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**Investigation and prosecution of Torture in Zimbabwe: A look into the legislative framework, and existing challenges.**

**Introduction**

The Zimbabwe Human Rights NGO Forum (the Forum) The Forum is a coalition of 22 specialist human rights organizations in Zimbabwe that advocate for greater protection, enjoyment, and promotion of human rights, with a particular focus on organised violence and torture. The Forum challenges organised violence and torture in Zimbabwe, through documenting and publicising incidents of gross human rights violations, as well as seeking legal redress for victims of abuses.

**Torture in Zimbabwe**

Historically, Zimbabwe has battled with cases of torture pre- and post-independence. Torture in Zimbabwe dates from the liberation struggle in the 70’s and was subsequently used as a tool of suppression in instances such as the Gukurahundi genocide in the 1980s, during which the North Korea–trained Five tortured thousands of peoples.[[1]](#footnote-1) In the late 90s, torture was used primarily against opposition party members.[[2]](#footnote-2) In 2008, military torture camps were set up in the Marange diamond mines to torture those involved in unsanctioned mining activities.[[3]](#footnote-3) To date, Zimbabwe battles with torture and impunity in the civic and political space, as the state continues to clamp down on activists and members of opposition parties.[[4]](#footnote-4) Outside of political spaces, the Zimbabwe Republic Police (ZRP) have, in the absence of resources for effective investigation, also relied heavily on torture to force confessions out of accused persons *(see case of Sharai Mukaro as documented by ZLHR)*.[[5]](#footnote-5) The cycle of torture in Zimbabwe continues and is fuelled by gaps in the law, lack of accountability and impunity.

In most cases it takes many forms with perpetrators ranging from the police, army, Government militias, the Central Intelligence Organisation (CIO), Government-organised war veterans and political party members. Beatings, rape, and electric shocks are some of the methods used. This report will address the practise of torture, the legislative framework used to hold perpetrators accountable, and the challenges faced in effective investigation and prosecution of cases of torture in Zimbabwe.

**(I) Regulatory Frameworks:**

The Constitution of Zimbabwe is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency. The obligations imposed by the Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of government at every level, and must be fulfilled by them.[[6]](#footnote-6) In Chapter 4, the Constitution of Zimbabwe provides that no person may be subjected to physical or psychological torture ,[[7]](#footnote-7) that the right not to be tortured may not be limited by any law and that no person may violate the right.[[8]](#footnote-8) This makes the right an “absolute” or “non-derogable” right, the violation of which is never justifiable under any circumstances.

While the supreme law of the land expressly outlaws torture, there is a recognition that the general ban on torture in the Constitution is not enough, as such section 11 calls on the State to “take all practical measures to protect the fundamental rights and freedoms enshrined in Chapter 4 and to promote their full realisation and fulfilment”.[[9]](#footnote-9) Such practical measures would include the state passing legislation and regulations that align with international standards and best practice. The general prohibition against torture as outlined in the constitution, falls short in that it does not define torture broadly as defined in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment *[CAT]*.[[10]](#footnote-10) It also does not criminalise torture as a standalone offence, providing appropriately serious punishments for it.

The absence of legislation to cover this gap, creates a lacuna in the framework which has become a serious impediment for human rights practitioners and victims of torture, in the fight against torture in Zimbabwe. Notwithstanding the absence of the express criminalization of torture in Zimbabwe, human rights practitioners have turned to other pieces of legislation to hold perpetrators accountable, and to get redress for victims. For instance, under the Criminal Law Code,[[11]](#footnote-11) physical torture can be prosecuted as assault or,[[12]](#footnote-12) in serious cases, attempted murder. Other forms of torture, such as starving prisoners or detaining them under intolerable conditions, can be prosecuted as criminal abuse of duty on the part of the perpetrator.[[13]](#footnote-13)

**(III) Challenges to effective investigation and prosecutions of acts of torture.**

**(i)Unchecked discretionary powers and impunity of security forces.**

What is most concerning about the unending cycle of torture and impunity in Zimbabwe, is that, despite Section 208 of the Constitution, calling on members of the security services to act in accordance with the law in promoting and respecting fundamental rights and freedoms, the security forces are in fact at the forefront of human rights violations. The Zimbabwe Republic Police (ZRP) and the Zimbabwe National Army (ZNA) sadly makeup for the bulk of reports of torture and gross violence on the citizenry.

A case in point is the aftermath of the mass protests in 2019. Over the 3 weeks following the January 14 protests, the Zimbabwe Human Rights NGO Forum (the Forum) documented at least **1803** violations of human rights, the ZNA and ZRP being implicated in all categories of violations. The violations included at least 17 extra-judicial killings, 17 cases of rape or other violations of a sexual nature, 26 abductions, 81 assaults consistent with gunshot attacks, at least 586 assaults and torture, inhuman and degrading treatment including dog bites, among other violations.[[14]](#footnote-14) The 2019 cycle of violence is only but a manifestation of a culture of violence, impunity and violence actioned by the security sector that dates back in time. During the period between 2008 and 2013, for instance, the Forum documented over **5 000** reports of victims tortured by ZRP officers at public gatherings and peaceful protests.

The propensity and appetite for violence and the culture of impunity amongst the security forces can be attributed to the gaps in the legislative framework that is prone to abuse. For instance, the Criminal Procedure and Evidence Act,[[15]](#footnote-15) which is the main procedural law that regulates aspects of the police organization, allows for the ZRP officers to use reasonable force to prevent crime and/or to effect an arrest.[[16]](#footnote-16) The Zimbabwe Republic Police (ZRP), have been known to justify the excessive use of force or assault (torture) under the Criminal Procedure and Evidence Act. The ZRP officers often use lethal and excessive force against human rights activists, political activists, and human rights defenders during protests. Whether the ZRP can lawfully and successfully justify the use of excessive force or torture in the course of their duties, is not so much the issue, as it is the fact that in the absence of the express prohibition of torture, with no exceptions, there remains a gap to be exploited by perpetrators. Only an express prohibition and criminalization of torture can curtail the police’s, often abused, discretionary powers.

The involvement of the ZNA in policing is an added cause for concern as far as accountability for torture is concerned. The Defence Act does not set clear parameters for the conduct of military personnel when it comes to their treatment of civilians. The Act is silent on the issue of torture of civilians and its consequences.

**(ii) Investigating and prosecuting bodies are compromised and biased**

The Constitution places the duty to investigate and prosecute crimes as defined in Zimbabwe’s Criminal Law, on the State through its institutions such as the ZRP and the National Prosecuting Authority (NPA).[[17]](#footnote-17) When these institutions discharge their obligations, perpetrators are held accountable, which ends impunity and promotes confidence in the justice system thereby encouraging victims of torture to report crimes. However, it is regrettable that these institutions are biased due to members of the security services, being implicated in crimes and cases of torture. Police officers are reluctant to open dockets for torture perpetrated by other officers, as they tend to protect each other. When they do open dockets, these are prepared poorly, and cases are not investigated thoroughly or in good faith. As a result, most cases against police officers or military personnel do not make it to the NPA.

As far as the NPA goes, the state is very reluctant to prosecute when the perpetrators are members of the uniformed forces. The widespread use of amnesties, the difficulty of identifying who to prosecute due to use of militia, and the scope of defences which exist, create further complications. It is common practice, for example, for members of the security services to give the excuse that they were acting on the instruction of those “above” or that they were not aware that their actions constituted criminal acts. As a result, the cases will not proceed, or officers may be convicted, but only on minor assault charges. Alternatively, officers may be subjected to internal disciplinary proceedings: in these cases, however, victims are not informed. With unlawful death cases, inquest proceedings are usually conducted in secret: the deaths are treated as “sudden deaths”, not investigated as homicides, and are determined on the papers. Victims are not called to give evidence.[[18]](#footnote-18)

In addition to the ZRP and the NPA being unwilling to investigate reports of torture and prosecute when security personnel are implicated, state institutions are generally partial to the ruling party. Zimbabwe has long had a history of cycles of politically motivated violence in which members of the opposition and activists fall victim to organized violence and torture. In most of these cases, the police are unwilling to take reports or carry out investigations.

An example of the State’s reluctance to hold ZRP and ZNA perpetrators accountable, is the aftermath of the August 2018 shootings in Harare. On 1 August 2018, following the first elections after the ousting of President Mugabe and delays in the release of the results of the presidential election, protests broke out in Harare. In response, the Zimbabwe National Army (ZNA) was deployed into the streets to quell an official commission of inquiry that was set up to investigate the killing of civilians on 1 August 2018, headed by former South African President Kgalema Motlanthe. Despite the commission calling for those responsible to be held accountable to date there has been no persecution of any of the identified suspects despite all the evidence available.

The biased and compromised state of the ZRP and the NPA, has led to a lack of confidence in the justice system. This challenge can be addressed through the operationalization of Section 210 of the Constitution. Section 210 states that an Act of Parliament **must** provide an effective and independent mechanism for receiving and investigating complaints from members of the public about misconduct on the part of members of the security services. While the government of Zimbabwe has taken steps to operationalize s210, by approving the principles for the ‘Zimbabwe Independent Complaints Commission Bill, it is left to be seen if this Commission will indeed be effective and independent.

**(iii) Lack of Witness protection**

Witness and victim support and protection form an important part of truth and justice seeking mechanisms. The protection of witnesses and victims is crucial in any effective investigation and prosecution of perpetrators of human rights violations, be it in criminal justice or transitional justice processes. In many cases, victims of torture or organized violence perpetrated by the state or members of the ruling party, are subjected to further persecution, even criminal charges, for the “crime” of coming forward. In June 2020, for example, three MDC-Alliance youth leaders, Joana Mamombe (MP for Harare West), Cecilia Chimbiri (MDC Alliance Youth Assembly Vice Chair) and Netsai Marova (Deputy Organising Secretary for Youth) were arrested and charged with falsifying the accusation of their abduction and torture at the hands of suspected state security agents.[[19]](#footnote-19)

Following the commission of enquiry hearings for the 1 August 2018 shootings, the Forum noted the victimisation and harassment of witnesses who either testified or were planning to testify before the Commission. Specifically: Makomborero Haruzivishe who was attacked by unknown assailants a few days after he testified on 19 October 2018 during the first round of testimonies in Harare. He was attacked on 5 November 2018; the arbitrary arrest and detention of the Mthwakazi activists, Mayo Ncube, Welcome Moyo, Marshal Sibanda and Wisdom Mkwananzi in Bulawayo on the 26th of October for testifying before the Commission; and the abduction of Retired Lieutenant Elliot Piki by unknown assailants on 25 November 2018 in Harare. Retired Lieutenant Elliot Piki was due to testify before the Commission of Inquiry on 26 November 2018. It is therefore apparent that the Commission has done very little, if anything at all, to ensure witness protection.[[20]](#footnote-20)

In the absence of an independent witness protection program, victims are unlikely to come forward with reports.

**(iv) Pardoning of perpetrators affiliated with the state and ruling party**

Section 112(1)(a) and (d) of the Constitution of Zimbabwe grants the president power to pardon convicted criminals. Previously criminals were also pardoned under The Amnesty powers (General Pardon) Act [Chapter 9.03], also known as the presidential pardon, which authorises discontinuance of prosecution. It must be noted that while, the president has the power to pardon criminals for a wide array of reasons, including overcrowding in the prisons,[[21]](#footnote-21) these powers are not always exercised in good faith. For example:

* In October 2000, Mugabe issued Clemency Order No. 1 of 2000, which granted general amnesty for all political crimes, including torture and kidnappings committed by ZANU-PF supporters, youth militia and state security forces – exempting only rape, murder, and fraud.[[22]](#footnote-22)
* Clemency Order No. 1 of 2008, issued in June 2008, covered those arrested between March 29 and June 16, 2008, from the day of the general elections to the eve of the presidential run-off. This included those who were convicted of acts such as torture and abductions of which most abuses committed by ruling party supporters and the uniformed forces took place during that time.[[23]](#footnote-23)

The abuse of the powers to grant pardons, in the furtherance of political agendas has unfortunately led to perpetrators not being held accountable for their crimes thus fuelling impunity. Such insulation from justice further erodes the victims’ trust in the system and further emboldens perpetrators, particularly those who commit crimes in the name of the State/ruling party.

**Conclusion**

While the Constitution of Zimbabwe is clear on the prohibition of torture, the prohibition falls short as it does not define torture as broadly as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment *[CAT]*. The lack of Legislation that criminalizes torture and expands on its definition, has created a gap in the law that has fuelled impunity. The prosecution of torture, under the Criminal Code, as assault leaves room for perpetrators within the uniformed forces, to abuse their discretionary powers and leads to situations where the sentence may not fit the crime. Additional challenges in the investigation and prosecution of torture, include bias in the NPA and ZRP, lack of witness protection and the abuse of the powers of presidential pardon. While it is commendable that the government of Zimbabwe, has recently set up an independent complaint handling commission, they have more steps to take to ensure that there is trust in the system and that perpetrators are held accountable for their crimes. The Government of Zimbabwe must also adopt CAT and implement it fully in its domestic Legislation.

1. Brinkley, John. *Zimbabwe and the Politics of Torture*. US Institute of Peace, 2002. *JSTOR*, http://www.jstor.org/stable/resrep12561. Accessed 24 Nov. 2022. [↑](#footnote-ref-1)
2. Brinkley, John. *Zimbabwe and the Politics of Torture*. US Institute of Peace, 2002. *JSTOR*, http://www.jstor.org/stable/resrep12561. Accessed 24 Nov. 2022. [↑](#footnote-ref-2)
3. Marange diamond field: Zimbabwe torture camp discovered at https://www.bbc.com/news/world-africa-14377215 [↑](#footnote-ref-3)
4. <https://www.hrw.org/world-report/2021/country-chapters/zimbabwe>. [↑](#footnote-ref-4)
5. ZRP Under Spotlight as Inquest into Death of Tortured Zim Woman Commences at <https://www.zlhr.org.zw/?p=2693> [↑](#footnote-ref-5)
6. Constitution of Zimbabwe Amendment (No20) Act 2013 section 2(1-2). [↑](#footnote-ref-6)
7. Constitution of Zimbabwe Amendment (No20) Act 2013 Section 53. [↑](#footnote-ref-7)
8. Constitution of Zimbabwe Amendment (No20) Act 2013 section 86(3)]. [↑](#footnote-ref-8)
9. Constitution of Zimbabwe Amendment (No20) Act 2013 section 11. [↑](#footnote-ref-9)
10. Article 1 CAT: For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. [↑](#footnote-ref-10)
11. Section 88 (a) of the Criminal Law (Codification and Reform) Act [Chapter 9:23] defines assault as any act by a person that involves the application of direct or indirect force to the body of another person, resulting in bodily harm to that other person. [↑](#footnote-ref-11)
12. See AMOS REZA and ROGERS CHIWASHIRA versus THE STATE which sets precedent for assaults such as falanga, to be considered torture. [↑](#footnote-ref-12)
13. Section 174 (1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23] (The Criminal Law Code). [↑](#footnote-ref-13)
14. <https://www.hrforumzim.org/daysofdarkness2/> [↑](#footnote-ref-14)
15. Criminal Procedure & Evidence Act [Chapter 9:07] as amended on 10 June 2016. [↑](#footnote-ref-15)
16. Section 42 Criminal Procedure & Evidence Act [Chapter 9:07] as amended on 10 June 2016. [↑](#footnote-ref-16)
17. Constitution of Zimbabwe Amendment (No20) Act 2013. [↑](#footnote-ref-17)
18. Zimbabwe Human Rights NGO Forum Anti-impunity report 2019. Available at http://www.hrforumzim.org/wpcontent/uploads/2019/07/ANTI-IMPUNITY-REPORT-COMPRESSED.pdf [Accessed 12 November 2020]. [↑](#footnote-ref-18)
19. <https://www.bbc.com/news/world-africa-53005447> [↑](#footnote-ref-19)
20. <https://www.hrforumzim.org/the-commission-of-inquiry-into-post-election-violence-on-1st-august-2018/> [↑](#footnote-ref-20)
21. President Mnangagwa pardons 5000 prisoners at <https://cite.org.zw/president-mnangagwa-pardons-5000-prisoners/> [↑](#footnote-ref-21)
22. The Place for Amnesty in Zimbabwe’s Transitional Justice Process at https://www.accord.org.za/conflict-trends/place-amnesty-zimbabwes-transitional-justice-process/ [↑](#footnote-ref-22)
23. Ibid. [↑](#footnote-ref-23)