



Zimbabwe  
**HUMAN RIGHTS**  
N G O F o r u m

**Only bruises on the soles  
of their feet!  
Torture and Falanga in  
Zimbabwe**

**Report by Zimbabwe Human Rights NGO Forum**

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## **Introduction**

**“ We beat prisoners beneath the foot, we are not crazy enough to hit the whole body because that can be used against us in court.”**

This is what a senior Zimbabwean police officer is reported to have told a South African newspaper in an interview, thus confirming the use of torture by the Zimbabwe Republic Police, (ZRP) and it is still the case that the ZRP resort to this horrible practice, as evidenced in the allegations of the use of falanga in the torture of Jestina Mukoko and the other 41 abductees.

Although torture has been seen in all three previous decades of Zimbabwe, it has become so commonplace since 2000 that it is only when particularly repugnant episodes occur that there is publicly expressed revulsion of it. Since its formation in 1998, the Zimbabwe Human Rights NGO Forum [Human Rights Forum] has issued a large number of reports about torture, urging an end to this vile practice. Despite this torture still continues to be practised on a widespread basis in Zimbabwe.

Falanga is unequivocally a form of torture and constitutes a serious criminal assault under Zimbabwean law. This form of torture has become particularly prevalent in the past five years. Although falanga has been reported in previous decades, it now appears to be very widespread indeed, and almost routine, both inside and outside of places of detention. It is used by the police as well as non-state actors that are supporters of the government.

The police have a constitutional and professional duty to protect people against unlawful assaults and yet members of the police force are frequently perpetrating acts of torture as is documented in this report and has also been documented in previous reports of the Human Rights Forum. The evidence establishes that the practice of torture, including falanga, is not carried out by a few aberrant law enforcement officers but instead is widespread and systematic. It is evident that it is not only the ZRP that are guilty of falanga, but that it has become a widespread practice carried out by proxy forces of the Zimbabwe government, and mostly by supporters and members of ZANU PF.

### **What is torture?**

Torture is one of the worst forms of inhumane treatment, involving as it does the deliberate infliction of severe pain, mental suffering and degradation upon a person who is in a helpless

condition. It is usually carried out in a way that is grossly humiliating to the victim. It generally stops short of causing death, but sometimes victims are tortured to death. It causes physical injury (sometimes permanent disabling injury) and usually also leads to drastic long-term psychological harm.

Torture is a vile practice which any civilized society will do everything possible to prevent and eradicate. As the Supreme Court observed, in the case of the Catholic Commission for Justice and Peace in Zimbabwe v Attorney-General<sup>1</sup>, "the right not to be subjected to torture stands as a sentinel over human misery, degradation and oppression."

No civilized nation will permit its law enforcement agencies or its military forces to make use of torture or seek to justify, excuse or condone the use of such practices by these personnel. No civilized government will encourage or allow irregular forces or militias to inflict torture upon its opponents. No civilized nation will grant an amnesty or pardon to persons who have used torture. Instead, a civilized nation will ensure that all persons who are alleged to have engaged in this despicable practice are prosecuted and, if found guilty, are punished in a manner that takes account of the gravity of this crime. Victims should also be entitled to claim civil compensation for the harm they have suffered.

In international law, torture can constitute a crime against humanity. Under Article 7 of the **Rome Statute of the International Criminal Court**, torture will constitute a crime against humanity, if it is "committed as part of a widespread and systematic attack directed against any civilian population, with knowledge of the attack", and the attack was "pursuant to or in furtherance of a State or organisational policy to commit such attack." The Rome Statute thus requires that the crime against humanity constituted by official use of torture be part of a widespread and systematic attack against civilians in pursuit of state policy. On the other hand, under the **United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**, a single act of official torture is enough to fall foul of the Torture Convention.

For the purposes of the Torture Convention, torture is defined as involving the following elements:

- the intentional infliction of severe pain and suffering, whether physical or mental;
- the purpose of inflicting the pain or suffering must be
  - to obtain from the victim or another person information or a confession;

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<sup>1</sup> CCJP vs Attorney General and others 1993 (1) ZLR 242 (S)

- to punish the victim for an act that the victim or another person has committed or is suspected of having committed;
- to intimidate or coerce the victim or another person; or
- for any reason based upon discrimination of any kind;
- the pain or suffering must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The key point in this definition is the involvement of a public official or person acting in an official capacity. The public officer could be a police officer, an intelligence officer, an army officer or some other public servant. The Convention also lays open the possibility that other persons, who are not officials, but are acting with the full support of the state or the government, may commit torture: the point here is that it is the causal nexus between the perpetrator and the state that will define an act as torture or not. Here it is important to note that governments can avoid the torture label by creating forces and groups outside of the state agencies.

### **The importance of the Torture Convention**

In its preamble, it is stated that State Parties to this Convention are desirous of making "more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world." This is a laudable goal, and Zimbabwe should join in the pursuit of this goal.

The Torture Convention contains a series of provisions that indeed are likely to make the international struggle against the use of torture far more effective. Some of these are set out below.

- A State Party to the Convention is obliged to "take effective legislative, administrative, judicial and other measures to prevent acts of torture in any territory under its jurisdiction."
- A State Party is not entitled to invoke as a justification for torture any exceptional circumstances, whether a state of war or a threat of war, internal political instability or any other public emergency.
- An order from a superior officer or a public authority may not be invoked as a justification for torture.
- A State Party must ensure that all acts of torture are offences under its

criminal law and it must make these offences punishable by appropriate penalties that take into account their grave nature.

- A State Party must take the measures necessary to establish jurisdiction over the offence of torture:
  - when the offence is committed in its territory;
  - when the alleged offender is a national of that State; and
  - where the victim is a national of that State, if that State considers it appropriate.

By far the most significant provisions are those that apply the principle of universal jurisdiction. Under the principle of universal jurisdiction, a State is entitled or even required to bring proceedings in respect of certain serious crimes, irrespective of the location of the crime, and irrespective of the nationality of the perpetrator or the victim. The Torture Convention incorporates this principle by requiring that, where an official or a person acting in an official capacity has inflicted torture, or has instigated torture, or has consented or acquiesced to its use in another country, and the alleged torturer is found in the territory of a State Party, that person must either be brought before a court of the State Party in which he or she is found or extradited to a state prepared to try that person. This is provided for in Article 5(2). It is further provided in Article 7(1): "The State Party in the territory under whose jurisdiction a person alleged to have committed any offence [of torture] is found shall in the cases contemplated in Article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution."

A State Party must provide the greatest measure of assistance in relation to criminal proceedings for torture, including supplying all the evidence at its disposal necessary for the proceedings.

A State Party must train relevant personnel on the prohibition against torture and include this prohibition in the rules or instructions issued to these persons. The personnel that must be so trained are law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation and treatment of any person subject to arrest, detention or imprisonment.

A State Party must try to prevent torture by systematically reviewing rules and practices relating to interrogation and treatment of persons in custody.

When there is reasonable ground to believe that an act of torture has occurred in its territory, a State Party must ensure that the competent authorities carry out a prompt and impartial investigation.

If a person alleges he or she has been tortured in a State Party's territory, the state must ensure that the person has a right to complain to competent authorities and have the case promptly and impartially examined by those authorities. The State Party must take steps to ensure that the complainant and witnesses are protected against reprisals.

A State Party must ensure that under its legal system a torture victim can obtain redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

A State Party must ensure that any statement made as a result of torture must not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

The Convention establishes a Committee Against Torture. This Committee receives and considers reports from State Parties on the measures they have taken to give effect to their undertakings under the Convention. If the Committee receives reliable information containing well-founded indications that torture is being systematically practised in that State, it can probe the information in collaboration with the State concerned and may carry out a confidential inquiry into the matter with the cooperation of the State concerned. A State Party may make a declaration recognising the competence of the Committee to receive and consider complaints from a second State Party that the first State Party is not fulfilling its obligations under the Convention. A State Party may also make a declaration recognising the competence of the Committee to receive and consider complaints from individuals in that State who claim to be victims of torture.

### **Ratification of the Torture Convention**

**The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** was first produced by resolution of the General Assembly, and was entered into force on 26 June 1987.

Some 137 countries have ratified this important Convention. These include all Zimbabwe's neighbours, and nearly every Southern African country except Zimbabwe. African countries that have ratified include Botswana, Lesotho, Malawi, Mozambique, Namibia, Nigeria, South Africa, Swaziland and Uganda. The two countries that President Mugabe regards as his bitter

enemies namely, the United Kingdom and the United States of America, have both ratified this Convention.

Although Zimbabwe has not ratified the Torture Convention, torture is prohibited in section 15 of the **United Nations Universal Declaration of Human Rights**, which provides that “no one shall be subjected to torture or inhuman or degrading punishment or other such treatment”. However, a series of constitutional amendments have qualified the right not be tortured or subjected to inhuman or degrading punishment or treatment. Zimbabwe has also ratified the **International Covenant on Civil and Political Rights** and the **African Charter on Human and People’s Rights**, both of which contain absolute prohibitions of torture.

### **Falanga as torture**

Falanga is a very ancient form of torture, and it seems that originally it was peculiar to the Middle East. However, in the past three decades, falanga has been found right across the world, wherever torture is found.

Falanga is the systematic beating of the soles of the feet using some form of instrument, such as a stick, a baton, an iron bar, etc. In order for it to be done, a person must obviously be restrained in some way. Thus when falanga occurs it is **unequivocally** torture as defined in the UN Convention: it is the deliberate infliction of severe pain for the purpose of punishment, or intimidation, or to extract a confession.

Falanga is one of the few methods of torture that has been well-researched. The type of assault can range from whipping with an instrument such as a sjambok whip through to severe beatings using a baton or an iron rod. The degree of injury will depend on a number of obvious factors: the instrument used, the force that is applied [whipping versus beating, for example], and the length of time that force is applied.

In the acute stage, immediately after torture, the extensive bruising of the feet is easy to observe, but it may be more difficult to detect much later. Bleeding and bruising are the most common post-torture signs, with swelling and discoloration of the feet. In very severe cases, there can be ulceration and gangrene, but this is not common. There may also be fractures of the toes and the bones of the feet too. All these acute changes, except serious fractures, disappear within weeks, but permanent soft tissue lesions may be a result.

The victims frequently complain later of chronic pain, which is dull and cramping, and intensifies with weight-bearing or exercise. This pain may spread up the lower legs. They can

also complain of a stinging, burning sensation which is spontaneous or can be elicited in the soles of the feet on examination. There can also be changes in the sensation of the feet, with a tendency of the feet to alternate between hot and cold. There are frequently chronic changes resulting in impaired walking, with both walking speed and walking distance being reduced, and typically the victim will only be able to walk a short distance before the increasing pain will stop this activity. Clearly, this has profound effects on a victim's subsequent life.

Thus, as can be seen, the effects of falanga range from the extreme pain caused during the beating of the feet, through the short-term pain and suffering of the acute phase (which may last for weeks), and finally to the possibility of long-term disability and life-long pain. It is quite obviously not a trivial form of ill-treatment, and the belief frequently held by the perpetrators, that it is an effective form of abuse that does not cause long-term damage, is definitely not supported by the evidence.

Falanga has received the attention of the Zimbabwean courts, and has been accepted as a form of torture. In a Zimbabwe High Court case in 2003, Justices Chinhengo and Makarau had to consider on appeal a case of physical abuse by two police officers.<sup>2</sup> The facts of the case were these:

On 28 March 2001, the complainant went to the local veterinary offices to obtain a permit to allow him to move certain livestock from one place to another. At the veterinary offices he was accosted by one of the police officers and taken to the police post at Masasa, near Chivhu. The two police officers were investigating a stock theft case and suspected the complainant to be the thief. At the police post, the two police officers jointly assaulted the complainant by beating him under the feet with a sjambok. This was in a bid to make him admit to the stock theft charges. Despite the torture the complainant did not confess and he was subsequently released.

The assault was described by the victim as follows:

"Yes, accused two approached me and handcuffed me. I was taken to the Police Post and I was handed over to accused one. Accused one said I was the stock thief and he wanted me. I was ordered to remove my pair of shoes and (it was) said I had stolen Mupeperekis' bovines. My hands were handcuffed so accused one removed my shoes. I was taken into the yard. He started assaulting me with a sjambok under my feet whilst he was stepping on my legs and accused two was holding my head. He only stopped when I started bleeding profusely. Accused two also assaulted me. I was assaulted on the soles of my feet and the skin turned black. I also bled profusely. I was assaulted whilst outside people were watching. I later went to hospital and was examined by a Doctor."

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<sup>2</sup> *S vs Reza*, HH-02-04, Crim. Appeal 159/03.

The medical report provided to the trial court noted a number of the physical signs described above. The examining doctor noted "haematomas under the feet. Swollen upper arm and headache", and also noted that the injuries were consistent with the use of a blunt instrument, such as a sjambok, and also that it required severe force to inflict these injuries. The doctor also concluded that, in this case, there was little likelihood of permanent disability.

As was seen above, the body of medical evidence on falanga indicates that there is a probability that the victim will suffer some form of disability in cases where the assault was severe. In this particular case, it may well be that the examining doctor felt that no permanent injury would result, but this is somewhat different to the court reaching the general conclusion that falanga does not ever cause permanent harm.

However, the two judges nonetheless concluded that what the police officers did to the prisoner did constitute torture. This is the first case in which this type of assault has been classified as torture by the Zimbabwe courts. However, it is certainly not the first time that either torture or falanga have been reported in Zimbabwe.

### **Torture and elections**

There is a strong relationship between torture and elections as the Human Rights Forum and other human rights groups have reported in the past. This most graphically illustrated by Table below.

**Table 1**  
**Violations and elections: July 2001 to November 2008**

[Source: Monthly Political Violence Reports of the Human Rights NGO Forum]

	<b>No elections</b>	<b>Elections</b>
Abductions	282	344**
Arrest & detention	7262	2137
Assault	2182	2454***
Attempted murder	14	18**
Death threats	64	136***
Disappearance	46	5
Displacement	861	846
Freedoms	7661	2805
Murder	93	131*
Political discrimination	2866	3101**
Property violation	940	1028**
Rape	12	15*
School closure	45	27

Torture	2059	2483***
<b>Total</b>	<b>24387</b>	<b>15530</b>
<b>Average:</b>	<b>359</b>	<b>706</b>

\*p=0.01; \*\*p=0.001; \*\*\*p=0.0001

As can be seen, abductions, assault, attempted murder, death threats, murder, rape, political discrimination, property violations, and torture are all significantly more common during elections than other times, and the average frequency of all violations during elections is more than double the average frequency of violations at other times. Torture itself is the third most common violation that has been reported by the Human Rights Forum, but it should be borne in mind that many of the other violations – assault, death threats, rape, property violations, and political discrimination – could easily be classified as forms of torture in a much more careful investigation of each report. For example, death threats are coded by the Human Rights Forum as a separate violation, but these will frequently occur in the context of torture. Furthermore, the whole pattern of violations speaks very strongly to the notion of a widespread and systematic campaign of gross human rights violations in pursuit of a clear political objective, the winning of elections. This was most obviously seen during the run-up to the June 2008 Presidential Re-run, as was argued by the Human Rights Forum.

It is against this background that the reports of falanga are so important in verifying allegations of torture, for, as pointed out above, falanga is incontestably torture, and, although not the only form of torture, when it is reported it lends credence to the allegations about other forms of torture also occurring.

### **How widespread is falanga?**

Some of the earliest recorded cases came in the 1970s during the Liberation War. The Catholic Commission for Justice and Peace [CCJP], in its documenting of torture in the North-East of Zimbabwe, reported 2 cases in which falanga was used by the Rhodesian security forces.

#### **The Man in the Middle 1975 at p.4**

“Antony Dzvinamurungu alleges that following an attack by insurgents on the chief’s buildings in Mudzi District, Mtoko, about 100 miles from Salisbury, soldiers came to his kraal by helicopter and questioned the people. In the course of the questioning his two sisters-in-law, Winnie and Praxedes, were assaulted by the soldiers. Winnie was pregnant at the time and was whipped. Antony immediately went to Salisbury to report the incident to the Catholic Commission for Justice and Peace. At the time he said that he expected more trouble. He alleges that on his return he was picked up before he got home by the

police. He was then held at Mtoko police station, where he reports, he was repeatedly beaten on the buttocks and feet with sticks, hair was pulled from his head, and a pair of scissors was placed against his genitals with a threat to cut them off. A firearm was pointed at his head and a threat to shoot him was made. A few days later after his release he was examined in Salisbury and found to have patches of hair missing, severe bruising of the soles of his feet and marks of the assault on his buttocks. The Government is defending his claim but has not yet given details of its attitude. Antony has not been charged or detained.”

Initially it appeared that falanga had not been widely used during the Liberation War. The victims reported severe beatings as very common, but few reported falanga. However, in a follow-up study of survivors from the Liberation War, it was noted that 10% of the sample reported experiencing falanga, which was confirmed on medical examination.<sup>3</sup>

Falanga was again reported during the disturbances in the 1980s in Matabeleland, and were detailed in another CCJP report, *Torture in Zimbabwe*. Subsequently up to the Food Riots in 1998 but there were no reported cases of falanga. However during and after the Food Riots there were anecdotal reports of the use of falanga, but there was not one case in the 42 cases represented by the Human Rights Forum.

In recent years one of the more notorious cases where falanga was used involved Chief Detective Inspector Henry Dowa of the Law and Order Section of the Criminal Investigation Department [CID] of the Zimbabwe Republic Police [ZRP]. Dowa was accused of using falanga on an arrested person in 2002. Dowa had been posted to Kosovo as a member of a ZRP contingent operating under the auspices of the United Nations. An approach was made to the United Nations Interim Administration in Kosovo [UNMIK] for Dowa to be arrested on the allegations of torture, but the UN declined to do so and instead suspended Dowa from his duties and sent him back to Zimbabwe, with a request to the Zimbabwe Government that it investigate these allegations. To the Human Rights Forum’s knowledge no such investigations have taken place. Dowa returned to his duties in Zimbabwe, where further allegations have been made about his involvement in torture.

#### **Redress report**

“A victim seen by REDRESS alleged that in 2002 at Harare Central he was beaten with a wooden pole in the presence of Dowa and then, after his hands were handcuffed behind his

<sup>3</sup> See Amani (1998), *Survivors of Torture and Organised Violence from the 1970 War of Liberation*, HARARE: AMANI.

back, an electrical wire was attached behind his ear and he was subjected to repeated electric shocks ranging from ten seconds to about a minute. This torture continued for several hours during which time Dowu and others screamed questions and accusations at him. Between shocks he was kicked, slapped and punched. He was also beaten on the soles of his bare feet with batons. Medical reports compiled soon after the torture confirmed that all his injuries were consistent with what the victim described.”

It may also be that falanga was actually uncommon up to 2000. However, the absence of reported cases may also be attributable to lack of awareness on the part of human rights groups about the phenomenon of falanga and how to detect it.

Since 2000 though, there has been a large increase proportionately in the number of falanga cases reported. In its report entitled *An Analysis of Zimbabwe Human Rights NGO Forum Legal Cases 1998- 2006* (June 2006), it was found that in 35 cases of falanga the victims had gone to court to seek civil damages. This was 12% of the total, and represented a significant increase from previous reports.

**Table 2**  
**Involvement in falanga.**

Source: Human Rights Forum [2006]

	<b>Falanga reported [n=35]</b>
ZRP[Uniformed branch]	60%
ZRP[CID]	43%
ZRP[PISI]	0%
ZRP[Riot Squad]	19%
ZRP[Support Unit]	0%
Army	8%
CIO	0%

\*4

As can also be seen, not all branches of the ZRP are implicated in falanga, but all branches apart from PISI were implicated in torture.

Additionally, the probability of torture increases if the person is seen as a political dissident,

<sup>4</sup> The percentages exceed 100, as, for each case reported, there may have been more than one branch of the ZRP involved.

but interestingly falanga is not necessarily associated with the political nature of the case. Here we can refer to the case below, where falanga was used in a non-political investigation in an attempt to force a confession, and there is even a newspaper report of the use of torture against minors.<sup>5</sup>

In order to get a better idea about how widespread is the use of falanga, estimates were made from reports given to the Human Rights Forum. Here, 573 cases reported between 2000 and 2002 were analysed with respect to falanga.

As can be seen [Table 3], the ZRP was strongly implicated in the use of torture, including falanga during the period 2000 to 2002, and clearly an association between both torture and falanga occurring in places of detention. During election periods significantly more torture is perpetrated by groups other than the police, although it is evident that a large number of victims [32%] do report violations at the hands of the ZRP during elections.

**Table 3**

**Comparison of ZRP involvement with other types of perpetrators.**

Source: Human Rights Forum [2006]

	<b>ZRP [n=112]</b>	<b>Other perpetrators [n=461]</b>
Assault	22%	48%*
Political intimidation	9%	20%**
Torture	49%*	6%
Detained in custody	46%*	1%
Held at militia base	4%	16%*
Incident during election	32%	64%*
Displaced as a result of incident	44%*	28%
Falanga used	13%**	7%

\*p=0.005; \*\*p=0.01

However, it is evident that torture does not only occur at the hands of the ZRP, and that it has been used by many other groups affiliated to the Government, such as Zanu (PF) supporters, mostly in connection with elections. As pointed out earlier, most serious human rights violations tend to increase substantially during elections, and this is seen most

<sup>5</sup> 'Police probe detectives' assault of schoolchildren', Nqobani Ndlovu, Zimbabwe Standard, 24 September 2006.

dramatically during the 2008 elections [see following] where the use of torture and falanga are reported as being carried out by a wide range of non-state agents.

### **Falanga in 2008**

An analysis of all the cases of torture reported to the Human Rights Forum and its members during May 2008 was undertaken. There were 377 cases reported in May, and 49 [13%] of these explicitly reported falanga. However, the sample reported very high rates of aggravated assaults (assaults involving the use of weapons or other instruments), with 262 [70%] reporting such assaults, and 29 [59%] reporting other forms of torture. Falanga was significantly associated with assault, other forms of torture, abductions, and much more likely to have been carried out by members of ZANU PF youth than any other group. There was also a significant association in the group specifically mentioning falanga between ZANU PF Youth and War Veterans. Thus, the oft-quoted relationship between gross human rights violations, elections, and supporters of the ZANU PF party is once again found to be the case for May 2008.

Virtually all these cases of falanga [98%] took place in the rural areas, and 84% of these occurred in one of the three Mashonaland Provinces, with Mashonaland Central accounting for over 50%. 37% of the victims reported that their abuse took place at a public building – schools, clinics, churches, business centres, etc – and 43% reported that their torture took place at a so-called ZANU PF “base”.

It is also evident since the Presidential Re-run that abductions, torture, and falanga are being reported once again. 42 members of the MDC and other civic groups, including Ms Jestina Mukoko, the Director of the Zimbabwe Peace Project (a member of the Human Rights Forum), have been abducted since 27 October 2008, held at various detention centres around the country in defiance of High Court orders, produced finally in court, and immediately re-detained in defiance again of a High Court order. Senior ZANU PF officials have claimed that this was all necessary in order to conclude investigations into a conspiracy to provide military training for Zimbabweans in Botswana in preparation for the violent overthrow of the ZANU PF regime. These allegations have been roundly dismissed by virtually everyone, including the SADC Presidency.

It is worth making a small aside here in relation to the strategy being used by ZANU PF in respect of these allegations. ZANU PF, and the Zimbabwe government previously, has made spurious allegations about the MDC and other groups being involved in attempts at “regime change” or political violence. The ZRP issued a report in 2007 alleging that the MDC, the NCA, WOZA and the ZCTU, amongst others, were involved in violent activities. This report

was easily rebutted and shown to be a crude attempt to deflect blame for the torture of dozens of MDC supporters and civic activists, including the President of the MDC, Morgan Tsvangirai, the Secretary-General of the MDC, Tendai Biti, and the Chairperson of the NCA, Dr Lovemore Mduku. The ZRP issued a further two reports in April 2008 in order to deflect criticism again over the violent electoral campaign. These reports were again easily dismissed as crude propaganda on the part of ZANU PF, and do not appear to have been given any credence by SADC.

The attempt to use abduction and torture in order to fabricate an allegation against the MDC or others also has a previous dishonourable pedigree in the Cain Nkala case<sup>6</sup>. Here allegations that various members of the MDC had abducted and murdered Cain Nkala were dismissed by the Justice Sandra Mungwira, in a "trial within the trial", as having being produced by torture. It is worth quoting the late Justice Mungwira:

"The evidence of the State witnesses who are police officers is fraught with conflict and inconsistencies. The witnesses conducted themselves in a shameless fashion and displayed utter contempt for the due administration of justice to the extent that they were prepared to indulge in what can only be described as works of fiction. The magnitude of their complicity was such as to put paid [sic] to this court attaching any weight to the truth or accuracy of their statements."

Against this background, both of the widespread use of torture and falanga, and their systematic use in fabricating allegations of treason or violence by opposition members and civic activists, these recent abductions give enormous cause for concern. There are already strong indications that torture and falanga have been used in order to obtain "confessions" from the abductees, and the manouvers by ZANU PF to keep them out of the public eye and prevent full examination by medical doctors only raise the concerns higher.

## **Conclusion**

There is an absolute prohibition against torture: there are no situations in which torture is allowed or can be condoned.

Falanga is a very serious form of torture, and can lead to permanent disability. That falanga is used at all by the ZRP is wholly unacceptable, as is any form of torture, but it is wholly unacceptable that torture, and falanga, occur on a widespread basis. Torture and falanga have become endemic in Zimbabwe, and, as was shown in the analysis of the Zimbabwe Human Rights reports from May 2008, are being applied more widely and systematically than ever. It can be concluded that the use of falanga by state agents such as the ZRP is likely to

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<sup>6</sup> Fletcher Dulani Ncube vs the State HB 20/2004

encourage non-state actors to do the same, and this is suggested strongly by the evidence.

The recent torture, including the now widespread use of falanga, must be condemned in the strongest possible terms. All those who commit this heinous crime must be speedily tried and all those found guilty must be severely punished. Regrettably, past experience makes this an unlikely prospect: no charges have been brought against those who tortured Choto and Chavunduka<sup>7</sup>; no charges have been brought against those who tortured Member of Parliament, Job Sikhala, and human rights lawyer, Gabriel Shumba<sup>8</sup>; no charges have been brought against Chief Detective Inspector Dowa who is alleged to have tortured prisoners; and the murderers of Chiminya and Mabika still remain at large<sup>9</sup>. The practice of torture is clearly encouraged by the informal impunity afforded by the Government of Zimbabwe to most of the perpetrators.

The failure of the Zimbabwean authorities to ratify the UN Torture Convention, when most countries in the region have already done so, gives rise to justifiable suspicion that there are sinister reasons for this failure. The suspicion is that it does not want to ratify the Convention because ratification would make it far more difficult to continue to employ torture against its political opponents. If this suspicion is unfounded and the Zimbabwean Government now wishes to show that it is determined to prevent torture within Zimbabwe, and also contribute to the international effort to put an end to the scourge of torture, it should ratify the Torture Convention as soon as possible.

Justices Chinhengo and Makarau, in their judgement on the case quoted earlier, quote approvingly an article in the State-controlled *Zimbabwe Herald* in its issue of 28 January 2003.

"Torture is banned in Zimbabwe but there is, most unfortunately, a small minority in the country who think they can get away with using torture as a short-cut to the professional techniques used by the police.

There are four strong objections to torture. First and most important, it breaches a fundamental right guaranteed in our constitution and in international treaties to which Zimbabwe is a signatory.

Secondly, it does not produce much practical information. Most people, faced with torture, will admit to anything, whether they did it or not, and will try to figure out

<sup>7</sup> Choto and Chavhunduka were journalists working for the *Standard* newspaper who were tortured by military agents after they had published an article of a failed coup in Zimbabwe

<sup>8</sup> The Magistrate Court sitting at Harare Rotten Row found that torture, including electrocution had been used on an opposition politician one Job Sikhala, and human rights lawyer, Gabriel Shumba and others when these were arrested on false charges of treason, trumped up by the police.

<sup>9</sup> These were MDC activists who were petrol bombed and allegedly killed by CIO operatives who were Zanu PF loyalist including one Mwale and Kitsiyatota.

what sort of lies that the torturer wants to hear and then tell them. The information obtained is very dubious.

Thirdly, it degrades the torturer. The victim is not degraded. The victim is hurt by the torturer but will receive the sympathy of all right-thinking people later and will even become some sort of a hero. The torturer will be regarded as some monster fit for the gutter.

Finally, even if any remotely valuable evidence is obtained, it will be thrown out in any trial. Thus we might have the wrong person brought to court, because they have admitted something they did not do, or the right person going free because the evidence is tainted. Neither is desirable.

Thus there are legal, moral and practical objections to torture. It is wrong and it does not work.

There is one argument in favour of torture that, at first sight, looks as though it may be valid. It is an argument presented by the intelligence community in several parts of the world including countries such as Israel and America. These intelligence officers usually give the example that a terror gang is about to detonate a bomb, overthrow a government or some other terrorist attack. A member of the gang is found. Surely, they argue, it is better for this person to be violently persuaded to give the vital information of where the bomb is to be placed than for many innocents to die. Unfortunately, such an arrested person is likely to lie. The information is likely to be worse than useless.

We would assume that those belonging to groups prepared to kill civilians would be given plausible stories to tell should they be arrested. The fake information would have the additional advantage of diverting intelligence efforts down the wrong track and boosting the chances of a successful terror attack.

Thus even this superficially valid argument fails the practical test.

The ban on torture does not mean that intelligence officers and the police have to treat a suspect as though such a suspect was a guest in their homes. There is a general acceptance that robust interrogation can be used.

But this robust interrogation consists of lengthy periods of questioning, sometimes by teams of skilled officers operating in relays. Every inconsistency in the answers is rigorously probed and pursued. A liar will be worn down.

Eventually a skilled and experienced senior officer, and such a drastic interrogation should always be led by this sort of person, will be able to make a professional assessment over whether the suspect is involved. If not, a handsome apology should be made and the tired and hungry, but unharmed, suspect be released.

Even in these cases the general principle is that there should be some real and substantial evidence of involvement in a serious crime before any one can be subjected to this procedure.

The cases of torture documented in the courts, both ours and others, show that this abuse of legal and moral rights is committed by those who are unwilling to follow the professional standards of their calling.

First class intelligence officers and first class police detectives do not resort to torture. They obtain their information or their evidence with their brains, not their hands. And that information is more reliable, and the evidence more solid, than anything obtained under torture.

We hope the heads of our intelligence and police services make it abundantly clear to all their officers that they will not tolerate torture in any circumstance. This also applies to opposition leaders who have been arrested for kidnapping and torturing members of other political parties. We don't expect them to cry foul when the tables are turned against them. Torture is wrong and useless."

The Human Rights Forum agrees with the general observations of the *Herald*. However, it does not agree that acts of torture are committed only by a small minority. The evidence suggests that torture is a regular practice that is widely used. Torture is used not only to extract confessions, but is used to intimidate and terrorise those that the government sees as "enemies". Falanga is widely used by the ZRP, and is now increasingly used by supporters of ZANU PF, and is also being used during elections in order to intimidate citizens into voting for ZANU PF: this is the clear conclusion to be drawn from the data relating to 2008.

Until the Zimbabwe government demonstrates its clear commitment to enforcing human rights, ratifies the UN Convention Against Torture and the Rome Statute and ensures that these instruments are enshrined in domestic law, and takes public steps to bring all perpetrators of torture to book, any discussion about a Human Rights Commission can only be viewed as window-dressing and an evasion of its constitutional responsibilities. The various Zimbabwean court decisions awarding damages to victims of human rights completely contradict the contentions of the Minister of Justice, Legal and Parliamentary Affairs and the ZRP that Zimbabwe is a human rights-abiding country, and that all reports to the contrary are mischievous inventions of imperialist lackeys. The country needs a government to ensure that the police do their job properly, professionally, without prejudice, and without using torture, such as falanga.

It is thus unacceptable that SADC does not make stronger statements about the endless resort by ZANU PF to organized violence and torture. The evidence before SADC, in near countless reports now, is that state agents and ZANU PF supporters resort to torture extremely frequently, both in order to win elections and to suppress peaceful dissent, and this was graphically illustrated during the Presidential Re-run in June 2008 – which is why SADC refused to accept the result of that election – and recently in the cynical construction of a case against the MDC-T and the members of the ZPP.

It should be evident to SADC that the allegations about the MDC and others seeking military overthrow of ZANU PF are false, that the rule of law continues to be flouted in the most cynical and brutal fashion. This requires a good deal more than pious homilies on the need for dialogue, the acceptance of an Agreement that ignores the fundamental problems that

made an Agreement necessary, and the intemperate claims that all is well because there is now a unity government.

Instead of insisting that personal sanctions – not “formal sanctions” – be lifted, SADC should be insisting on clear benchmarks for agreeing that democracy has been restored, and one of the primary benchmarks must be an end to torture, investigation of all allegations of torture, and prosecution of the alleged offenders.

**The Zimbabwe Human Rights NGO Forum** (also known as the “Human Rights Forum”) is a coalition comprising 16 member organisations. It has been in existence since January 1998 when non-Governmental organisations working in the field of human rights joined together to provide legal and psychosocial assistance to the victims of the Food Riots of January 1998. The Human Rights Forum has now expanded its objectives to assist the victims of organised violence, using the following definition:

“Organised violence” means the inter-human infliction of significant avoidable pain and suffering by an organised group according to a declared or implied strategy and/or system of ideas and attitudes. It comprises any violent action, which is unacceptable by general human standards, and relates to the victims’ mental and physical well-being.”

The Human Rights Forum operates a Research and Documentation Unit and offers legal services to assist the victims of organised violence and torture claim compensation from perpetrators through its Public Interest Unit.

Member organisations of the Human Rights Forum are:

- Amnesty International (Zimbabwe) (AI (Z))
- Catholic Commission for Justice and Peace (CCJP)
- Gays and Lesbians of Zimbabwe (GALZ)
- Legal Resources Foundation (LRF)
- Media Institute of Southern Africa (MISA)
- Media Monitoring Project of Zimbabwe (MMPZ)
- Non-violent Action and Strategies for Social Change (NOVASC)
- Transparency International (Zimbabwe) (TI (Z))
- Women of Zimbabwe Arise (WOZA)
- Zimbabwe Association for Crime Prevention and the Rehabilitation of the Offender (ZACRO)
- Zimbabwe Association of Doctors for Human Rights (ZADHR)
- Zimbabwe Civic Education Trust (ZIMCET)
- Zimbabwe Human Rights Association (ZimRights)
- Zimbabwe Lawyers for Human Rights (ZLHR)
- Zimbabwe Peace Project (ZPP)
- Zimbabwe Women Lawyers Association (ZWLA)

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