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Operation "Drive Out the Trash": The Case for Imposing Targeted United Nations Sanctions Against Zimbabwean Officials

Cover Page Footnote
J.D. Candidate, 2008, Fordham University School of Law; M.A. Candidate, 2008, International Political Economy and Development, Fordham University Graduate School of Arts and Sciences. I extend my deepest gratitude to the many Zimbabweans who welcomed me into their country. I would also like to thank Jim Leitner; Professors Rachel Vorspan, Jeanmarie Fenrich, and Susanna Chung; and Alasdair Ferguson for their invaluable support and comments.

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OPERATION "DRIVE OUT THE TRASH":
THE CASE FOR IMPOSING TARGETED
UNITED NATIONS SANCTIONS
AGAINST ZIMBABWEAN OFFICIALS

Katherine Hughes*

In May 2005, representatives of President Robert Mugabe’s government initiated a slum-clearance campaign entitled Operation Murambatsvina, which displaced nearly one million Zimbabweans. Using Operation Murambatsvina as a case study, this Note examines how the United Nations (U.N.) should respond to governments that violate the human rights of those living within their borders. Exploring arguments for and against the various responses available to the U.N., this Note argues that targeted sanctions are the most appropriate response to the abuses perpetrated by the Mugabe regime and offers suggestions for crafting a “smart” sanctions program.

INTRODUCTION

Please ask Mugabe what it is they want from us. What is the dirt they want to clear out—is it us?1

Since gaining independence in 1980, Zimbabweans have been President Robert Mugabe’s passengers on a wild ride from hopes of postcolonial peace2 to a reality marked by violence and discord. Starting with Operation Murambatsvina...
Gukurahundi\(^3\) in the 1980s and continuing with a controversial “fast-track” land-redistribution program,\(^4\) Mugabe’s leadership has resulted in successive waves of trauma for the nation, including food riots in 1997 and 2003,\(^5\) an internationally condemned presidential election in 2002,\(^6\) and, beginning in May 2005, a massive slum-clearance program entitled Operation Murambatsvina and its ineffective follow-up rehousing plan, Operation Garikai/Hlalani Kuhle.\(^7\) President Mugabe now rules over a failing state, where corruption, poverty, unemployment, repression, and despair are the norm.\(^8\)

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8. The Mugabe government’s latest crackdown on opposition party members and civic leaders in early 2007 resulted in reports of beatings and at least one death. See Michael Wines, In Zimbabwe, an Embattled Government Responds to Political Unrest with Violence, N.Y. Times, Apr. 8, 2007, § 1, at 14. As a result of continuing violence and the economic crisis, Zimbabweans have been leaving the country “en masse.” Justin Pearce, So Where Are Zimbabweans Going?, BBC News, Nov. 8, 2005, http://news.bbc.co.uk/2/hi/africa/4416820.stm. In addition to those emigrating, more than 3000 Zimbabweans die each week
In Zimbabwe, the movement toward urbanization, which began with independence and the repeal of racially restrictive laws, grew as the economy suffered through the 1990s and strengthened with the land-redistribution program. The end result was a flourishing informal economy. While slums in Zimbabwe grew at a slower rate than in many other postcolonial African nations, after the land seizures of the late 1990s and early 2000s, “slum pockets” began to spring up in and around urban areas. Moreover, for many years poor urban dwellers relied on other “informal and unauthorised” housing alternatives, most frequently multiple “backyard extensions,” which were added on to preexisting homes; these extensions were essentially shacks that shared the plumbing and sanitation facilities of permanent homes.

Allegedly in response to this trend toward urbanization, in May 2005 the government announced Operation Murambatsvina, a massive “clean-up” operation in Harare, which continued throughout 2006. Branded as a crackdown on illegal activity, Operation Murambatsvina initially focused on vendors in the informal markets. As the army and the police swept through the nation arbitrarily arresting flea-market traders, they also dismantled, torched, and demolished thousands of structures serving as homes and market stalls, beating those who resisted arrest or refused to participate in the demolition of their own homes. Locals referred to the due to AIDS-related illnesses. See Human Rights Watch, No Bright Future: Government Failures, Human Rights Abuses and Squandered Progress in the Fight Against AIDS in Zimbabwe 17 (2006); Int’l Crisis Group, Zimbabwe’s Operation Murambatsvina: The Tipping Point? 2 (2005) (observing that Zimbabwe’s problems are “primarily man-made, a mixture of failed governance, food insecurity and manipulation of food for political ends, and economic meltdown, including triple digit inflation, over 70 per cent unemployment, and large shortages of consumer items, fuel and foreign currency”). As a result, few Zimbabweans remain who are willing or able to stand up against the oppression the Mugabe government has long inflicted on its people.

9. See Tibaijuka, supra note 2, at 22.
10. See id. at 22–23.
11. Id. at 25.
12. Id. at 23.
13. Id. at 25.
14. Id. at 7.
16. See Tibaijuka, supra note 2, at 87.
17. By June 2005, the informal market supported at least 8 to 9 million people, while the formal economy provided income for only 1.3 million. See id. at 17.
18. Within the first week of the operation, a reported 20,000 vendors were arrested. See id. at 12.
19. Id.
destruction as Operation Tsunami, a reflection of the havoc it wreaked on the lives of the more than 700,000 people who lost their homes and jobs and the 2.4 million others who felt its more indirect effects. Ultimately, Operation Murambatsvina devastated Zimbabwe, a nation with an official population of fewer than 13 million.

While Murambatsvina's destruction has been extensively chronicled, the campaign must also be understood as a symptom of greater problems. Domestically, Zimbabwe is home to an economy free falling at record speed, one of the world's highest HIV/AIDS infection rates, a judiciary that has failed to remain independent, a deeply disappointing agricultural reform program, and an army and police force that often seem to be operating above the law. Within the larger African context, the operation provides an opportunity to reflect on a challenge much of the continent faces: the rise of slums resulting from rapid postcolonial urbanization. In fact, the Centre on Housing Rights and Evictions estimates that from 2003 through 2006 nearly two million African residents were evicted forcibly from their homes, while more than four million were evicted worldwide. In most cases, these forced evictions were targeted at "the poor, living in informal settlements or in slums."


22. According to International Crisis Group, Operation Murambatsvina exacerbated the already difficult living conditions in Zimbabwe, increasing the "number of people in need of humanitarian assistance, since orphans, widows, women, the chronically ill, elderly and disabled persons and households headed by children bore its brunt." Int'l Crisis Group, supra note 8, at 2. For details on Zimbabwe's population data, see The World Bank Group, Table 2.1: Population Dynamics, http://devdata.worldbank.org/wdi2006/contents/Table2_1htm (last visited Aug. 20, 2007).

23. See Editorial, The Agonies of Zimbabwe, N.Y. Times, Dec. 9, 2006, at A18; see also Tibaijuka, supra note 2, at 62 (expressing concern at the judiciary's inability to remain independent from Zimbabwean politics). In 2003, the last year for which data was collected, more than half of the nation's population suffered shortages in basic food and nonfood needs; malnutrition among children and inability to access health care increased by 35%; approximately 18% of the population suffered from HIV/AIDS; unemployment increased to more than 70%; and average life expectancy decreased to thirty-six years. Editorial, supra.


26. Id. at preface.
sanitation systems, spread infectious diseases, and give rise to unsafe living
and working conditions. 27 Unfortunately, these broader problems show no
signs of abating. 28

Conscious of this situation, few critics, including Zimbabweans, argue
that the status quo in urban health and safety prior to the operation was
acceptable. 29 If one disregards reports of alleged political motivations for
the operation, its official purpose—to clean up Zimbabwean cities—could
have been noble. However, due to the seemingly haphazard
implementation of the operation and the lack of alternative housing and
employment plans in place prior to its initiation, doubts persist about the
true motivations behind the program.

As a case study, this Note examines the human rights abuses perpetrated
by the Zimbabwean government during Operation Murambatsvina and
argues that, in response to these and similar abuses around the globe, the
United Nations (U.N.) should impose targeted sanctions on government
officials, including freezing their assets, banning them from international
travel, blocking shipments of luxury goods and military equipment, and
prohibiting trade with businesses and industries owned by such officials.

Although the implementation of sanctions remains a controversial area, 30
such measures, if carefully crafted, offer an effective response to violations
of international human rights norms and treaties. The objective of these
sanctions would be to coerce officials into observing international human
rights norms, in this case by adhering to Zimbabwe’s announced policy of
rehousing the displaced, as outlined in Operation Garikai/Hlalani Kuhle. 31
Sanctions would also symbolize international outrage at the perpetration of
gross human rights violations, demonstrating that the major powers of the
U.N. disapprove of the Mugabe government’s brutal treatment of its own
people. Such a message would deter other nations from committing similar
human rights violations. The U.N.’s growing reliance upon sanctions over
the past fifteen years 32 and the lessons learned in the implementation of
these programs provide a base of experience for crafting an effective
program.

Part I of this Note offers an overview of the situation in Zimbabwe
specifically, including a description of Operations Murambatsvina and
Garikai. Part I also examines the main options available to the U.N. in
response to gross violations of international human rights norms, exploring
the various types of sanctions, and looks at the U.N.’s response to the
abuses in Zimbabwe thus far. Part II examines the debate surrounding

27. See, e.g., Tibaijuka, supra note 2, at 80–83.
29. See Tibaijuka, supra note 2, at 22–23 (describing the situation in urban areas prior to
the operation).
30. See infra Part II.B.4.
31. See infra Part I.B.
32. See infra notes 209–10 and accompanying text.
Zimbabwe’s legal accountability for Operation Murambatsvina and explores the criticisms of, and counterarguments against, the implementation of each of the potential U.N. responses, especially those relating to sanctions. Finally, Part III argues that sanctions are the only viable U.N. response to the Zimbabwean crisis and are justified with respect to legal, political, economic, and humanitarian concerns. Part III concludes by recommending a specific targeted sanctions program, tailored to suit Zimbabwe’s needs. In making these arguments, this Note suggests a way for the international community to exert pressure on those responsible for human rights abuses, such as those perpetrated during Operation Murambatsvina, and also ensures that those affected by this brutal campaign are not forgotten.


Beginning on or around May 17, 2005, and continuing through 2006, the Zimbabwean government initiated Operation Murambatsvina, a slum-clearance program that initially targeted vendors and residents of Zimbabwe’s poorest and most densely populated urban areas and then reached into the rural areas. By July 2005, with hundreds of thousands of people left homeless and deprived of their livelihoods, the government responded to the crisis it had created by launching a follow-up program, Operation Garikai/Hlalani Kuhle, which aspired to provide housing and jobs for those affected by Murambatsvina. Garikai is ongoing, but it has been widely condemned as a failure, conceived only after Murambatsvina and promising goals that were always beyond its reach. Moreover, the

33. The exact date of the operation’s inception varies according to reports; however, the United Nations (U.N.) reports that the destruction began as early as May 17, 2005. See Tibaijuka, supra note 2, at 31.


35. See Gov’t of Zimb., Response by the Government of Zimbabwe to the Report by the U.N. Special Envoy on Operation Murambatsvina/Restore Order 6 (2005) (describing the object of Operation Garikai as a means of providing “decent and affordable accommodation” and promoting “small and medium scale business enterprises”); see also Tibaijuka, supra note 2, at 47–50. In her report, Tibaijuka writes that Operation Garikai seemed “hastily” planned and that the government’s ability to satisfy the immediate housing needs of those displaced was “severely limited.” Id. at 49.

36. See Carole Gombakomba, Senior UNDP Official Measures Progress Housing Zimbabwe’s Evicted, Voice of America, Dec. 6, 2006, http://www.voanews.com/english/archive/2006-12/2006-12-06-voa47.cfm (citing a lack of funds and widespread corruption as the reasons for Garikai’s failure); see also Amnesty Int’l, supra note 1, at 9–10 (describing how Operation Garikai did not appear in any published government plans during the years 2004–08 and how the failure to provide for such plans prior to forced evictions conflicts with the guidelines issued by the U.N. Committee on Social, Economic and Cultural Rights and the U.N. Special Rapporteur on adequate housing).
U.N. response to the operations has been limited, with efforts to provide humanitarian relief often frustrated by the Mugabe government.\textsuperscript{37}

Part I.A offers a brief history of events prior to Operation Murambatsvina and then investigates the immediate and long-term effects of the campaign. Part I.B explores the failure of Operation Garikai to rehouse and employ those affected by it. In Part I.C, the Note shifts focus to offer an overview of the possible responses available to the U.N., including the various types of sanctions. Part I.D investigates the U.N.’s response thus far to the humanitarian crisis created and exacerbated by both operations.

A. Operation Murambatsvina

Operation Murambatsvina, and the failure of Operation Garikai to provide relief to its victims, exacerbated the problems of an already vulnerable population. Not only did the Zimbabwean “tsunami”\textsuperscript{38} directly affect hundreds of thousands of slum dwellers, but it also carried long-term consequences that have affected food security, health, education, and the economy.

1. A Brief Political History of Zimbabwe

Since independence, the Zimbabwean political, economic, and urban landscape has changed considerably. In 1980, after an extended period of guerrilla warfare in response to then-Prime Minister Ian Smith’s policy of white-minority rule,\textsuperscript{39} President Mugabe took control of what appeared to be a “relatively sophisticated and diversified economy.”\textsuperscript{40} However, it soon became clear that the economy was already suffering “from a large fiscal deficit, low economic performance, high unemployment, price controls, and a lack of foreign currency,”\textsuperscript{41} all of which would only increase in severity in the coming years. President Mugabe’s accession also brought the dismantling of strict systems of segregation between blacks and whites and the loosening of restrictions on the movement of workers.\textsuperscript{42} As a result, the urban population increased “from 23% in 1982 to 30% by the early 1990s,”\textsuperscript{43} as Zimbabweans migrated in pursuit of work to cities whose

\textsuperscript{37} See infra Part I.A.3.c.
\textsuperscript{38} See supra note 20 and accompanying text.
\textsuperscript{40} Tibajuka, supra note 2, at 16.
\textsuperscript{41} Id.
\textsuperscript{43} Tibajuka, supra note 2, at 22.
infrastructures could not support them.\textsuperscript{44} In the 1990s, the nation’s failed Economic Structural Adjustment Policy, its cash payments to pre-independence war veterans, and its egregious military overspending on the war in the Democratic Republic of Congo all contributed to the country’s economic decline.\textsuperscript{45} Then, later that decade, the Mugabe government formalized its support of the increasingly frequent and often violent invasions of white-owned commercial farms,\textsuperscript{46} which “rendered homeless and jobless large numbers of farm workers.”\textsuperscript{47} As a result of economic decline and subsequent mass unemployment, Zimbabweans turned to an informal economy to support themselves, with the tacit approval and even encouragement of the government.\textsuperscript{48}

Compared to other African nations facing similar rapid urbanization crises, Zimbabwe’s rate of slum occupancy has remained unusually low until recent years.\textsuperscript{49} This is for two reasons: First, the nation’s strictly enforced building codes restricted the construction of slum settlements; and second, areas surrounding cities consisted mainly of farms, which precluded settlers from squatting on them.\textsuperscript{50} Although the farm invasions offered poor urban settlers new access to land near cities, many urban residents had already come to rely on rentals of “backyard extensions.”\textsuperscript{51} Because the Zimbabwean government was unable to keep pace with the housing demand, the U.N. reports that leaders turned “a blind eye to these developments,”\textsuperscript{52} thereby forcing local authorities to disregard strict planning bylaws.\textsuperscript{53} In May 2005, the Zimbabwean government changed its position, suddenly enforcing these laws through Operation Murambatsvina and inflicting what is perhaps the most widely felt example of President Mugabe’s continuing campaign of oppression and violence.

\textsuperscript{44} See id.
\textsuperscript{45} See id. at 22–23; Zimb. Human Rights NGO Forum, supra note 34, at 3–4.
\textsuperscript{46} See Zimb. Human Rights NGO Forum, supra note 34, at 3–4.
\textsuperscript{47} Id. at 4.
\textsuperscript{48} See id. at 4–5 (detailing how the government has allowed informal traders to operate without appropriate licenses and has overlooked the construction of illegal shelters in response to housing shortages). For example, the Zimbabwe Parliament “allowed for the development of non-residential activities in residential areas,” sending “a clear signal to local authorities of the government’s desire to promote the informal economy in residential areas.” Tibajuka, supra note 2, at 23.
\textsuperscript{49} See Tibajuka, supra note 2, at 25.
\textsuperscript{50} See id. at 24–25 (indicating that in 2001 Zimbabwe’s slums comprised only 3.4% of the urban population, while in other “industrialized nations” the figure stood at approximately 6.2%).
\textsuperscript{51} Id. at 25.
\textsuperscript{52} Id. at 26. Furthermore, Tibajuka noted in her report that by “2004, backyard tenancy had become a dominant source of housing for low-income households living in urban areas. In Mutare, for example, the mission was informed that there were 34,000 backyard extensions compared to 27,000 legally recognised and approved dwellings. In Victoria Falls, they comprised 64% of the housing stock.” Id.
\textsuperscript{53} See id. at 24–26.
\textsuperscript{54} See id. at 12.
2. The Government’s Justifications for Operation Murambatsvina

The government put forth a number of reasons for instigating the slum-clearance campaign. The outbuildings and informal vendors were blamed for creating eyesores and spoiling the beauty of cities; interfering with traffic flows; encouraging activities such as illegal foreign-exchange trading and commodity hoarding, which were blamed for undermining the economy; posing a health hazard due to inadequate sanitation facilities; and harboring criminals, prostitutes, and illegal aliens. Nonetheless, nongovernmental organizations (NGOs) and civic groups cite various political justifications as the main spark for the operation. In March 2005, poor urban dwellers supported the opposition party in parliamentary elections, suggesting that the operation could have been a punishment meted out by the ruling party, the Zimbabwe African National Union–Patriotic Front (ZANU–PF), and an attempt to relocate opposition supporters to rural areas where they could be more easily monitored. However, since the operation also affected ZANU–PF supporters, many posit that it was either an attempt to quell urban unrest by dispersing the population or an attempt to gain control over the informal markets for the government’s benefit. Since the government did not issue an official statement declaring the specific reasons for the operation, speculations on motive remain just that; ultimately, all that is clear is that Murambatsvina carried with it a devastating immediate impact.

3. Direct Effects of Operation Murambatsvina

Operation Murambatsvina directly affected a substantial proportion of the Zimbabwean population. In its first three weeks, the campaign left more than 700,000 people homeless or jobless and the U.N. received...
reports of police brutality, tens of thousands of arrests and detentions, and of residents being forced to dismantle their own homes and businesses, including those who possessed the required building permits and complied with all relevant laws. In addition, the government reported that during these inaugural weeks, approximately 92,460 housing structures were destroyed, directly affecting 133,534 households, and 32,538 businesses were demolished, directly eliminating the livelihoods of approximately 97,614 people. Moreover, several NGOs reported deaths arising directly from the operation, although these reports stand in the single digits and remain unsubstantiated. This section examines the immediate issues raised by the implementation of Operation Murambatsvina, illustrating the devastation wrought during the winter months of 2005.

a. Lack of Notice

In the run up to the operation, the government gave residents little or no notice of their impending evictions. On May 19, 2005, Ms. Sekesai Makwavarara, Chairperson of the Harare Commission, delivered a speech at Harare Town House describing the operation as a means of purging illegal activity from city centers. Then, on May 24 and 26, 2005, The Herald, one of Zimbabwe's major newspapers, printed an official notice...
from the City of Harare, informing residents that all illegal structures should be dismantled or registered with local authorities by June 20, 2005.68 Residents of other cities appear not to have received any warning at all.69

Ultimately, the police and army forces charged with implementing the operation completely disregarded the deadlines included in the newspaper notice. In fact, in the weeks preceding its publication, the police had already begun randomly rounding up informal traders and destroying their vending stalls.70 Then, in the days that followed the newspaper notice, a "massive military style operation"71 kicked off in Harare, Bulawayo, and Mutare, as well as in other urban areas throughout the country.72 For example, on June 8, in Killarney, a well-known settlement located just outside of Bulawayo, police informed residents that they should remove their belongings in order to prepare for demolition of their homes and businesses.73 Then, on June 12, police arrived at dawn, torching structures and bulldozing long-standing residential communities.74 The U.N. has determined that the government’s failure to provide adequate notice of the program and the police’s disregard of the official deadline contributed considerably to the inability of evictees to find alternative housing and to the destruction of their property.75

b. Lack of Housing and Employment Alternatives

The lack of notice further compounded the problems faced by those who had no viable options for alternative housing or employment.76 From the start, the government ordered victims to return to their rural homes, including those who had emigrated or fled as refugees from neighboring nations and those who never or no longer had rural homes.77 Additionally, many of those who did have rural homes could not afford to travel to them;78 the government assisted in these relocation efforts by trucking the displaced to rural areas, abandoning them in places where they had no resources or contacts,79 where food shortages were increasing in severity,80

68. See Tibaijuka, supra note 2, at 58, 96.
69. See id. at 58.
70. See id. at 87.
71. Id. at 12; see also Zimb. Human Rights NGO Forum, supra note 34, at 2.
72. See Tibaijuka, supra note 2, at 12; see also Zimb. Human Rights NGO Forum, supra note 34, at 6–7.
73. See Tibaijuka, supra note 2, at 26.
74. Eighty-three percent of Killarney residents had no rural home to which they could return. See id. at 26.
75. See id. at 58, 77–78.
78. See id.
and where they were often rejected by tribal leaders for the "immorality of [their] urban lifestyles."  

By July 18, 2005, the U.N. estimated that, of the total number directly affected, approximately 20% were living without any shelter; another 20% had moved or were forced to move to rural areas; 30% had found shelter with family or friends; and the final 30% had sought refuge in churches and other temporary locations.  

Those without family or friends upon whom they could rely were forced to adapt to life in the bush or in government-operated camps.  

Now, more than two years after the implementation of the operation, these problems persist. In September 2006, Amnesty International reported that many of the victims had found some sort of shelter since the operation, but that others remained living in the open, were contending with overcrowded and filthy conditions, or were sheltering in rooms intended to be used as bathrooms. In addition, as of August 2006, many of the affected were still staying at a government-run internally displaced persons camp in Harare, which was notorious for its poor sanitation facilities and the ill health of its residents. And in May 2007, when Zimbabwean...
activists marked the second anniversary of the operation’s inception, they observed that whole families were now staying in “makeshift plastic shack[s],” living “a life worse than they led in the concrete and brick structures they were living in before the [O]peration.” Unfortunately, due to the preexisting housing shortage that was further exacerbated by Murambatsvina, few alternatives exist for those still suffering.

Murambatsvina also directly affected the livelihoods of tens of thousands of Zimbabweans. Due to a lack of formal employment in the years preceding the operation, the informal sector had become the foundation of the Zimbabwean economy. Not only did the government target the stalls of these informal-economy street vendors, but it also eliminated housing outbuildings, which pensioners had rented out to lodgers in order to supplement their meager incomes. Roadside markets—although now reemerging—were shut down, depriving rural residents of vital income and eliminating a major source of business for the agricultural industry. In addition, the police seized, destroyed, or auctioned off the stocks of many informal traders’ shops, dealing these vendors a further financial blow. The destruction left gaps in both the formal and informal employment sectors due to the large percentage of the population forced to relocate in search of housing. Murambatsvina exacerbated what was already a record unemployment rate by eliminating much of the informal sector and leaving many Zimbabweans entirely dependent on foreign and charitable aid.

While the justifications for the operation remain uncertain, it is clear that the government planned its implementation poorly, providing no

90. See Amnesty Int’l, supra note 1, at 1. Rents reportedly doubled and tripled in the aftermath of the operation. See Tibajuka, supra note 2, at 36.
91. See Tibajuka, supra note 2, at 35–36; see also ActionAid Int’l S. Africa P’ship Programme, supra note 60, at 14–19.
92. See Tibajuka, supra note 2, at 17, 24.
93. See Nicolai, supra note 77, at 818–19. The term “outbuildings,” in this case, refers to shacks, built mainly from wood but also from concrete blocks, that were attached to permanent housing structures. Some homes had four or more of these shacks added on to the main building. See Tibajuka, supra note 2, at 25.
94. See Tibajuka, supra note 2, at 35–36. Without these sources of informal income, many pensioners were forced to survive on US$2 per month. See id.
95. See id. at 36.
96. See id. at 35, 63.
97. See id. at 36.
98. See id. at 75; see also Wines, supra note 23; Zimbabwe ‘Running Out of Wheat,’ BBC News, Mar. 4, 2006, http://news.bbc.co.uk/2/hi/afrika/4773876.stm (observing the sharp increase in inflation rates over the past two years).
99. See Tibajuka, supra note 2, at 35.
alternatives for the displaced either through national channels or aid agencies. Moreover, many churches declined to assist victims in the immediate aftermath of the operation, fearing a governmental backlash. As the crisis grew, at least in Mutare, one major church took a lead in distributing aid, calling on smaller local churches to assist. Subsequently, a black market for food, blankets, and other emergency supplies grew out of the corruption and desperation of those working in the local churches. Soon after, in Mutare, the government took control of the distribution of food and blankets, resulting in the outright politicization of aid and leaving opposition supporters without basic necessities. In its implementation of Murambatsvina, the Zimbabwean government failed to provide adequate humanitarian assistance and also blocked such aid from being supplied by other bodies.

4. Long-Term Implications of Operation Murambatsvina

Beyond the direct disruption to the employment and housing sectors, Operation Murambatsvina affected the lives of another 2.4 million Zimbabwe residents. This section highlights some of the many ways the operation’s effects have persisted, emphasizing the lack of food security,

101. See Confidential Interview with a representative of the Zimbabwean Anglican Diocese, in Mutare, Zimb. (July 6, 2006). The Anglican Diocese was one of the only church groups to respond immediately to the emergency situation, as most churches and aid groups were afraid to act out of fear of government retribution against them, including the possibility of interference with sources of funding. Id. The government’s Non-governmental Organizations Bill, which has not yet been enacted but serves as a constant threat to all aid organizations operating in Zimbabwe, denies local groups access to foreign funding if they are involved with political issues. See Human Rights Watch, Zimbabwe’s Non-Governmental Organizations Bill: Out of Sync with SADC Standards and Threat to Civil Society Groups 4 (2004); see also Zimb. Human Rights NGO Forum, supra note 34, at 13–14 (describing how the government blocked the U.N. from providing aid during the operation and how such organizations were forced to operate “clandestinely”). Moreover, in April 2007, the government reportedly “revoke[d] the legal basis for all nongovernmental organizations to operate inside the country, arguing that some of the groups have provided cover for Western governments seeking to overthrow” the president. Michael Wines, Zimbabwe: Aid Groups’ Status Revoked, N.Y. Times, Apr. 18, 2007, at A6.
102. See Confidential Interview with a representative of the Zimbabwean Anglican Diocese, supra note 101.
103. See id. The Chicago Tribune reported in November 2005 that “a nephew of Mugabe’s was arrested . . . for reselling subsidized flour in Zambia, where it fetched a higher price.” Paul Salopek, On Road to Economic Meltdown: Insular Zimbabwe Is Fast Becoming Africa’s North Korea, Chi. Trib., Nov. 6, 2005, § 1, at 4.
104. See Confidential Interview with a representative of the Zimbabwean Anglican Diocese, supra note 101. In addition, the government only made matters worse when in July 2005 it forced the U.N. to condemn 900 tons of food donated by the United States, claiming that it “look[ed] too green after cooking.” In fact, the food was simply “overfortified with nutrients.” Salopek, supra note 103.
105. See Tibaijuka, supra note 2, at 60–61, 71, 74.
106. See id. at 7.
increased exposure to disease, disruption of the education system, and further negative impacts on the faltering Zimbabwean economy.

a. Exacerbation of Food Insecurity

At the inception of the operation, Zimbabwe was already facing severe food shortages, and conditions only worsened as the destruction swept through its cities. Residents were rendered jobless, without any source of income to obtain food, and the informal sector, which sustained many residents, was left in chaos. The lack of foreign currency in the Zimbabwean federal reserves and the country's inability to access any credit to import food stocks, as well as a reported drought, placed Zimbabwe on the brink of famine during the 2005 to 2006 season. While food stocks appeared to have increased slightly in 2006, the U.N. estimated that approximately seventeen percent of the rural population (1.4 million people), including those still mobile after the operation, would be unable to provide themselves with adequate food supplies for the period of December 2006 through March 2007. Furthermore, continued rising inflation and unemployment rates mean that Zimbabweans' lack of food security will not be resolved going forward.

b. Increased Exposure to Disease and Illness

Operation Murambatsvina also exposed hundreds of thousands of Zimbabweans to disease and illness as a result of disrupted health care and

107. See id. at 47.
108. See id. at 38.
109. See id. at 47.
110. See U.N. Office for the Coordination of Humanitarian Affairs, Consolidated Appeals Process, Zimbabwe: 2007, at 25 (2006); see also Jeff Koinange, Living Off Rats to Survive in Zimbabwe, CNN.com, Dec. 19, 2006, http://edition.cnn.com/2006/WORLD/africa/12/19/koinange.zimbabwe/ (describing the practice of eating field rats to cope with increasingly severe food shortages). In August 2007, the U.N. World Food Programme (WFP) reported that "an estimated 3.3 million [Zimbabweans would] need assistance during the peak hunger period between November and March" of the 2007 to 2008 season. UN in Food Aid Plea for Zimbabwe, BBC News, Aug. 1, 2007, http://news.bbc.co.uk/2/hi/africa/6926651.stm. WFP further declared that, during this peak period, Zimbabweans will be "forced to adopt risky survival measures, including eating potentially poisonous wild foods, selling their remaining household assets, exchanging sex for food and crossing illegally into South Africa." Id.
111. Operation Murambatsvina has been described as a "Draconian government slum-clearing campaign" that has resulted in reports of unemployed market women turning to prostitution to generate income, families eating out of garbage damps, and a climate of fear in which both public figures and the operation's now-homeless victims assume that they are being spied upon by President Mugabe's secret police force. Salopek, supra note 103. In reporting on the December 2006 arrest of 16,000 Zimbabwean miners, the BBC noted Zimbabwe's struggles with "chronic unemployment" and "the world's lowest life expectancy and highest inflation rate." Zimbabwe Holds 16,000 over Mining, BBC News, Dec. 28, 2006, http://news.bbc.co.uk/2/hi/africa/6214431.stm.
a lack of sanitation facilities and clean water. In the weeks immediately following the operation, victims were at risk of contracting dysentery, cholera, pneumonia, tuberculosis, and diarrhea, either due to the overcrowded conditions at the camps or as a result of life without shelter at all. During her visit, the U.N. Special Envoy observed displaced persons collecting water from rivers and shallow wells and using untreated areas for sanitation purposes. As of August 2006, this situation had barely improved, with most camp residents still living in shelters made of plastic sheeting; at that time, the lack of water and sanitation facilities remained a major concern. In addition, many of the displaced reported that the condition of chronically ill members of their families worsened both during and after the operation. As early as July 2005, the U.N. had received reports of disruption to health care, indicating that women who lost access to reproductive services had no choice but to give birth in the open and that many HIV/AIDS patients had lost access to antiretroviral drugs and home-based care. Aggravating concerns over disrupted health-care services, the displacement also increased the vulnerability of women, with overcrowding and homelessness leading to dangerous sexual practices, such as prostitution, and increased sex-related violence, heightening women’s chances of contracting sexually transmitted diseases. While the immediate impact of the disruption of the health-care delivery system is clear, the effects on the nation in the years to come remain to be seen.

c. Disruption of Education

Murambatsvina interrupted the delivery of education, the success of which is often used as a proxy for measuring the vulnerability of children. The operation occurred during the middle of the school year.

112. See Tibajjuka, supra note 2, at 37–38 (discussing the increased risk of exposure to waterborne diseases in the immediate aftermath of Murambatsvina); see also id. at 40 (describing the increased risk of HIV infection due to vulnerability caused by Murambatsvina).
113. See id. at 37–38.
114. See id.
115. See Amnesty Int’l & Zimb. Lawyers for Human Rights, Zimbabwe: Shattered Lives—The Case of Porta Farm, at 17, AI Index AFR 46/004/2006, Mar. 31, 2006 (describing the plight of the 6000 to 10,000 residents of Porta Farm who were forcibly evicted to Caledonia Farm and then to Hopley Farm, from which aid agencies and the U.N. were subsequently denied access); see also Amnesty Int’l, supra note 1, at 4–5.
116. See ActionAid Int’l S. Africa P’ship Programme, supra note 60, at 21.
117. See Tibajjuka, supra note 2, at 39. The U.N. estimates that approximately 79,500 HIV/AIDS patients over the age of fifteen were displaced in the first few weeks of the operation. See id.
118. See id. In June 2005, the U.N. reported that since May sales of male condoms had dropped by more than 20% and female condoms by 40%. See id. at 40–41.
119. See ActionAid Int’l S. Africa P’ship Programme, supra note 60, at 13.
120. See Tibajjuka, supra note 2, at 41.
and as of August 2005 dropout rates had increased dramatically,\textsuperscript{121} most likely because of displacement, a lack of transportation, and an inability to pay bus fares and other school fees.\textsuperscript{122} In fact, children who were moved to certain government-run camps, also referred to as transit camps, appeared to have no schools to attend at all.\textsuperscript{123} Moreover, in the wake of the operation, teachers were displaced, several schools closed, and school heads turned students away due to overcrowding and an uncertainty about student transfer rules.\textsuperscript{124} Again, it remains to be seen whether the Zimbabwean education system will rebound from this massive disruption.

d. Disruption of the Zimbabwean Economy

While it is clear that Operation Murambatsvina had a deep impact on the Zimbabwean economy, it is difficult to disentangle its effects from what was already a failing system. The direct economic cost of the operation to Zimbabwe has been estimated at approximately fifteen to twenty percent of the country's gross domestic product, which is the equivalent of US$700 million.\textsuperscript{125} The elimination of such a substantial proportion of an economy that produces at the rate of US$4 billion per year undoubtedly carries enormous long-term effects for the formal economy.\textsuperscript{126} Furthermore, on a micro-level, many victims lost their only assets, which consisted of their homes and vending stalls, including the materials they used to build them, and their shop stocks.\textsuperscript{127} While the economy was in decline prior to the campaign, Murambatsvina exacerbated the situation for individuals and the nation as a whole.

In conclusion, Operation Murambatsvina carried serious humanitarian consequences for Zimbabweans both immediately and in the long run. Not only did victims lose their homes and jobs but, as of this writing, they continue to suffer under similar, if not worse, adverse conditions. The next section examines the government's response to this humanitarian crisis in the weeks and months after Murambatsvina.

\textsuperscript{121} ActionAid reported that 22\% of the 23,511 households it surveyed indicated that their children were no longer attending school. In addition, Harare, Mutare, and Bulawayo reported a 20\% increase in dropout figures, while children of female-headed households appeared more likely to drop out than those in male-headed households. See ActionAid Int'l S. Africa P'ship Programme, supra note 60, at 14.

\textsuperscript{122} See Tibaijuka, supra note 2, at 41–42.

\textsuperscript{123} See id.

\textsuperscript{124} See id.

\textsuperscript{125} See Zimb. Human Rights NGO Forum, supra note 34, at 15.

\textsuperscript{126} See id.

\textsuperscript{127} See Tibaijuka, supra note 2, at 35; Zimb. Human Rights NGO Forum, supra note 34, at 7.
B. Operation Garikai

Five weeks after Murambatsvina began, the government announced that the program had been completed and that Operation Garikai/Hlalani Kuhle would replace it. Officially conceived by the Zimbabwean government as a means of recognizing the dignity and hopes of Murambatsvina’s victims, Garikai may also be framed in other ways: as a belated response to the overwhelming humanitarian disaster the government created, as a reaction to objections to Murambatsvina from nations such as the United States and the United Kingdom, or as a preemptive measure to stave off further international condemnation in response to the U.N.’s impending report. The new campaign aspired to construct thousands of houses, business facilities, and a sorely lacking infrastructure throughout the country all by August 2005. Vice President Msika hosted the official launch ceremony for Garikai, which the U.N. Special Envoy attended during her two-week mission to the devastated nation. In addition, the government announced that ZW$3 trillion had been budgeted for new homes; however, no mention of this expenditure was made in the 2005 budget.

Almost immediately, the U.N. expressed doubts about the government’s ability to implement Garikai. In view of Zimbabweans’ humanitarian needs, the official U.N. report stated that Garikai did “not appear to have accounted for the immediate shelter needs of people who ha[d] been rendered homeless at the onset of winter.” Moreover, the Special Envoy’s report pointed out that just the first phase of the operation would

129. See Gov’t of Zimb., supra note 35, at 7.
130. See Andrew Meldrum, Mugabe Feels the Pinch, Guardian Unlimited, Sept. 7, 2005, http://www.guardian.co.uk/comment/story/0,,1564611,00.html (highlighting the international criticism Mugabe has faced). In fact, the Zimbabwean government has “acknowledged that Murambatsvina was carried out without sufficient safety nets to take care of the victims” and was “somewhat embarrassed by the international outcry.” Int’l Crisis Group, supra note 8, at 7 (internal quotation marks omitted).
131. See Gov’t of Zimb., supra note 35, at 20. International nongovernmental organizations (NGOs), including International Crisis Group, have speculated that Operation Garikai/Hlalani Kuhle was conceived in response to international criticism and “probably to pre-empt the report that Tibaijuka was preparing for the U.N.” Int’l Crisis Group, supra note 8, at 7.
132. See Tibaijuka, supra note 2, at 47–48; see also Amnesty Int’l, supra note 1, at 7–9.
133. In his speech, Vice President Msika announced that Zimbabwe was “destroying in order to build.” Lester Holloway, Zimbabwe—The Other Half of the Story, Blink, June 30, 2005, http://www.blink.org.uk/print.asp?key=7891.
134. See Tibaijuka, supra note 2, at 47. With spiraling inflation, the value of this money dramatically depreciated almost immediately, if it was earmarked at all. See Solidarity Peace Trust, supra note 79, at 5 (describing the effect of inflation on Garikai funds).
135. See Tibaijuka, supra note 2, at 47–48.
136. See Nicolai, supra note 77, at 822.
137. See Tibaijuka, supra note 2, at 49.
cost approximately US$35 to $40 million, which demanded foreign currency that would not only strain other sectors but would also drain the nation’s remaining currency reserves.138 Finally, the report noted that in recent years the government had allocated less than 5000 plots of land to its constituents per year, a number dramatically disproportionate to the 4900 it announced it would attempt to allocate within a target time frame of less than two months.139

Early on, a number of NGOs, including Amnesty International,140 Human Rights Watch,141 and Solidarity Peace Trust, which described the program as mere “window dressing,”142 reported that Garikai was failing to address the needs of Murambatsvina’s victims. By the government’s own estimates, 92,460 homes were destroyed during the first five weeks of the operation, yet it announced a rebuilding target of just 15,825.143 By May of 2006, officials declared that only 3325 homes had been rebuilt, with Amnesty International reporting that the majority of the homes were incomplete, lacking windows, doors, floors, roofs, and sanitation and water facilities.144 Furthermore, many of those homes were of substandard construction, with twenty Garikai homes allegedly collapsing after a rainfall in Chinoyi in November 2005 and others built on bedrock, where sewerage pipes could not be laid.145 Regardless of quality, construction of homes in most areas remains at a standstill due to the government’s failure to pay contractors.146

The government itself has admitted that the allocation of the newly built homes has been politicized and that victims have not benefited. Local Government Minister Ignatius Chombo has publicly stated that government officials used the program for their own benefit, allocating homes to

138. See id. at 48.
139. See id.
140. See Amnesty Int’l, supra note 1, at 7–11.
142. Solidarity Peace Trust, supra note 79, at 6.
143. See Amnesty Int’l, supra note 1, at 11.
144. See id. at 11–12. In Hobehouse, a suburb of Mutare, most Garikai homes, which appear to be less than three meters long and wide, have been built without windows, doors, indoor plumbing, or toilet facilities. Various interviewees reported that the displaced victims of the operation would never benefit from these constructions for a number of reasons. First, there simply are not enough homes to go around. Second, homes were mainly being distributed to active ZANU–PF party members and their families, who have identification cards to prove their membership. Finally, anyone who wishes to take advantage of the program is required to pay a fee of ZW$6,000,000 (as of July 2006) to the government and make monthly payments thereafter; beneficiaries are required to provide their own windows and doors and install their own plumbing and electricity, all at their own cost. Confidential Interviews with victims of Operation Murambatsvina, in Mutare and Bulawayo, Zimb. (July–August 2006).
145. See Solidarity Peace Trust, supra note 7, at 28.
146. See id.
themselves, family members, and friends.\footnote{147}{See id. at 32–35 (discussing the corrupt allocation of Garikai homes).} Member of Parliament David Coltart (of the Movement for Democratic Change (MDC) opposition party) pointed out that at Cowdry Park, a targeted area near Bulawayo, one need only look at the clotheslines of the newly built homes to see the uniforms of government soldiers drying in the sun.\footnote{148}{See Interview with David Coltart, \textit{supra} note 57.} In addition to overcoming such political hurdles, persons wishing to acquire Garikai homes must pay large deposits and make substantial monthly payments,\footnote{149}{See Solidarity Peace Trust, \textit{supra} note 7, at 29 (describing the process of acquiring a home in Bulawayo, which involves a wait list, an initial lump-sum payment, further monthly payments, and payments to the local municipal services provider for services that may or may not exist).} requirements that are practically impossible for the unemployed to meet. As a result of the financial barriers to ownership and the pervasive corruption at all levels of the allocation process, few of Murambatsvina’s victims have benefited from Garikai’s rehousing plan,\footnote{150}{See generally Amnesty Int’l, \textit{Zimbabwe: Housing Policy Built on a Foundation of Failures and Lies}, AI Index AFR 46/015/2006, Sept. 8, 2006.} and the question of what is to be done still remains.

\textbf{C. Possible U.N. Responses to Operations Murambatsvina and Garikai}

At the end of the Cold War, the international approach to human rights abuses perpetrated by sovereign nations against their own citizens shifted.\footnote{151}{See Joanna Weschler, \textit{Human Rights, in} The U.N. Security Council: From the Cold War to the 21st Century 55, 55 (David M. Malone ed., 2004). The communist bloc supported the post-Westphalian view of sovereignty, which posited that human rights concerns went beyond the mandate of the U.N., as they did not involve relations between nation states but rather within nation states. See id. Article 2(7) of the U.N. Charter may be interpreted as a defense of this thesis: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.” U.N. Charter art. 2, para. 7.} Previously, the U.N. had only marginally addressed such issues, but in the early 1990s, via a Security Council resolution, the U.N. first directly included human rights as part of the process of peace building within a country.\footnote{152}{See Weschler, \textit{supra} note 151, at 56. Security Council Resolution 693 established a U.N. Observer Mission in El Salvador for purposes of monitoring and reporting on human rights violations. See S.C. Res. 693, para. 13, U.N. Doc. S/RES/693 (May 20, 1991).} Since then, the U.N. has made great progress\footnote{153}{For example, in 1993 the U.N. Security Council established the Ad Hoc Criminal Tribunal for the Former Yugoslavia via Resolution 827, and in 1994 it established a tribunal for Rwanda. See Weschler, \textit{supra} note 151, at 59–60; see also S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993); S.C. Res. 955, U.N. Doc. S/RES/955 (Nov. 8, 1994). In addition, the Rome Statute of the International Criminal Court (ICC) established a permanent criminal court to address such human rights violations as genocide and crimes against humanity. See Rome Statute of the International Criminal Court, U.N. Doc. A/CONF. 183/9 (17 July 1998).} in
recognizing the observance of international human rights norms as integral to the creation of "conditions of stability and well-being,"\(^1\)\(^5\)\(^4\) the mandate it sets for itself in the U.N. Charter. In approaching a situation of internal human rights abuses, such as in Zimbabwe, the U.N. now has a number of tools at its disposal.

1. Diplomacy and Negotiation

First, the U.N. can engage the perpetrators of such abuses in diplomatic negotiations in an attempt to end the offending behavior. The U.N. may rely on its own representatives or on another government to communicate with officials responsible for or involved in the conflict in order to coerce or negotiate a compromise or resolution.\(^1\)\(^5\)\(^5\) \(^1\)\(^5\)\(^4\) Referred to as "track-one diplomacy,"\(^1\)\(^5\)\(^6\) these techniques allow the U.N. to engage offending actors in direct negotiation, to support other nations’ efforts at negotiation, or to act as mediators to the conflict.\(^1\)\(^5\)\(^7\)

With respect to Zimbabwe, the U.N. and the African Union have been relying on South African President Thabo Mbeki to initiate and lead negotiations with President Mugabe in order to find a resolution to Zimbabwe’s current economic and political crisis.\(^1\)\(^5\)\(^8\) Referring to his efforts as "quiet diplomacy," the media and the international community largely agree that President Mbeki’s efforts have thus far failed,\(^1\)\(^5\)\(^9\) although

\(^{154}\) U.N. Charter art. 55.
\(^{156}\) Id. Nan differentiates between track-one diplomacy, which refers to official diplomatic communications and encompasses most of the U.N.’s work, and track-two diplomacy, which involves unofficial communications from advocates, mediators, and NGOs, among other groups. Id.
\(^{157}\) Id.
\(^{158}\) See Mbeki to Tackle Zimbabwe Crisis, BBC News, Mar. 29, 2007, http://news.bbc.co.uk/2/hi/africa/6505391.stm; Interview with South African President Thabo Mbeki (BBC World Service broadcast May 24, 2006), available at http://www.bbc.co.uk/worldservice/programmes/newshour/news/story/2006/05/060525_mbeki.shtml. Since his efforts to mediate talks between the two rival Zimbabwean political factions began earlier this year, in anticipation of the upcoming 2008 presidential elections, Mbeki has remained quiet publicly. See Zimbabwe Crisis Talks Adjourned, BBC News, June 20, 2007, http://news.bbc.co.uk/2/hi/africa/6223708.stm ("Mr Mbeki was asked by fellow southern African leaders to mediate in an effort to resolve Zimbabwe’s political and economic crisis."). After a recent Southern African Development Community (SADC) meeting, at which the results of Mbeki’s negotiations were rumored to have been discussed, "the US state department said Mr Mugabe’s government had not shown any commitment to a democratic, prosperous Zimbabwe" and Mbeki issued no statement on his progress. See No Pressure on Mugabe from Summit, BBC News, Aug. 18, 2007, http://news.bbc.co.uk/2/hi/africa/6952486.stm.
a recent summit of fourteen African nations declared that Mbeki would embark on a more formal course of discussions.\textsuperscript{160} South Africa’s decision to pursue such nonaggressive tactics seems to rest on several rationales: the goal of preserving the “force-based”\textsuperscript{161} ruling party, ZANU–PF, as a means of preventing further civil conflict; the widely held view of President Mugabe as a hero of African liberation and the resistance to outside interference with his legacy; and the belief that Zimbabweans must rely only on themselves rather than on outsiders to resolve the political conflict.\textsuperscript{162} These rationales suggest that even the humanitarian crisis precipitated by Operation Murambatsvina and Mugabe’s leadership will not affect South Africa’s relations with Zimbabwe.\textsuperscript{163}

2. International Criminal Prosecution

Depending on the level of abuse, the U.N. may also choose to prosecute those responsible for human rights abuses under the Rome Statute of the International Criminal Court (ICC).\textsuperscript{164} For the court to exercise jurisdiction over a state or its citizens, the state must have signed and ratified the statute.\textsuperscript{165} Alternatively, either another state or the Security Council can refer a situation that threatens international peace and security in a non-ratifying state to the court’s prosecutor under article 13(b).\textsuperscript{166} On July 18, 1998, Zimbabwe signed the treaty; however, the government has yet to ratify it.\textsuperscript{167} Therefore, prosecution of Zimbabwe and its nationals would require a referral.

The court’s power to prosecute is further limited in a number of ways. First, jurisdiction extends only to the gravest crimes, including genocide, crimes against humanity, war crimes, and the crime of aggression,\textsuperscript{168} all of

\textsuperscript{160} See Mbeki to Tackle Zimbabwe Crisis, supra note 158. The results of these negotiations, which included representatives from both the ruling party and the opposition, with Mbeki leading, were presented to the African Union in August 2007. See Patience Rusere, US Voices Skepticism on South African-Mediated Zimbabwe Crisis Talks, Voice of America, June 19, 2007, http://www.voanews.com/english/Africa/2007-06-19-voa67.cfm; see also supra note 158 and accompanying text.

\textsuperscript{161} Int’l Crisis Group, supra note 8, at 13.

\textsuperscript{162} See id. at 14; see also Interview with South African President Thabo Mbeki, supra note 158.

\textsuperscript{163} See Int’l Crisis Group, supra note 8, at 13.

\textsuperscript{164} See Rome Statute of the International Criminal Court, supra note 153.

\textsuperscript{165} See Nicolai, supra note 77, at 828–29.

\textsuperscript{166} See Rome Statute of the International Criminal Court, supra note 153, art. 13(b); see also Philippe Kirsch, John T. Holmes & Mora Johnson, International Tribunals and Courts, in The U.N. Security Council: From the Cold War to the 21st Century, supra note 151, at 281, 288–89; Nicolai, supra note 77, at 834–36 (arguing that the Security Council should refer President Mugabe to the ICC’s prosecutor).


\textsuperscript{168} See Rome Statute of the International Criminal Court, supra note 153, art. 5.
which the court defines narrowly in favor of the accused. In addition, since the court is a "court of last resort," a state may object to its referral by offering a "complementarity challenge," proving that it has genuinely attempted to investigate or prosecute the situation itself. Finally, the court may only act if the situation involves a "widespread or systematic attack against a civilian population" and where the perpetrator had knowledge of the attack.

3. Action Under U.N. Charter Chapter VII

Under the U.N. Charter, the U.N. can authorize either the use of military force to halt abuses or impose economic, travel, trade, and diplomatic sanctions to coerce policy change. The charter charges the Security Council with the mandate of maintaining international peace and security, and, therefore, the Security Council is responsible for deciding when the use of force or the imposition of sanctions is appropriate against states, groups, or individuals. While the General Assembly frequently releases declarations on issues related to the maintenance of peace and security, the Security Council is the only branch of the U.N. that has the power to issue legally binding resolutions on member states. For this reason, the Security Council is seen as the primary body for enforcing international human rights norms and treaties.

Chapter VII offers the responses available to the Security Council when it encounters any international "threats to the peace, breaches of the peace,

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169. See Nicolai, supra note 77, at 829.
172. See id. at 288–89.
174. See U.N. Charter arts. 41, 42.
175. See U.N. Charter art. 23.
177. See article 25 of the U.N. Charter, which indicates member states’ legal obligation to "accept and carry out the decisions of the Security Council in accordance with the present Charter." U.N. Charter art. 25. See also Steven R. Ratner, The Security Council and International Law, in The UN Security Council: From the Cold War to the 21st Century, supra note 151, at 591, 601 (discussing the Security Council’s role as an international human rights enforcement body).
178. See Ratner, supra note 177, at 601–02 (explaining that the Security Council’s mandate extends beyond ensuring compliance with its own resolutions under article 25 to the enforcement of other binding international law, including human rights treaties and norms).
and acts of aggression.” Once the Security Council determines that such a threat exists, it decides what measures should be taken “to maintain or restore international peace and security.” Article 41 governs the Security Council’s use of economic sanctions, and article 42 controls the use of military force. The language of article 41 is broad, covering all “measures not involving the use of armed force,” including “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.” Article 42 implies that recourse to military force is to be used as a last resort, only when measures under article 41 “would be inadequate or have proved to be inadequate.” Although reliance on either of these articles technically requires the finding of a “threat to the peace,” a brief review of recent Security Council resolutions reveals that this language is easily satisfied. In the past, the U.N. has determined that certain instances of racism, genocide, starvation, and “massive violations of human rights” have all constituted threats to the peace.

Furthermore, over the past several years, the U.N. has moved toward a more liberal definition of a threat to the peace through the emergence of the “responsibility to protect” doctrine. Introduced in a report by the International Commission on Intervention and State Sovereignty in 2001, the doctrine was officially adopted by the U.N. in the Secretary-General’s 2004 High-Level Panel Report on Threats, Challenges and Change.

179. U.N. Charter ch. VII.
181. See U.N. Charter arts. 41, 42.
182. U.N. Charter art. 41.
183. U.N. Charter art. 42.
185. For example, as far back as 1977, the Security Council interpreted what were essentially internal human rights violations as satisfying the threat to the peace language. Resolution 418, which called for sanctions against South Africa in response to its apartheid program, found that the “policies and acts of the South African Government [were] fraught with danger to international peace and security,” and cited the South African “military build-up” and its position on the “threshold of producing nuclear weapons” to satisfy the language. S.C. Res. 418, paras. 3, 6, 8, U.N. Doc. S/RES/418 (Nov. 4, 1977). With the passage of time, the threat to the peace requirement appears to have become a technicality in the Security Council’s advocacy of chapter VII resolutions. For example, Resolution 733 against Somalia only mentions the consequences to regional stability and rather focuses on the “heavy loss of human life and widespread material damage resulting from the conflict in the country.” S.C. Res. 733, para. 4, U.N. Doc. S/RES/733 (Jan. 23, 1992).
188. ICISS Report, supra note 187.
Shifting the discussion from intervention in a sovereign state’s internal affairs, either through military force or sanctions, the U.N. is now attempting to confront gross violations of human rights through the paradigm of a responsibility to protect the safety and lives of all human beings.\textsuperscript{190} The doctrine transforms the U.N. from an organization confined to focusing on relationships between states into one that is working to uphold its role as promoter of the “dignity and worth of the human person.”\textsuperscript{191} With this shift comes a new construction of the definition of sovereignty, recasting it from one that shapes the nation as fortress to one that shapes the nation as obligated by a duty to its citizens. Not only does this reconstruction encourage governmental accountability for internal human rights violations, but it also implies that nations are responsible to their citizens and to the world through the U.N. for the protection of those citizens and the promotion of their development.\textsuperscript{192} Practically speaking, this doctrine broadens the Security Council’s mandate and grants it greater authority when assessing whether or not to impose sanctions or military force.

When advocating for the use of force or sanctions under chapter VII, the Security Council is beholden to political will. The council is composed of fifteen members—ten rotating positions and five permanent positions.\textsuperscript{193} The adoption of any resolution requires the affirmative vote of nine members, including the concurring votes of the permanent members.\textsuperscript{194} The five permanent members are China, the United Kingdom, France, the Russian Federation, and the United States, and their veto power grants them the ability to strike down actions against any nation in their own self interests, regardless of human rights violations in that nation.\textsuperscript{195}

\textsuperscript{190} See ICISS Report, supra note 187, at 13 (explaining the move from “sovereignty as control to sovereignty as responsibility in both internal functions and external duties”).
\textsuperscript{191} U.N. Charter pmbl.
\textsuperscript{192} See ICISS Report, supra note 187, at 13 (suggesting that states may now be held responsible for “the functions of protecting the safety and lives of citizens and promotion of their welfare,” that states may be responsible to their “citizens internally and to the international community through the UN,” and that state officials are “accountable for their acts of commission and omission”).
\textsuperscript{194} See U.N. Charter art. 27.
\textsuperscript{195} See generally Open-Ended Working Group, Report on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council General Assembly, Supp. No. 47, U.N. Doc. A/58/47 (2004) (discussing the use of the permanent members’ veto and potential Security Council reforms). Since 1946, the Security Council’s inaugural year, the veto has been used a total of 259 times. See Security Council: Patterns in the Use of the Veto, Global Policy Forum, http://www.globalpolicy.org/security/data/vetotab.htm (last visited Aug. 20, 2007). The Russian Federation leads the list with 123 vetoes, while the United States has tallied eighty-two. Id. Following are the United Kingdom at thirty-two, France at eighteen, and China at five. Id. However, over the past twenty years, the United States has exercised its veto power only thirty-six times, the United Kingdom eight times, the Russian Federation and France
a. Military Action Under Chapter VII

Where all other methods of negotiation and inducement fail, article 42 authorizes the Security Council to intervene with military force, while article 25 requires member states to uphold any resolution mandating the use of force. When the council recognizes a threat to the peace that requires the use of military action, it generally authorizes force by U.N. member states, rather than leading a campaign itself. The U.N. may rely on the use of military force only as a last resort. Finally, any chapter VII authorization of force is subject to the customary law doctrine of proportionality, which requires that force be proportionate to the aggression that triggered it.

The Security Council has authorized its member states to use force against other nations or groups in a wide variety of situations: The United States has led coalitions of armed forces in Korea (1950), Iraq-Kuwait (1990), Somalia (1992), and Haiti (1994); France has led armed forces in Rwanda (1994); Italy has led in Albania (1997); and Australia has led in East Timor (1999). The Security Council has also authorized the “limited use of force by states” to enforce sanctions, among other initiatives. However, the Security Council may not always be successful in authorizing the use of armed force in an intervention for two reasons. First, the U.N. relies on its member states to supply the necessary troops. States may be unwilling to commit their resources for a variety of reasons, and this may impede the Security Council’s attempts at intervening in a crisis, as was the case in Rwanda in 1994. Second, the Security Council faces the threat of a veto from each of the five permanent member states, even where there is an “overwhelming case” for the use of force. For example, the Security Council was unable to act in East Pakistan (1971), Kurdish Iraq (1991), and Kosovo (1999).

three times each, and China twice. Moreover, few vetoes have been cast in order to block resolutions that dealt with pressing humanitarian issues.

196. U.N. Charter art. 42.
197. U.N. Charter art. 25.
198. See Franck, supra note 186, at 21.
200. See supra text accompanying note 183.
203. See id.
204. Id.
205. See id. at 136, 138; see also U.N. Charter art. 43.
206. See Roberts, supra note 199, at 138.
207. See supra text accompanying note 195.
208. Roberts, supra note 199, at 139.
b. Sanctions Under Chapter VII

Under chapter VII, the U.N. may also opt to impose sanctions against an offending nation or individuals. The U.N. has imposed sanctions approximately twenty times since its founding, with just two of these instances occurring during the first forty-five years of the institution's existence.\(^{209}\) In the 1990s, demonstrating an increasing reliance on sanctions as a coercive tool,\(^{210}\) the U.N. imposed sanctions against Iraq (1990), the former Yugoslavia (1991, 1992, and 1998), Libya (1992), Liberia (1992), Somalia (1992), parts of Cambodia (1992), Haiti (1993), parts of Angola (1993, 1997, and 1998), Rwanda (1994), Sudan (1996), Sierra Leone (1997), and Afghanistan (1999).\(^{211}\)

Sanctions are based on several basic principles. First, any sanctions program consists of a “sender,” or the country or group imposing sanctions, and a “target,” the offending nation.\(^{212}\) Second, they attempt to deny nations the benefits of being members of a global community. Essentially, sanctions control the flow of goods, services, money,\(^{213}\) or other benefits into and out of a given nation in an effort to coerce that nation into complying with or ceasing specific behaviors. Finally, economic sanctions may serve as a way to prepare the public for the eventual use of military action\(^{214}\) or to offer a less costly, and therefore more feasible, alternative to military action.\(^{215}\)

A range of behaviors and policies of targeted countries has triggered U.N. sanctions. The first U.N. sanctions program was imposed on Southern Rhodesia in 1965, lasting until 1979, over concerns about continued...


\(^{210}\) See David Cortright & George A. Lopez, The Sanctions Decade 1 (2000). For example, after the Security Council passed Resolution 687 authorizing sanctions against Iraq in 1991, it then proceeded to impose sanctions against the Federal Republic of Yugoslavia, Libya, Liberia, Somalia, Cambodia, Haiti, and the National Union for the Total Independence of Angola (UNITA) all within a span of two years. See id.

\(^{211}\) See id. at 1–2.


\(^{213}\) See Andrew K. Fishman, Comment, Between Iraq and a Hard Place: The Use of Economic Sanctions and Threats to International Peace and Security, 13 Emory Int’l L. Rev. 687, 691 (1999) (noting that sanctions inflict hardship on a state in an attempt to coerce it into changing its approach).

\(^{214}\) For example, the imposition of economic sanctions in Iraq, Yugoslavia, and Haiti preceded military intervention. See Cortright & Lopez, supra note 210, at 6 (stating that some view sanctions as simply an attempt to prepare the public for the impending use of force).

\(^{215}\) See, e.g., id. (discussing sanctions as an alternative to inaction or military force); see also Barry E. Carter, International Economic Sanctions: Improving the Haphazard U.S. Legal Regime, 75 Cal. L. Rev. 1162, 1169 (1987).
rebellion under Ian Smith’s Unilateral Declaration of Independence. Recently the U.N. imposed a range of targeted sanctions on North Korea and Iran in response to the development of both nations’ nuclear programs. Over the past fifty years, the Security Council has interpreted a variety of crises in a way that satisfies the threat to the peace language required in article 39.

The U.N. most frequently imposes sanctions in response to loss of life due to violence; however, the language of sanctions resolutions remains fairly broad, encompassing a host of issues. For example, in Haiti, from 1993 to 1994 under Resolution 841, the Security Council imposed sanctions in response to the coup against President Jean-Bertrand Aristide. The resolution discussed the ongoing humanitarian crisis, “including mass displacements of population” and “a climate of fear of persecution and economic dislocation which could increase the number of Haitians seeking refuge in neighbouring Member States,” and called for a “reversal of [the] situation... to prevent its negative repercussions on the region.” The Security Council resolution against Afghanistan cited “continuing violations of international humanitarian law and of human rights, particularly discrimination against women and girls.” And, in sanctioning the former Yugoslavia for the first time, the Security Council relied upon “the consequences for the countries of the region, in particular

220. See supra note 185 and accompanying text.
221. For examples, see Ethiopia and Eritrea, Sierra Leone, Rwanda, Somalia, and the former Yugoslavia. See S.C. Res. 1298, paras. 4-5, U.N. Doc. S/RES/1298 (May 17, 2000) (citing “the continuation of fighting between Eritrea and Ethiopia... the loss of human life resulting from the fighting, and... the negative impact the diversion of resources to the conflict continues to have on efforts to address the ongoing humanitarian food crisis in the region”); S.C. Res. 1132, para. 9, U.N. Doc. S/RES/1132 (Oct. 8, 1997) (citing “continued violence and loss of life in Sierra Leone following the military coup of 25 May 1997, the deteriorating humanitarian conditions in that country, and the consequences for neighbouring countries”); S.C. Res. 918, para. 6, U.N. Doc. S/RES/918 (May 17, 1994) (citing “ongoing violence in Rwanda... the very numerous killings of civilians which have taken place in Rwanda and the impunity with which armed individuals have been able to operate and continue operating therein”); S.C. Res. 733, para. 4, U.N. Doc. S/RES/733 (Jan. 23, 1992) (citing “the rapid deterioration of the situation in Somalia and the heavy loss of human life and widespread material damage resulting from the conflict in the country and... its consequences on stability and peace in the region”); S.C. Res. 713, para. 4, U.N. Doc. S/RES/713 (Sept. 25, 1991) (citing “the fighting in Yugoslavia, which is causing a heavy loss of human life and material damage”.
223. Id. paras. 10, 12.
in the border areas of neighboring countries,"²²⁵ to declare a threat to the peace.

There are two basic sanctions models available as "tools of enforcement"²²⁶ to the U.N.: comprehensive and smart sanctions. As was the case with Iraq, Haiti, Yugoslavia (1992–95), and arguably the National Union for the Total Independence of Angola (UNITA), comprehensive sanctions consist of complete trade embargoes.²²⁷ Such sanctions are intended to spur change by inflicting extreme hardship on the general population, thus indirectly causing either a literal or political revolt against oppressive leaders;²²⁸ however, comprehensive sanctions are often criticized for harming the public whose interests they have at heart.²²⁹ Perhaps the most widely cited example of such criticism came during the imposition of Security Council sanctions against Iraq from 1990 to 1991, which was blamed for precipitating a massive humanitarian disaster.²³⁰ Due to such overwhelming humanitarian concerns, the logic of creating change by imposing hardship on the public has largely been discounted and is now referred to as the "naive theory" of sanctions.²³¹ As a result of the perceived failures of these comprehensive programs, the U.N. has moved away from them toward the concept of smart sanctions, which target specific groups or individuals responsible for human rights abuses, with the intention of reducing negative impacts on the general public.²³²

Beginning in 1999, in cooperation with the U.N., several European governments and experts undertook a series of studies with the goal of formulating targeted or "smart" sanctions programs. As a result of the Interlaken Process, which explored targeted financial sanctions,²³³ the

²²⁸. See Cortright & Lopez, supra note 210, at 19.
²³². See The Swiss Confederation in Cooperation with the United Nations Secretariat and the Watson Inst. for Int’l Studies, Targeted Financial Sanctions: A Manual for Design and Implementation, at vi (2001) [hereinafter Interlaken Report]; see also Cortright & Lopez, supra note 227, at 2; Howlett, supra note 212, at 1212 (describing how targeted, or smart, sanctions focus only on those responsible for the offending behavior and are often directed at terrorist groups or leaders, rather than nation states).
Bonn-Berlin Process, which focused on arms embargoes and travel-related sanctions;\textsuperscript{234} and the Stockholm Process, which set forth the means to implement and monitor these smart-sanctions programs;\textsuperscript{235} the U.N., and therefore the Security Council, began to adopt the recommendations set forth in these reports.\textsuperscript{236}

There are three basic rationales behind the implementation of smart sanctions: punitive, coercive, and demonstrative.\textsuperscript{237} Sanctions may be used to punish a state’s leaders for their objectionable behavior;\textsuperscript{238} or they may be used to coerce leaders into compliance with demands made by the sending group.\textsuperscript{239} They may also be used to signal international disapproval of the target country’s behavior, acting as both a deterrent to other potential target nations and as a means of confirming international norms.\textsuperscript{240} Ultimately, the U.N. supports the use of sanctions as a tool of coercion rather than as a method of punishment.\textsuperscript{241}


\textsuperscript{237} See Fishman, supra note 213, at 691 (quoting Margaret P. Doxey, International Sanctions in Contemporary Perspectives 12 (1987)). Ultimately, all types of sanctions attempt to coerce, but at the same time they also embrace the other rationales.


\textsuperscript{239} See id.

\textsuperscript{240} See Carter, supra note 215, at 1170–71; see also Moran, supra note 238, at 1404–05. Among these rationales there is spillover. As leading sanctions scholar Margaret Doxey notes, sanctions should deter targets from engaging in the offending behavior with the threat of punishment, but they can also serve as a warning to others. See Fishman, supra note 213, at 690–91 (citing Margaret Doxey, International Sanctions in Contemporary Perspectives 7 (1987)) (discussing the role of sanctions as imposing a cost on a state for its offensive behaviors).

Within such targeted sanctions programs, there are a variety of measures that can be applied, including selective trade embargoes, which may bar the import of luxury goods into a country or the export of goods produced by businesses owned by targeted individuals; financial restrictions, which block targeted individuals' assets abroad and their access to financial markets; travel restrictions, which bar targeted individuals from visa eligibility and entry into certain nations; military restrictions; and diplomatic restrictions, which prohibit specified individuals from participating in cultural, sporting, or other international events. In addition, sanctions may also block investment by foreign nationals in the offending nation or condition the disbursement of foreign aid on compliance with specific behaviors. In fact, just the simple threat of sanctions may result in behavior modifications and bring about the desired effect. Generally, sanctions programs implement a combination of these instruments in order to force leaders of target nations to reassess the costs of their behaviors.

Thus far, the U.N. has chosen to respond to the Zimbabwean crisis with a limited program of diplomacy and negotiation. The following section highlights the success of this approach to date and explores the Mugabe government's reaction to it.

D. The Current U.N. Response to Operations Murambatsvina and Garikai

In the face of the humanitarian crisis exacerbated by Operation Murambatsvina and the persistent housing shortage that Operation Garikai has failed to alleviate, the U.N. response has been limited. Before his departure from the U.N., Secretary-General Kofi Annan dispatched Special Envoy Anna Kajumulo Tibaijuka to tour the country and report on the situation in June 2005. Since the publication of her report, which
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condemned the Zimbabwean government for creating an enormous humanitarian crisis and suggested that its actions could potentially be labeled a crime against humanity under the Rome Statute. The U.N. has done little else to address the needs of Murambatsvina's victims. A combination of disorganization on the part of U.N. agencies and resistance from forces within Zimbabwe has left victims with limited assistance.

Initially the U.N. seemed hopeful about addressing the needs of the displaced; however, the Mugabe government soon stepped in to frustrate its efforts. The International Organization for Migration, an intergovernmental body that works closely with the U.N., reported that it had reached forty-nine percent of households in need of food aid during June through September 2005. However, in August 2005 food programs were severely curtailed when the Minister of Social Welfare prohibited the distribution of food aid to victims still living in urban areas and perhaps to all victims. That same August, the Zimbabwean police dismantled more than one hundred tents of plastic sheeting, informing U.N. representatives that such tents were prohibited. By October 2005, the government had rejected U.N. offers of temporary tents as shelters, denying that a humanitarian crisis still existed, and by December 2005, the government

248. See id. at 9. Article 7 of the Rome Statute, which established the ICC, defines a crime against humanity as one of several enumerated acts that is "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." Rome Statute of the International Criminal Court, supra note 153, art. 7. Included among the enumerated acts are "[d]eportation or forcible transfer of population," "[p]ersecution against any identifiable group or collectivity," and "[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health." Id. Tibaijuka concedes that such a suit would be difficult to sustain. See Tibaijuka, supra note 2, at 9.

249. See Human Rights Watch, supra note 141, at 37.

250. See id. at 58–60.

251. See id. at 54–55.

252. See supra Part I.A.3.c.

253. See Human Rights Watch, supra note 141, at 57.

254. See id. at 56. Statistics on the success of food-aid programs operating in Zimbabwe are incomplete. This may be due to disorganization on the part of NGOs and the U.N., but it may also be due to the need of these agencies to keep their activities confidential from government officials. Unfortunately, Human Rights Watch reports that the majority of its interviewees across the country had received little or no aid by December 2005; however, it is difficult to confirm or deny these statements. See id. at 55–56. In an uncharacteristic reversal, in 2006 the government began resettling white farmers on previously seized farms in a late attempt to subvert the impending and likely severe food crisis. See Zimbabwe Confirms White Farm Move, BBC News, Apr. 24, 2007, http://news.bbc.co.uk/2/hi/afirca/4937310.stm.

255. See Human Rights Watch, supra note 141, at 22.

had rebuffed U.N. offers of temporary brick-and-asbestos homes, claiming that they were substandard.\textsuperscript{257} Aid workers speculate that these rejections were an attempt to hide the magnitude of the crisis the government had created,\textsuperscript{258} complementing its policies of obstructing aid workers’ access to transit camps and punishing those groups and individuals who accepted aid from NGOs and the U.N.\textsuperscript{259} Thus far, the U.N.’s assistance efforts appear to have been frustrated at every turn.

In response to these roadblocks, the U.N. and its affiliate organizations have resorted to “quiet diplomacy”\textsuperscript{260} in order to negotiate with the Mugabe government over the distribution of aid and the construction of homes.\textsuperscript{261} Human Rights Watch alleges that the U.N.’s strategy of negotiating with oppressive governments rather than taking a more aggressive stance has long been ineffective.\textsuperscript{262} Suggesting that the U.N. has adopted this position out of a fear of being denied any access to displaced populations, Human Rights Watch points out that, at least in Zimbabwe, the U.N.’s access has been so limited that they really “have little to lose” by becoming more vocal about the Mugabe regime’s human rights abuses.\textsuperscript{263}

E. Summary

Zimbabwe continues to suffer from the long-term effects of Operation Murambatsvina,\textsuperscript{264} with aftershocks permeating the health, education, employment, housing, and economic sectors. Operation Garikai, widely characterized as mere rhetoric conceived in response to international and U.N. criticism,\textsuperscript{265} appears to have failed in its efforts to address the consequences of Murambatsvina’s destruction. As the international body legally charged with protecting and promoting international peace and security, the U.N. can adopt a strategy of diplomacy, international criminal prosecution, military intervention, or sanctions to address the humanitarian crisis in Zimbabwe. Such a decision depends on a number of important


\textsuperscript{258} See Human Rights Watch, supra note 141, at 24. Many of those directly affected by the operation still remain unaccounted for, having been trucked to remote rural areas in an effort to hide them from Tibajuka’s investigations. See Confidential Interview with Bulawayan church minister, supra note 87.

\textsuperscript{259} See Human Rights Watch, supra note 141, at 23 (noting that two transit camps in Bulawayo and Harare were closed immediately after the Special Envoy’s visit and that one in Mutare was closed just prior to her visit).

\textsuperscript{260} See supra Part I.C.1.

\textsuperscript{261} See Human Rights Watch, supra note 141, at 38.

\textsuperscript{262} See id. at 59–60.

\textsuperscript{263} Id. at 60.

\textsuperscript{264} See generally Amnesty Int’l, supra note 1.

\textsuperscript{265} See supra Part I.B.
considerations; however, it is clear that "[t]here are no easy answers" to this difficult question of politics, economics, and survival.

II. ZIMBABWE'S LEGAL ACCOUNTABILITY AND THE POSSIBLE U.N. RESPONSES TO THE OPERATIONS

In its attempt to locate a feasible and realistic U.N. response to the humanitarian crisis exacerbated by Operation Murambatsvina, this Note focuses on a program of restrictive sanctions as a potential reaction. In Part II, the Note introduces the debate surrounding the U.N.'s response. In particular, Part II.A explores Zimbabwe's legal accountability under international and domestic law in order to determine whether a stronger U.N. response is necessary. Part II.B then examines the options available to the U.N. in the event of legal liability, exploring the obstacles raised by each alternative but with a focus on sanctions.

A. Zimbabwe's Potential Legal Accountability

In most cases, U.N. action does not require specific legal infractions, but rather a "threat to the peace." Nonetheless, specific violations may help to justify a U.N. program of intervention or otherwise. In crafting a response to human rights abuses, the U.N. may look to the U.N. Charter, the Declaration on Human Rights, international treaties, customary law, and even domestic law to determine whether violations have taken place and at what level. This section explores the various laws and treaties to which Zimbabwe is (or is not) subject and examines the arguments for their application.

1. Possible Violations of the U.N. Charter

As a signatory to the U.N. Charter, Zimbabwe has a legal obligation under articles 55 and 56 to uphold the principles of peace and security set forth in it. However, a close reading of the text reveals that articles 2(4) and 2(7) could be construed to prohibit the intervention of foreign

266. Int'l Crisis Group, supra note 8, at 21.
267. See supra note 184 and accompanying text.
269. U.N. Charter arts. 55, 56. Article 55 sets out the U.N.'s mandate, which involves the promotion of "higher standards of living, full employment, and conditions of economic and social progress and development" alongside "solutions of international economic, social, health and related problems; and international cultural and educational cooperation[,]" as well as "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." U.N. Charter art. 55. Article 56 imposes a legal obligation on member states to further the purposes set out in article 55. U.N. Charter art. 56; see also U.N. Charter art. 1, para. 1–3 (setting out the fundamental purpose of the U.N. body).
270. U.N. Charter art. 2, para. 4.
nations or organizations in what may be described as a sovereign nation’s internal matters. For example, article 2(4) restricts member states from threatening to use or using force against the “territorial integrity or political independence of any state.” More explicitly, article 2(7) advises member states that

[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Interpretations of the articles vary. Some argue that “[a]rticle 2(4) essentially prohibits states from using force against one another.” But what is force? Those who favor a broad reading of the term posit that article 2(4) encompasses any form of coercion, including military action and sanctions. Others adhere to a narrower interpretation, which restricts members only from using military force, thereby indicating that the broad reading “is speculation.” On the other hand, while article 2(4) deals with the use of force by individual states and groups against other states, article 2(7) deals more broadly with whether or not the U.N. itself can use force as a means of intervention. Article 2(7) raises the question of how we determine when a conflict or crisis lies solely within a state’s domestic jurisdiction and therefore whether the U.N. is authorized to intervene. While the “non-intervention clause” of article 2(7) restricts any intervention in such domestic matters, the drafters qualified the prohibition by including language that allows the U.N. to intervene under chapter VII.

274. Franck, supra note 186, at 2.
275. For example, during the drafting of the charter, Czechoslovakia, Yugoslavia, and eight African states unsuccessfully proposed that the term “force” should include economic pressure, as the term “armed force” was used overtly in articles 41, 42, 43, and 46 of the charter. Therefore, under their logic, the generic term “force” must have an alternate meaning. See Omer Yousif Elagab, The Legality of Non-forcible Counter-measures in International Law 199 (1988). The travaux preparatoires for the article indicate otherwise. Apparently, Brazil proposed an amendment to “the original Dumbarton Oaks Draft Article 2(4) as follows: ‘All Members of the Organisation shall refrain in their international relations from the threat or use of force and from the threat or use of economic measures in any manner inconsistent with the purposes of the Organisation.’” Id. at 198. The amendment was rejected, making it clear that delegates had no intention of barring economic sanctions under the charter. On the contrary, the U.S. delegate indicated that the authors of the original text intended just the opposite—that “or in any other manner” should be all-inclusive. Id. at 198; see also Franck, supra note 186, at 11–15 (further elaborating on the drafting of articles 2(4) and 2(7)).
276. Elagab, supra note 275, at 199.
277. See Franck, supra note 186, at 12.
278. U.N. Charter art. 2, para. 7.
via a finding of a "threat to the peace"280 or a "breach of the peace"281 under article 39. The "elasticity"282 of these two articles results in, at the very least, "a murky text."283

The responsibility to protect doctrine284 attempts to eliminate much of this murkiness, shifting the focus of the U.N. from relations between states to the promotion and enforcement of human rights regardless of boundaries.285 However, this refocusing on universal human rights over sovereignty has given rise to claims of injustice and assertions that it poses a "threat to the peaceful order based on respect for state sovereignty."286 In fact, President Mugabe himself, as well as members of his cabinet, often claims that unilateral sanctions already being imposed against him and other high-level officials by the United States, European Union, and other nations287 are illegally interfering in what are exclusively Zimbabwean

281. Id.
283. Id.
284. See supra note 187 and accompanying text.
1) what a sovereign does to his own people isn't necessarily his own business—and other states may rightfully intervene under certain conditions; 2) non-state entities such as international organizations, regional alliances, and non-governmental organizations have a place at the international table; and 3) there are some universally applicable ideas that no one gets to reject, such as the inherent right of persons to fundamental human rights, the right of peoples to self-determination, and perhaps the right of everyone to democratic governance and environmental protection.
286. Franck, supra note 186, at 19.
In 2003 President George W. Bush made official a unilateral sanctions regime against Zimbabwe via Executive Order 13,288, which blocks the property of 77 people and prohibits Americans from doing business with them or parties acting on their behalf. See Exec. Order No. 13,288, 3 C.F.R. 186 (2004). The November 2005 amendment to this order extended the list to 128 people and 33 businesses (primarily farms), blocking the family members of listed individuals. See Exec. Order No. 13,391, 3 C.F.R. 206 (2006). Most recently, on February 27, 2006, the President extended these sanctions for another year. See Notice, Continuation of the National Emergency with Respect to Zimbabwe, 72 Fed. Reg. 9,645 (Mar. 2, 2007).
matters. He would undoubtedly object to U.N. interference. While the drafters of the charter did not clarify whether or not they granted the Security Council the power to intervene in domestic matters absent a finding of a threat to the peace, reference to the council’s practice reveals its frequent exploitation of the murkiness of article 2(7).

2. Possible Violations of the Universal Declaration of Human Rights

Zimbabwe is also obligated by the principles set out in the Universal Declaration of Human Rights. While the document was originally considered aspirational, it is now widely accepted as binding law either through customary international law or incorporation via articles 55 and 56 of the U.N. Charter. In the case at hand, the actions of Zimbabwean officials in implementing Operation Murambatsvina could be read to violate a number of rights enumerated in the declaration, most importantly the right to be free from discrimination based on property, birth, or social origin.

In 2007, the European Union renewed its program of targeted sanctions against 130 specific Zimbabwean officials and their family members, including an arms embargo and a freeze on individuals’ funds. See Council Decision 235/CFSP, 2007 O.J. (L 101) 14.

In addition, Australia and New Zealand have imposed similar programs against individuals in Zimbabwe. See Media Release, Alexander Downer, Member of Parliament & Minister for Foreign Affairs, Australia, Tighter Sanctions Against Zimbabwe (June 14, 2005) (on file with author); New Zealand Ministry of Foreign Affairs & Trade, Republic of Zimbabwe, http://www.mfat.govt.nz/Countries/Africa/Zimbabwe.php (last visited Aug. 20, 2007). Furthermore, in 2005 New Zealand banned all sports teams representing Zimbabwe from entering New Zealand. See id.

For example, in response to the imposition of European Union sanctions in 2002, then-Information Minister Jonathan Moyo declared, “It is very clear that what we are now dealing with is organised economic terrorism whose aim is clear and is to unseat a legitimately elected government which has decided to defend its national independence and national sovereignty.” Anger over Zimbabwe Sanctions, CNN.com, Feb. 19, 2002, http://archives.cnn.com/2002/WORLD/africa/02/18/zimbabwe.eu/index.html. In the past, similar claims have come not only from smaller states, which fear a reprise of colonialism and the erosion of their sovereignty, but also from larger states, including China, which hope to avoid foreign criticisms of internal human rights matters. See John Stremlau, Sharpening International Sanctions: Toward a Stronger Role for the United Nations 19 (1996).

See Franck, supra note 186, at 14.

In the past, the Security Council has responded to crises that could be construed as domestic matters, including in Haiti, Somalia, Bosnia, and Afghanistan. “To understand the real meaning of Article 2(7), therefore, it is necessary to turn to these and other practical responses of the Organization, rather than rely solely on the drafting history or a parsing of the text.” Id.

When Zimbabwe became a U.N. member state on Aug. 25, 1980, it became a signatory to the declaration. See supra note 268 and accompanying text.


See Universal Declaration of Human Rights, supra note 291, art. 2.
the right to life and security of person;\textsuperscript{294} the right to be free from cruel, inhuman, or degrading treatment;\textsuperscript{295} the right to an effective remedy;\textsuperscript{296} the right to be free from arbitrary arrest\textsuperscript{297} and interference with one's privacy and family;\textsuperscript{298} the right to freedom of movement;\textsuperscript{299} the right to property and to be free from arbitrary deprivation of it;\textsuperscript{300} and the rights to work,\textsuperscript{301} an adequate standard of living,\textsuperscript{302} education,\textsuperscript{303} and social and international order,\textsuperscript{304} among others.

In the event of such allegations, the government can raise two arguments against legal accountability under the declaration and other treaties. First, Zimbabwe has already claimed that its program of mass evictions is legal under local bylaws. In implementing Operation Murambatsvina, the government relied almost exclusively on the Regional, Town and Country Planning Act.\textsuperscript{305} Regardless of whether the act is still a valid piece of legislation postindependence, it requires the removal of structures built without the authority of the local government.\textsuperscript{306} However, the act also provides for a thirty-day notice period, during which time residents can challenge their removal or make alternative provisions.\textsuperscript{307} Second, the government can attempt to invoke the Universal Declaration's article 29(2), which allows for the restriction of certain enumerated rights in order to meet the "just requirements of morality, public order and the general welfare in a democratic society."\textsuperscript{308} The government characterized the pre-Murambatsvina status of urban areas as a danger to public health, morals, national security, and the economy and stated in its response to Tibaijuka's report that "the Operation had to be undertaken without further delay."\textsuperscript{309} Setting aside doubts about the urgency of the operation,\textsuperscript{310} article 30 of the

\begin{thebibliography}{9}
\bibitem{294} See id. art. 3.
\bibitem{295} See id. art. 5.
\bibitem{296} See id. art. 8.
\bibitem{297} See id. art. 9.
\bibitem{298} See id. art. 12.
\bibitem{299} See id. art. 13.
\bibitem{300} See id. art. 17.
\bibitem{301} See id. art. 23.
\bibitem{302} See id. art. 25 (guaranteeing the "right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services," in addition to "the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control").
\bibitem{303} See id. art. 26.
\bibitem{304} See id. art. 28.
\bibitem{305} See Regional, Town and Country Planning Act 1976 [Ch. 29:12] (Zimb.); see also Gov't of Zimb., supra note 35, at 27 (discussing the legitimacy of the act and the operation).
\bibitem{306} Regional, Town and Country Planning Act, supra note 305, § 35; see also Tibaijuka, supra note 2, at 57.
\bibitem{307} See Tibaijuka, supra note 2, at 57.
\bibitem{308} Universal Declaration of Human Rights, supra note 291, art. 29, para. 2.
\bibitem{309} Gov't of Zimb., supra note 35, at 30.
\bibitem{310} See supra note 57 and accompanying text.
\end{thebibliography}
declaration limits the extent to which a state may restrict an individual’s exercise of these rights, stating, "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."  

3. Possible Violations of Customary International Law

Zimbabwe may also be bound under principles of customary international law, as outlined by the Restatement (Third) of Foreign Relations Law. The Restatement defines customary international law as resulting from a “general and consistent practice of states followed by them from a sense of legal obligation.”  

Under this definition, customary international law could be interpreted to impose an affirmative duty on states not to engage in and to prohibit gross violations of human rights, including "acts of aggression," "acts of genocide," and other violations of the "basic rights of the human person." Nonetheless, any claim that international customary law has been violated requires proof that the "custom has become so established as to be legally binding," according to the International Court of Justice. This “attitude of judicial caution” comports with the recurring theme of respect for a state’s sovereignty in the international courts.

Since the norms of international customary law are not set out in a treaty, the concept seems almost limitless. While the International Court of Justice counsels caution in finding violations of international customary law, one may also find shape for these norms in nonbinding guidelines issued by advisory bodies such as the U.N. Commission on Human Rights (now Council), which has declared “that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing.”  

Furthermore, the U.N. Committee on Economic, Social and Cultural Rights defines forced evictions as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of and access to, appropriate forms of legal or other protection.” The U.N.’s Guiding Principles on Internal Displacement,

314. Id. at 377.
315. Id.
316. See supra note 315 and accompanying text.
which add weight to the customary law argument and which protect individuals from arbitrary displacement as a collective punishment, ensure the investigation of alternatives to displacement and guarantee the provision of replacement housing in the event of displacement. Finally, the rights enumerated in the Universal Declaration, the violations set out in the Rome Statute, and the principles in the U.N. Charter also help craft customary international law claims.

4. Possible Violations of International and Regional Treaties

A number of international and regional treaties applicable to Zimbabwe expand on the rights enumerated in the Universal Declaration. These treaties include the International Covenant on Civil and Political Rights; the Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; and the International Convention on the Rights of the Child. Zimbabwe is also a member state of the African Union and has ratified the African Charter on Human and Peoples' Rights. Zimbabwe could argue that its suspension of certain non-fundamental rights is permitted under the treaties' various derogation clauses; however, the government did not file an

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320. See id. at princ. 7.1.
321. See id. at princ. 7.2.
322. Universal Declaration of Human Rights, supra note 291.
324. Universal Declaration of Human Rights, supra note 291.
330. For example, see article 4 of the International Covenant on Civil and Political Rights, which reads:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under
emergency derogation with the U.N. under any of the relevant provisions prior to the inception of the operation.

5. Possible Violations of Zimbabwean Domestic Law

Finally, the Zimbabwean government may be accountable for human rights violations under its domestic laws. Section 16 of the Zimbabwean Constitution guarantees individuals "reasonable notice" in the event of "reasonably necessary" acquisition of property by the government.331 Furthermore, the Zimbabwean Constitution enumerates a catalog of rights that echoes those found in the Universal Declaration and the related treaties,332 including the right to be free from inhuman treatment,333 the right to the secure protection of the law,334 and the right to be free from discrimination.335 In its response to Tibaijuka’s report, the Zimbabwean government argued that Operation Murambatsvina was simply a means of enforcing the Regional, Town and Country Planning Act,336 but the various international treaties to which Zimbabwe is a signatory require that the government incorporate those principles into domestic legislation.337 Therefore, the government may have violated such treaties.

In conclusion, there are a number of local, regional, and international laws in place that Operation Murambatsvina and its hasty implementation may have violated. While the issue of Zimbabwe’s legal accountability may certainly be debated, the U.N., in its role as global defender of human rights, has a number of responses available to violations of these laws. The following section explores the logistics of using these responses.

B. The Debate Surrounding the Potential U.N. Responses

In formulating a response to Operation Murambatsvina and its exacerbation of the humanitarian crisis in Zimbabwe, the U.N. has several options available, including diplomatic negotiations, prosecution in the ICC, or Security Council action under chapter VII of the U.N. Charter. This section investigates the arguments for and against the different U.N. responses, paying particular attention to sanctions.

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international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

International Covenant on Civil and Political Rights, supra note 325, art. 4.

333. Id. § 15.
334. Id. § 18.
335. Id. § 23.
336. See Gov’t of Zimb., supra note 35, at 27.
337. See Nicolai, supra note 77, at 832–33, 832 n.110 (“A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” (quoting the Vienna Convention on the Law of Treaties art. 27, done May 23, 1969, 1155 U.N.T.S. 331)).
1. Diplomacy and Negotiation

In response to the crisis in Zimbabwe, the U.N. may opt to maintain its current approach of diplomacy and negotiation, while also continuing to deliver humanitarian assistance and implement aid programs. Such negotiations can provide a safe, nonconfrontational environment for sharing perceptions and exploring potential resolutions, creating a dialogue that may result in change. However, in adopting a program of diplomatic engagement, the U.N. may face several problems. A conflict may remain intractable, meaning that the “costs of a political settlement are appreciably lower (and recognized to be so) than the military and political costs of continued fighting,” and therefore the negotiating parties remain at a stalemate. A state may resist external interference, either preferring to solve the conflict itself or barring others from attempting to resolve it. Finally, if mediation or negotiation is pursued, the simple fact that so many other parties may become involved, including states, NGOs, and civic groups, means that the U.N.’s authority over the situation is diluted, and it therefore must “choose its negotiating opportunities with care.”

The U.N. has long relied on South African President Thabo Mbeki to negotiate with Mugabe on political matters; however, critics argue that Mbeki’s failure to create change in Zimbabwe makes him complicit in Zimbabwe’s ongoing oppression. Further illustrating the challenges of Mbeki’s approach, in the past Mugabe has rejected Mbeki’s suggestions that the U.N. broker a package of international aid in exchange for Mugabe’s retirement. At a recent Southern African Development Community summit, Mugabe’s Minister of Justice, Patrick Chinamasa, declared, “Political reform is not necessary in [Zimbabwe]...” On the topic of Operation Murambatsvina’s forced evictions, Mbeki has said little publicly. While Mbeki’s public silence is not indicative of his progress (or lack thereof), the “real questions are whether something sensible is being pursued consequentially or whether the lack of volume and visibility is a cover for doing too little or even nothing at all.”

338. See Nan, supra note 155.
340. See id.
341. See id. at 83–84.
342. Id. at 85.
345. See No Pressure on Mugabe from Summit, supra note 158.
347. Int’l Crisis Group, supra note 8, at 20.
2. International Criminal Prosecution

Various states and NGOs have accused those responsible for Zimbabwe's human rights abuses of violating the Rome Statute of the ICC; however, the U.N. may face several challenges in proceeding with a referral to the ICC. First, were the Zimbabwean government to admit that any crime had occurred, it could raise the defense that the ICC is intended as a "court of last resort" and that it had, in fact, conducted its own investigation, thus precluding any prosecution. Second, the human rights violations to which Operation Murambatsvina gave rise may not fall under the rubric of "crime against humanity," which the Rome Statute's article 7 defines as any of a series of enumerated acts "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." Relevant acts include deportation or forcible transfer, deprivation of physical liberty, persecution against a group based on race or other protected characteristic, or other similar acts that intentionally cause serious physical or mental injury. Article 7(2)(d) further defines the provision concerning deportation as forcible displacement by "expulsion or other coercive acts." Finally, the court is likely to adhere to a strict interpretation of the crimes over which it holds jurisdiction.

When deciding on a course of action, the U.N. must also keep in mind its mandate, set out in the preamble of the U.N. Charter, which calls for the establishment of "conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." In the event that the court does find that Murambatsvina constitutes a crime against humanity, a case could be brought both against lower level officials, who publicly initiated the operation, and the president, who dispatched the army to ensure its implementation. However, while criminal accountability is arguably a vital part of this mandate, the U.N. itself has acknowledged that such a debate "would serve only to distract the attention of the international community from focusing on the humanitarian crisis facing the displaced." Adding to the difficulty of bringing such an action, an ICC prosecution may be subject to

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348. See Nicolai, supra note 77, at 816.
349. See supra note 170 and accompanying text.
351. See id.
352. Id. art. 7(2)(d); see also Nicolai, supra note 77, at 826–27.
353. See supra note 169 and accompanying text; see also Nicolai, supra note 77, at 839–40.
356. See Nicolai, supra note 77, at 838.
357. Tibaijuka, supra note 2, at 66.
accusations that it "represents an undue usurpation of state sovereignty" due to the jurisdictional reach of the court, or that it offers more powerful nations the opportunity to manipulate developing nations whose legal systems cannot undertake their own prosecutions. By focusing on criminal accountability rather than coercion, such prosecutions may not further or could even undermine the U.N.'s immediate goals with respect to Zimbabwe.

3. Military Action Under Chapter VII

In response to a threat to the peace, the U.N. may also choose to pursue military intervention under the U.N. Charter's chapter VII. The implementation of a military campaign carries with it substantial hurdles that may be difficult to overcome, including the commitment of troops and military equipment by member states. Moreover, the use of force is subject to the doctrine of proportionality; it must be "proportionate to the unlawful aggression that gave rise to the right." In assessing the proportionality of a potential recourse to force, the U.N. asks whether the "scale, duration and intensity" of the response is the minimum required to respond to the situation. The U.N. also recommends weighing a number of other factors in its determination of whether to deploy military force in response to a threat or crisis, including whether the unlawful aggression gives rise to "genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended" and, most important, whether all other nonmilitary options have been exhausted. Finally, doubts about the legitimacy of any use of military force will always linger. On the contrary, the spare use of the veto by permanent members indicates that a Security Council resolution mandating military force in response to human rights abuses might not be rejected due to a lack of political will, contrary to popular belief.

359. See id. at 132.
361. See supra notes 205–06 and accompanying text.
362. See Gardam, supra note 201, at 391.
364. Id.
365. See id.
366. See id. at 36.
367. See supra note 195.
368. See Joseph Kahn, China Courts Africa, Angling for Strategic Gains, N.Y. Times, Nov. 3, 2006, at A1 (indicating that China may be shifting from its long-held foreign policy of refraining from interfering in the internal affairs of sovereign nations while courting
essence, the question with which the U.N. must grapple concerning the use of force is whether or not there is a “reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.”

4. Sanctions Under Chapter VII

Finally, the U.N. may opt for a program of sanctions to coerce the Mugabe government into compliance with its own plan to rehouse the victims of Operation Murambatsvina. The imposition of sanctions is a deeply debated issue that gives rise to a number of political, economic, and humanitarian criticisms.

a. Measuring the Success of Sanctions and Ensuring Effective Enforcement

Perhaps the greatest criticisms of sanctions programs arise out of doubts about the U.N.’s ability to effectively monitor member states’ enforcement of such programs and sanctions’ notoriously low rate of success in achieving their stated objectives. The central goal of targeted sanctions is to increase the cost of engaging in a particular behavior while minimizing the impact on the general population, which can only be achieved through enforcement by all member states. As U.N. member states, Zimbabwe’s neighbors have a duty to monitor sanctions violations being perpetrated

African trade to a policy of, at least rhetorically, encouraging human rights compliance and good governance. In recent years, President Mugabe has pursued a “Look East” economic policy, which entailed negotiating business deals with China and Russia in the face of Western sanctions. The policy suggested that China or Russia was likely to veto any suggestion of sanctions to protect their economic interests. Analysts have deemed the program mere “propaganda.” Zimbabwe’s “Look East Policy” Fails to Deliver, Bus. Day, Oct. 16, 2006, www.businessday.co.za/articles/world.aspx?ID=BD4A290255 (internal quotation marks omitted). This news contributes to the hope that the push for sanctions to enforce human rights is not without merit. Id. (indicating both that Zimbabwe’s push to increase trade and political relations with China after unilateral sanctions were imposed has not helped the Zimbabwean economy and that economists doubt that Zimbabwe’s latest business deals with Moscow will help either).

370. See supra Part I.B.
371. See Cortright & Lopez, supra note 210, at 5–6 (discussing how, throughout the 1990s, the U.N. lacked the ability to enforce sanctions effectively due to insufficient resources); see also Stremlau, supra note 288, at 48.
373. See Elliott, supra note 372, at 171.
across their borders, but the U.N. must also work with local NGOs to collect details regarding the effects of sanctions on the general population. Successfully inflicting a real cost on targeted individuals and avoiding a humanitarian disaster, such as the Iraqi program produced, depends on the U.N.'s ability to gather reliable data from sources embedded in the target nations. As globalization increases, the U.N. will find it more difficult to enforce sanctions due to the interdependence of businesses, the complexity of financial transactions, and the prevalence of the informal economy, especially in Zimbabwe. Furthermore, to incentivize U.N. enforcement demands on member states, larger nations may offer trade and other financial benefits to induce cooperation among neighboring countries, which may be adversely affected by enforcing the sanctions program.

When measuring the success rate of sanctions, the analysis depends on more than just the achievement of stated coercive goals; there are also unstated demonstrative goals to be considered. These include, but are not limited to, the deterrence of future violations, the creation of alliances, the announced adherence to and therefore strengthening of international principles by sending nations, and the sending of symbolic messages of disapproval to the target nation. Therefore, the success of a particular sanctions regime depends not only on the U.N.'s ability to enforce the program and the subsequent achievement of stated goals, but also largely on the goals being considered.

b. Misuse of Sanctions

Sanctions have also been criticized as a means to neocolonial ends, where sending nations or groups are viewed as imposing sanctions to further their own economic, cultural, or political interests. In response to sanctions, politicians, including President Mugabe, have declared that such programs force Western norms upon sovereign nations in an effort to continue or to

374. See U.N. Charter art. 49.
375. See supra note 230 and accompanying text.
376. Such information aids in shaping effective sanctions programs as well as assessing the likelihood of a political backlash by providing insight on the attitudes of civic groups, the media, religious institutions, businesses, and other organizations, while also lending legitimacy to the entire scheme. See Stremlau, supra note 288, at 52.
377. See id. at 54.
378. See supra notes 10, 48 and accompanying text.
379. See Cortright & Lopez, supra note 227, at 10 (discussing how the success of any sanctions program depends on enforcement and international cooperation); see also Margaret P. Doxey, United Nations Economic Sanctions: Minimizing Adverse Effects on Non-target States, in Smart Sanctions: Targeting Economic Statecraft, supra note 227, at 183, 194–95 (discussing the need to minimize the effects of sanctions on non-target states); infra Part II.B.4.d.
380. See supra note 237 and accompanying text.
381. See Cortright & Lopez, supra note 210, at 16.
renew colonialism. In Zimbabwe, critics have branded unilateral sanctions imposed by the United Kingdom and the United States as racist. Such declarations contribute to a “rally round the flag phenomenon,” whereby targeted individuals mobilize feelings of nationalism that unite the general population and redirect their discontent against the sender. For example, critics of the U.N. sanctions program against Iraq claim that, while the sanctions’ stated objective was to remove Saddam Hussein from power, he was able to retain his position due to his ability to convince Iraqis that they were victims of Western aggression. Such critics also claim that the sanctions carried unarticulated goals, including furthering Western interests in Iraqi natural resources and the expansion of Western military power in the region.

Furthermore, sanctions have been criticized as being mere pretext for military action, which is used to further sending nations’ goals. For example, in Iraq, Yugoslavia, and Haiti, military force followed on the heels of the implementation of economic sanctions. In contrast, supporters characterize sanctions as “a form of economic warfare,” and, in fact, sanctions may actually be most effective when targeted leaders suspect that sending nations will resort to military force to ensure the success of their goals.
Requests from credible groups within the target nation may help to justify the imposition of sanctions, supporting their legitimacy and speaking to their likely political success.\(^{391}\) In Zimbabwe, in response to the controversial 2002 presidential elections\(^ {392}\) the nation’s most widely hailed church leader, Pius Ncube, Archbishop of Bulawayo, called for South Africa and other nations to implement a total economic blockade of the country, under the logic that this would force Mugabe into negotiations over humanitarian issues.\(^ {393}\) In addition, also in response to the 2002 election outcome, the defeated MDC called for increased sanctions against ZANU–PF.\(^ {394}\) Such calls serve as a counter to those who claim that U.N. sanctions programs reflect imperialistic intentions.

Adding further support, sanctions may carry beneficial effects for the target nation. For example, they may serve as a sign of international solidarity to those attempting to oppose an oppressive regime.\(^ {395}\) They may also provide encouragement to local NGOs providing humanitarian aid, indicating that the international community is working for change.\(^ {396}\) Finally, the presence of a sanctions program may be used as evidence of crimes in the event of eventual prosecutions.\(^ {397}\)

c. Unintended Consequences for Third-Party Nations

Third-party nations may feel unintended adverse economic effects of sanctions, especially in comprehensive programs, and this may lead to lax efforts\(^ {398}\) in enforcing the program against the target.\(^ {399}\) Relevant costs to non-target nations include the loss of export markets and imported goods and services, interruption to infrastructure systems, and enforcement costs, among others.\(^ {400}\) Article 50 of the U.N. Charter guarantees non-target nations the right to “consult the Security Council with regard to a solution”

\(^{391}\) Id. at 21.
\(^{395}\) See also Cortright & Lopez, supra note 210, at 20–21. For example, both the African National Congress in South Africa and the Lavalas in Haiti benefited from the solidarity provided by sanctions. See id. at 21.
\(^{396}\) See id. at 20–21.
\(^{397}\) See Stremlau, supra note 288, at 3.
\(^{398}\) Mack & Kahn, supra note 384, at 112.
\(^{399}\) For example, twenty-one states made claims in response to the sanctions regime imposed on Iraq during the 1990s; however, the U.N. took the view that it did not have the authority to order compensation to be made to them. See Stremlau, supra note 288, at 41.
\(^{400}\) See Doxey, supra note 379, at 185–86.
to their "special economic problems"; however, it offers no guarantee that their burden will be shared. Supporters of sanctions posit that the U.N. may avoid these secondary economic effects, and thereby ensure more effective enforcement, by undertaking preliminary studies to assess potential economic impacts before sanctions are imposed and by developing a U.N.-controlled compensation fund for concerned states.

**d. Humanitarian Consequences**

Critics argue that sanctions further civilian suffering through adverse humanitarian effects, as occurred in Iraq during the 1990s. Such effects may include retrogressive impacts on nutrition, mortality rates, public health, employment rates, commodity shortages, decreased NGO access to those in need, and declines in economic output. A sanctions strategy may aim to force regime change through pressure on the general population, but these effects may disproportionately harm civilians and can contribute to a decline in support on the ground for the sending body.

On the contrary, supporters of smart sanctions assert that they do not adopt blanket trade embargoes, rather they cause discomfort only to those responsible for the offending behavior or policy. In addition, the Security Council may be able to avoid adverse humanitarian consequences by crafting its sanctions resolutions to include exceptions for necessary commodities, which exclude essential food and medicines from trade restrictions. Long-term humanitarian consequences may be further mitigated by the inclusion of flexible language in Security Council resolutions, allowing for revisions to lists of targeted individuals or commodities. Changes on the ground, including in the weather or in actions by an oppressive regime, may necessitate the expeditious adjustment of such sanctions lists. Finally, in order to monitor violations, gather information on their impacts, and decide on humanitarian exemptions, the U.N. may also implement sanctions committees before and during a sanctions program.

401. U.N. Charter art. 50.
402. See Doxey, supra note 379, at 192; see also Stremlau, supra note 288, at 40–45.
403. See Cortright & Lopez, supra note 210, at 4–5, 37.
404. See id. at 24 (citing the negative impacts of sanctions on the populations of targeted nations).
405. See id.
406. See id. at 25.
407. See Geiss, supra note 241, at 180. In 2000, the resolution imposing sanctions on Afghanistan declared the "necessity for sanctions to contain adequate and effective exemptions to avoid adverse humanitarian consequences." Id. at 186 (quoting S.C. Res. 1333, para. 17, U.N. Doc. S/RES/1333 (Dec. 19, 2000)).
408. See id. at 189.
409. See id. at 186–87.
e. Summary

If the U.N. chooses to take a new, and perhaps more rigorous, course of action in response to the humanitarian crisis in Zimbabwe, it will need to assess the extent of the human rights abuses that have been committed. Such an assessment must focus on an examination of the various laws and treaties that may or may not apply to Zimbabwe in order to determine the extent of the government’s accountability. Furthermore, deciding which course of action to pursue—whether diplomatic negotiation, criminal prosecution, military action, or sanctions—requires the consideration of a variety of criticisms, obstacles, and suggestions for effective implementation. Only then will the U.N. be able to choose an effective response that is economically and politically feasible, as well as legally justified.

III. THE U.N. SHOULD IMPose “SMART” SANCTIONS AGAINST ZIMBABWE

The central question of this Note is whether the U.N. ought to pursue a more aggressive course of action in response to Zimbabwe’s humanitarian crisis, which has been greatly exacerbated by the implementation of Murambatsvina and the failures of Operation Garikai. To answer this question, one must settle at least three issues, each of which was raised in Part II. First, is there a legal basis for a stronger international response? Second, if so, what is the best approach for the U.N.? Third, in particular, are sanctions the best way forward?

The goal of any U.N. response should be coercing the Mugabe government into complying with the stated provisions of Operation Garikai. Part III.A explores the legal justifications of imposing sanctions and presents smart sanctions as the most politically and economically viable response currently available to the U.N.—and the one most likely to succeed in its coercive objectives. Part III.B offers recommendations for a smart sanctions program specifically designed to target Zimbabwean officials. Such a program should be narrowly tailored to ensure that only those specially designated individuals feel its effects and to minimize any adverse humanitarian and economic effects on the general population and third-party nations. Part III.B.1 looks at the general structure, implementation, and enforcement of sanctions, and Part III.B.2 explores specific types of sanctions, including arms embargoes and trade, financial, travel, and diplomatic sanctions, in relation to Zimbabwe.

410. See supra Part I.A.
411. See supra Part I.B.
412. See supra notes 129, 132 and accompanying text.
413. See supra note 232 and accompanying text.
414. See supra Part II.B.4.d.
415. See supra Part II.B.4.c.
A. Smart Sanctions as the Most Appropriate U.N. Response Today

1. The Legal Basis for U.N.-Imposed Sanctions

Legally, the Security Council can impose sanctions once it satisfies the threat to the peace language found in article 39 of the U.N. Charter. A brief review of the language of past Security Council resolutions indicates the possibility and even likelihood that the U.N. would interpret the mass forced evictions and the failure of the Zimbabwean government to redress the humanitarian crisis it has caused as satisfying the threat to the peace requirement. For example, parallels between the language used to describe specific triggering behaviors and the current situation in Zimbabwe can be drawn, especially with respect to the economic repercussions of the operations, the hundreds of thousands displaced by Murambatsvina, the disparate impact the operations have had on women and girls, and the numbers of refugees crossing the border into South Africa.

Furthermore, the imposition of Operation Murambatsvina and the failure of Operation Garikai to address the needs of the displaced constitute violations of international, customary, and domestic laws and therefore provide further justification for the imposition of targeted sanctions on Zimbabwean leaders. In forcibly evicting Zimbabweans from their homes, causing mass unemployment, disrupting health services and education, and further plunging the economy into disrepair, the Mugabe government has violated its obligations under the U.N. Charter. Moreover, the systematic destruction of homes, forced removal of residents to rural areas, confiscation of shop stocks, arbitrary

416. U.N. Charter art. 39; see also supra notes 184–85 and accompanying text.
417. See supra notes 221–24 and accompanying text.
418. See supra Part I.A.4.d.
419. See supra note 21 and accompanying text.
420. See supra note 117 and accompanying text.
422. See supra note 60 and accompanying text.
423. See supra Part I.A.3.b.
426. See supra Part II.A.1.
427. See supra note 19 and accompanying text.
428. See supra notes 78–81 and accompanying text.
429. See Tibaijuka, supra note 2, at 63.
arrests, forcing of homeowners to destroy their own buildings, and disruption of health care and education constitute violations of the rights set out in the Universal Declaration of Human Rights.

The government’s arguments that the operation is legal under the Regional, Town and Country Planning Act; article 29 of the Universal Declaration; or the Zimbabwean Constitution fail. For example, on many occasions during Operation Murambatsvina, residents were given just a few hours to remove their belongings from their homes before the structures were destroyed or residents were forced to destroy them themselves. On others, residents who had obtained the authority to build on the land were evicted anyway. In both instances, the government pursued its goals in violation of both the notice requirement in the Regional, Town and Country Planning Act and rights pertaining to the ownership of property, among others, enumerated in a number of relevant international treaties and in the Zimbabwean Constitution. Since Zimbabwe has signed and ratified these treaties and has not filed any relevant derogations, its leaders are therefore accountable for any violations of them. Any claims that Zimbabwe is not accountable under international human rights law fail in the face of the clear incorporation of those rights into the Zimbabwean Constitution. Such violations provide a foundation for finding a threat to the peace and therefore for imposing sanctions against those responsible for the operation and its aftermath.

In addition, any claim that Operation Garikai mitigates these violations is moot. Conceived after the fact in an attempt to cast Operation Murambatsvina in a noble light and to head off further international recriminations that were certain to follow the publication of Tibaijuka’s U.N. report, Operation Garikai has failed to provide relief to the thousands of victims still waiting to be rehoused. Woefully inadequate in the number and quality of homes it has successfully completed, the

430. See supra note 61 and accompanying text.
431. See supra note 62 and accompanying text.
433. See supra Part II.A.2.
434. See Regional, Town and Country Planning Act, supra note 305.
435. See supra note 308 and accompanying text.
437. See supra notes 19, 62 and accompanying text.
438. See supra note 62 and accompanying text.
439. See Regional, Town and Country Planning Act, supra note 305; Part I.A.3.a.
440. See supra Part II.A.4.
441. See supra Part II.A.5.
442. See supra note 330 and accompanying text.
443. See supra note 332 and accompanying text.
444. See supra note 131 and accompanying text.
445. See supra Part I.B.
446. See supra note 144 and accompanying text.
operation has been bogged down by a corrupt allocation system\textsuperscript{447} and an unrealistic scheme of charging displaced persons for their resettlement.\textsuperscript{448} Construction has all but stopped in most areas,\textsuperscript{449} and the displaced continue to cope with their situation without the help of the government.\textsuperscript{450}

The Zimbabwean government’s failure to respond effectively to the humanitarian crisis it created calls for coercive action on the part of the U.N. With the U.N.’s likely interpretation of the situation as a threat to the peace and the support of various legal justifications for action, the U.N. should take a stronger approach in order to push the government to ameliorate the abuses it continues to inflict on the Zimbabwean population.

2. Negotiations, Prosecution, and Military Action Are Not Appropriate or Viable Options

This Note presents four options that are available to the U.N. in its response to Operation Murambatsvina and the deepening humanitarian crisis in Zimbabwe.\textsuperscript{451} The first three—diplomatic negotiations, international criminal prosecution, and military intervention—are not viable or likely to be successful at this time. Therefore, the U.N. should adopt a program of smart sanctions in order to coerce the Zimbabwean government into complying with the guidelines it set out in Operation Garikai\textsuperscript{452} and to send a clear message of disapproval.

First, the U.N.’s program of diplomacy and negotiation\textsuperscript{453} is failing as a response to Operation Murambatsvina and Zimbabwe’s difficult political crisis.\textsuperscript{454} Currently, the Mugabe government has rejected U.N. efforts to extend aid to those still suffering,\textsuperscript{455} and the government’s plan to rehouse the displaced has fallen dramatically short of its stated targets.\textsuperscript{456} The U.N.’s long-term reliance on South African President Thabo Mbeki’s “quiet diplomacy” has reaped little change for the Zimbabwean people.\textsuperscript{457} In fact, armed police officers continue to forcibly evict residents from their homes through 2006, and today the nation continues to teeter on the brink of starvation.\textsuperscript{458}

\begin{itemize}
  \item \textsuperscript{447} See supra note 147 and accompanying text.
  \item \textsuperscript{448} See supra note 149 and accompanying text.
  \item \textsuperscript{449} See supra note 146 and accompanying text.
  \item \textsuperscript{450} See supra notes 84–90 and accompanying text.
  \item \textsuperscript{451} See supra Part I.C and I.B.
  \item \textsuperscript{452} See supra notes 129, 132 and accompanying text.
  \item \textsuperscript{453} See supra Part I.C.1.
  \item \textsuperscript{454} See supra notes 56–58 and accompanying text.
  \item \textsuperscript{455} See supra notes 252–65 and accompanying text.
  \item \textsuperscript{456} See supra notes 142–45 and accompanying text.
  \item \textsuperscript{457} See supra notes 158–63 and accompanying text.
Second, international criminal prosecution of those responsible for Operation Murambatsvina under the Rome Statute\(^4\) is unlikely to produce any coercive effects and will therefore fail to further the immediate U.N. goals of creating food stability, employment opportunities, and housing options for Zimbabweans.\(^4^\) The U.N. itself has admitted that the pursuit of such prosecutions would likely be protracted and would only cause further debate,\(^4\) perhaps even worsening tensions already present in the country and giving rise to claims of imperialism.\(^4\)

Third, the crisis in Zimbabwe is not yet ripe for military action. First, any resolution for military action is likely to face a veto from at least one of the Security Council's five permanent members.\(^4\) In light of current American and British obligations in Iraq,\(^4\) those nations are unlikely to be amenable to further commitments of troops and equipment to distant conflicts.\(^4\) Second, while the possibility of a veto is debatable, it is clear that all other tools of coercion have not yet been exhausted.\(^4\) Negotiations with President Mugabe appear to be failing,\(^4\) and the government has rejected offers of aid,\(^4\) but sanctions are still a viable option.

In sum, sanctions are the most appropriate approach both politically and economically and present perhaps the most likely means of achieving the U.N.'s goals of fostering international peace and security.\(^4\) While the situation in Zimbabwe may seem hopeless to many, the U.N., as a collective of 192 member states,\(^4\) possesses an imprimatur that can be used to do more than simply negotiate with this oppressive regime. A program of smart sanctions, including financial, arms, trade, travel, and diplomatic prohibitions,\(^4\) would coerce targeted officials to address the humanitarian crisis precipitated by Operation Murambatsvina and the failing Operation Garikai, would send a message of international officials continued to raze dozens of homes in late 2006, giving residents just twenty-four hours' notice to evacuate; see also supra Part I.A.4.a.

460. See Tibaijuka, supra note 2, at 74–79.
461. See supra note 357 and accompanying text.
462. See supra notes 358–59 and accompanying text (discussing the tensions raised by ICC prosecution).
463. See supra notes 194–95 and accompanying text.
465. See supra note 206 and accompanying text.
466. See supra note 183 and accompanying text.
467. See supra Part I.C.1.
468. See supra notes 100–05 and accompanying text.
469. See supra note 354 and accompanying text.
471. See supra notes 242–44 and accompanying text.
condemnation to Zimbabwean leaders, and would send a rallying call of support to opposition groups on the ground.

3. Criticism and Concerns over the Implementation of Sanctions

Despite criticisms, the U.N. should impose a program of smart sanctions against Zimbabwe. Concerns over their success rates, potential misuse, economic effects, political feasibility, and humanitarian effects are misplaced. This section argues that a system of smart sanctions successfully addresses or bypasses each of these criticisms.

The U.N. can easily overcome doubts about the success rate of sanctions in achieving their stated goals and about its own ability to enforce a program of sanctions. First, by redefining the factors used to measure the success of sanctions, the U.N. will focus more on demonstrative goals rather than on the stated coercive goals. Second, the counter to concerns over the U.N.'s ability to effectively implement and monitor a smart-sanctions program lies in its efforts to cultivate local contacts and international commitment. A robust outreach program designed to engage local stakeholders and an attempt to mitigate adverse secondary effects on third-party nations will contribute greatly to the success of a U.N. program.

Criticisms that sanctions are susceptible to potential misuse or disingenuous intentions are misplaced with regard to Zimbabwe. Allegations that sanctions are simply a pretext for military intervention fail in this case, as it is unlikely that the Security Council could garner approval for such action in light of the current conflict in Iraq. Since the Security Council, acting as a multilateral agent, would be imposing sanctions in this case, rather than a nation acting unilaterally, its multicultural membership largely preempts claims of racism. Moreover, the rights the U.N. seeks to uphold are founded on principles of antidiscrimination, have been incorporated into Zimbabwean law,
and form a significant part of the Zimbabwean Constitution.\(^485\) Zimbabwe’s various ratifications\(^486\) of international treaties and its U.N. membership\(^487\) also indicate its support, at least rhetorically, of the principles the U.N. seeks to enforce through a sanctions program. Finally, Mugabe has already capitalized upon any remaining notions of nationalism with his regular mischaracterizations of British and U.S. sanctions as comprehensive and subsequently responsible for the current situation.\(^488\) Any attempt to generate a “rally round the flag effect”\(^489\) by playing on the population’s nationalist emotions likely has occurred already. Therefore, the imposition of U.N. sanctions will not spark further backlash in Zimbabwe. Finally, the U.N. can achieve legitimacy for its sanctions program by exploring whether or not opposition groups have called for them.\(^490\) Considering all of the foregoing, a U.N.-sponsored program of sanctions should not be susceptible to claims of potential misuse or imperialist motivations.

In addition, economic concerns over sanctions implementation can easily be resolved in the case of Zimbabwe.\(^491\) In the event that the U.N. does impose smart sanctions on Zimbabwe, costs to non-target nations will be minimal.\(^492\) Smart sanctions will be directed only at ruling-party members and will not involve comprehensive trade embargoes. Therefore, the cost of enforcing sanctions to neighboring states will be low,\(^493\) as they will not need to intrude heavily upon cross-border trading and informal-market activity among the lower levels of the economy. The effects on Zimbabwe’s economy should also be minimal. Essentially, the Zimbabwean government has already self-sanctioned\(^494\) the nation with its

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484. See supra note 332 and accompanying text.
485. See supra note 332 and accompanying text.
486. See supra Part II.A.4.
487. See supra notes 268, 291 and accompanying text.
488. See supra note 382.
489. See supra notes 384–85 and accompanying text.
490. See supra notes 391–94 and accompanying text.
491. See supra Part II.B.4.c.
492. See supra Part II.B.4.c.
493. See supra Part II.B.4.c.
494. See Online NewsHour: Contested Victory (PBS online broadcast Mar. 13, 2002), available at http://www.pbs.org/newshour/bb/africa/jan-june02/elections_3-13.html. In an interview just after the 2002 Zimbabwean presidential election, Jeffrey Herbst, professor of international affairs at Princeton University, stated that he thought U.S. and E.U. sanctions would have little effect on Zimbabwe’s political order: “The Mugabe regime has already done far more damage to the country’s economic prospects than outsiders could possibly do. They’ve self-sanctioned themselves.” Id. Ray Choto, a Zimbabwean journalist who has been arrested and tortured by the Zimbabwean military for his work, also commented on sanctions, stating,

Well, I mean the sanctions, especially if they are targeted on certain individuals, that’s fine. I mean I am opposed to sanctions, which would be targeted at the country as a whole, because I mean the people who are fighting against the Mugabe regime trying to make sure that it does respect the rule of law will be punished at the end of the day.
failing economic policies, massive government-induced unemployment and homelessness, and inability to work with states that are already imposing unilateral targeted sanctions. Although reliable statistics pertaining to Zimbabwe's economy are unavailable, it is clear that over the past five or more years agricultural output and the country's gross domestic product have contracted sharply. These indicators reflect the fact that the nation has neither the currency nor the demand to import goods or the productivity to export them, and further restrictions on such transactions should not have a great effect on what is largely an informal economy or on the trade activity of neighboring states.

Since most major Western nations have already implemented smart sanctions against President Mugabe and other high-ranking officials, any further economic impact of U.N.-imposed sanctions on the general population should be minimal. Therefore, economic concerns with respect to non-target nations are not a primary consideration with respect to a smart sanctions program in Zimbabwe.

Finally, concerns over the humanitarian effects of sanctions are misplaced. More specifically, smart sanctions as applied to Zimbabwe should not result in any extreme adverse effects on the Zimbabwean population. The program will not cause inadvertent harm if it is targeted only at those responsible for Operation Murambatsvina includes exemptions for any potentially targeted necessary commodities and includes flexible language in order to adapt to changing circumstances on the ground. To be sure, the U.N. will need to monitor implementation carefully and effectively, but with basic monitoring frameworks in place, the U.N. can avoid any adverse humanitarian effects.

A U.N.-imposed smart sanctions program in Zimbabwe is a practical choice. By setting a demonstrative goal for the program, in addition to the usual coercive goals, the U.N. can measure its success by factors other than

Therefore, the selective use of these sanctions, the smart sanctions, I think is the best way forward to go.

Id.

495. See Wines, supra note 23 (discussing Operation Sunrise).
496. See supra Part I.A.
497. See supra note 287 and accompanying text.
499. See supra Part II.B.4.c.
500. See supra note 287 and accompanying text. Incidentally, the implementation of these unilateral sanctions indicates strong political will for a U.N.-imposed sanctions program. For further discussion, see supra note 368, indicating that China and Russia might not exercise its veto power against proposed U.N. sanctions.
501. See supra note 406 and accompanying text.
502. See supra note 407 and accompanying text.
503. See supra note 408 and accompanying text.
504. See supra note 409 and accompanying text.
regime change or even compliance. If the U.N. cultivates local contacts and ensures robust international commitment to effectively enforce the program, the sanctions should be successful. Secondary economic impacts should be minimal due to Zimbabwe's financial crisis, but the U.N. should undertake preliminary studies to assess the impact on third-party nations to ensure that these effects are mitigated as much as possible. Any adverse humanitarian effects can be avoided with the careful tailoring of the program to target only those responsible for Operation Murambatsvina, to include exemptions for necessary goods, and to include flexible language. These recommendations fully address the criticisms of sanctions, making the imposition of smart sanctions a viable next step against Zimbabwean officials.

B. Recommendations: Drafting a Model Sanctions Program for Zimbabwe

The choice of sanctions as an appropriate response to Operations Murambatsvina and Garikai requires crafting a plan that will affect only those responsible for the destruction. This section offers recommendations for such a plan, first looking at its construction via language and enforcement and then looking at the coercive approaches that may be implemented through it.

1. Language, Implementation, and Enforcement

In designing a program of smart sanctions for Zimbabwe, the U.N. should focus on the language of the program and provisions for its implementation and enforcement. Drawing on recommendations made by the Security Council's Informal Working Group on General Issues of Sanctions, the Stockholm Process, various academics, and the unique characteristics of the situation in Zimbabwe, this section suggests ways the U.N. can build an effective smart-sanctions program.

The text of the Security Council's sanctions mandate must be clear in several ways. The list of targeted individuals must be as accurate as possible, and the resolution should include a means of redress for those who wish to challenge their inclusion. Unambiguous definitions of restrictions must also be included, especially with respect to financial and trade transactions. The means of compliance that will result in the lifting or easing of sanctions must be clearly spelled out, so that targeted

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507. See id. at 97–98.
508. See id. at 96.
individuals are aware of what is expected of them.\textsuperscript{509} In this respect, the U.N. should be careful not to "move the goalposts"\textsuperscript{510} during the sanctions period, instead adhering to objectives that are clearly and concisely framed. Small, carefully iterated goals will help with clarity. Finally, the text should include a sunset clause, which provides a time frame for compliance.\textsuperscript{511} On the same note, the Security Council may also consider including deadlines for the easing of sanctions in response to partial compliance.\textsuperscript{512} Ultimately, ensuring that the text includes clear demands will aid in enforcement and in ensuring compliance.

In modeling a sanctions program specific to Zimbabwe, the U.N. should draw on the above recommendations. First, an investigation into the target lists already in place in the unilateral sanctions program of the United States, the European Union, Australia, and New Zealand will help to determine who the U.N. should target.\textsuperscript{513} The list will likely include a majority of ZANU–PF officials in local and national government, including President Mugabe, his family members, business partners, and any other individuals or groups likely to transact business on his behalf. In addition, the U.N. should focus on the objectives set forth in Operation Garikai, which largely focus on the construction of new homes for the displaced and the creation of jobs through the allocation of plots of land.\textsuperscript{514} Such goals are directly linked to stabilizing the economy. The U.N. should tie these goals to negotiations with the current regime, requiring President Mugabe to permit the U.N. to assist in achieving a more stable monetary policy and allow aid into the country. Finally, the U.N. should set an initial deadline of six months with a provision for renewal after the first series of negotiations. These recommendations provide the Security Council with a starting point for drafting a Zimbabwe-specific resolution.

In implementing the program, the Security Council should pay particular attention to humanitarian exemptions,\textsuperscript{515} methods of assessment of progress,\textsuperscript{516} and adverse effects on the general population\textsuperscript{517} and third-party

\textsuperscript{509} See Proposed Outcome, supra note 505, at 4. Sanctions must be narrowly construed with clear goals and perhaps provisions for pre-assessment studies. See Cortright & Lopez, supra note 210, at 5; see also Stremlau, supra note 288, at 53 (calling for an improvement in the precision of resolution language). This lack of clarity is compounded by the fact that the U.N. often relies on the language of past resolutions, resulting in a lack of individuality and responsiveness to the specific situation. See id.

\textsuperscript{510} Cortright & Lopez, supra note 210, at 6.

\textsuperscript{511} See Stockholm Report, supra note 235, at 96–97; see also Proposed Outcome, supra note 505, at 4.

\textsuperscript{512} See Stockholm Report, supra note 235, at 26; see also Cortright & Lopez, supra note 210, at 5–6; Proposed Outcome, supra note 505, at 4.

\textsuperscript{513} See supra note 287 and accompanying text.

\textsuperscript{514} See supra note 132 and accompanying text.

\textsuperscript{515} See supra note 407 and accompanying text.

\textsuperscript{516} See supra notes 510–11 and accompanying text.

\textsuperscript{517} See supra Part II.B.4.d.
In so doing, the Security Council should conduct pre-assessment reports to determine the specific needs and possible negative effects of the program. Relying on these reports, the Security Council should determine what, if any, exemptions are required for humanitarian purposes, including food, medical supplies, educational items, and nonlethal military equipment. During implementation, applications for further exemptions should be dealt with immediately. In addition, the U.N. should also seek regular evaluations from in-country representatives to determine the impact and success of the sanctions and accept recommendations for modifications to them. In that vein, effects on the population can extend into the post-sanctions period and the U.N. should continue its monitoring duties accordingly.

While enforcement of sanctions depends on member states, the U.N. should make provisions for assisting those states. Such provisions will include providing mechanisms for the investigation of potential violations and immediately conveying any reports of violations to the relevant member state. Similarly, the U.N. should also conduct a survey of the potential effects on third-party nations to ensure that they are equipped to confront violations occurring at their borders. With respect to Zimbabwe, these measures will involve engaging border countries such as South Africa, Mozambique, Zambia, Botswana, and Namibia in discussions to determine their enforcement needs during the program and to evaluate any unintended negative effects. The U.N. should involve these governments at every stage in order to ensure enforcement.

To craft an effective sanctions program, the U.N. needs to communicate with local groups on all levels. Clear language in the resolution will let targeted groups know what is expected of them, and discussions with local and international NGOs as well as neighboring states can help to assess the presence of unintended consequences and enforcement obstacles. While individual member states bear the responsibility of enforcing sanctions, the U.N. must be clear about what is expected from all parties involved.

2. Types of Smart Sanctions for Zimbabwe

A program of smart sanctions depends on a mixture of types of sanctions, each one intended to alter the cost-benefit analysis of engaging in the

518. See supra Part II.B.4.c.
519. See Proposed Outcome, supra note 505, at 4.
520. See id. at 5; see also Stockholm Report, supra note 235, at 112.
521. See Proposed Outcome, supra note 505, at 5.
522. See Stockholm Report, supra note 235, at 21; see also Proposed Outcome, supra note 505, at 6.
523. See Geiss, supra note 241, at 198.
524. See Stockholm Report, supra note 235, at 59; see also Proposed Outcome, supra note 505, at 7.
525. See supra Part II.B.4.c.
offensive behavior in a specific way. The program against Zimbabwe should include trade, financial, travel, and diplomatic sanctions, as well as an arms embargo. The U.N. program should build on the unilateral programs already put in place against Zimbabwe by Western nations, which include many of these elements.

First, the U.N. should include trade sanctions on businesses owned by targeted members of the government and their family members and associates. This is particularly relevant in the agricultural sector since many officials were allocated commercial farms in the land-redistribution program. However, the U.N. should carefully monitor the effects of trade sanctions, especially on agriculture, to be certain the country has the required inputs to produce food supplies for the general population and to ensure that the sanctions do not cause further unemployment of non-target individuals. In response to partial compliance on the part of Zimbabwean officials, a gradual easing of trade sanctions may prove necessary to achieve the goals of creating jobs and food security. The U.N. should also impose trade sanctions on luxury goods, as proposed in the sanctions program against North Korea. Such goods are out of the financial reach of the majority of Zimbabweans, so a ban would affect only the targeted elite and likely would not have a great impact on third-party businesses. Combining prohibitions on trade transactions with bans on luxury goods should inflict a heavy cost on targeted officials.

Second, the U.N. should include provisions for freezing the foreign-held assets of targeted individuals, their family members, and their business partners. These provisions should include blocks on all credit and loans for these individuals, as well as a bar on all non-humanitarian governmental assistance. Admittedly, enforcement of such a bar is difficult, especially in locations where technology is not adequate; however, progress is continually being made.

Third, the U.N. should impose robust travel bans on all government officials and their families and business partners. These provisions should include travel for medical purposes, forcing officials to rely instead

526. See supra note 245 and accompanying text.
527. See supra note 287 and accompanying text.
528. See supra note 4 and accompanying text.
532. See id. at 32–37.
533. See id. at 37.
534. See Stockholm Report, supra note 235, at 74 (offering guidance on implementing travel bans, including visa restrictions).
on the medical system in their home country. Exemptions should only be permitted for international negotiation sessions. In conjunction with these prohibitions, the U.N. should also impose diplomatic sanctions on Zimbabwe, prohibiting officials from participating in international events and suspending the nation from the U.N. under article 5 of the charter. The imposition of travel and diplomatic sanctions imposes a symbolic and psychological cost, demonstrating international rejection of the targeted parties. Such an effect aids in reaching the demonstrative goals of the sanctions program.

Finally, the U.N. should impose an arms embargo on Zimbabwe. In Zimbabwe, the government’s threats of violence are currently potent enough to avoid violent clashes; however, the situation could ignite at any moment, as evidenced by the political disruptions seen earlier this year. A prohibition on the sale of arms to the state would not only diffuse the possibility of a long-term conflict erupting, it would also limit the ability of targeted individuals to profit from transactions in the sale of arms. An arms embargo works together with the other sanctions to limit individuals’ finances.

C. Summary

The U.N. should carefully craft its smart sanctions program to inflict the maximum amount of coercive pressure on targeted officials while minimizing any unintended adverse effects. When drafting its resolution, the Security Council should include clear, well-defined compliance

535. See Douglas Southgate, Turn Your Eyes to Zimbabwe, N.Y. Sun, Sept. 20, 2006, at 7 (highlighting President Mugabe’s recent trip to New York for a meeting of the U.N. General Assembly). Much to international dismay, Portugal recently extended an invitation to President Mugabe to attend a summit of E.U. and African nations in Lisbon; however, Portuguese officials indicated that they “hope[d that] he will be clever enough not to come.” See Mugabe to Be Invited to EU Summit, BBC News, July 2, 2007, http://news.bbc.co.uk/2/hi/europe/6261656.stm. A representative of the British Conservative party declared, “The Portuguese presidency is sending out a terrible signal that we are prepared to do business with dictators.” Id.

536. U.N. Charter art. 5. Article 5 declares that

[a] Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Id.


538. See Stockholm Report, supra note 235, at 70–71 (offering guidance on the implementation of arms embargoes).


provisions and a sunset clause, so that all parties understand what is expected of them. The sanctions program should not only focus on implementing the rehousing goals of Operation Garikai but will also need to include negotiations with the U.N. in order to pursue such longer-term goals as economic stability, employment, and food security. The resolution should include exemptions for necessary humanitarian needs, including food and medical supplies, and the U.N. should work with local and international NGOs and neighboring countries to monitor the effects of the sanctions program both during and after its implementation. A successful smart sanctions program against Zimbabwe will include trade embargoes against targeted individuals and businesses, and on luxury goods; the freezing of the financial assets of targeted individuals; robust travel prohibitions, including provisions for diplomatic exclusion; and an arms embargo. These recommendations provide a framework for crafting a successful draft resolution for smart sanctions against Zimbabwean officials.

CONCLUSION

In framing a response to gross violations of human rights law, as seen in Zimbabwe during Operation Murambatsvina and in the failure of Operation Garikai, the U.N. has a range of tools available. In this case, the U.N. should impose targeted sanctions against those responsible for the continuing human rights violations. While the economic and humanitarian situation in the country prior to May 2005 was in a downward spiral, the brutal efficiency with which the government displaced nearly one million people calls for an international response. Not only did the operation directly affect the victims' housing and employment situations, but it also carried disastrous knock-on effects in the health care, education, and economic sectors of society. Thus far, the U.N. has taken little official action to express its disapproval, and the human rights abuses continue with impunity.

The U.N. has a variety of responses available, ranging from diplomacy to military intervention; however, as is so often the case, the situation calls for an immediate coercive strategy that can only be achieved through the implementation of targeted sanctions. Such sanctions impose a heavy cost on officials responsible for the devastation, causing them to recalculate the benefits of allowing the nation to suffer. Moreover, a sanctions program sends a clear message of warning to other nations facing similar issues, of

541. See supra note 8 and accompanying text.
542. See supra note 21 and accompanying text.
543. See supra note 21 and accompanying text.
544. See supra Part I.A.4.b–d.
545. See supra Part I.D.
546. See supra notes 14–21 and accompanying text.
support to those suffering, and of outrage to the perpetrators of these crimes.

Imposing a smart sanctions program is justified on many levels. Operation Murambatsvina violated a host of international, regional, and local human rights laws, which creates a legal justification (although one is not required) for U.N. action. Concerns over the feasibility and potential harmful effects of sanctions can easily be mitigated or avoided entirely with strong international commitment to enforcement, careful and continual monitoring, consultation with local and international NGOs, and precise drafting.

The international community as a whole must not consent to the mass suffering that the Mugabe regime and other governments continue to inflict on citizens around the world. Undoubtedly, in this case, Zimbabweans will continue to feel the effects of Operation Murambatsvina for years to come; at the very least, the U.N. should attempt to move beyond its failed efforts at diplomacy with a man who has ruled with impunity for decades. A program of smart sanctions serves as a channel for U.N. disapproval of this government-induced disaster, sets an example to other governments engaging in similar human rights violations, creates a U.N. precedent for future enforcement actions, and generates momentum for change in a country that desperately needs it.

547. See supra notes 2–8 and accompanying text. Despite the upcoming 2008 Zimbabwean presidential elections and despite rumors of political negotiations, the U.N. should take a stronger stance to express its disapproval. Past elections have proven flawed, and Mbeki has made no public statement about any negotiated political compromises. See supra note 158 and accompanying text.