁷⁷ Annan responded to the Special Envoy report by condemning the activities of the Zimbabwean government. “It is a profoundly distressing report. . . . I call on the Government to stop these forced evictions and demolitions immediately, and to ensure that those who orchestrated this ill-advised policy are held fully accountable for their actions.”¹⁷⁸ “In a no-holds-barred statement . . . Annan said he was gravely concerned by the humanitarian situation in Zimbabwe as it emerged that thousands of people were still sleeping in the open and in urgent need of aid five months after the beginning of the government’s controver-

171. *Id.*

172. *Id.* The U.N. relief coordinator is expected to visit Harare in December 2005. Njabulo Ncube, *New UN Envoy for Zim*, FIN. GAZETTE (Zimb.), Nov. 9, 2005.

173. Mberi, *supra* note 170.

174. Alys Brehio, *Good Offices of the Secretary-General as Preventative Measures*, 30 N.Y.U. J. INT’L L. & POL. 589, 595-96 (1998).

175. *Id.* at 596.

176. *Id.* at 598.

177. Annan has condemned Operation Murambatsvina, has urged the ratification of the Kyoto Protocol in the face of United States refusal to do so, and issued statements about events in Darfur, Kosovo and other regions. Annan most recently condemned statements made by Iran’s president refuting the Holocaust. *See Annan questions Iran Holocaust exhibit*, USA TODAY, Sept. 3, 2006, http://www.usatoday.com/news/world/2006-09-02-iran-cartoons_x.htm.

178. *UN Orders Halt to Demolitions*, ZIMB. STANDARD, July 24, 2005.

sial clean-up exercise.”¹⁷⁹ On the other hand, “United Nations Secretary-General Kofi Annan . . . also spurned the Greek attempts [to place the Special Envoy report before the Security Council] making it clear that it was his report and he alone knew what to do with it, when and how.”¹⁸⁰

As Secretary-General, Annan was essentially limited to drawing attention to the crisis and using his good offices to intervene. This he has done. However, arguably Annan missed a valuable opportunity to promote the GPID by failing to send Kälin to Zimbabwe to report rather than Tibaijuka. It would be interesting to learn the factors Annan weighed in making this decision that balanced in favor of sending a U.N. Habitat representative rather than the Internally Displaced Persons representative to report on Zimbabwe's crisis.

V. OTHER INTERNATIONAL ACTORS

Because the Guiding Principles are soft law recommendations, there is no clear mechanism to call Zimbabwe to task for its violations. Instead, the international community must resort to sanctions and condemnation. There has been a call for two countries in particular to play a key role in bringing the weight of their relationship to bear on the Mugabe regime, China and South Africa.

A. *South Africa*

South Africa is Zimbabwe's neighbor to the immediate south, sharing a rather fluid border. In recent years, South Africa's president Thabo Mbeki has attempted to practice quiet diplomacy in his relations with Zimbabwe.¹⁸¹ There are several reasons for this tactic. First, a shared history of colonial oppression and harsh race relations inflicted by Western superpowers creates a common bond. Second,

179. Ncube, *supra* note 172.

180. *China, Tanzania Thwart Efforts to Put Zimbabwe on UN Agenda*, *supra* note 142.

181. “Mbeki has long maintained that Zimbabwe is a sovereign state and active interference in its domestic affairs would be misguided.” *Loan Request Gives SA Leverage to Press for Change*, U.N. INTEGRATED REGIONAL INFO. NETWORKS, July 18, 2005.

South Africa is Zimbabwe's largest trading partner in Africa.¹⁸² Compounding this, due to its geographical location, in order for South Africa to reach many of its trading partners further north, it is necessary to traverse Zimbabwe, necessitating continued good relations.

"South Africa is, in fact, Robert Mugabe's best and last remaining friend in the world."¹⁸³ Mbeki and Mugabe are compatriots from a generation of vast change in the political landscape of Africa.¹⁸⁴ Consequently, there is a sense of shared history and camaraderie between the two nations and an impression of political debts owed. President Mbeki recently revealed the following information:

[W]hen South Africa was negotiating its transition to democracy around the time when Zimbabwe planned to speed up its land reform [in the early 1990s, the same time the Lancaster House agreement expired], a Commonwealth official asked Harare not to drastically change its programme as it would "frighten the apartheid government in South Africa."¹⁸⁵

Such revelations provide vital links in understanding the delicate balance of diplomacy in the region and how the past continues to color the future.¹⁸⁶

However, South Africa is in a unique position in Africa, particularly sub-Saharan Africa, as the economic powerhouse of the region with strong political clout in the West.¹⁸⁷ South Africa possesses the

182. Shakeman Mugari, *West Still Major Trading Partner Despite Look East Policy*, ZIMB. INDEP., Sept. 23, 2005.

183. Tony Leon, *Why South Africa Backs Mugabe*, THE SPECTATOR (U.K.), Oct. 15, 2005, at 20.

184. "The two presidents are two African brothers who are fully aware of the bloody struggles that not only Zimbabwe, but many countries in Africa went through in their fight against colonialism and apartheid." *The SA, Nigeria, and MDC Connection*, THE HERALD (Zimb.), Nov. 6, 2005.

185. *Mbeki Indicates He May Pay Off IMF Debt*, *supra* note 17.

186. The ANC, President Mbeki's ruling party, "too often continues to view all politics through the lens of the national liberation struggle, identifying racism as the basic problem and solidarity as the only answer." Jeffrey Herbst, *Mbeki's Big Mistake South Africa*, THE INT'L HERALD TRIB. (Oxford, OH), Oct. 27, 2005, at 6.

187. "We are the Silicon Valley of the continent. We invest more in the economic development of southern Africa than any other country in the world." Norman Levine, *Rising South Africa Called 'Catalyst' for Continent's Progress; Regional Clout, Industrial Gains Propel Agenda*, WASH. TIMES, Oct. 20, 2005, at A17.

potential to shape the dimensions of policy in southern Africa through its economic force and strong example of progressive social policies.¹⁸⁸ "For good or ill, the rise of South Africa as the powerhouse of the continent has captured the imagination of people from the Sahara to the Cape."¹⁸⁹ Due to this power, Western authorities have put pressure on Mbeki to use his clout to influence Mugabe's agenda.

In 2003, President Bush expressed initial confidence in Mbeki's efforts of quiet diplomacy with Zimbabwe, saying: "[H]e 'is the point man on the subject. He is working very hard. He believes that he is making good progress.'"¹⁹⁰ This supposed progress never materialized as the situation continued to deteriorate over the next two years. After the commencement of Operation Murambatsvina, Western leaders upped the ante, calling for a strong stance from Mbeki on Zimbabwe's policies.¹⁹¹ Subsequently, U.S. Secretary of State Condoleezza Rice met with Mbeki and apparently urged a stronger stance be taken against Zimbabwe.¹⁹² British Foreign Secretary Straw urged regional African leaders, particularly South Africa, to put pressure on Mugabe to reign in his worst excesses.¹⁹³ However, one commentator offered the following assessment of Mbeki's reticence in dealing with Zimbabwe despite Western pressures:

The fact is that Mbeki finds Zimbabwe's plight politically useful in dealing with his most restive constituencies at home. The fate of Zimbabwe's white farmers and business owners is constantly dan-

188. South Africa recently became one of four countries in the world to legalize gay marriage. See *South Africa's high court approves gay marriage*, MSNBC.com, Dec. 1, 2005, <http://www.msnbc.msn.com/id/10279366/>.

189. Levine, *supra* note 187.

190. Joshua Frydenberg, *Hell in World Basket Case*, THE COURIER MAIL, (Queensland) Sept. 26, 2005, at 11.

191. "Australian Foreign Minister Alexander Downer told parliament that Australia will continue to ratchet up pressure on countries like South Africa to 'stand up to' President Mugabe in light of his refusal to accept assistance for four million people in need of food and thousands made homeless by Operation Murambatsvina." *Zimbabwe Press Review for 5 November*, BBC MONITORING, Nov. 5, 2005.

192. Mbeki appears to have responded; purportedly abandoning quiet diplomacy but has yet to make any definitive steps towards changing South Africa's policies. Roger Bate, *The Sadness of Zimbabwe*, ZIMB. INDEP., Oct. 28, 2005.

193. Katherine Haddon, *Straw Urges Action by Neighbor States on Zimbabwe*, PRESS ASS'N (London), Nov. 1, 2005.

gled before South Africa's racial minorities as a warning of what could happen if they don't play along. To South Africa's massive, sometimes unruly population of urban poor, Mbeki uses Zimbabwe's economic collapse to teach a lesson: if you demand progress too quickly, you get hyperinflation, debt and ruin.¹⁹⁴

Mugabe, though, has reached out to South Africa. Zimbabwe was in arrears with the International Monetary Fund (IMF) and facing expulsion.¹⁹⁵ A loan from South Africa was discussed; but, when South Africa attempted to condition the loan with humanitarian terms, conversation stalled.¹⁹⁶ Zimbabwe and South African officials continued to discuss the possibility of a loan into September 2005, even after Zimbabwe managed to make an initial payment towards its arrears with the IMF.¹⁹⁷ The source of Zimbabwe's initial \$131 million payment to the IMF sparked speculation.¹⁹⁸ In the face of suggestions that South Africa covertly assisted Zimbabwe with its payment to the IMF, South Africa's Finance Minister soundly rejected this hypothesis.¹⁹⁹ "[S]ome economists have said that it was possible for Zimbabwe to have raised the \$120m by putting pressure on private businesses to grant loans to the country's central bank and by not fully allocating

194. Leon, *supra* note 183.

195. The IMF has not expelled a country since Czechoslovakia in 1954. *IMF Postpones Expulsion*, FACTS ON FILE WORLD DIGEST, Oct. 27, 2005, at 766C3. The World Bank also stated they will withhold funding from Zimbabwe due to concerns over corruption and to set an example. However, the World Bank has already ceased funding Zimbabwe due to its being in arrears and limits its participation to analytical work, policy support and humanitarian and social support. Thea Fourie, *World Bank President Expresses Concern over Financing Zimbabwe*, WORLD MARKETS ANALYSIS, Oct. 12, 2005.

196. Mbeki turned the tables on Mugabe and stressed solidarity and past political debts owed to him to lessen the impact of a conditional loan offer. South Africa demanded that the forced evictions cease and that Mugabe meet with MDC leaders. *Mbeki Indicates He May Pay Off Mugabe's IMF Debt*, *supra* note 17.

197. The IMF delayed expelling Zimbabwe for six months upon receipt of this initial payment. *IMF Postpones Expulsion*, *supra* note 195.

198. An IMF official stated they had queried the source of the funding. Zimbabwe states the money derived from banks in New York, London, export proceeds, free funds, and foreign currency liquidations. *Bailout Talks to Resume Soon*, U.N. INTEGRATED REGIONAL INFO. NETWORKS, Sept. 28, 2005.

199. Jonathan Katzenellenbogen 'Rubbish' to Say SA Bailed Out Zimbabwe, BUS. DAY (S. Afr.), Sept. 29, 2005.

foreign exchange at its weekly auctions.”²⁰⁰ Zimbabwe bought itself time from imminent bankruptcy, but its economic future remains more than shaky.²⁰¹

It is in South Africa's interest that Zimbabwe not collapse next door, as South Africa would inherit Zimbabwe's refugees and other social concerns. For example, as Norman Levine comments:

The relative prosperity of South Africa has prompted a flood of legal and illegal immigrations from the nation's African neighbors. Unemployment is still high in South Africa, so the new immigrants frequently turn into the urban poor, but politically, it is impossible for majority-black South Africa to block the immigration of other black Africans.²⁰²

Zimbabwe's economic crisis has already seen a flood of Zimbabweans illegally crossing the border into South Africa. “According to the Geneva-based International Organisation for Migration, at least 2,000 Zimbabweans are deported from South Africa via the border town of Beitbridge every week.”²⁰³ South Africa must also concern itself with issues beyond immigration. “Having a failed state on one's borders also raises the risk of a surge in unsavoury activities like money laundering, terrorism and crime—all of which carry an economic and social cost.”²⁰⁴ Alternatively, Zimbabwe's downward slide has not yet caused significant damage to South Africa's fortunes.

[T]hough Zimbabwe may have played a role in the rand's collapse in 2001, South Africa has subsequently distanced itself from Zimbabwe in terms of its approach to economic management, land reform and black empowerment If anything, Zimbabwe's trou-

200. *Id.*

201. “Zimbabwe is the world's fastest shrinking economy, having shed 40% of its real GDP since 1997. The IMF nevertheless warns that Zimbabwe continues to cast a cloud over the region that unnerves some foreign investors.” Claire Bissek, *Zimbabwe's Impact on SA's Economy*, FIN. MAIL (S. Afr.), Oct. 21, 2005, at 34.

202. Levine, *supra* note 187, at A17. “If the economy were to implode, then the steady stream of 1000 Zimbabwean refugees that pour into SA daily could become a flood, adding to the stresses on SA, which already has a broad unemployment rate of 40%.” Bissek, *supra* note 201.

203. *Bailout Talks to Resume Soon*, *supra* note 198.

204. Bissek, *supra* note 201.

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bles have diverted tourists to South Africa. This includes international tourists to Victoria Falls who afterwards choose to spend time in South Africa rather than Zimbabwe.²⁰⁵

Although Mbeki took a harder stance in statements about Mugabe's policies, he did not accede to international pressure to fully censure his northern neighbor.²⁰⁶ The relationship between these neighboring countries is complex and layered and commands the attention of all of Africa, not merely the region, who watched the interplay between Zimbabwe and the West with fervent attention.²⁰⁷ "Why can't these Westerners understand that the more they shout about Mugabe the stronger such leaders become and the more difficult it is for an African leader to condemn him openly for fear of being seen as a Western puppet?"²⁰⁸ Former South African President De Klerk summed up the complexities of South Africa's political ties with Zimbabwe:

[T]hey are being hammered across the world [for] the Zimbabwe situation What should we do? Isn't the world expecting too much from us vis-à-vis Zimbabwe? Should we send in our army? Should we make Zimbabwe South Africa's Iraq? I don't think so, because if we really put on a scale the worst countries in Africa, terribly bad as it is, Zimbabwe isn't the worst. Should we strangle them economically? . . . We will just make the people who are already hungry die of hunger. We won't hurt Mugabe and his cronies.²⁰⁹

205. *Id.*

206. Mbeki recently met with opposition leaders from the MDC in Johannesburg in an attempt to try to foster a dialogue, raising the ire of Zimbabwe officials. "[W]hen President Mbeki tries to save or prop up an opposition party that was formed to dislodge another Africa president, then surely such and many other questions will be asked." *The SA, Nigeria And MDC Connection*, THE HERALD (Zimb.), Nov. 6, 2005.

207. "[M]ost of these African leaders seem to fear him. Some of them marvel at how he has managed to take on the West. They actually admire him and he is taking advantage of that." Tendai Farai, *Zimbabwe on the Brink; Heart of Darkness*, THE ADVERTISER, July 16, 2005, at W07.

208. Abdul-Raheem, *supra* note 19.

209. Richard Stengel, *Council on Foreign Relations HBO History Makers Series with Frederick Willem De Klerk, Former President of South Africa*, FED. NEWS

B. China

In recent years, disgruntled with Western efforts to curtail human rights violations through targeted sanctions, Mugabe's government vigorously pursued a "Look East" policy.²¹⁰ China is looking at investment opportunities in Zimbabwe, courting the industrial markets for raw resources, developing markets for its own goods, and boosting the tourist market to improve the value of its investments.²¹¹ Mugabe reportedly sought a loan from China to fund its IMF bailout; however, leery of international scrutiny, China only provided a lukewarm response and tepid promises.²¹² Perhaps Mugabe's strongest weapon in his relationship with China is its position as one of the five permanent U.N. Security Council members, providing veto power to any resolutions targeting Zimbabwe. China made clear that it would exercise this veto.²¹³ In the face of China's own human rights record, it is unlikely that it will be swayed to utilize its economic power to influence Mugabe. However, Mugabe's own policies appear to be China's greatest

SERVICE, June 8, 2004.

210. "Europe, America and Africa remain Zimbabwe's major trading partners despite government's Look East thrust, latest figures from the Reserve Bank of Zimbabwe reveal. . . . [T]he numbers indicate that there is very little business going on between Zimbabwe and Asian countries which are the major focus of the policy." Shakeman Mugari, *West Still Major Trading Partner Despite Look East Policy*, ZIMB. INDEP., Sept. 23, 2005.

211. China is expanding its commercial reach in Zimbabwe, including tourism, industry, minerals excavation, funding broadcasting equipment, credit lines to purchase electricity services, a donation of a commuter plane to the national airline, and most predominantly, agriculture development. *Zimbabwe to Participate at Travel Showcases in China*, XINHUA GENERAL NEWS SERVICE (China), Nov. 5, 2005; *IDC Seeks US\$7m to Reopen Zimglass Furnace*, THE HERALD (Zimb.), Nov. 8, 2005; *China to Supply Transmitters to State Broadcaster*, BBC MONITORING INT'L REPORTS, Oct. 27, 2005; Thea Fourie, *Zimbabwe Electricity Supply Authority Secures Credit Facility from China*, WORLD MARKETS ANALYSIS, Oct. 19, 2005; *Donated Plane to Zimbabwe by China Expected Next Year*, XINHUA GENERAL NEWS SERVICE (China), Oct. 6, 2005; *Chinese Firm Pledges to Back Agrarian Reform*, THE HERALD (Zimb.), Sept. 19, 2005.

212. "In all, China has spent only US \$100 million on Zimbabwe despite Mugabe's hype about cementing Sino-Zimbabwean relations." *Mbeki Indicates He May Pay Off Mugabe's IMF Debt*, *supra* note 17.

213. *China, Tanzania Thwart Efforts to Put Zimbabwe Report on UN Agenda*, (ZTV1, Harare, television broadcast July 26, 2005) (text of report on file with the California Western International Law Journal).

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deterrent, creating an atmosphere that is causing it to hesitate. Even China will not sanction investing in a country whose economy is spiraling out of control.

China and Zimbabwe share ties dating back to the liberation struggle, when China was a chief ally of ZANU-PF and the minority rule movement.²¹⁴ As the West pushed harder at Mugabe and made efforts to reign in his policies, Mugabe wooed China as a source of financial and political support.²¹⁵ Western superpowers are unhappy with this new direction, which both the United States and United Kingdom made clear to China.²¹⁶

China is increasingly, because of its economic weight and its presence on the Security Council, a key player in challenges that the international community faces around the world . . . and our view is we should have a dialogue with China that's strategic about what that role should be because many people question, for example, why the leader of Zimbabwe or other leaders who are not moving in the direction the international community is calling for, have such access to Beijing.²¹⁷

There is a philosophical difference between the East and West in how to approach international humanitarian crises.²¹⁸ China believes

214. *Zimbabwe, China Continue to Strengthen Cooperation*, XINHUA GENERAL NEWS SERVICE (China), Sept. 29, 2005.

215. "Government has given a number of farms seized from white commercial farmers during the land reform programme to the Chinese as incentives for them to start business ventures in Zimbabwe." *Chinese Get Seized Farms as Incentive to Invest*, ZIMB. INDEP., Nov. 11, 2005. Further, Zimbabwe and China have signed agreements regarding the exchange of pesticide production and management. The agreement paves the way for an increase in agro trade between the two nations. *Zim, China Sign Agreement*, THE HERALD (Zimb.), Nov. 12, 2005.

216. Britain approached China to request it respect the travel bans imposed on Zimbabwean government officials by Britain, Australia and the United States. *Minister Praises China for Loyalty in Face of 'Detractors'*, (ZTV1 Harare television broadcast, BBC MONITORING INT'L REPORTS Sept. 26, 2005).

217. Background Briefing, Wash. Foreign Press Center, The President's Upcoming Trip to Asia (Nov. 11, 2005) (on file with the California Western International Law Journal).

218. Ian Bremmer states:

Since Sept. 11, 2001, U.S. foreign policy has been shaped by the conviction that Washington must push for political reform in some authoritarian regimes and isolate others to prevent them from incubating terrorism and

that it is promoting the interests of African citizens in a manner that benefits all involved and that many initiatives are directly in line with Western policies.²¹⁹ However it is clear that China intends to pursue a policy of non-intervention, in particularly with regards to Zimbabwe. When questioned about Western concerns regarding China's relationship with African hotspots, Chinese Ambassador to South Africa Liu Guijin responded:

We have our own approach to doing things and that is something like the South African government's quiet diplomacy. We do not, like western countries, have a habit of interfering in other countries' internal affairs and there is no example of us imposing our ideology on Africa nowadays From our own bitter experience, China favours negotiation, talking and does not resort to sanctions and embargoes.²²⁰

obtaining weapons of mass destruction. The Chinese, on the other hand, formulate policies meant to fuel their fast-growing economy and maintain social stability. The Communist Party leadership believes it must continue to create jobs at a steady pace, satisfy rising consumer expectations, and lift hundreds of millions of peasants out of poverty in order to prevent the social unrest provoked by uneven economic development. To ensure that happens, Beijing is doing more and more business with regimes Washington wants to democratize or isolate.

Ian Bremmer, *Why Bush and Hu Don't See Eye to Eye*, FORTUNE INT'L, Oct. 31, 2005, at 37.

219. Indeed,

China and African countries share mutual understanding and support as they step up consultation and cooperation. China actively pushes the international community to give priority to the peace and development of Africa. It insists that reform of the United Nations should give priority to increasing the representation of African countries and other developing countries in the Security Council. In addition, China is carrying out its promise to waive \$1.3bn US dollars of debt on 31 African countries and reduce imports tariffs on 25 least developed African countries while never attaching any political conditions to its aid packages.

Senior Chinese Leaders Plan Simultaneous Visits to Africa in November, XINHUA NEWS AGENCY (Beijing), Nov. 10, 2005.

220. Jonathan Katzenellenbogen, *The Official Line-China*, BUS. DAY (S. Afr.) Nov. 7, 2005.

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When asked whether China was prepared to overlook human rights violations and bad governance to secure good relations with an African government, he replied:

We do recognise the universality of human rights. But equally human rights are not simply about allowing people to speak freely and to demonstrate. The other side of human rights is the right of development, the right to survival. The kind of democracy and human rights are basically the choice of the people and of the state. That does not mean China maintains that everything that sovereign governments do are [sic] correct or totally in accordance with the basic spirit of human rights. But we don't want to interference [sic] in countries' internal affairs.²²¹

It is not clear whether China is only taking moderate steps toward investing in Zimbabwe's economic future due to the influence of Western condemnation or hesitancy based on the shaky structure of Zimbabwe's finances. But it appears evident that China will continue to block any attempts at Security Council intervention and will not speak out against Mugabe for such policies as Operation Murambatsvina.

VI. CIVIL SOCIETY

In recent years “[Zimbabwe] ordered the closure of a number of NGO's and banned others from operating in the country after accusing them of acting as fronts and conduits for Western governments and the main opposition [party].”²²² In 2004, a bill was drafted, passing through the Zimbabwean Parliament, with the potential to severely hamper future efforts of civil society in Zimbabwe.²²³ Spawned by a belief that agencies are dictated by Western policies that promote ideals to foster a regime change, the bill prohibits local NGO's involved

221. *Id.*

222. *Zimbabwe: NGO's to Discuss Restrictions with Govt*, U.N. INTEGRATED REGIONAL INFO. NETWORKS, Aug. 4, 2005.

223. Human Rights Watch, *Zimbabwe's Non-Governmental Organizations Bill: Out of Sync with SADC Standards and a Threat to Civil Society Groups* (2004), <http://hrw.org/backgrounders/africa/zimbabwe/2004/12/>. Mugabe purportedly vetoed the bill; however, it is being applied in practice. *NGO's to Discuss Restrictions with Govt*, *supra* note 222.

in "issues of governance" to receive foreign funding.²²⁴ Additionally, foreign NGO's engaged in "issues of governance" are prohibited from registering to operate within Zimbabwe.²²⁵ "'Issues of governance' are defined by the Bill to include 'the promotion and protection of human rights and political governance issues.'"²²⁶

Amnesty International, Human Rights Watch, and the South African Council of Churches all publicly condemned Operation Murambatsvina.²²⁷ However, relief efforts were stymied by legislation and practice policies of Zimbabwe.²²⁸ "Mugabe lashed out at NGO's, whom he accused of going on the war path against Operation Garikai as it sought to provide people with decent accommodation and services through elimination of squalor whose images had become a powerful medium for NGO fund-raising efforts."²²⁹ As a result, trucks carrying relief goods stalled in ports in South Africa, trucks were turned back at borders, and food stores rotted in warehouses because

224. *Zimbabwe's Non-Governmental Organizations Bill*, *supra* note 223.

225. *Id.*

226. *Id.*

227. The Catholic Church also expressed "grave concern" over the growing humanitarian crisis in Zimbabwe, which seemed to have little effect, despite Mugabe's avowals of being a devout Catholic. Ray Matikinye, *Bishops Meeting to Blast Mugabe Over Clean-Up*, ZIMB. STANDARD, July 3, 2005. High-ranking clerics within the church also called upon "Zimbabwe's neighbors to do more to stop the violence that has accompanied the evictions." *Id.*

228. "Although the [United Nations] was able to move freely about the country, access to evicted people had been difficult, particularly for NGO's. [A]id agencies had not been informed when evictions took place, and often arrived too late, or on occasion were not allowed to access sites where evictions had taken place." *Zimbabwe: Gov't Won't Agree on Appeal for Victim Cleanup*, U.N. INTEGRATED REGIONAL INFO. NETWORKS, Aug. 29, 2005. "[F]or the first three weeks of the campaign, aid organizations were forcibly prevented from assisting those left to live in the open at the onset of winter, without food, their belongings piled up on the roadside beside them." Corcoran, *supra* note 128. Since the evictions, UNICEF, the U.N. World Food Programme, the International Office of Migration, the Zimbabwe Red Cross Society and local NGO's have been able to provide blankets and plastic sheeting for the displaced, along with sanitation facilities, food and shelter. Additionally, UNICEF has rented housing for 100 families with disabled children. *UNICEF Rents Housing for Evicted Zimbabweans With Disabilities*, UN NEWS SERVICE, Aug. 10, 2005.

229. *China, Tanzania Thwart Efforts to Put Zimbabwe on UN Agenda*, *supra* note 142.

agencies were not allowed to access needy populations.²³⁰ The only recourse open to agencies was to broadcast conditions and draw attention to the human rights violations of the Mugabe regime, which effectively shut out assistance with its isolationist policies, in essence becoming the North Korea of Africa.²³¹

Despite Zimbabwe's renunciation of the West, the United Kingdom and United States have been major donors of relief to the region. In response to a United Nation request for relief assistance to the region, the United States announced in August 2006 a relief package of \$51.8 million to Southern Africa, most of which will be diverted to Zimbabwe.²³² Further, "the U.S. has provided \$300 million in food assistance to Zimbabwe since 2002."²³³ In a simultaneous response, the United Kingdom pledged 11.5 million GBP in humanitarian assistance with 10 million earmarked for Zimbabwe.²³⁴ The aid money will be channeled through U.N. agencies and NGO's. However, this is precisely the conundrum that Mugabe faces with accepting Western sources of aid. When Mugabe met with Annan in New York in Sep-

230. Visiting U.S. Ambassador Hall noted, "several tonnes of relief food were being held up by bureaucratic paperwork." *Envoy Avoids Mugabe*, ZIMB. STANDARD, Aug. 14, 2005. Further, the South Africa Council of Churches, after an initial fact finding mission, launched "Operation Hope for Zimbabwe" in response to Operation Murambatsvina. *S. Africa Council of Churches to Ship 1 August Relief Aid to Zimbabwe's Homeless*, BBC MONITORING INT'L REP., July 29, 2005. However, Zimbabwe thwarted their efforts and refused to allow trucks carrying relief goods to enter the country. *Good Samaritans Become Targets*, FIN. GAZETTE (Zimb.), Aug. 18, 2005. The Herald reported that the SACC visit was "bankrolled by British intelligence services" and part of a campaign to push for regime change. *South African Churchmen Back in Zimbabwe*, U.S. FED. NEWS, July 19, 2005. The trucks were eventually allowed to enter Zimbabwe after proof was furnished that the maize was not genetically modified. *Church Aid to Leave for Harare Soon*, UN INTEGRATED REGIONAL INFO. NETWORKS, Aug. 11, 2005.

231. Paul Salopek, *On Road to Economic Meltdown; Insular Zimbabwe is Fast Becoming Africa's North Korea*, CHI. TRIB., Nov. 6, 2005, at C3.

232. *Envoy Avoids Mugabe*, *supra* note 230.

233. *Id.*

234. The United Kingdom's total humanitarian commitments made to Zimbabwe since the ongoing crisis started in 2001 is now over \$100 million. Thea Fourie, *U.K. Extends Aid to Zimbabwe*, WORLD MRT. ANALYSIS, Sept. 30, 2005. Additionally, South Africa pledged \$22 million to the World Food Programme after the United Nations warned of continuing droughts in the South African region. *SA to Donate \$22m to Ease Food Shortages*, BUS. DAY (S. Afr.) Oct. 10, 2005.

tember 2005 at the World Summit, Annan again stressed the need for Zimbabwe to accept U.N. food provisions.²³⁵ Mugabe continued to object to the use of NGO's as a conduit of delivery "because these tended to politicize humanitarian assistance. What we do not want is for the United Nations to give a role to non-governmental organizations so these NGO's make politics out of it."²³⁶ An article recently published in *New African* magazine, details the thinking process behind Mugabe's civil society paranoia:²³⁷

In Zimbabwe, whose government is intensely disliked by Western powers, NGO's are known not to give aid to vulnerable groups unless they are allowed to distribute it themselves, in so doing passing on their "message." African governments are left with two options: accept the aid and subsequent undermining of their institutions, or refuse the aid to the immediate cost of the population affected, and the simultaneous negative impact from the adverse lobbying by the NGO's, with support from their respective governments. Therefore, recipient countries now have the enormous challenge of maintaining their basic sovereignty and territorial integrity.²³⁸

Due to these institutional difficulties the role of civil society in helping Zimbabwe address its problems has come under increasing scrutiny. One Zimbabwean activist commented that Operation *Murambatsvina* "may have served as a turning point for non-governmental organizations."²³⁹ He also noted that "[t]he struggle in

235. See *Annan Visit Still On*, THE HERALD (Zimb.), Sept. 19, 2005. "Mugabe, quite implausibly, claims to have an iron grasp of the problems at hand. His people, he declared at the UN in September, are 'very, very happy.' If there's not enough maize, he said, in a Monty Python-meets-Marie Antoinette moment, 'we have heaps of potatoes.'" Leon, *supra* note 183. "A bag of potatoes costs about £20 and is out of reach of many Zimbabweans." Basildon Peta, *Mugabe's Regime Admits Zimbabwe's People are Starving*, BELFAST TELEGRAPH, Oct. 6, 2005. "Zimbabweans are not hungry, he said—they just can't eat their favorite foods." *Mugabe's Colonial Ghosts*, THE INT'L HERALD TRIBUNE, Oct. 21, 2005, at 6.

236. *Annan Visit Still On*, *supra* note 235.

237. *New African* is published by a Mugabe supporter. *Murambatsvina CIO Brainchild*, FIN. GAZETTE (Zimb.), Oct. 6, 2005.

238. Michael Onyanyo, *NGOs: Pseudo Governments or Surrogates of Western Powers?*, NEW AFR., Aug. 1, 2005, at 20.

239. Nduru, *supra* note 99.

Zimbabwe is between its people and their government. This makes it difficult for the people who don't have resources, access to the media and transport to push for change. This is why we need support from our African brothers and sisters."²⁴⁰ However, the equal resistance the Zimbabwean government exerted against civil society led to a stalemate.

Margaret E. Keck and Kathryn Sikkink promote a boomerang pattern to describe the effects of transnational advocacy networks to change societal patterns.²⁴¹ When the government of a state is the human rights violator, internal actors are usually stymied in their abilities to effectuate change. Domestic NGO's seek out international allies to bring pressure to bear on the state from the outside. For the domestic actor, these connections provide access, leverage, information, and money; while for international agencies they provide evidence that effort is being made to advance rights within troubled nations. It is clear that Mugabe is doing everything possible to hinder the efforts of domestic actors, as well as the efforts of these agencies to seek out international actors. An opportunity was missed to utilize the GPID through the Special Envoy to initiate the boomerang process in Zimbabwe. It has been pointed out that

[soft law] can serve as the fulcrum of this process as well, or nearly as well, as more traditional . . . [hard law]. Advocates hope that privately generated [soft law] like the GPID will enmesh governments in a web of norms and pressures from above (other states and [international organizations]) and below (civil society).²⁴²

VII. CONCLUSION

In September 2005, Mugabe was named the fourth worst dictator in the world in a survey compiled by dictator-watcher David Wallechinsky in collaboration with Amnesty International, Freedom

240. *Id.* "On June 23, a coalition of more than 200 African and international NGO's issued an unprecedented joint appeal to the United Nations and the African Union for intervention to help Zimbabweans whose houses were demolished." *Id.*

241. MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS* 12-13 (1998).

242. Kenneth Abbott, *Privately Generated Soft Law in International Governance: Comment on Francis M. Deng* (on file with author).

House, Human Rights Watch, and Reporters Without Borders.²⁴³ Despite suggestions that Mugabe be forcibly removed from office,

[t]he absurdity of this stance is obvious. . . . [I]n spite of all the vilification and demonisation by the most powerful global media, the President still commands the respect of more than half the world, including those who do not entirely agree with him and his methods. This is the major reason why, when it comes to the highest councils in Europe and at the United Nations, there has never been any unanimous agreement that the President and his country be totally condemned.²⁴⁴

This is true to some extent, and is reflected in the ambivalence of regional states, the South African Development Commission, and African Union towards forcing Mugabe to policy change. However, it likely also reflects a concern about causing more harm to the Zimbabwean populace through any collective security or sanction action.

One commentator offered this perspective:

The problem is with Mugabe. He knows as soon as he is out of power he will be prosecuted. He has created too many enemies within ZANU PF and outside. Maybe what the people of Zimbabwe need to understand is that Mugabe is afraid to leave office. If the people of Zimbabwe address that, then maybe we can find a solution.²⁴⁵

This is an interesting idea, offering Mugabe blanket amnesty in exchange for abdicating power.²⁴⁶ What is likely to be more effective, but hampered by Mugabe's civil society policies and sadly, the failure of the United Nations to apply the GPID, is a mobilization effort from

243. Those edging him out for top honors are Kim Jong Il of North Korea at number one, Than Shwe of Burma at number two and Hu Jintao of China at number three, ironically Mugabe's vested partner. Daniel Boffey, *The Worlds Worst Dictators*, THE MIRROR, Sept. 1, 2004, at 6.

244. *We Need Development Based on Local Resources*, THE HERALD (Zimb), Oct. 9, 2005.

245. Cosanna Preston, *Zimbabwe: A Polarized Society*, CAN. DIMENSION, July 1, 2005, at 22.

246. This worked with Pinochet, but likely sets a poor example as Chile is now forcing his return to face prosecution for his human rights violations while in office.

within.²⁴⁷ Further hampering the effort is the significant brain drain Zimbabwe has experienced in recent years; educated professionals immigrating to other countries and leaving a gaping hole of qualified professionals in the workforce.²⁴⁸ Finally, the MDC, once a strong opposition voice, is falling apart. Quarrels over internal policy are splintering the group and Mugabe's efforts to dispel enclaves of MDC supports via Operation Murambatsvina were all too successful.²⁴⁹

The Guiding Principles on Internal Displacement are promising documents that address the concerns of those affected by internal displacement. Further, the Principles are gaining international acceptance and momentum towards achieving status as a standard applicable to state and non-state actors who initiate displacement crisis. However, a valuable opportunity was lost to dramatically advance the Guiding Principles by enumerating the violations by Zimbabwe in the Special Envoy report and failing to send a representative who would appropriately apply them in this circumstance. As a result, the Principles linger in the limbo of lip service by the United Nations rather than calling violators to task. It is also clear that other state actors and NGO's are hampered to intervene during internal displacement crises. Zimbabwe

247. Corcoran states:

Change for Zimbabweans must be wrought from within, either by an opposition group or by disgruntled members of the ruling party. If international aid is denied to the masses, leaders with the courage to instigate such a change have a much better chance of success if they can rally citizens that have absolutely nothing to lose except the starvation and poverty forced upon them by their own government.

Corcoran, *supra* note 128.

248. It is estimated more than 500,000 individuals with higher education have left Zimbabwe. *Brain Drain Economic, Not Political*, THE HERALD (Zimb.), Oct. 11, 2005.

249. Dumisani Muleya, *Tsvangirai Leader Snubs President Mbeki as MDC Factions Battle*, BUS. DAY, Oct. 25, 2005. "Ninety-five per cent of people are fed up with Mugabe but they don't know what to do. They have no real leader to motivate them and are frightened that Mugabe will turn the army on them." Christina Lamb, *Quiet Chant of 'Hungry, Hungry' Rouses a Nation to Oust Mugabe*, SUNDAY TIMES (London) Mar. 27, 2005, at 20. "A recent survey found that only 14 per cent of black South Africans approve of him. Ordinary Zimbabweans . . . are, privately, Mugabe's most embittered critics. Mugabe's real constituents are not the African 'masses' he claims to represent, but the crusty southern African post-colonial elites. Mugabe's anti-Western histrionics appeal to their lingering insecurity, resentment and Soviet nostalgia." Leon, *supra* note 183.

and its allies effectively hindered efforts to call the state to task before the international community. It is vital in going forward that the United Nations appropriately utilizes the document that was so laboriously created. In doing so, internally displaced persons may some day receive the recognition and protections afforded refugees, their fellow brethren in the loss and confusion of having no home within their homeland.

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APPENDIX

Principle	Language	Action in Violation
Principle 3	<p>1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.</p> <p>2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.</p>	<p>Depending on their location, the population affected by the evictions is in immediate need of tents, blankets, food, water, sanitation and medical assistance.</p> <p>Tibaijuka, <i>supra</i> note 13, at 36.</p>
Principle 4	<p>2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.</p>	<p>The impact is particularly severe for vulnerable groups such as orphans, widows, pregnant women, women and child-headed households, the chronically ill, the elderly and the disabled.</p> <p>Tibaijuka, <i>supra</i> note 13, at 34.</p> <p>A 19-year old woman from Chitungwiza in Harare told the mission: "I was living in a cottage with my younger sister and my disabled brother. My parents had already passed away. Then the clean-up operation came and destroyed the cottage. Now we have nowhere to go and we are sleeping outside. Our blankets and our other property were stolen. We are not going to school because we have no place to stay. We are sleeping outside with my disabled brother in a cold place."</p> <p>Tibaijuka, <i>supra</i> note 13, at 37.</p>
Principle 5	<p>All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions</p>	<p>The Government of Zimbabwe has a duty to protect and enforce the economic and social rights of its citizens as guaranteed by the Constitution of Zimbabwe and the African Charter on Human and Peoples' Rights. The Government of Zim-</p>

	<p>that might lead to displacement of persons.</p>	<p>Zimbabwe also has a duty to fulfil its obligations under the International Covenant on Economic, Social and Cultural Rights, which Zimbabwe ratified on 13th May 1991. General Comment Numbers 4 . . . and Number 7 . . . of the United Nations Committee on Economic, Social and Cultural Rights state that, "forced evictions are <i>prima facie</i> incompatible with the provisions of the Covenant and can only be carried out under specific circumstances." As a member of the United Nations Commission on Human Rights, Zimbabwe committed itself to advocating for the respect and implementation of key Resolutions on Forced Evictions passed in 1993 . . . 1998 . . . and 2004 . . .</p> <p>The foremost statement of international law relating to housing rights is found in the International Covenant on Economic, Social and Cultural Rights which states in Article 11(1) that: "The State parties to the present Covenant recognise the right of every one to an adequate standard of living for himself [herself] and his [her] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance to international cooperation based on free consent." Tibaijuka, <i>supra</i> note 13, at 57.</p>
Principle 6	<p>1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.</p> <p>(c) In cases of large-scale development projects, which are not</p>	<p>Official Government figures released on 7 July 2005 revealed a total of 92,460 housing structures that had been demolished directly affecting 133,534 households. At the same time, the structures of 32,538 small, micro and medium-</p>

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	<p>justified by compelling and overriding public interests;</p>	<p>size enterprises were demolished. Based on average household size derived from the 2002 census, and authoritative studies on the informal economy, the population having lost their homes can be estimated at 569,685, and those having lost their primary source of livelihood at 97,614. Tibaijuka, <i>supra</i> note 13, at 32.</p>
<p>Principle 7</p>	<p>1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.</p> <p>2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.</p> <p>(a) A specific decision shall be taken by a State authority empowered by law to order such measures;</p> <p>(b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;</p> <p>(c) The free and informed consent of those to be displaced shall be sought;</p> <p>(d) The authorities concerned shall endeavour to involve those</p>	<p>In summary, Operation Garikai gives the impression of being hastily put together. It does not appear to have accounted for the immediate shelter needs of people who have been rendered homeless at the onset of winter. The mission was able to witness thousands of people, including small children, pregnant women and the elderly, who were sleeping in the open without adequate protection from the elements either on the rubble of their destroyed homes, in rural areas or in official transit camps. The mission visited one of the transit camps known as Caledonia Farm on the outskirts of Harare where an estimated 5,000 people were being sustained by <i>ad hoc</i> humanitarian assistance at the time of the visit. While this camp is intended to be a temporary facility pending relocation to other destinations, it was evident that Government capacity to provide basic needs and sustenance is severely limited. The conditions of those living in the camp clearly did not meet SPHERE standards and are worse than those found in refugee camps. Tibaijuka, <i>supra</i> note 13, at 49.</p>

	affected, particularly women, in the planning and management of their relocation;	
Principle 12	2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.	People who have moved to transit points/camps. At the time of the mission, the main such camp was Caledonia Farm near Harare, which held about 5,000 persons. Another camp located in the Sports Oval of Mutare held about 100 persons, while an additional camp was planned in Bulawayo. Tibajuka, <i>supra</i> note 13, at 34.
Principle 14	1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.	Government officials repeatedly asserted in the press and in official statements to the mission that a major expected outcome of Operation Restore Order is the "return" of people to rural areas. It is the informed opinion of the mission, based on two decades of research by UN-HABITAT and its partners, that this is a misinformed assumption. Rural-urban migration is driven by economic factors. It lies in the search for better livelihoods and escaping rural poverty. Moreover, urban to rural relocation, whether forced or voluntary, would exacerbate the present situation in rural Zimbabwe, characterized by several years of continuous drought, shortages in food supply and falling incomes. Tibajuka, <i>supra</i> note 13, at 35. Those affected include tens of thousands of people of Malawian, Mozambican and Zambian origin who have established themselves for decades, and in some cases for generations, in Zimbabwe. They have no rural home to go to. Similarly, many widows and divorcees have no rural homes to return to, because property often stays with the former husband's side of the family. Others

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		<p>are in need of medical care which is difficult to get in rural areas. The mission was also presented with testimonials of families transported to rural areas had been rejected by traditional leaders who claimed that they did not want to be exposed to "the immorality of urban lifestyles and increased risks of HIV propagation."</p> <p>Tibajjuka, <i>supra</i> note 13, at 35.</p>
Principle 18	<p>1. All internally displaced persons have the right to an adequate standard of living.</p> <p>2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:</p> <p>(a) Essential food and potable water;</p> <p>(b) Basic shelter and housing;</p> <p>(c) Appropriate clothing; and</p> <p>(d) Essential medical services and sanitation.</p> <p>3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.</p>	<p>Many of the displaced are staying in overcrowded conditions or out in the open without adequate access to water and sanitation. Unless their situation is improved, there is a serious risk of transmission of disease and of epidemic outbreaks related to water-borne diseases such as diarrhea, dysentery and cholera. This threat is exacerbated by the lack of access to safe drinking water and basic sanitation. Many displaced persons were observed to be collecting drinking water from rivers, streams and unprotected shallow wells while using open areas for sanitation. The risk of an epidemic is likely to increase dramatically with the start of the rainy season towards October- November.</p> <p>Tibajjuka, <i>supra</i> note 13, at 37-38.</p>
Principle 19	<p>1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.</p> <p>3. Special attention should also be given to the prevention of contagious and infectious dis-</p>	<p>An estimated 24.6% of adult Zimbabweans are infected with HIV/AIDS. Assuming that the displaced population had an HIV/AIDS prevalence rate similar to the rest of population, the mission estimates that over 79,500 persons over 15 years of age living with HIV/AIDS have been displaced. The Operation has led to an increase of vulnerability and, probably, risky sexual practices and gender-based violence. It has also led to a disruption in HIV/AIDS services, particularly ARV treat-</p>

	eases, including AIDS, among internally displaced persons.	ment, home-based care and prevention. Immediate consequences likely include shortened life expectancy and death owing to lack of treatment and care in a situation where life expectancy has already dropped to only 33 years, malnutrition and exposure to the elements. Medium to long-term consequences include increased transmission of HIV, leading to higher infection rates and a more rapid progression of the disease that may only be detected over the next few years. Tibaijuka, <i>supra</i> note 13, at 39.
Principle 23	2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.	An estimated 113,000 children aged between 5 and 11 while 109,000 children aged 12-18 were directly affected by the Operation. While there is, at present, no means of assessing the number of children not attending school as a result of the Operation, the UN inter-agency working group on the protection of children has reported that school enrollment may have dropped by about 25% following the Operation. Tibaijuka, <i>supra</i> note 13, at 41.
Principle 25	1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities. 2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assis-	The Government has several times stopped assistance being provided to people near demolition sites, and nearly two months into the crisis, the United Nations has been unable to survey humanitarian needs in coordination with the authorities. Some NGOs and UN agencies are concerned their office premises could be earmarked for demolition. And some donors have concerns that aid channeled through Government might indirectly support policies to which they are opposed. These constraints have now been compounded by the burgeoning impact of the Operation Restore Order, a prevailing political climate of mistrust and fear, and the lack of

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	<p>tance.</p> <p>3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.</p>	<p>information on, and access to the affected population.</p> <p>Tibaijuka, <i>supra</i> note 13, at 51.</p>
<p>Principle 30</p>	<p>All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.</p>	<p>The Government has, on several occasions, prevented humanitarian actors from providing shelter and basic services to the displaced population, particularly near the demolition sites, even though many of the affected persons remain without any form of shelter or ready means of sustenance. It has also impeded data collection. Lack of access is therefore a serious obstacle to humanitarian action, with significant, adverse consequences for the affected populations.</p> <p>Almost two months into the crisis, it has not been possible for the United Nations to conduct any comprehensive assessment of humanitarian needs in coordination with the authorities. Lack of information on the number of people affected, their profile, and their whereabouts makes programming, coordination and resource mobilization extremely difficult and onerous.</p> <p>Tibaijuka, <i>supra</i> note 13, at 53.</p>