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Operation Murambatsvina and Crimes Against Humanity

Exploring the Prospect of Accountability

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Abstract

In May of 2005 the government of Zimbabwe initiated an eviction campaign called Operation Murambatsvina which rendered approximately 700,000 Zimbabweans homeless. The international community condemned the action and a UN Special Envoy was sent to assess the scope and extent of the Operation. This envoy, as well as numerous NGO reports, touched upon the subject of a "crimes against humanity" charge for the responsible actors. The purpose of this paper is to investigate whether or not there is a possibility to hold the responsible individuals accountable for crimes against humanity. The legal basis and definition of the concept of crimes against humanity used, lies in article 7 of the Rome Statute of the International Criminal Court. There are two relevant subsections of article 7, namely paragraphs 7(1)(c) and 7(1)(d), that may be applicable in this case. In investigating if a breach of the provisions of these paragraphs has occurred in Operation Murambatsvina, I found that enough support could be found for it to be legitimate for an ICC prosecutor to initiate a formal investigation.

Key words: Zimbabwe, Murambatsvina, Rome Statute, Crimes Against Humanity, International Criminal Court

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1 Introduction

The actions and policies undertaken by governments toward their own people are commonly and widely accepted as being part of that nation's internal affairs. Indeed the world order would be thrown off balance if it were not for this basic principal of sovereignty. However, when government actions directly cause great suffering and harm toward its own population there is need for immediate attention from the international community and, if the situation calls for it, action needs to be taken. Depending on the nature of the act committed and the level of human suffering, the responsible individuals need to be held accountable. This is a fundamental idea in international criminal law that has developed greatly over the past century. It was for this purpose of accountability that the International Criminal Court was established and among the crimes which are prosecutable in this court "crimes against humanity" can be found. The set of crimes included under the heading of crimes against humanity are of a particularly atrocious nature and reserved for the most serious violations of human dignity, resulting in grave human suffering.

In May of 2005, the government of Zimbabwe descended upon large portions of the urban populations across the country with brute force in a campaign called Operation Murambatsvina. This campaign, carried out by the police and military, was aimed at the destruction of informal housing and businesses in urban areas of Zimbabwe. The extent of the Operation reached huge proportions in terms of human suffering as hundreds of thousands of people were made homeless in a matter of weeks. The question of whether or not the actions of the government could raise issues under article 7, dealing with crimes against humanity, of the Rome Statute of the ICC arose. The UN special envoy which was sent to investigate the extent and scope of Operation Murambatsvina, headed by Mrs. Anna Tibaijuka, very briefly touched upon this matter. Her conclusion, however, was that at the time focus needed to be placed on coming to terms with the immediate humanitarian situation. Also, the government had presented a plan to address the needs of the displaced persons and the outcome of this new campaign, known as Operation Garikai, needed to be anticipated. Operation Garikai, however, proved to be a failure. Now, two years after the event, it is relevant to again open up a discussion concerning possibility of crimes against humanity having been committed in the undertaking of Operation Murambatsvina.

1.1 Statement of Purpose and Limitations

The scope and nature of Operation Murambatsvina has no doubt received much attention from the international community. Voices have been raised in condemnation of the act and of the overall human rights situation in Zimbabwe. I have felt that there is a need to look closer at what happened during those weeks in the winter of 2005, and avoid drowning in the general condemnation of the situation in Zimbabwe as a whole. I have felt the need to go into specifics and investigate the prospect of accountability. After reading several NGO reports and the report presented by the UN Fact Finding Mission, which have all touched upon the possibility of holding the people responsible for Operation Murambatsvina accountable for crimes against humanity, I decided to investigate this possibility further. *The purpose of this paper is therefore to examine if the government of Zimbabwe, in the undertaking of Operation Murambatsvina, could be held accountable for crimes against humanity as understood by article 7 of the Rome Statute of the International Criminal Court*.

It is not my purpose to conduct a narrow investigation into which individuals were responsible. By investigating the nature and extent of the campaign I intend to look at the possibility of eventually holding individual perpetrators accountable. This is why I will refer to the "government" or "regime" when discussing responsibility although I am fully aware of the fact that only individuals can stand trial at the ICC. The limitations of this paper make it impossible for me to conduct a full investigation of the type that an eventual ICC prosecutor would.

1.2 Method and Material

When analyzing the scope and extent of Operation Murambatsvina I have used material in the form of various NGO reports, official government statements, and reports from independent organizations such as the UN. In my approach to the notion of crimes against humanity I have looked at the legal development of the concept from the Nuremberg Tribunals and onward. Official legal documentation, such as statutes, draft codes, and court judgments, has been the basis of the theoretical approach. The legal analysis is approached through a step by step procedure of scrutinizing the relevant aspects of each legal text. In this process, I have used relevant academic literature concerning crimes against humanity in international criminal law.

2 Crimes against humanity

In order to understand when where and how crimes against humanity can apply it is important to look at the history and evolution of the concept. In this chapter I will look at the concept of crimes against humanity through its development into what has become a part of international customary law. In order to understand the concept both theoretically and practically it is important to look at the origins of it as well follow its development up to present time. I will look at the evolution of the codification of crimes against humanity through analyzing the definitions brought forth in the Nuremberg trials, the ad hoc tribunals of the 1990s and finally the Rome Statute of the International Criminal Court. This analysis is important in order to know where and when certain actions can be seen as constituting a crime against humanity.

2.1 Origins

The first mention of the modern notion of crimes against humanity in official legal documentation can be found in the Charter of the International Military Tribunal (IMT) for the Trial of the Major War Criminals of the European Axis (London Charter) which the allies ratified in 1945. Since the definition of the concept that can be found here is the first of its kind it has served as a mould from which later definitions have been drawn out.[1] Therefore it is essential to discuss the definition given in the London Charter. Article 6(c) of the Charter defines "crimes against humanity" as:

> "Murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."[2]

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[1] Bassiouni, M. Cherif, "Crimes Against Humanity in International Criminal Law", Kluwer Law International, 1999, p.1
[2] http://www.yale.edu/lawweb/avalon/imt/proc/imtconst.htm

This definition has naturally been influenced by the context in which it was born. Through the complete control of land, accused persons, and documentary records the victorious powers had the ability to enforce international criminal laws without the limitations that often hamper its progress.[3] The horrible acts committed by the axis powers during world war two sprung the allied powers to take steps which ultimately led to a great leap forward for international humanitarian law. The most important aspect of the London charter in respect to crimes against humanity is that it prosecuted individuals for acts that went beyond war crimes. Acts against a state's own citizens before or during the war as well as acts committed against enemy nationals can not be seen as war crimes, yet the IMT criminalized these acts.[4] The tribunals were dominated by charges of war crimes and crimes against peace but two defendants were found guilty of crimes against humanity alone which is of prime importance. However, when looking at the definition of article 6(c) it is clear that crimes against humanity do not stand alone as the wording of the article states that the crimes need to be "in execution of or in connection with any crime within the jurisdiction of the tribunal". This is a clear statement that crimes against humanity require a nexus to war crimes or crimes against peace.[5] Yet it was not long until the important first step toward an independent definition of crimes against humanity was taken. In December of 1945 the Control Council for Germany enacted the Control Council Law no. 10 (CCL 10). This law was seen as part of German national legislation in concordance to the legislative authority of the Allies over occupied Germany and so it was not an international instrument. The preamble, however, states that this law was brought forth in order to give effect to the London Agreement, and so it is born out of an international instrument.[6] The definition of crimes against humanity in CCL 10 is essentially the same as the definition that is found in the London Charter, but with the very significant difference that it does not require a connection to crimes against peace or war crimes.[7] Crimes against humanity had therefore found its own identity here, and despite the fact that CCL 10 was seen as national law, it had sprung out of international instruments and therefore seen as part of international law. This blending of national legislation with international law seems very confusing, but the character of the definition provided in CCL 10 has nevertheless been one of the building blocks used in providing a comprehensive and independent definition of crimes against humanity.

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[3] Bassiouni, M. Cherif, "Crimes Against Humanity in International Criminal Law", Kluwer Law International, 1999, p. 7

[4] Steven R. Ratner, Jason S. Abrams, "Accountability for human rights atrocities in international law. Beyond the Nuremberg legacy" p. 47

[5] Ibid p. 47

[6] http://www.yale.edu/lawweb/avalon/imt/imt10.htm

[7] Bassiouni, M. Cherif, "Crimes Against Humanity in International Criminal Law", Kluwer Law International, 1999, p. 34

The post World War II years saw efforts by the UN to permanently incorporate crimes against humanity into international law and was partly successful in that a number of conventions which dealt with certain aspects of crimes against humanity, such as the Genocide Convention, were drafted. The ILC produced an advanced definition of crimes against humanity in its 1950 Report. This report was called *Principles of International Law Recognized by the Charter of the Nuremberg Tribunal and the Judgments of the Tribunal* and the principles stated in this report were recognized by the UN member states as principles of customary international law.[8] The most relevant aspect of this report, in respect to the aim of this paper, is that the definition of crimes against humanity laid forth here does not require a nexus to war.[9] However, there was little real progress in the specific field of crimes against humanity as the International Law Commission (ILC) failed to incorporate the 1950 definition into its Draft Code of Offenses Against the Peace and Security of Mankind. In fact the Draft Code itself was not successful. It was the inability of states to agree upon a definition of aggression that hampered this process.[10] Because of these political disagreements it took almost half a century for the ILC to come up with a legal definition of crimes against humanity. When it finally did so in 1996, it was a result of further atrocities committed on European soil, namely the war in former Yugoslavia. It was in the aftermath of this conflict, and the conflict in Rwanda, that the next really significant developments in the field of crimes against humanity occurred.

2.2 The Ad Hoc tribunals of Yugoslavia and Rwanda

The significance, in terms of the development of international criminal law, of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) should not be underestimated. The charters of these two ad hoc tribunals both add depth and clarification to the concept of crimes against humanity.

The ICTY statute, adopted in May, 1993, held a very close resemblance to the London Charter in certain aspects. Article 5 of the ICTY statute, dealing with crimes against humanity states that:

> "The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed

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[8] Ibid, p. 184
[9] Ibid, p. 180
[10] Steven R. Ratner, Jason S. Abrams, "Accountability for human rights atrocities in international law. Beyond the Nuremberg legacy" p. 49

> conflicts, whether international or internal in character, and directed against any civilian population […]"[11]

A very interesting aspect of this article concerns the debated feature of a connection of crimes against humanity with armed conflict. This article is similar the London Charter article 6(c) in that there is a nexus to war in both writings. The reason for this is not clear but there was most likely a fear of challenges to the legality of the charter that impelled the drafters to include the nexus requirement.[12] By keeping this link to war there could be no doubt that the statute was binding customary law. This is a step in the wrong direction from the CCL 10 definition which excluded this nexus and thereby broadened the concept of crimes against humanity, and the 1950 ILC Report which eliminated the nexus requirement. Despite this limiting factor, however, the definition is much broader than the definition found in the London Charter as it states that crimes against humanity can not only be committed in international conflicts but also in conflicts of "internal character". This should be recognized as a positive development as most post-WWII atrocities have been committed during internal conflicts.

The ICTR statute, which was adopted in November, 1994, differs sharply from the ICTY in terms of a nexus requirement. Article 3 of the ICTR deals with crimes against humanity and states that:

> "The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial, or religious grounds […]"[13]

This article takes a clear stance against the requirement of a nexus between crimes against humanity and armed conflict, thereby following the development initiated by CCL 10 and the ILC's work toward an independent definition of crimes against humanity. In that respect it differs from both the London Charter and the ICTY. The ICTR also adds a second requirement that is not found in the previous two charters, namely that of the "widespread and systematic" nature of the act. When analyzing this, however, it is possible to see that there are tangible influences from article 6(c) of the London Charter. A requirement in this article was that of persecution of certain groups was necessary for an action to be deemed a crime against humanity. This implies that there is a requirement of some kind of state policy which then can be seen as contained in the ICTR under the

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[11] http://www.un.org/icty/legaldoc-e/index.htm
[12] Bassiouni, M. Cherif, "Crimes Against Humanity in International Criminal Law", Kluwer Law International, 1999, p. 195
[13] http://69.94.11.53/ENGLISH/basicdocs/statute.html

"widespread or systematic" formulation.[14] The ICTR also includes the words "on national, political, ethnic, racial, or religious grounds" which means that there needs to be a discriminatory intent in order for the acts to constitute crimes against humanity. This discriminatory intent requirement is not included in the ICTY and, as can be seen below, is only narrowly included in the Rome Statute of the ICC. For the purpose of his paper it should also be noted that the ICTY and ICTR should be recognized for the inclusion of the deportation and forcible transfer of population as specific crimes in their respective statutes. However, they did not define the specific contents of these crimes.

Both of these ad hoc tribunals contributed to the development of the concept of crimes against humanity in their own way. What should be kept in mind, however, is that the statutes for the ICTY and ICTR were a product of their respective context. They were formulated in a way that would fit their purposes. This does not mean that they did not influence the further work that was done on the international arena in ways of advancing international criminal law and future definitions of crimes against humanity. Judgments that have been made in these two tribunals have served as guidance in later cases and have been used to overcome definitional difficulties. The ICTY and ICTR and through them, the London Charter, have all influenced the latest development of crimes against humanity, namely that of the Rome Statute of the International Criminal Court.

2.3 The International Criminal Court

After the conflicts in the former Yugoslavia and Rwanda, the need for a permanent international criminal court became more apparent than ever. The ILC, under the directive of the General Assembly, adopted a Draft Statute for a court in 1994.[15] This Draft Statute was very much influenced by the ICTY and centered around such crimes as genocide, war crimes, and crimes against humanity. In the summer of 1998, a UN diplomatic conference in Rome adopted, after a month of intense debates, the Statute for the International Criminal Court.[16] The definition of crimes against humanity that can be found in article 7 of the Rome Statute of the ICC is more expansive than any of the preceding definitions. It is not limited in the way that the London Charter and the ICTY are in that it does not require a nexus to armed conflict. Neither is it limited in the way that the ICTR is in that

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[14] Bassiouni, M. Cherif, "Crimes Against Humanity in International Criminal Law", Kluwer Law International, 1999, p. 197
[15] Steven R. Ratner, Jason S. Abrams, "Accountability for human rights atrocities in international law. Beyond the Nuremberg legacy", p. 208
[16] Ibid p. 209

there is only a requirement of discriminatory intent when confronting the crime of persecution.

In paragraph 2 of article 7 the Rome Statute also goes into very much detail on the specific contents of the acts that are listed as crimes against humanity. This is a much needed development that the ICTY and ICTR have contributed greatly to by showing the way and uncovering pit falls. The most important aspects, other than article 7, of the Rome Statute in regard to this paper are the general elements. The general elements provide guidance and show which requirements need to be met in order for a crime to be international. The main general elements have to do with the nature of the crime and the conduct of the actors. These are the "widespread or systematic" and "state action or policy" requirements.

The jurisdiction of the Court stretches over all countries that have ratified the Rome Statute, and only crimes that have been committed after the Statute's entry into force are applicable.[17] For the purpose of this paper it is vital to understand the mechanisms that allow the Court to exercise its jurisdiction over non-party states. Article 13 of the Rome Statute states that:

> "The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this statute if:
> (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations."[18]

Chapter VII of the Charter of the UN allows for the Security Council to make recommendations and apply measures in order to maintain international peace and security.[19] However, the Security Council does not have the final say as they can only recommend the Prosecutor to open up an investigation.[20] So in situations where crimes may have been committed in countries that are not party-states, like Zimbabwe, a Security Council decision is needed in order for a prosecutor to eventually open up a formal investigation.

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[17] "Rome Statute of the International Criminal Court" from *The Raoul Wallenberg Institute Compilation of Human Rights Instruments*, Martinus Nijhoff Publishers, 2004, p. 562
[18] Ibid, p. 563
[19] "Charter of the United Nations" from *The Raoul Wallenberg Institute Compilation of Human Rights Instruments*, Martinus Nijhoff Publishers, 2004, p. 665
[20] Steven R. Ratner, Jason S. Abrams, "Accountability for human rights atrocities in international law. Beyond the Nuremberg legacy", p. 213

3 Operation Murambatsvina

In this chapter I intend to describe what Operation Murambatsvina was and provide knowledge into the series of events that led up to the campaign and what the outcome was in terms of the loss of homes and livelihoods. In order to understand that Operation Murambatsvina is not an isolated irregularity in Zimbabwean history it is also important to put the event in its context in terms of urbanization and housing problems in Zimbabwe.

3.1 A Description of Events

On 19 May 2005 the government of Zimbabwe commenced upon a mass-scale operation labeled Operation Murambatsvina. The government has translated the term Murambatsvina, which is a Shona word, into meaning "clean up" or "restore order". However, the literal definition of the word lies closer to "drive out the filth".[21] The campaign was a widespread military-style operation intended to "clean up" the cities of Zimbabwe through the destruction of illegal structures, homes and informal businesses. The army and police carried out the demolitions and evictions which started in Harare and quickly spread to other cities and towns across Zimbabwe.[22] There was no real dialogue between the different actors and the series of events that led up to the start of the operation took place in a very short time frame.

The first official statement concerning the Operation was a speech declaring the official launch of Operation Murambatsvina held by Ms. Makwavarara, the Chairperson of the Harare Commission on 19 may 2005. On the same day a notice from the city of Harare appeared in the Herald newspaper requiring persons that had erected illegal structures to demolish them by 20 June 2005.[23] However, on 25 May 2005 only a few days after the notice was published and with total indifference to the official deadline which was announced, the operation

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[21] Solidarity Peace Trust "Discarding the filth: Operation Murambatsvina" 27 June 2005, p. 5
[22] Kajumulo Tibaijuka, Anna "Report on the Fact-Finding Mission to Zimbabwe to assess the scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe" p. 12
[23] Zimbabwe Human Rights NGO Forum, "Order Out of Chaos or Chaos Out of Order" June 2005, p. 2

commenced with total and absolute force. The operation was carried out in a military style way where police officers dressed up in riot gear and fully armed with automatic rifles raided the suburbs of cities around Zimbabwe, sometimes in the early dawn, and demolished, bulldozed and burned down informal market sites and houses. The operation was carried out using vast numbers of police and army personnel, making resistance impossible and at the same time acting as a show of force.[24] The police also forced people to destroy their own houses and assaulted individuals who did not comply despite the fact that many people were only given a minute period of time to gather their life belongings before being forced to destroy their homes. The structures that were destroyed were not only mere shacks but also large brick houses and homes that existed with government approval for 70 to 80 years.[25] The Operation was mainly targeted at two socio-economic spheres, namely the informal economic centers and "illegal" residential structures. The destruction of informal businesses was widespread and the source of income for thousands of Zimbabweans was literally destroyed as flea markets, vending sites, roadside sculpture parks and other informal markets were razed to the ground. Goods were either destroyed straight away or taken by the police to be sold off either through exclusive auctions not open to the public or directly to the public by police officers.[26] Already in the first week of the operation the scale of the campaign became evident as 20,000 vendors across the country were arrested.[27]

Not only were businesses and sources of livelihood destroyed but the homes of hundreds of thousands of poor urban Zimbabweans were also demolished. It is in the light of the destruction of residential structures that the enormity of Operation Murambatsvina becomes clear. In a matter of months 700,000 Zimbabweans across the country lost their homes and livelihoods. It is estimated that a further 2.4 million people have been affected in some way by the Operation.[28]

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[24] Zimbabwe Human Rights NGO forum, "Order Out of Chaos or Chaos Out of Order? A preliminary report on Operation Murambatsvina", June 2005, p. 6
[25] Ibid p. 6
[26] Solidarity Peace Trust "Discarding the filth: Operation Murambatsvina" 27 June 2005, p. 10
[27] Kajumulo Tibaijuka, Anna "Report on the Fact-Finding Mission to Zimbabwe to assess the scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe" p. 12
[28] Ibid. p. 7

3.2 A Brief Historical Overview

The violence, suffering and devastation that Operation Murambatsvina has left behind raise some very serious human rights and humanitarian issues. However, before looking into the relevant aspects of the international legal framework there is a need for a more comprehensive understanding of the context of the operation. The housing problems that have plagued not only Zimbabwe but the whole of Africa needs to be understood, and the previous actions taken by the government need to be laid forth in order to show that Operation Murambatsvina is not an isolated incident.

3.2.1 Previous Campaigns of a Similar Nature

Operation Murambatsvina was unfortunately an event that, although it came as a shock to the Zimbabwean population and the international community, can be seen as symptomatic of the Mugabe regime. Looking back at post-independence conflicts in Zimbabwe, the willingness to use force by the government has been a reoccurring problem in the country. Zimbabwe, having been a British colony, has been plagued by the societal structures, laws and power-elites that were established during colonial times to favor minority rule. This colonial heritage has been a key problem in respect to the government's misuse of power. Zimbabwe won its independence in 1980 and a government was formed by the two political factions, ZANU and ZAPU, that had entered the liberation war with two separate armed wings. ZANU was a Shona party and ZAPU an Ndebele one. The tension between these two parties, which held an element of tribalism, resulted in a low-intensity war between 1982 and 1987. It is during this time that the ZANU party, headed by President Robert Mugabe, descended upon a campaign of a nature that has unfortunately proven to be symptomatic of the ruling party. This operation, name Gukurahundi, involved the massacre of an estimated 20,000 civilians in Matabeleland.[29] This was the first show of brute force that demonstrated the ruling party's attitude toward any political opposition. It was in Matabeleland that ZAPU had its base of support and the Gukurahundi campaign was an attempt to crush this political opponent through spreading terror among its supporters. Another example of the government's willingness to use violence against political opposition is when, after the parliamentary elections in 1985, Mugabe encouraged the people of Harare to "weed your gardens". This very familiar rhetoric of "cleaning up" was taken as an invitation by crowds of ZANU supporters to go out

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[29] Ibid, p. 15

and harass their ZAPU counterparts. Twenty people were killed and many more injured while the police stood by and did nothing.[30] The ZANU/ZAPU tensions were once and for all quelled when a Unity Accord was signed in 1987, merging the two parties into ZANU-PF. However, the atmosphere of lawlessness would again become apparent during the very violent farm invasions that started in 2000 and are an ongoing event. This violence was in response to the formation of an opposition party, Movement for Democratic Change (MDC), and the ruling party's loss in the Referendum on a new Constitution. Again supporters of the ruling party were allowed to freely use violent methods for their own political purposes without having to face any criminal responsibility for their actions.

This was the political and social climate from which Operation Murambatsvina was born. It is important to keep these facts in mind when assessing the Operation. The Operation took place in a country plagued by human rights abuses, and is part of a development toward a lawless society. Responsible individuals have been able to escape justice throughout the above mentioned atrocities. Holding the instigators responsible for Operation Murambatsvina accountable for crimes against humanity could be a first step in the turning around of the downward spiral that Zimbabwean society is caught in.

3.2.2 Housing Situation

The African continent has the highest rate of urbanization in the world. Today 37% of the African population lives in cities and this number is expected to rise to 53% by 2030. Additionally, 72% or around 187 million, of the urban Sub-Saharan population live in slums.31 Needless to say, this rapid urbanization is a big problem that poses great challenges to the governments of the affected countries. It must be recognized that Zimbabwe, being one of these counties, has to come to terms with this problem. Operation Murambatsvina, which was centered around the problem of urban slums, therefore needs to be seen in this context. Evictions are a common occurrence as African governments strive to get the urban housing problems under control, so Operation Murambatsvina is not unique in that sense. What makes it unique is the enormous scale of the forced evictions. Operation Murambatsvina is unprecedented in terms of the vast number of human beings that were affected.32 The government of Zimbabwe, in initiating this campaign, seems to have seen a possibility of a quick-fix solution to the urbanization problem, namely that of reversing the development by evicting urbanites and

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[30] Solidarity Peace Trust "Discarding the filth: Operation Murambatsvina" 27 June 2005, p. 5
[31] Kajumulo Tibaijuka, Anna "Report on the Fact-Finding Mission to Zimbabwe to assess the scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe" p. 80
[32] Ibid, p. 81

compelling them to move to rural areas. The solution, however, lies in a long-term approach focusing on pre-emptive solutions. There is no denying that Zimbabwe has a problem, and that this problem must be recognized by the international community as a severe one, but this does not justify the actions taken in Operation Murambatsvina. Indeed, the fact that the government dealt with a problem involving the poorest and most exposed segment of the population, the slum dwellers, in such an inhumane way makes their actions all the more appalling.

4 Legal Analysis of Operation Murambatsvina

The aim of this chapter is to analyze the actions taken by the government of Zimbabwe in Operation Murambatsvina in order to see if crimes against humanity as they are defined in article 7 the Rome statute of the ICC have been committed. To do this I will firstly look at which paragraphs of article 7 that are significant in this case and analyze the technical issues relating to the definitions of the contents of these paragraphs. Secondly, I will analyze the broader legal requirements of article 7 concerning the general conduct of the government, and thirdly I will analyze the government's defense.

4.1 Relevant Articles of the Rome Statute

As discussed in chapter 2.3, the Rome Statute has listed, and explained, the different crimes that come under the heading of crimes against humanity. In the case of Operation Murambatsvina, there are two points of article 7 of the Statute that are appropriate to discuss. These are: Article 7(1)(d) "deportation or forcible transfer of population" and article 7(1)(k) "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health".[33] When looking at these articles and the definitions they are given, one can see that there are certain criteria that need to be covered. I will go through these criteria and see how they correspond to the events and actions that took place during Operation Murambatsvina in order to thereby conclude if Operation Murambatsvina could be seen as a crime against humanity.

[33] "Rome Statute of the International Criminal Court" from *The Raoul Wallenberg Institute Compilation of Human Rights Instruments*, Martinus Nijhoff Publishers, 2004, p. 554

4.1.1 Deportation or forcible transfer of population

Article 7(2)(d) defines deportation or forcible transfer of population as:

> "[…] forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law."[34]

Notice that this article does not mention that forcible transfer of population has to mean the deportation of people from one state to another, as the developed concept of *displacement* makes it clear that forced displacement can take place fully within one state. This is clear as the article contains both "*deportation*" and "*forcible transfer of population*".

The first criteria that can be seen in this definition is that there needs to be a *forced* displacement of people. When looking at the facts of the events of Operation Murambatsvina, it is clear that not all of the houses were destroyed by the police, army, or other agencies acting under government orders, but instead the residents themselves tore down their structures. This fact becomes insignificant, however, when confronting the details of the operation which make clear that people were forced to tear down their own homes and in some instances beaten by the police for not destroying their houses quickly enough.[35] Clearly this constitutes "*coercive acts*" as stated in the article. The Elements of Crimes of the International Criminal Court also makes it clear that "*forcibly*" includes the threat of force.[36] It is evident, then, that the destruction of homes was forced, as people destroyed their homes out of fear. Still, the question remains of whether or not it was a forcible *transfer* of population. The government had no plan for accommodation for the thousands of people who lost their homes but instead forced many people into transit camps. Some people stayed behind and slept on the rubble of their former homes, only because there was no other place to go, but these people were eventually forced to find shelter as the time of the operation was in the winter months which have bitterly cold nights. The government rhetoric shows their intent as they repeatedly stated that the evictees needed to go "back to their rural homes."[37] Indeed, the definition of eviction holds that people are forced to leave their homes. This makes it clear then, that the intention was not only to destroy homes, but also to drive people out of the areas on which they

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[34] Ibid, p. 554
[35] Zimbabwe Human Rights NGO forum, "Order Out of Chaos or Chaos Out of Order? A preliminary report on Operation Murambatsvina", June 2005, p. 7
[36] U.N.Doc.PCNICC/2000/1/Add.2
[37] Kajumulo Tibaijuka, Anna "Report on the Fact-Finding Mission to Zimbabwe to assess the scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe" p. 13

lived, thus fulfilling the requirement of population transfer as a crime against humanity.

When further reading article 7(2)(d) in light of Operation Murambatsvina, ones attention is immediately drawn to the words "*lawfully present*". Strictly speaking, most of the evictees were not lawfully present on the land from which they were evicted, or were they? The fact is that most of the structures that were destroyed were not legally built. It can therefore be accepted that the government of Zimbabwe had the right to destroy these structures since the manner in which they were built and settled did not comply with the domestic housing laws. Still, this does not answer the question of whether the people themselves were lawfully present on the land; it only states that their possessions, in form of residential structures, were not lawfully present. In order to resolve this issue there is need to look at how the act of "*forcible transfer of population*" was recognized as a crime against humanity through the development of the concept.

During both World War I and World War II acts of deportation and population transfers took place. The resulting legal proceeding that followed the allied victories can serve as a guide in defining the specific details of when a population transfer can be seen as legal and when it can not. One clear example which shows the different dimensions of legal and illegal population transfers in international law can be found in the turbulent birth of the Turkish state. "*Deportation and forcible transfer of population*" became a major issue in the aftermath of World War I as a result of the mass deportations and transfers of people in Turkey and Greece. The 1919 Report of the Commission on the Responsibilities of the Authors of the War made it clear that deportation and forcible transfer of population, even of a country's own nationals, was an international crime.[38] This was a result of the outrageous acts committed by Turkey in way of deportation and population transfers of Armenians and Greeks. However, the distinctions of when and in what manner forcible population transfers could be deemed legal were still vague. The fact that the war resulted in the formation of new states, such as Turkey and Greece, led to some clarification on the subject. During the 1922-1923 Lausanne peace negotiations, a treaty which concerned the exchange of Greek and Turkish populations was signed and ratified by the Greek and Turkish delegates.[39] This treaty made it possible to forcibly remove populations of Greeks from the new Turkish territory, and Turks from Greece. It is in this light that the words "*lawfully present*" should be read. It can be said that after the ratification of this convention, the Turks in Greece and the Greeks in Turkey were not lawfully present in their respective areas. At the same time, it concerns the words "*without grounds permitted under international law*" since population transfers can be legal when they are a result of an international convention.[40] So it has to do with

[38] Bassiouni, M. Cherif, "Crimes Against Humanity in International Criminal Law", Kluwer Law International, 1999, p. 312
[39] Ibid. p. 321
[40] Ibid. p. 326

rights to a state territory in situations of territorial changes, and a states right to control entry into their territory, but it does not concern the occupation of certain areas by nationals of that state.

It can then be said that the forcible transfer of population that the government of Zimbabwe carried out in Operation Murambatsvina can not find its defense in the content of article 7(2)(d). The criterion of the definition that is brought forth in this article is met. This does not automatically lead to the conclusion that a crime against humanity in regard to article 7(1)(d) has been committed. There are still certain aspects of the actions taken in Operation Murambatsvina that need to be analyzed in order to validate such an accusation. These aspects will be dealt with in chapters 4.2 and 4.3.

4.1.2 Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health

The aim of this article is evidently to catch certain acts that fall through the net of explicitly stated crimes that are listed in articles 7(1)(a) to (j). Unlike article 7(1)(d) that is discussed above, this article does not contain a definitional explanation in the second part of article 7.It is thereby somewhat unclear how the article should be defined and exactly what crimes can be seen as falling under this act. There is therefore a need to unravel the definition and requirements of the article.

It is clear that this article can not be defined on its own as it contains the words "*acts of a similar character*". These words state that the acts that fall under this category need to be similar to other acts under the Rome Statute that constitute crimes against humanity. According to The Elements of Crimes, the word "*character*" is to be understood as the nature and gravity of the act.[41] The act therefore needs to be of a similar nature and character as other acts that are criminalized under article 7. Operation Murambatsvina was an action of such massive scale that affected hundreds of thousands of people in all areas of Zimbabwe. The character and nature can therefore be seen as similar to other criminal acts covered by article 7. Additionally, the act itself needs to be inhumane in order for it to fall under this article. It then becomes a question of defining the word "*humane*". Previous texts, such as the London Charter and the ICTR/ICTY have not had any exact definition of this word. Instead it has been subject of interpretation by analogy.[42] This method of interpretation, called

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[41] U.N.Doc.PCNICC/2000/1/Add.2, p. 17

[42] Bassiouni, M. Cherif, "Crimes Against Humanity in International Criminal Law", Kluwer Law International, 1999, p. 330

ejusdem generic, means that broad terms in a series ("other inhumane acts") are defined in light of the more specific terms in that series ("murder", "enslavement", "extermination"). This type of interpretation can be dangerous if not carefully constrained, and through adding the phrase "*causing great suffering, or serious injury to body or mental or physical health*" the ICC Statute has produced a more specific interpretation to be used when defining "*inhumane acts*".[43] When looking Operation Murambatsvina, then, there is evidence that great suffering and serious injury was inflicted, both mentally and physically. The people that were forced to tear down their own houses or stood by to see their sources of livelihood destroyed no doubt felt a serious blow to their psychological well being. The trauma of becoming homeless over night caused people to feel depression and injury to their dignity.[44] The UN fact finding mission also gathered testimonies which showed that many victims of the Operation had adopted anti-social behavior.[45] There can be no doubt that serious injury to mental health was inflicted. Also, the horrible impact of Operation Murambatsvina no doubt injured the physical well being of the victims. It is important to note that the action taken in the Operation did not vary in force or ruthlessness in regard to the types of people that were evicted. Orphans, the elderly, children and sick people were all dealt with in the same brutal fashion, and the most vulnerable groups suffered the most. One woman reported that after their house was demolished she and her four children had nowhere to go and she stated that "[…] we fall asleep from sheer exhaustion – and hope to wake up alive."[46] No doubt the Operation injured the physical and mental well being of the victims on such a large scale that it must be seen as an "*inhumane act*".

A very important aspect concerning article 7(1)(k) deals with the words "*intentionally causing*". In order to find clarification in regard to these words attention should again be given to the Elements of Crimes of the International Criminal Court. It is stated in this document that in order to be held responsible, the perpetrator needs to be aware of the factual circumstances that established the character of the act.[47] This means that the people responsible for Operation Murambatsvina needed to be aware of the fact that the Operation would result in the suffering and injury to the affected people. It would, in my opinion, be hard for any eventual defendant to claim that they could not foresee the consequences of ordering the destruction of almost 100,000 residential structures. So it is certain that the perpetrators knew what the outcome of the Operation would be, but still went through with it. Still, this does not certify that a crime under this article has

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[43] Ibid p. 331
[44] Kajumulo Tibaijuka, Anna "Report on the Fact-Finding Mission to Zimbabwe to assess the scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe" p. 49
[45] Ibid., p. 39
[46] Ibid., p. 43
[47] U.N.Doc.PCNICC/2000/1/Add.2

been committed. Since the article so expressively states that the actor needs to intentionally cause harm there could be need of a subjective will to deliberately cause harm. When looking at the accusations of a hidden agenda described further down in chapter 4.4.1 it is warranted to investigate this further. If the Operation even partially involved a deliberate attempt of retribution or fear instigation by the government it would be very serious indeed.

4.2 A Widespread or Systematic Attack

When dealing with international criminal law it is of utmost importance to recognize the characteristics of crimes that make them part of international rather than domestic jurisdiction. Certainly, the method used when committing the crime and the scale of the crime are elements that need to be taken into consideration when assessing an act that could possibly constitute a crime against humanity. Article 7(1) of the Rome Statute states that:

> "For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."[48]

This article makes it clear that the act needs to be of a specific nature in terms of its systematic nature and its extent. This is of prime importance as it specifies a boundary that includes acts of a certain magnitude and method and excludes others. The debate that surrounded the drafting of this article centered around the question of whether there should be a conjunctive or disjunctive relationship between the words "*widespread*" and "*systematic*". As can be seen in the article above, the disjunctive definition prevailed, but the added definition of the article opens up for a conjunctive interpretation.[49] Article 7(2)(a) of the Rome Statute states that an "*attack against any civilian population*" means:

> "a course of conduct involving the multiple commissions of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attack."[50]

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[48] "Rome Statute of the International Criminal Court" from *The Raoul Wallenberg Institute Compilation of Human Rights Instruments*, Martinus Nijhoff Publishers, 2004, p. 554
[49] Steven R. Ratner, Jason S. Abrams, "Accountability for human rights atrocities in international law. Beyond the Nuremberg legacy" p. 60
[50] "Rome Statute of the International Criminal Court" from *The Raoul Wallenberg Institute Compilation of Human Rights Instruments*, Martinus Nijhoff Publishers, 2004, p.555

The first part of this article states that there needs to be a "*multiple commission of acts*". This rules out isolated incidents and makes it clear that the act needs to be widespread. Interestingly, when keeping in mind that little word "*or*" that is found in article 7(1), this definition includes a part about "*furtherance of a state policy*" which clearly represents the word "*systematic*". The "*or*" has become an "*and*". So the disjunctive interpretation that seems clear enough when reading the article suddenly becomes very vague when reading this definition and a conjunctive interpretation now seems more accurate. If we suppose that there is a condition of both a widespread *and* systematic attack, do the actions taken in Operation Murambatsvina fulfill the requirements set forth in this definition? Certainly, the "*multiple commissions*" requirement is met. The Operation was carried out over the entire country. Bulldozers, police, and army personnel were deployed in this nationwide campaign that went on for weeks.[51] The "*multiple commissions*" requirement was therefore, beyond any doubt, met. As for the systematic nature of the act a deeper analysis of the words "*state policy*" is needed.

4.3 State Action or Policy

Article 7(2)(a) brings forth a vital element that is needed when looking to prosecute an individual for crimes against humanity, namely that of the acts as part of "*state policy*." State action or policy is one of the elements that distinguish an act of crimes against humanity from other acts such as mass murder committed by an individual, which would fall under domestic jurisdiction.[52] The act needs to reflect some kind of state policy in order for it to be prosecutable as a crime against humanity. This is because when a crimes is a result of a state action it is part of a greater societal ruin, a process where the legal framework collapses, and where norms and values are bent and skewed in order to act as an instrument of the power system of that state. It is in situations such as these that the crime becomes so much greater than the sum of its parts, and therefore carries the weight that makes it prosecutable as a crime against humanity.[53] The question is, then, whether the actions taken during Operation Murambatsvina were part of a state action or policy. The facts point toward an entirely affirmative answer to this question.

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[51] Kajumulo Tibaijuka, Anna "Report on the Fact-Finding Mission to Zimbabwe to assess the scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe" p. 12

[52] Bassiouni, M. Cherif, "Crimes Against Humanity in International Criminal Law", Kluwer Law International, 1999, p. 245

[53] Ibid, p. 252

First of all, one must recognize that Operation Murambatsvina was an openly declared act of the government of Zimbabwe. There was a press-release by the government-appointed Harare Commission that declared the opening of the operation, and the actual commission of the material act was conducted by the state institutions of the police and military.[54] There can therefore be no doubt that the individuals responsible for the planning and carrying out of Operation Murambatsvina were doing so in correlation with an organized state action or policy. Further, when looking at the legal argumentation and reasons for the Operation that were given by the government, it is important to note that a characteristic of totalitarianism can be discerned.

When the power-holders of a state are responsible for crimes against humanity, there is a situation of lawlessness in that state which allows these individuals to use governmental institutions without being checked by the law, in essence the decision makers can be said to stand above the law.[55] In these situations, history has shown us that governments have claimed that their actions hold legitimacy through the manipulation of legal processes. As these governments have the power to shape the law as they please, they take an absolutist positivist approach to law and thereby claim that their actions are legitimate, as they are in line with the law. These laws are produced to protect "public order" in order to provide false grounds for legitimacy.[56] In the case of Operation Murambatsvina the government's declared intentions hold an alarming similarity to this rhetoric of "public order". Indeed, the government of Zimbabwe has called the campaign "Operation Restore Order", and the government claims to be acting in the best interest of society.[57]

There is also a need to look closer at the word "*attack*" so that a clear definition of this term can be formulated and understood. The first thing that comes into mind when assessing the meaning of this word is that it must contain some form of physical violence. However, an attack need not be of a military nature.[58] Operation Murambatsvina was an attack in that it used a show of force, and in some instances used real force, to pressure a very large number of civilians into acting a certain way. This is in line with the definition of "*attack*" as it has developed through previous judgments such as in the ICTR case of Prosecutor v Akayesu. Here, it was found that an attack could be non-violent, and if systematic and large-scale, it could be "exerting pressure on the population to act in a particular manner".[59]Another requirement that needs to be met is that the attack be

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[54] Solidarity Peace Trust "Discarding the filth: Operation Murambatsvina" 27 June 2005, p. 12
[55] Bassiouni, M. Cherif, "Crimes Against Humanity in International Criminal Law", Kluwer Law International, 1999, p. 249
[56] Ibid, p. 250
[57] Response by Government of Zimbabwe to the Report by the UN Special Envoy on Operation Murambatsvina/Restore Order, August 2005
[58] U.N.Doc.PCNICC/2000/1/Add.2
[59] The Prosecutor versus Jean-Paul Akayesu, Judgement, C*ase No: ICTR-96-4-T,* 2 September 1998

directed against a "*civilian population*". The victims of Operation Murambatsvina were clearly a civilian population as it consisted of men, women, and children living in all urban areas across the country. Operation Murambatsvina was a campaign that was initiated by the government, and the individuals that carried out the Operation were acting as part of a state action or policy. As mentioned above, the fact that it was a state action or policy becomes even more tangible when looking at the way the government legitimized their actions. The Operation was clearly constituted an attack, and it was directed at a civilian population.

4.4 Assessing the Government's Standpoint

In order for a comprehensive assessment of Operation Murambatsvina as a crime against humanity it is necessary to look at the reasons given by the government for conducting the operation, and their justifications of the committed acts. Shortly after the UN Special Envoy (UNSE) concluded her report on Operation Murambatsvina the government of Zimbabwe issued a formal response in defense of their actions during the campaign. The official view of the government is that the campaign was necessary in order to raise the living standard and promote the well-being of the Zimbabwean public.

The government states that the Operation was intended to "address the cocktail of social, economic and security challenges that had come to negatively impact upon the […] populace."[60] From this, the reasons for the Operation seem to stem from a will to improve the lives of the Zimbabwean people. In the formal response to the UNSE, the government repeatedly states that the operation was conducted for the good of the people, and that no one was happy with the situation as it was before Operation Murambatsvina. When looking at these statements in comparison to the previously discussed level of human suffering there seems, to put it lightly, to be a difference of opinion. The numerous NGO reports and the UNSE report point toward a very different truth than the government's claims. In this situation the ZANU(PF) regime's merit list, discussed in chapter 3.3.1, works against them. There are no indications that the government is acting on the behalf of the people, unless of course the 700,000 evictees are not included in the term "populace". The language of the response is also filled with mistrust against the west, particularly Britain, and there are statements claiming that only the government of Zimbabwe knows what is best for the people and that people were

[60] Response by Government of Zimbabwe to the Report by the UN Special Envoy on Operation Murambatsvina/Restore Order, August 2005, p.5

in fact very enthusiastic about Operation Murambatsvina.[61] There is no way that a majority of the Zimbabwean population could have supported the Operation. A frightening aspect of the ZANU-PF regime can be discerned here, namely that of the government's determination that they can dictate the will of the people, and that the means can justify the goal of realizing this proposed will of the people. This is a trademark sign of the dictatorial, tyrannical, and totalitarian regimes that have committed mass human rights violations throughout the twentieth century.[62] Another important aspect of the government's response to the massive critique it received for carrying out Operation Murambatsvina concerns the claim that the campaign was a two-part process where the evictions only constituted the first phase. The second phase of the campaign, termed Operation Garikai, intended to provide new housing for the displaced population. Operation Garikai was launched during Operation Murambatsvina but lacked planning and the capital expense of 3 trillion Zim dollars (300 million USD) was not foreseen as it was not included in the 2005 budget.[63] Neither does it appear in the 2004-2008 National Housing Delivery Program.[64] All in all Operation Garikai seemed hastily put together and it is questionable if there was ever a will to see it through. Indeed, it is two years since the Operation and it is safe to say that Operation Garikai never really commenced and was a clear failure.[65] Had Operation Garikai actually been the intended end-destination of the entire campaign the question of intent would have changed the entire perspective of the problem. The intent would then have been to improve the lives of the Zimbabwean population and that would make it hard to validate any claims of crimes against humanity having been committed. The facts, however, show that Operation Garikai never fully commenced, and more importantly, never seemed to be the real intention of the entire campaign. Had the actual goal been to provide alternative housing for the evictees, these houses would have had to be built before the evictions. Overall, the pronounced reasons for Operation Murambatsvina are very questionable, as the goals of these official reasons could have been reached without the infliction of such massive human suffering. If the official intentions are questionable, what then could have been the motive behind the Operation?

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[61] Ibid. p. 9
[62] Bassiouni, M. Cherif, "Crimes Against Humanity in International Criminal Law", Kluwer Law International, 1999, p. 250
[63] Kajumulo Tibaijuka, Anna "Report on the Fact-Finding Mission to Zimbabwe to assess the scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe" p. 47
[64] http://web.amnesty.org/library/Index/ENGAFR460052006
[65] Ibid.

4.4.1 Possible Other Reasons

Many NGO's and international human rights organizations have claimed that the real reasons for Operation Murambatsvina are much different from the official ones. When the UN Special Envoy conducted its fact finding mission they found, through interviews with individuals and organizations, that the believed motivations behind Operation Murambatsvina were political. The timing of the Operation certainly opens up for such a claim. It took place a few weeks after the 2005 General Election where for the second time the Opposition won almost all urban seats. Many observers and victims therefore believe that the campaign was an act of retribution, since the affected population is known to have lived in areas that voted for the MDC.[66] Further, the urban areas, especially the poor areas, have long been bubbling with malcontent toward the government's mismanagement of the country. There is therefore also a belief that the Operation was a pre-emptive strike against a population that the government feared would rise up in a revolt.[67] If these reasons would prove to be true, it would greatly strengthen a crimes against humanity accusation. The above described intentions are purely aimed at harming a huge section of the Zimbabwean population. This would put the question of whether there was intent to harm beyond any doubt. The fact that there is even a possibility that these could have been the real motives behind Operation Murambatsvina warrants an investigation.

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[66] Kajumulo Tibaijuka, Anna "Report on the Fact-Finding Mission to Zimbabwe to assess the scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe" p. 20
[67] Ibid., p. 20

5 Concluding Remarks

The destruction of homes that rendered 700,000 Zimbabweans homeless can by no means be seen as a minor incident. In fact, even if the Zimbabwean government had presented an extremely good reason for the operation and put a well planned reconstruction program in place, it would still be doubtful if Operation Murambatsvina was a legitimate action. The UNSE report and the numerous accounts that have been published by NGO's paint a picture of such vast human suffering that the question of whether crimes against humanity have been committed must be asked. The endeavor of this paper has been to analyze Operation Murambatsvina through the Rome Statute's definitions of crimes against humanity. In light of the analysis presented above, it is my firm belief that crimes against humanity have been committed, and there is a real possibility that an eventual prosecutor would open an investigation if the recommendation to do so is submitted by the Security Council. It would then be possible to prosecute individual perpetrators for crimes against humanity as the requirements of articles 7(1)(d) and 7(1)(k) of the Rome Statute have, in my opinion, been met.

The government's justification for the campaign, that it was necessary for the good of the country, must in no way be understood as legitimate. This does not mean that the urban housing and development problem should be belittled, but the actions taken in Operation Murambatsvina, and the very predictable consequences of these actions, cannot be the way to deal with these problems. When confronting the fact that the responsible individuals must have been able to foresee the consequences of the campaign, questions of a possible hidden agenda arise. As discussed in my analysis, there is a strong conviction within the general public and some NGO's that the motivations behind the Operation were political. The circumstances seem to indicate that these motivations were in fact the real driving force behind the campaign. This makes the possible crime even more severe, as the intention to harm is put beyond any doubt. If these hidden motives had been openly declared by the government I am sure that the international community would have reacted with much more authority in an attempt to hold the responsible instigators accountable. The fact that there is even a suspicion that there were political motives behind Operation Murambatsvina should, in my opinion, greatly strengthen the legitimacy of a Security Council recommendation to open an investigation.

An interesting aspect of the government's response to the UNSE report is the overall mistrust toward western involvement in Zimbabwe's internal affairs. This, it must be pointed out, is a common strategy used by the ZANU(PF) regime to divert attention from the real issues at hand. Nonetheless, it presents a vital point of discussion that I feel is in need of further study. These are relevant questions concerning a very relevant issue. Who has the right to judge who, and on what

grounds does this right rest? There is a standing third world critique against the universal human rights concept, expressing that it is a western invention which does not recognize the difficulties and dilemmas, partly brought on by western colonization, which many third-world governments are faced with. Human rights and international criminal law does not rest on such firm foundations as one could wish. This is partly due to the lack of a third world perspective and understanding of the concepts. Perhaps there is likewise a different idea and notion of what qualifies as a crime against humanity. If certain countries do not believe in the founding framework that human rights rest on, they might also choose to neglect and perhaps tone down rights abuses that the western world would qualify as hideous and even as crimes against humanity. I feel that further study on this matter is very important for the furtherance and development of human rights.

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