

TORTURE IN ZIMBABWE

1 Defining Torture:

According to Article 1 of the United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* torture is:

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as:

- **obtaining from that person information or a confession,**
- **punishing that person for an act he/she or a third person has committed or is suspected of having committed,**
- **intimidating or coercing that person or a third person,**
- **for any reason based on discrimination of any kind.”**

Torture is carried out by a state official or another individual acting with the acquiescence of the State. Some of the most common torture methods include beatings with instruments such as whips, clubs, and baton sticks, imposition of electric shocks, beating on the soles of one’s feet, suspension by the arms or legs and sexual torture including the threat or the act of rape and sexual assault.

Torture and Zimbabwe’s International Obligations

In this *Human Rights Monthly* we assess, against the background of its international duties, what the Government of Zimbabwe has done to prevent acts of torture within its borders, assist its victims, punish the perpetrators and ensure these acts are not repeated. Zimbabwe has ratified the *African Charter on Human and Peoples’ Rights* and the *International Covenant on Civil and Political Rights* which prohibit torture in *Articles 5 and 7* respectively. In addition torture is considered to be a peremptory norm in international law. This means that it is illegal for any state to violate the prohibition against torture. This prohibition of torture is set out more fully in *CAT*. The proscription for torture obliges Zimbabwe to actively prevent torture within its borders even though it has not yet ratified the *CAT*.

The *CAT* obligates State Parties to ensure that “*torture, attempts to commit torture or complicity in torture*” are treated as criminal offences. It also requires that all Member States take effective measures, including legislative, administrative and judicial, to prevent acts of torture. Zimbabwe is still to ratify the *CAT*. Parliament passed a motion to ratify it on 23 May 2001, however, no action has been taken since then. Zimbabwe’s ratification and subsequent local implementation of the *CAT* would be a significant move towards elimination of torture in the country. The Human Rights Forum has in the past called upon and continues to call upon the Government of Zimbabwe to ratify the *Convention Against Torture* without further delay.

Torture in Zimbabwe

Section 15 (1) of the Zimbabwe Constitution provides that:

“no person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.”

“*Torture, inhuman or degrading punishment or other such treatment*” is not defined in the Zimbabwean Constitution but has been interpreted in Zimbabwean case law (*Blanchard & Ors v Minister of Justice*) to mean actions that result in severe mental and physical suffering. Torture has

been reported in Zimbabwe in all of the past decades in association with the War of Liberation prior to independence, political events such as elections, and in the case of the early to mid 1980s, disturbances in Matabeleland and the Midlands. In our more recent context, sustained levels of political violence and torture have been and continue to be perpetrated around the country since early 2000. In 2002, 1 061 cases of torture were recorded by the Human Rights Forum, the majority of them in connection with the Presidential Election of March 2002. In 2003, 497 cases of torture were recorded. The cumulative total for cases of torture documented by the Human Rights Forum between the period 1 January and 31 August 2004 is 159, an average of 20 cases every month.

Torture, cruel, inhuman or degrading treatment appears to have become a central element of state agents' treatment of citizens perceived as being in opposition to the State and those attempting to exercise their rights to freedom of association, assembly and expression. Citizens who support opposition political parties or have divergent views to those of the State have been the primary targets of torture. State agencies such as the Zimbabwe Republic Police (ZRP), the Central Intelligence Organisation (CIO) and the Zimbabwe National Army (ZNA) are repeatedly alleged to be using torture as a means of investigating and obtaining information or confessions from the real or perceived perpetrators of a crime in cases recorded by the Human Rights Forum. International law states clearly that there are no circumstances under which torture and other cruel, inhuman, degrading treatment or punishment can be justified as is expressed in *Article 2 of CAT*:

Torture by Private Individuals

"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political stability or any other public emergency, may be invoked as justification of torture. An order from a superior officer or a public authority may not be invoked as a justification for

The Government of Zimbabwe is not only responsible for protecting people against torture perpetrated by the State or its officials, but also against torture by private individuals. The Government is accountable for acts of torture where it has failed to take reasonable steps to prevent the violations or to ensure that adequate remedies are available for the victims of such acts. Failure by the Government of Zimbabwe to provide criminal and civil remedies for torture through its laws is thus equivalent to condoning acts of torture. If the Government does nothing regarding acts of torture by private individuals of which it is fully aware, then it is responsible.

In 2000, after a period of excessive violence, the Government granted a General Amnesty for politically-motivated crimes in the period surrounding the February 2000 Constitutional Referendum and the June 2000 General Elections. *Clemency Order of No. 1 October 2000* freed from prosecution perpetrators of politically motivated crimes between 1 January and 31 July 2000 and pardoned those who had already been convicted. The *Clemency Order* excluded crimes such as "murder, rape, robbery, indecent assault, statutory rape, theft and possession of arms". Persons who committed assault, torture, abduction and arson were therefore pardoned. The *Clemency Order of 2000* was a breach of the State's duty to investigate and to guarantee people's freedom from such acts. Thus the State is liable for torture committed by private individuals during this period.

The Government of Zimbabwe is also responsible for acts of torture committed by private individuals from August 2000 to the present day through failure to investigate and prosecute those alleged to be responsible for the majority of cases of torture perpetrated by members and supporters of political parties or other groups. In 1988 the *Inter-American Court for Human Rights* in the *Velasques Rodrigues* case was clear as to what extent a State may become responsible for cases not intentionally or directly attributable to it if it fails to "carry our *serious* investigations of the violations committed within its jurisdiction, identify those responsible and ensure appropriate punishment for the perpetrators"

The Right to Remedies for Victims of Torture

Article 2(3) of the *International Covenant on Civil and Political Rights* stresses the importance of an "effective remedy" for persons who allege that their rights have been violated. Torture victims

should therefore have access to justice, compensation and rehabilitation for harm suffered. Torture must be domestically outlawed as a criminal offence and perpetrators prosecuted. Compensation available to victims should be adequate, effective, prompt and proportional to the gravity of the violation. Rehabilitation, which includes medical, psychological and other care, should also be part of the remedy. Guarantees of non-repetition should also exist through the systematic enforcement of the prohibition against torture and elimination of impunity for all perpetrators.

Recommendations

In order to address its shortcomings in protecting its citizens from torture the Human Rights Forum urges the Government of Zimbabwe to:

- sign and ratify the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment;
- enact laws that designate torture as a criminal offence with grave consequences;
- scrupulously investigate all reported cases of torture and bring the perpetrators to justice and ensure adequate compensation for the victims and put in place measures to prevent the repetition of such acts.

2 Political Human Rights Violations - August 2004

Intra-party violence between members of ZANU PF resulted in high levels of politically motivated violence taking place in Makoni North constituency (Manicaland Province) between 21 and 22 August 2004. Didymus Mutasa, ZANU PF MP for Makoni North and Minister of Special Affairs in the President's Office Responsible for the Anti-corruption and Anti Monopolies Programme, was allegedly involved in or the instigator of several incidents of assault and destruction of property. Forty-two people were arrested for their involvement in the violence. Minister Mutasa reportedly acknowledged that the youths were his supporters and paid bail for 31 of them. However, no action has yet been recorded as having been taken against Minister Mutasa who seems to be enjoying impunity for his actions.

The Human Rights Forum commends the Commissioner of Police, Augustine Chihuri, for the recent stance that he adopted with respect to incidents of political violence. The Commissioner stated that "*towards the 2005 Parliamentary Elections...barbaric type of political activism in which youths are used as cannon fodder should cease*" and that the ZRP will "*have zero tolerance of any situation or activities which they perceive as contributing to violence.*" Indeed often youths are used as foot soldiers who are later prosecuted for perpetrating violence while the instigators themselves are not held accountable for their involvement in the violence as well. We call upon the Commissioner to take action against holders of political office such as Minister Mutasa who believe that they enjoy impunity in so far as they make statements such as "*Ndino disciplinwa nani?*" (*who will discipline me*).

Clashes broke out between ZANU PF and MDC youths in Epworth, Hatfield constituency (Harare Province). MDC youths who were distributing flyers in the constituency were reportedly attacked by ZANU PF youths resulting in a clash during which some MDC youths were allegedly kidnapped by ZANU PF youths and assaulted by them. A lack of political tolerance subsists between ZANU PF and MDC youths.

State agents were allegedly involved in torturing residents of Mabvuku on 26 August 2004. About 15 uniformed soldiers reportedly randomly assaulted any person that they came across accusing them of having assaulted a soldier earlier on. The soldiers reportedly abducted some of the residents, accusing them of being MDC supporters and took them to the ZNA NOCZIM base along Mutare Road where they were assaulted with rifle butts, baton sticks and kicked with booted feet.

NB: The *Human Rights Monthly* was not produced between April and July due to unforeseen circumstances.

3 Zimbabwe Human Rights NGO Forum Member Focus

The *Human Rights Monthly* carries a brief narrative on the activities of a member of the Zimbabwe Human Rights NGO Forum in each issue. This is intended to assist our readers to understand the activities of the coalition and furthermore about the services offered by each NGO. This month we feature the Media Monitoring Project Zimbabwe.

Media Monitoring Project Zimbabwe

Background Information

The Media Monitoring Project Zimbabwe (MMPZ) is an independent Trust that works to promote responsible journalism in Zimbabwe. MMPZ monitors the information output of Zimbabwe's radio, television and print media. It produces weekly reports of its findings and occasional reports on current issues. MMPZ began its operations in January 1999 as a joint initiative of three organisations: the Zimbabwe Chapter of the Media Institute of Southern Africa (MISA), the Catholic Commission for Justice and Peace in Zimbabwe (CCJP) and Article 19, the International Centre Against Censorship.

Its mission is:

- To monitor the Zimbabwean media to determine how far they adhere to constitutionally and internationally guaranteed standards of freedom of expression, as well as generally accepted standards of ethical journalistic practice.
- To inform the public and relevant decision-makers about its findings; to make its reports public; and to conduct public information rights campaigns that help to foster and protect the freedom of expression and information rights.

This is achieved through:

- Research and analysis of news and current affairs stories and programmes on radio, television and in print media
- Making these available in the media to promote awareness
- Engaging the media and civic society to promote the public's rights to fair and accurate information and freedom of expression

The two core aspects of MMPZ's work are:

1 Research and Monitoring

- Analysing the content and presentation of news, current affairs, and public information on radio, television and in the print media
- Monitoring the role of the media in elections, including balance and fairness in news and current affairs, accuracy and impartiality in voter education and equity in political advertising and direct access.
- Monitoring public information rights violations, including civic issues, in the media.

2 Advocacy

- Informing the public about its findings, including publishing these in the media and conducting public meetings on freedom of expression and freedom of information issues
- Campaigning for the reform of laws restricting the free flow of information including the public's right to freedom of expression
- Networking with other like-minded organisations to advance the cause of freedom of expression

MMPZ can be contacted at **15 Duthie Avenue, Alexandra Park, Harare**. Tel/Fax: **263 4 703702**.
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