



**FILE REF ZHRC/CI/0049/16**

In the matter between:

**COMPLAINANT A - K**

**COMPLAINANTS**

And

**THE ZIMBABWE REPUBLIC POLICE**

**1<sup>st</sup> RESPONDENT**

And

**MINISTRY OF HOME AFFAIRS**

**2<sup>nd</sup> RESPONDENT**

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**FINAL REPORT**

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**1. Introduction**

- 1.1 This report contains the preliminary findings of the Zimbabwe Human Rights Commission (ZHRC), pursuant to an ongoing investigation undertaken into complaints alleging violations of human rights, in particular the right to freedom from torture or cruel, inhuman or degrading treatment or punishment by **COMPLAINANT A AND OTHERS** in Epworth and Budiro, in the Harare Metropolitan Province, Zimbabwe.
- 1.2 Complainants, who are residents of Epworth and Budiro lodged complaints of allegations of torture by the Zimbabwe Republic Police with the Counselling Services Unit (CSU). The complaints were referred to the ZHRC to investigate in terms of **Section 243 (f) of the Constitution**.

- 1.3 In determining its role in this matter, the ZHRC considered the facts of the allegations in light of **the violation of human rights in** accordance with Chapter 4 of the Declaration of Rights in the Constitution of Zimbabwe, in particular, the right to freedom of torture or cruel, inhuman or degrading treatment as enshrined in **section 53** of the **Constitution**.

## **2. Mandate of the Commission**

- 2.1 The ZHRC was established as an Independent Commission in terms of Section 242 of the Constitution of Zimbabwe Amendment (No. 20) Act of 2013. The functions of the ZHRC are set out in terms of Section 243 1(a) –(k) which include, among others, to investigate the conduct of any authority or person , where it is alleged that any of the human rights and freedoms set out in the Declaration of Rights has been violated by that authority or person and to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate. Furthermore, the ZHRC can recommend the prosecution of offenders, where human rights or freedoms have been violated.
- 2.2 The Zimbabwe Human Rights Commission Act [Chapter 10:30] in **Section 9**, empowers the ZHRC to conduct investigations into allegations of human rights violations.

## **3. Detailed Background of the Complaint**

- 3.1 On the 12<sup>th</sup> of July 2016, the ZHRC received complaints from the complainants against the **ZIMBABWE REPUBLIC POLICE** in respect of a violation of their right to freedom from torture or cruel, inhuman or degrading treatment or punishment perpetrated on residents of Epworth and Budiriro. The complaints arose following the stay away declared by commuter omnibus operators on the 4<sup>th</sup> of July 2016 in these areas. For purposes of confidentiality complainants' identities have been withheld so they will be referred to using alphabetical letters A to K. Complainants alleged that:-

### **3.2 Complainant A**

- 3.2.1 Complainant resides in Komboniyatsva, Epworth.
- 3.2.2 Complainant is an artist by profession and works in town. On the 4<sup>th</sup> of July 2016, Complainant went to the Chiremba turn off bus stop to board commuter omnibuses into town. He was turned back by touts who were

gathered at Chiremba turn off. They informed him that there was no vehicle allowed to ferry people to work that day and that no one was getting into town. Complainant returned home where he had left his girlfriend.

- 3.2.3 When he got home, Complainant went to bed and slept. While he was sleeping, there was a knock at the door. He opened the door and the police instructed him to come out of the house. He informed the police who were knocking that he was finishing to dress up. The police responded by shouting that he was part of the people who were causing noise at the bus stop and they went ahead to unleash four dogs into the house. The dogs were under instructions to bite men only. The dogs attacked him, leaving his girlfriend unharmed. They bit him on his legs, with his left leg sustaining deep injuries on the calf. The police instructed Complainant to pull the dogs outside but he was already badly bitten. The police got into the house and pulled the dogs out. They were six (6) policemen.
- 3.2.4 Complainant was ordered to come out of the house. When he got out, the police started beating him up with baton sticks and slapping him all over his body. He was ordered to run to the police vehicle which was ferrying all the men who had been rounded up from houses to Harare Central Police Station. When Complainant got to the police vehicle, the police who were there started beating him up with slaps and baton sticks all over his body and under his feet.
- 3.2.5 Complainant was ferried together with the other men to Harare Central Police Station. He was taken to Parirenyatwa hospital for bandaging of the wounds he had sustained only. No other medication, including anti-rabies vaccinations were given to him. He returned to Harare Central Police Station where he spent two nights. He, together with others who had been arrested in connection with the stay away disturbances were then taken to court on the 6<sup>th</sup> of July where they were remanded to the 7<sup>th</sup> of July 2016. While he was in remand, he only had his wounds bandaged at the Remand Hospital but received no other treatment. Complainant could not attend court on the 7<sup>th</sup> because of the injuries but bail was applied for him in absentia by the Zimbabwe Lawyers for Human Rights (ZLHR) and was paid on his behalf by the Counselling Services Unit. He was released on the 9<sup>th</sup> of July 2016 and taken to Avenues Clinic by the Counselling Services Unit, where he was admitted.

### **3.3 Complainant B**

- 3.3.1 Complainant lives in Komboniyatsva area of Epworth and alleges that on Monday 4<sup>th</sup> of July 2016 he was selling in his tuck-shop which is located at his house. Someone informed him that the Anti-riot Police had arrived and were overpowered by the touts so they had called for reinforcement. When the reinforcement arrived with police dogs and teargas, the touts had fled. He was also alerted that the Police was moving from house to house in search of the touts so he closed his tuck-shop and locked himself inside.
- 3.3.2 The Anti-riot police arrived at his house and kicked open the tuck-shop door. They started beating him all over his body with baton sticks and stepping on him with their boots. They also used bare hands to beat him.
- 3.3.3 He tried to explain to them that he had not gone to the bus-stop and that he had a painful leg which was surgically operated on but they did not listen. Instead instructed him to lie down and started beating him on the painful leg.
- 3.3.4 Afterwards, they tied a rope around his waist in his trousers buckles and joined him together with the other men that had been rounded up. The Police continued to round up men and tying them up together.
- 3.3.5 The police unleashed police dogs on some of the men who were bitten and sustained some dog bites. The complainant and the men were also beaten up one by one under the feet using baton sticks.
- 3.3.6 Complainant, together with the other men who were rounded up in the houses were ferried to Harare Central Police Station where they were made to sit on in the lawn for a long time before they were attended to. Complainant recalls that there were about 54 men from Epworth. Complainant and the other men were held for two nights at the Harare Central Police Station on a charge of inciting public violence.
- 3.3.7 On Wednesday the 6<sup>th</sup> July 2016, complainant and the other men were taken to court. The lawyers from ZLHR represented them and applied for bail but they were told to come back the next day. They slept at Harare Remand Prison. Bail of US\$100 was granted on Thursday the 7<sup>th</sup> of July 2016 and he paid but he was only released on Saturday the 9<sup>th</sup> of July 2016.

### **3.4 Complainant C**

- 3.4.1 She resides in Epworth at Komboniyatsva and alleges that on Monday the 4<sup>th</sup> of July 2016 she heard that commuter omnibuses were not operating. Most residents in the residential area, including herself went to the Chiremba turn-off bus stop to establish why the commuter omnibuses were not operating. When she arrived at the bus stop, she witnessed touts (mahwindi) blockading the road and preventing cars from passing, announcing themselves to be the police for the day and declaring that no vehicles were supposed to ferry anyone since it was a stay away. They were using spikes to barricade the road. They were also breaking window screens of some cars that were on the road and demanded that people should disembark from small cars as cars were not supposed to be operating and no one was supposed to go to work.
- 3.4.2 There was no Anti-riot police at the time she arrived. The Anti-riot police later arrived and the touts began to throw stones at them. The riot police retreated since they were outnumbered but they requested reinforcements which came to assist. The Police sprayed paint and water from water cannons so as to disperse people especially men.
- 3.4.3 Most of the people ran to their houses but the Anti-riot police chased after them. The Police disembarked from the trucks and started going from house to house looking for suspects. They kicked doors open and launched teargas canisters. If there were any men present in the house, they were beaten up. Some were beaten and left behind, some fled and some were rounded and taken to Harare Central Police Station.
- 3.4.4 At complainant's house, the Police threw teargas outside but it filtered into the house. She was not beaten but the teargas affected her. She feels sick since the 4<sup>th</sup> of July 2016, especially her uterus and stomach. She was living in fear because the Police spent 3 days parked at the roadside near her house after the 4<sup>th</sup> of July 2016. She said she was in perpetual fear that they might come back again.
- 3.4.5 Complainant alleges that the Police acted out of vengeance because they could not locate the touts who had stoned the first group of police officers who had been deployed to the area. They then embarked on indiscriminate interception and apprehension of all males between the ages of 16 to 60 years.

### **3.5 COMPLAINANT D**

3.5.1 Complainant stays in Komboniyatsva area in Epworth. She alleged that on Monday 4<sup>th</sup> July 2016 she was with her two children when teargas canisters were launched outside her house by the Anti-riot Police and the smoke filtered into the house. She said they encountered breathing problems until help was rendered by neighbors who poured cold water on them. She further said that thereafter her 3 year old daughter and herself started suffering from chest pains.

### **3.6 COMPLAINANT E**

3.6.1 Complainant stays in Komboniyatsva area in Epworth and alleges that on Monday the 4<sup>th</sup> of July 2016 she joined others from her community to go and see and witness the incident that was occurring at Chiremba turn-off bus stop. She witnessed touts barricading the road and demanding other cars to stay off the road in protest of the heavy traffic fines that they said police was demanding from them on the road.

3.6.2 After about an hour of her arrival at the bus stop, the Anti- riot police arrived and launched teargas canisters to disperse the crowd. The touts retaliated by throwing stones at the police but when the teargas canisters that were being launched increased people ran back into their homes. The Police then started raiding homes and kicking doors open in search of all the men whom they suspected to be the touts who had attacked them. They beat the men up and took them to Harare Central Police Station.

3.6.3 She said she inhaled a lot of teargas and is experiencing chest pains and a persistent flue since the 4<sup>th</sup> of July 2016 and her daughter is also complaining of a headache and sore eyes and has not been able to attend school.

3.6.4 She also alleges that she lost income as she failed to work for 3 days at the open market which is located at the Chiremba turn-off bus stop where she is a vendor because the Police was occupying that space for 3 days after the disturbances.

### **3.7 Complainant F (18 year old male)**

- 3.7.1 Complainant resides in Muguta, Epworth and is enrolled at a local school in the area as a form 4 student. He was wrongfully and illegally arrested while in the comfort of his friend's house who is also **Complainant G**. He alleges that after school he went to his friend's (**Complainant G**) house to play. While there, there was suddenly a knock on the door and when they opened it was the police who had come to arrest them. When they asked for the reasons and when they tried to notify the police that they were only students, dogs were set into the house which bit them and dragged them outside.
- 3.7.2 When they were outside they were told to apply mud on their faces and heads and then told to run around their compound with police dogs chasing after them and biting them. Further the police assaulted them using baton sticks, clenched fist and they were also kicked with the police gumboots. They were then force marched to the Respondents' trucks where they noted that they were several other men and boys who had been arrested or detained the same way.
- 3.7.3 All those who had been arrested were assaulted at the soles of their feet using baton sticks while at the line up to get into the police truck. They were then taken to Harare Central Police Station where they were all detained in police cells. Complainant who was badly bitten by dogs and others who had faced the same predicament were then taken to Parirenyatwa Hospital at around 11 pm where he received anti rabies treatment around 3 am of the following morning. He was returned to Harare Central Police Station where he was detained in cells until Friday 8 July 2016 when bail was finally granted to him at \$100. This was paid by his mother who is a house maid.
- 3.7.4 He had not been able to attend school since the incident despite the fact that he is supposed to be writing his mid-year exams at the moment and his 'O' levels at the end of the year. He was at the time of the interview still limps due to the wounds caused by the dogs. Pictorial evidence of his bruises and wounds was captured.

### **3.8 Complainant G (17 years old)**

- 3.8.1 Complainant resides in Muguta, Epworth and is a friend of Complainant F and he also corroborates Complainant E's story. He is also enrolled at same local school where he is in form 4. He stays with his brother who works in a shop in Harare.

### **3.9 Complainant H**

- 3.9.1 Complainant H resides in Komboniyatsva, Epworth and she alleges that on Monday 4 July 2016 she and her two children, a 16 year old male and a 9 year old daughter were at home and she encouraged her children to stay at home since there had been a clash between the touts and the police and there was unrest. She lit a fire so she could prepare lunch for her children. While outside her son shout that the police were coming to their house as he could see them through the window. She went inside the house to be with her children. Within minutes the door to their house had been broken by the Anti-riot police and they threw canisters of tear gas into the house. The mother and her children were forced to take refuge outside as it became unbearable to stay in the house.
- 3.9.2 Her son was then taken by the police and was assaulted in his face with their baton sticks in her full view. She made an attempt to intervene but she was also assaulted with baton sticks and she sustained injuries on her right hand. Complainant and her son were made to lie on the ground and the riot police heavily assaulted them. Complainant was told to go back home and when she made efforts to go back with her son the efforts were futile. She followed the police and her son for a while despite being told to go back her. Her husband arrived from work and followed them. This time when the police told her to go back home she complied as she felt that at least her son who had not done anything wrong would at least be with his father.
- 3.9.3 However, her husband was also told to lie down, he was assaulted by the Anti-riot police and then told to go home. When complainant realized that her son had been left alone, she tried to follow the police but she was told that he had been taken to Harare Central Police Station. She only managed to travel to Harare the next day, Tuesday 5 July 2016. She made efforts to see her child which were not fruitful as she was shuffled from one office to the other. However, she was told to buy him food which she did even though she alleged that the food did not reach her son.
- 3.9.4 The next day Wednesday 6 July 2016 she was told that her son would appear in court and she got an opportunity to see him. However, she could not say anything to him but she was allowed to buy him food. She was also not allowed to assist him in court and wasn't even allowed in the court room as it was full as she would have wanted to tell the authorities that her son

had not done anything wrong and he was only a school child. Her son was released on Friday 8 July 2016 on free bail and he is still to appear in court on the 28<sup>th</sup> of July 2016. He also had to report at Harare Central Police every Monday.

3.9.5 Interviews with the son corroborates his mother story. Further to his mother's side of the story he highlighted that due to the police assaults he started vomiting blood which caught the attention of one police officer who then asked him how old he was. When he heard that he was 16 years old the police officer then asked him and other juveniles to be given a separate cell from that of adults. He remained in the separate cell until he was released on bail. He had not been to school since the incident as he had been limping and was experiencing recurring headaches which had not been treated. His mother also highlighted that she pays his fees per month but she has not been able to pay his fees because she had to make many ups and downs into Harare when her son was detained. She will only be able to pay for the month of August after she receives money from her tenants for the month.

### **3.10 Complainant I**

3.10.1 Complainant resides in Highfields and alleges that on the 3<sup>rd</sup> of July 2016 he went to visit his sister who stays in Epworth. While he was still visiting, on Monday the 4<sup>th</sup> of July 2016, a clash between touts and the police occurred and the police randomly threw tear gas in people's residences. His sister's house was broken into through the door which was kicked open by the riot police. The police then randomly selected him as he was the only male in the house. He was assaulted with baton sticks and kicked all over his body then arrested. He was detained at Harare Central Police Station from the 4<sup>th</sup> of July for two days. On the 6<sup>th</sup> of July they were taken to court and remanded until Friday the 8<sup>th</sup> of July when he and other people detained with him were granted bail of \$100.

### **3.11 Complainant J**

Complainant is a Voluntary HIV/AIDS counsellor based in Budiriro. She alleges that on the 6<sup>th</sup> of July, while carrying out her duties at a home in Budiriro 5. About five (5) police officers arrived and ordered her to lie down while her patient, an elderly woman was in another room. She was severely assaulted on her back and was not given the chance to explain herself. Complainant sustained injuries on her

arm, For fear of further victimization, she did not make a police report.

### **3.12 Complainant K**

Complainant lives in Budiro 5 and alleges that he was assaulted on the 4<sup>th</sup> of July 2016 while he was at his home. His door was broken down by the police and they rounded him up along with other men. He was assaulted on his buttocks and his back using baton sticks and he sustained injuries all over his body. He did not make a report to the police for fear of further victimization. He was advised of Counselling Services Unit (CSU) which was assisting victims of torture with counselling and then he engaged them as he could barely sit. CSU referred him to Avenues Clinic where he was admitted by the hospital from the 6<sup>th</sup> of July 2016 to the 12<sup>th</sup> of July 2016 when he was discharged.

## **4. Methodology**

In carrying out its investigations, ZHRC employed a number of methods which included desk top research, interviews with key informants and focus group discussions with community members in Epworth.

### **4.1 Desk top Research**

4.1.1 The ZHRC conducted extensive legal research into the local, regional and international legal framework governing human rights. This was done in order to identify and assess the human rights that were allegedly violated on the 4<sup>th</sup> of July 2016 by the Anti-riot Police.

### **4.2 Interviews**

4.2.1 The ZHRC interviewed some of the key informants, including the Member of Parliament for Budiro Constituency, two Councilors from Epworth and Budiro 5 and a medical Doctor who examined one of the complainants in order to make a balanced assessment of the situation. An interview guide was developed to facilitate interviews. This tool was used to extract qualitative data. Individual meetings were organised in recognition of the quality of data expected from

this interaction as well as to maximise on the meeting with interviewees' knowledge on the investigation at hand.

4.2.2 Individual interviews have been conducted with the community members randomly selected in the residential area located close to Chiremba turn-off bus stop and Budiro 5 shopping centre where the incidents leading to the allegations of human rights violations by police occurred. These were done in order to more fully understand how the incident leading to the alleged human rights violations occurred and how the community was affected.

### **4.3 Focus Group Discussions (FGDs)**

4.3.1 FGDs were conducted with two different groups of community members from Komboniyatsva. This tool was used to gather a wealth of detailed information and deep insight into the incident. The method created an accepting environment that put participants at ease, allowing them to recount the incident in detail in their own words and to answer questions. Initially the group had reservations as they sought to understand what ZHRC would do with the information they would provide. After an explanation of the ZHRC mandate, a lot of information was volunteered which proved to be useful to the investigation.

4.3.2 The participants in the first group were women who were passing out time at a house near the Chiremba turn off bus-stop. The owner of the house recounted how she had witnessed the incident in detail by reason of proximity of her house to the bus stop. She indicated that the touts who had gathered at the bus stop that day were not the usual touts they knew to operate at the bus stop. Many of them had gathered at the bus stop, coming from other areas and surrounding areas of Epworth. The touts blocked the road and would not allow movement of cars into town. When the police arrived, the touts fought them. The police reinforced, and that is when they started to launch teargases and spray itchy water on the people who were gathered. When people dispersed, some ran into the compound to their homes but others passed through the compound and ran for refuge. At this point, the police started doing door to door searches for any men who was found in the houses and they beat them and took most of them to Harare Central Police station. She recounted how badly men were

beaten, including innocent men who were caught in the cross-fire. She also recounted how she was badly affected by the teargas.

4.3.3 The other focus group discussion was conducted with a group of women, including Complainant H and her son who recounted how the police had unlawfully broken into their homes and launched teargases. Her tenant informed how the door to their house had been broken down by the police and her husband beaten and taken to Harare Central Police Station, and later to court and to remand prison before he was released on bail, together with Complainant H's son.

## 5. Participant observation

5.1 This was used to gain intimate familiarity with the community and their activities through involvement with people in their environment. Using observations gave the team an understanding of the geographical location, community relations and the atmosphere/mood in the area.

## 6. Applicable law

### 6.1 Constitutional Rights

6.1.1 At the core of the complaints before the ZHRC are allegations of violations of the human rights of the complainants. In particular, it is alleged that the Anti-riot police violated the complainants' right to freedom from torture or cruel, inhuman or degrading treatment or punishment, the right to privacy and the right to personal liberty. It was also noted that some of the complainants were either children or representing children so it would be prudent to include a section of children's rights that were violated such as the Best Interests of the Child being paramount in every matter concerning the child, the right of the child not to be detained except as a measure of last resort and the right of the child to education and health care services.

6.1.2 **Section 53 of the Constitution**, which is at the center of the present complaint provides for the *right to freedom from torture or cruel, inhuman or degrading treatment or punishment* as follows:

*“No person may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment.”*

6.1.3 **Section 86 of the Constitution** provides for the circumstances under which fundamental human rights and freedoms may be limited or permitted. However, **Section 86 (3) (c)** is of paramount importance as it excludes the right to freedom from torture or cruel, inhuman or degrading treatment or punishment from those rights that can be limited. It is important to quote the provisions of **Section 86 (3) (c)** in its entirety. It provides that;

*“No law may limit the following rights enshrined in this chapter, and no person may violate them-*  
*(c) the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment.”*

6.1.4 **Section 57 (a) and (b) of the Constitution** provides for the **right to privacy** and states that;

*“Every person has the right to privacy, which includes the right not to have-*  
*(a) Their home, premises or property entered without their permission;*  
*(b) Their person, home, premises or property searched.”*

6.1.5 **Section 49 (1) (b) of the Constitution** provides for the **right to personal liberty** and states that;

*“Every person has the right to personal liberty, which includes the right not to be deprived of their liberty arbitrarily or without just cause.”*

6.1.6 **Section 81 (2) of the Constitution** provided for **the best interests of the child** and states that;

*“A child’s best interests are paramount in every matter concerning the child.”*

6.1.7 **Section 81 (1) (i) of the Constitution** provides for conditions of **the detention of the child** as follows;

*“Every child, that is to say every boy and girl under the age of eighteen years, has the right-*

- (i) Not to be detained except as a measure of last resort and, if detained –
  - (i) to be detained for the shortest appropriate period;
  - (ii) to be kept separately from detained persons over the age of eighteen years; and
  - (iii) to be treated in a manner, and kept in conditions, that take into account of the child’s age.

6.1.8 Section **81 (1) (f) of the Constitution** provides for ***the right of the child to education and health care services***. It states the following;  
*“Every child, that is to say every boy and girl under the age of eighteen years, has the right-  
 (f) to education, health care services*

## 7. International Law

Zimbabwe is a State party to a number of international and regional human rights instruments which create obligations for it to respect, protect and promote the human rights enshrined in therein, which renders these instruments also relevant.

### 7.1 Universal Declaration of Human Rights (UDHR)

7.1.1 The UDHR provides for the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment in **Article 5**.

7.1.2 **Article 12** provides for the right not to be subjected to arbitrary interference with one’s privacy, family and home and the right to the protection of the law against such interference or attacks.

7.1.3 **Article 3** states that; *“Everyone has the right to life, liberty and security of person.”*

### 7.2 International Covenant on Civil and Political Rights (ICCPR)

7.2.1 **Article 7**, which forms part of the *jus cogens* principle under international law, i.e. rights to which no derogation is allowed, provides that;

*“No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.”*

7.2.2 **Article 17** provides for the right not to be subjected to arbitrary or unlawful interference with his privacy, family and home and the right to protection of the law against such interference or attacks.

7.2.3 **Article 9** provides that:

*“Everyone has the right to liberty and security of person.  
 No one shall be deprived of his liberty except on such*

*grounds and in accordance with such procedure as are established by law."*

### **7.3 African (Banjul) Charter on Human and People's Rights**

7.3.1 **Article 5** provides as follows;

*"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, **torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.**"*

7.3.2 **Article 6** provides for the right to personal liberty and states that:

*"Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."*

### **7.4 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**

Although Zimbabwe is not party to this Convention, it is persuasive that the provisions of this Convention be taken into account in the consideration and assessment of the allegations of torture brought forward to the ZHRC by the complainants.

7.4.1 **Article 2** provides as follows;

*"1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*

*2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*

*3. An order from a superior officer or a public authority may not be invoked as a justification of torture."*

### **7.5 Convention on the Rights of the Child**

7.5.1 **Article 3** provides as follows;

*“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*

7.5.2 **Article 37** states the following; *States Parties shall ensure that:*

*(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*

*(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*

*(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

*(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such act.*

## **7.6 African Charter on the Rights and Welfare of the Child**

7.6.1 **Article 4** states the following;

- 1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.*

2. *In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.*

7.6.2 **Article 16** states the following;

*Protection against Child Abuse and Torture*

1. *States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.*

7.6.3 **Article 17** provides the following;

*Administration of Juvenile Justice*

1. *Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.*
2. *States Parties to the present Charter shall in particular:*

*(a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;*

*(b) ensure that children are separated from adults in their place of detention or imprisonment;*

*(c) ensure that every child accused in infringing the penal law:*

*(i) shall be presumed innocent until duly recognized guilty;*

*(ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;*

*(iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;*  
*(iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;*  
*(d) prohibit the press and the public from trial.*

## **8. Excerpts from Interviews with Key Informants**

8.1 An interview was held on 3 August 2016 with the medical doctor who is currently treating Complainant A in order to get insight into Complainant A's medical condition resulting from the allegations of injuries sustained from police brutality on the 4<sup>th</sup> of July 2016.

8.1.1 The doctor indicated that Complainant A was admitted on the 8<sup>th</sup> of July 2016 having been bitten by police dogs on the 4<sup>th</sup> of July 2016 in Epworth. He had been bitten but received no medical attention as he was arrested and remanded until admission on the 9<sup>th</sup> of July.

8.1.2 The doctor informed that Complainant had ulcers which were consistent with dog bites on the right thigh and on his left leg. These were quite severe on the left leg. There was severe gas-forming bacteria on his left leg. The gas-forming bacteria causes death of tissues as it is a flesh eating bacteria which causes destruction of tissues. The infection from gas-forming bacteria ascends very fast, starting from below going upwards. As a result, Complainant had a tunnel going upwards from the left leg ascending up to the level of the knee.

8.1.3 Complainant was quite ill on admission. He had a high temperature and his blood count showed severe infection. He was taken to theatre for debridement on the 9<sup>th</sup> of July 2016 where the dirt and dead cells were cleaned.

8.1.4 At the time of the interview, the doctor indicated that Complainant A was still admitted and requires specialized dressing for the wounds from the dog bites.

8.1.5 The doctor informed that Complainant A was taken to theatre on 2 August 2016 to cover the ulcer on the left leg and the ulcers on the right thigh using skin harvested from the left thigh using a procedure

called split skin grafting. In the theatre, another problem was discovered. Complainant had developed an abscess on the left leg adjacent to the ulcer because of the infection. The abscess was tracking up the bone. It was drained but it is a risk to the split skin grafting taking. Complainant A was expected to be in hospital for another two weeks, depending on whether the skin grafting takes well.

8.1.6 The doctor highlighted that the gas-forming infection might have long-term challenges for Complainant because it might lead to chronic osteomyelitis, i.e. bone infection because the infection seems to be arising from or very close to the bone. Infections of the bone however take longer to show on the X-ray.

8.1.7 There is no Medical Report as yet.

8.1.8 On the psychological aspect, the doctor indicated that initially, Complainant A was quite depressed and did not want to communicate. He was withdrawn but as time went by, he became better. He seems to however have post traumatic disorder in that when he was asked whether he would stand dogs after he is discharged, he indicated that it was not the dogs that were a problem but the police. Complainant A feels that he will have problems adjusting his feelings and thoughts towards the police, including acceptance of his friends who are uniformed police officers.

8.1.9 The doctor gave his opinion based on the patients he had treated who sustained police dog bites on incidences that occurred on the 4<sup>th</sup> of July. He indicated that the dog attacks seem to be by decision and instruction as the target and direction of the dog bites was at specific areas. Generally animals of the nature of dogs attack the neck but the dogs in these cases the dogs had a preponderance for the legs, particularly the left leg. The dogs seem to attack the same places, i.e. legs where there are no vital organs.

8.2 Another interview was conducted with the Counselling Services Unit (CSU) doctor who carried out an independent medical examination on Complainant B. The Doctor indicate that Complainant B showed signs of being beaten all over his body but he had specific parts where he got injuries. His right upper hand was swollen and had hematoma (a solid

swelling of clotted blood within the tissues) measuring 13x13cm. He also had hematoma measuring 9x12cm at the back of his right thigh. His flank had tenderness which measured 8x11cm. Although he had no bruising on the buttocks, they were painful. The doctor informed that hematomas can take long to heal. They can lead to acute kidney failure. When they begin to break down to return to normal tissue in the healing process, the debris of the hematoma poses danger to the kidneys. Complainant B was therefore advised to take a lot of fluids to flush out the hematoma debris from the kidneys. He was beaten under the feet i.e. falanga and was referred to a physiotherapist. The doctor indicated that the effects of falanga are long term and do not heal completely due to the compartment of nerves and blood vessels under the feet. The nerves are delicate in that they link with the brain. Nerve damage leads to problems in walking, especially long distances due to increased sensations. Special shoes may be required in order to manage the pain and effects of nerve damage. He had a painful eye and was referred to an ophthalmologist.

The doctor indicated that although there is no way to medically determine what weapons were used to assault Complainant B, the presence of the hematoma and the pain under his feet as a result of being assaulted was consistent with allegations of assault with a blunt weapon such as a baton stick as alleged. Complainant B was given painkillers and antibiotics. He was also given tablets to assist him to fall asleep since he was experiencing sleep disturbances because of flashbacks of the trauma of torture at the hands of the Anti-riot police and the nights spent in police cells and Remand Prison. Lack of sleep was also as a result of anxiety of the pending court case on the 28<sup>th</sup> of July 2016.

8.2.1 The CSU Doctor also examined Complainants C, D and E on the 12<sup>th</sup> of July 2016. She confirmed that Complainants had not been assaulted but complained of chest pains due to teargas inhalation. The complainants had sounds in their chest and were given antibiotics to clear them. The Doctor indicated that she was not aware of any long term medical effects of teargas inhalation and she would need to research further on whether there were long term effects. To her knowledge, teargas inhalation has short term effects which cleared after a short while.

8.2.2 Complainant **F** was also examined by a doctor at Counselling Services Unit. The doctor informed that he had several dog bites on

his right forearm, right upper thigh, right calf and abdominal flank. He was also badly beaten by a baton stick under his feet such that he had to be referred to Physiotherapist. The doctor could not really state the exact time for the healing of the dog bites even though she stated that the wounds were starting to heal. She highlighted that when a person is bitten by a dog it is not possible to put stitches on the wound even where it will be deep as the wounds would become septic. She indicated that antiviral and tetanus vaccinations had been administered on the juvenile at Parirenyatwa according to the juvenile. All she had done was to administer sleeping pills and pain killers as they were having challenges sleeping as a result of the trauma they had suffered on the 4<sup>th</sup> of July 2016 due to the brutality of the police.

8.2.3 The doctor corroborated evidence that the marks on Complainant **G**'s body indicated that he had been bitten by dogs on his right forearm, both thighs, left calf, right leg and the front of his left leg. She highlighted that even though some of the wounds were deep it was not the norm for dog wounds to be closed with stitches as it would lead them to being antiseptic. As a result with regards to dog bites they are only cleaned and dressed which is how the doctor assisted the complainant. The doctor also highlighted that Falanga had been administered on the complainant. The victim will experience occasional pins and needles sensations on his feet which can be painful. Victims will also need to have physiotherapy sessions for them to be able to walk properly after the experience. In some instances they will not be able to walk for long distances after the experience. The doctor administered pain killers and antibiotics on the complainant. He was also given sleeping tablets as he also was now suffering from insomnia since the incident.

8.2.4 Complainant **I** was also examined at CSU and the doctor confirmed that his testimony that he had been bitten by dogs tallied with the wounds and marks that he had on his right lower leg. She however, could not assess the wound on the leg because it was properly dressed. She highlighted that he hinted that he had not been given the rabies vaccine as the police said that their dogs received constant vaccinations and as a result it was not necessary. He had

however been vaccinated against Tetanus. He had also been stamped on, on his chest with police gumboots. His buttocks were also swollen which confirmed complainant's testimony that he had been beaten on his buttocks with a baton stick. She administered pain killers on him even though she highlighted that his wounds were healing and that the swelling would subside with time.

8.3 Expert Opinion was also sought through interviews with Professional Counsellors (PCs) from CSU who attended to some of the complainants after the incident. The PCs indicated that they carry out a psychological assessment which a scale of 1-14 called the Shona Symptom Questionnaire (SSQ). Any level from 8 and above is an indicator of high psychological stress. They also do a physical assessment which is out of 60 and an assessment of sleep patterns which is out of 32.

8.3.1 The Counsellor who attended to Complainant B revealed that when she went through a counselling session with him on the 12<sup>th</sup> of July 2016, he had a high SSQ of 8/14. His sleep was at 5/32 meaning that he had high sleep disturbance and his physical condition was 32/60 which means that his physical status was not well. He was emotionally traumatized by the incident and had so many worries. He was worried that as they were being ferried to the Harare Central Police Station, there were some people who were bleeding and because they were too many in the vehicle ferrying them, he got some blood stains on his person which made him worried about the possibility of contracting HIV/ AIDS. He was also worried that his leg which he had been operated two years back might not heal since the Anti-riot police assaulted that leg despite him having informed them about the operation. He was anxious that the police would come and break in at his house again. He was also anxious about the outcome of the pending court case on the 28<sup>th</sup> of July 2016 because he is the family breadwinner and if he was sent to jail, he was worried about the future of his family in his absence. Although his cognition was intact, his concentration was low because he was in pain. He was also confused as to why the Anti-riot police broke into his tuck-shop yet he was not part of the crowd that went to Chiremba turnoff where the altercation between the police and touts took place.

8.3.2 The Counsellor indicated that Complainant C had moderate psychological stress but was characterized by thinking a lot, lack of concentration and tiredness. Her physical assessment was high at 33/60 due to chest pains, coughing a lot and tiredness. She was

sleeping well but had fear of the police coming back again. She was also disturbed by the teargas which still smelled in her house.

- 8.3.3 The Counsellor revealed that the psychological assessment for Complainant D showed that she had psychological stress of 7/14 which was moderate. She had disturbed sleep patterns of 8/32 and her physical assessment was 28/60. She was anxious that the Anti-riot Police might come back to her house and this made her feel helpless. She had disturbed sleep as she kept reliving the memories of the incident and kept hearing noise as if something was going on outside her house.
- 8.3.4. Complainant F scored highly which showed that he was greatly distressed and that his physical was also high. She highlighted that the juvenile was emotionally traumatized and he was angry because he was not part of the clashes. He had feelings of wanting to revenge the police for brutalizing him for no apparent reason. The Counsellor also highlighted that he was exhibiting symptoms associated with acute stress disorder which could be a result of worrying about missing school, spending a week in police custody and a pending court case. Further counselling was encouraged but the counsellor also feared that he might not be able to get bus fare considering the fact that he was only a school going child who was being looked after by his mother who is only a domestic worker.
- 8.3.5 Complainant G scored 9/14 which showed that he was greatly distressed. His sleep was also assessed and he scored 7/12 a high score which showed that he was not getting enough sleep due to the trauma. He also got 32/60 in a physical which was also regarded as a high score. From her assessment he was traumatized because he had been bitten by 6 dogs that had been let loose on him, he was also worried about an impending court case which was preceded by 2 days in police cells and 3 days in remand respectively. His schooling had also been disrupted first when he spend days in incarceration and he was also missing out on school as he could not properly walk and has to be treated. She highlighted that he was also insecure as he was anxious about going back home where he had been brutalized in the comfort of his own home.

The Counsellor highlighted that there were follow up sessions as she believed only one session would not restore the juvenile's state of mind. She indicated that the juvenile could face challenges with bus

fare since he was still a student and his brother whom he stays with had incurred expenses due to the incident would find it difficult to continue funding the trips.

8.3.6 Complainant I scored highly on his psychological assessment as he got 11/14. He was depressed and angry because he had been assaulted for no apparent reason as he had only gone to Epworth to visit his sister and did not even take part in the clashes between the police and the touts. The pending court also weighed heavily on his mind and he was anxious about the outcome. He was also worried about the loss of his income as he is self-employed and had to use his capital to pay bail. He had also lost income while incarcerated and continued to do so while he is seeking treatment for wounds and pain incurred of an assault that was not even justified. He was also suffering from disturbed sleep patterns, due to physical pains, worry about the future and the perceived long term effects of the assault like not being able to continue working. The counsellor was of the view that he will benefit from continuous counselling sessions.

8.3.4 The Counsellor revealed that all the Complainants needed continued sessions of counselling to support them. However, there were limiting factors for this kind of support in that most of them had no money for bus fare to come back for the consecutive counselling sessions. Most of them also indicated that they were breadwinners and commitments to their different work in order to fend for their families would be overriding in terms sparing time for other sessions.

8.4 An interview conducted with a medical doctor who examined complainant J revealed that the medical examination is in keeping with the allegations of assault with a blunt object on the person of the complainant, mainly on the buttocks extending to the thighs and right upper limb i.e. forearm. The medical doctor revealed that the complainant developed conjunctivitis (infection of the eyes) in his right eye. The X-ray of the complainant did not show any bone fractures. There was however, significant hematoma or bruising on the buttocks on both sides. These were evident marks of being beaten with something blunt like a sjambok. This caused myoglobinuria whereby muscles break down and cause myoglobin to be absorbed in the blood thereby affecting the kidneys. At one point complainant's urine was not coming out as a result. He had to be resuscitated and given fluids in

order to flush out the myoglobin from his kidneys. He was also given supportive treatment for pain relief.

- 8.5 A Councillor from Epworth who was interviewed pointed out that people are the ones who beat the police, killing one police officer in the process and chopping another on the chin with an axe. She further indicated that a BMW police vehicle was burnt down by the touts, forcing the police to call for back-up in order to contain the situation. She noted that the police followed the touts into the residential area where they ran to take refuge from the police but the large number of touts ran away. She further indicated that the Police used water cannons and teargas canisters to disperse people from Chiremba turn-off bus stop because the touts were throwing stones at them since the Police were fewer than the people who were gathered there. She went on to indicate that, she had no knowledge as to whether there were other people who were not touts who were beaten by the police. However, her indications were that Komboniyatsva is a residence for notorious people, predominantly from the opposition party, who oppose anything to do with the ruling party and government. She noted that it was also a haven for drugs. She also opined that it was highly recommended for the people of that residential area to be beaten thoroughly by the police because they are unruly due to drug abuse.
- 8.6 An interview was also conducted with the ZANU-PF chairperson of the area that covers Komboniyatsva. He informed that He informed that on 4<sup>th</sup> of July 2016 he could not open his stall that is situated at the market that is by the Commuter Omnibus Rank because they were some clashes between the police and touts which he believed were caused by touts who were disgruntled by the large number of police roadblocks. He also recalled that he had a meeting with the Ward Councillor which failed because of the commotion that then ensued. Most of his information was hearsay as he did not experience it firsthand. He as a community leader then heard about people who were bitten by police dogs and some who were assaulted by baton sticks. People also reported to him that there were door to door attacks whereby police would knock or break people's doors looking for "men." He also stated that he had received reports of some houses being tear gassed and that as the touts were running away from the police they passed through people's yards and some got into the houses. He understands that the majority of the people who caused the commotion were not from the area, he believes that some of them came from as far as

Chitungwiza, even though it is the local inhabitants he suffered through assaults, damage to property and other misfortunes. He highlighted that he did not know whether the door to door attacks were political or not because he had someone shout, “MaZANU muchaona moto” (ZANU PF members you are in trouble).

He also highlighted that they had a community meeting after the incident and it was confirmed that most of the people who were arrested after being assaulted, or just assaulted and left were not even part of those who demonstrated. He highlighted that from the cases he received some of the complainants had been beaten up and left, some were arrested and had been released on \$100 bail while children had been granted free bail.

On being questioned about the history of the area that they reside he highlighted that the area had three (3) different names Komboniyatsva, Balancing Rocks and Mugagawu and it was also known as Ward 1 of the district called Epworth. He highlighted that they settled in the area in as early as 1996 and initially they were under Hatfield when they wanted to hold political meetings. In 1999 as more and more people settled in the area they were removed from being classified under Hatfield and were moved to Epworth. He highlighted that they are registered to vote under Epworth and even the Movement for Democratic Change Councillor for the Ward stays in Komboniyatsva and was voted for under the district. In 2005 after Murambatsvina they were told to move to Garikai under a government scheme to benefit those who are homeless. He highlighted that only two (2) people benefited from the scheme from the whole community such that the people moved back to Komboniyatsva. In 2000 they were told to pay for registration for stands through the Epworth Local Board which they did and received cards. The stands are still to be provided. He also highlighted that he is aware that they are an illegal settlement because the area in which they stay is registered under the United Methodist Church which has taken them to court.

- 8.7 Another interview was conducted with the Chief Executive Officer at the Epworth Local Board. He indicated that Epworth Local Board had not received any reports about police brutality and torture of people on the 4<sup>th</sup> of July 2016. He highlighted he was at work all day on the day in question but they did not receive any report of casualties on the day in question. All he had heard was hearsay information to the effect that touts had burnt tyres

and placed boulders on the roads so they could stop people from going to work on the 4<sup>th</sup> of July 2016. The police had intervened by ensuring that roads were opened. He heard also heard that one police officer had been wounded who was rushed to Chitungwiza Hospital and this he had knowledge of because the police had asked for the Council Ambulance.

He went on to highlight that according to his knowledge the incident had not happened in Epworth but in Harare as the place where he had heard that the incident had occurred was not under Epworth Local Board but under Harare City Council so Harare City Council was in a better position to comment on the issue. He hinted that Komboniyatsva or Balancing Rocks is an area that does not fall under Epworth Local Board but rather under Harare City Council. He went on to say that even the Councilor for the compound falls under Harare City Council. He distanced himself from the habitants of Komboniyatsva which he said was an illegal settlement made up of very violent people who were not part of “them” and as such they were tarnishing the image of Epworth.

- 8.8 Efforts were made to secure an interview with the District Administrator for Epworth. She however informed that she is not in a position to comment on the incident and referred ZHRC to the Provincial Administrator or the Police Spokesperson since it is a matter involving the police.
- 8.9 A councillor from Budiriro 5 pointed out that on the 4<sup>th</sup> of July he was at his home in Budiriro. He heard that the police were rounding up and beating men allegedly for blocking the roads with stones and burning tires in protest against multiple police roadblocks. The councillor said on the day in question he stayed indoors at his house as way of avoiding being accused of inciting violence. He noted that the police employed a dragnet style to round up men, some of whom were going about their businesses like carpenters and vendors. Men were assaulted regardless of their political affiliation. There was heavy police presence in Budiriro on that day and about eight (8) men were arrested, they appeared at Rotten Row Magistrates’ court the following day and were granted \$100 bail each. He noted that he took an active role as the councillor in referring the victims of torture to CSU for assistance.
- 8.10 The Member of Parliament for Budiriro pointed out that on the 4<sup>th</sup> of July 2016 he received complaints from several people in his constituency indicating that police officers were moving around in Budiriro and beating

up people for allegedly causing violence and “provoking the police”. He noted that he assisted some victims of torture to make police reports and took some of them to hospitals for medical assistance. He further indicated that police brutality was indiscriminate and was not based on political affiliation.

## **9. Analysis of Violations of Human Rights and Application to Findings**

### **9.1 Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment.**

9.1.1 Although Zimbabwe has not ratified the Convention against Torture, in determining the question of whether torture has been perpetrated, the definition of torture as provided for in Article 1 of the Convention is most apt. Article 1 of the Convention provides that,

*“... 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 indicate pain or suffering arising only from, inherent in or incidental to lawful sanction.”*

9.1.2 In accordance with the definition of torture set forth in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the essential elements of torture are therefore as follows:

1. The perpetrator must intentionally inflict severe physical or mental pain or suffering upon the victim for one or more of the following purposes:

(a) To obtain information or a confession from the victim or a third person;

(b) To punish the victim or a third person for an act committed or suspected of having been committed by either of them;

(c) For the purpose of intimidating or coercing the victim or the third person;

(d) For any reason based on discrimination of any kind.

2. The perpetrator was himself/herself an official, or acted at the instigation of, or with the consent or acquiescence of, an official or person acting in an official capacity.<sup>1</sup>

9.1.3 The above definition of torture sits well with the interpretation adopted by the courts in case law of torture in section 53 of the Constitution.

In the case of *JESTINA MUKOKO v THE ATTORNEY-GENERAL*, Judgment No. SC 11/12<sup>2</sup>, it was emphasized that the right to freedom from torture or cruel, inhuman or degrading punishment was an absolute prohibition which cannot be derogated from by the State even in a state of public emergency.<sup>3</sup> This is due to the importance of the values it protects, i.e. the protection of the dignity and physical integrity of every person regardless of his or her conduct. It is paramount to quote verbatim from the judgement that,

*“No exceptional circumstance such as the seriousness of the crime the person is suspected of having committed, or the danger he or she is believed to pose to national security can justify infliction of torture, or inhuman or degrading treatment. There cannot be a value in our society over which there is no*

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<sup>1</sup> See **Genocide, War Crimes and Crimes against Humanity**: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, Available online at <https://www.hrw.org/reports/2004/ij/ictf/index.htm>.

<sup>2</sup> Available online at [http://archive.kubatana.net/docs/legal/sc\\_mukoko\\_vs\\_attorney\\_general\\_120320.pdf](http://archive.kubatana.net/docs/legal/sc_mukoko_vs_attorney_general_120320.pdf).

<sup>3</sup> See Section 87 (4) (b) of the Constitution, “ No law that provides for a declaration of a state of emergency, and no legislative or other measure taken in consequence of such a declaration, may limit any of the rights referred to in section 86 (3), or authorize or permit any of those rights to be violated.”

*clear a consensus as the prohibition of torture inhuman and degrading treatment of a person in the custody of a public official. That such a treatment should never form part of the techniques of investigation of crimes employed by law enforcement agents, is a restatement of the principle that the law which it is their duty to enforce, requires that only fair and humane treatment ought to be applied to a person under criminal investigation.”*

9.1.4 The findings reveal that following the altercations between the police and touts at the Chiremba turnoff bus stop on the 4<sup>th</sup> of July 2016, the police instigated systematic torture i.e. torture which was organized in that it targeted men on the basis that the touts, who were men, had fought the police, and therefore to punish the touts or men in the immediate residential place of Chiremba bus turnoff bus stop for an act committed or suspected of having been committed by them.

9.1.4.1 Torture was perpetrated through beating with baton sticks, including falanga, i.e. beating under the feet, beating with open hands, kicking with boots and unleashing of police dogs on men. Torture, in accordance with the definition and elements discussed above were satisfied by the actions of the police.

9.1.4.2 Despite the touts having attacked the police, it is important to observe and reiterate the interpretation that was given by the Supreme court in the Mukoko case (*supra*) that *“No exceptional circumstance such as the seriousness of the crime the person is suspected of having committed, or the danger he or she is believed to pose to national security can justify infliction of torture, or inhuman or degrading treatment.* (Emphasis added)

9.1.4 The amount of force, evidenced by the injuries sustained by some of the Complainants as corroborated by medical experts interviewed reveal a case of **Police Brutality**. **Police Brutality** is defined as;

*“The use of excessive and/or unnecessary force by police when dealing with civilians. “Excessive use of force” means a force well beyond what would be necessary in order to handle a situation.”<sup>4</sup>*

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<sup>4</sup> The Law Dictionary, available online at <http://thelawdictionary.org/article/what-is-police-brutality/>.

From the above definition it is clear that although “excessive force” is not subject to a precise definition, it is generally use of force beyond the force a reasonable and prudent law enforcement officer would use under the circumstances. Excessive force by law enforcement officers is a violation of a person's rights. The unleashing of police dogs on and falanga on some Complainants are examples of excessive force that was used by the police amounting to a case of **Police Brutality**.

## 9.2 Right to Privacy

9.2.1 The findings reveal that the police entered into the homes, premises and property of some of the Complainants without their permission, thereby violating their right to privacy which protects them from arbitrary searches of their homes and unlawful entry into their home, premises or property under section 57 of the Constitution.

## 9.3 Right to Personal Liberty

9.3.1 The facts reveal that the police targeted the men in the Komboniyatsva residential area merely due to its proximity to the Chiremba turnoff bus stop yet interviews with most stakeholders in Epworth revealed that the touts who were gathered at the bus stop, blocking the road, on the 4<sup>th</sup> of July 2016 came from different areas. To conclude that every single men in Komboniyatsva had been involved in the commotion at the bus stop and to proceed to conduct a door to door search for and arrest men on this basis led to a violation of personal liberty of men who had not been involved in the incident, including boys below the age of 18 years.

In the case of STAMBOLIE V COMMISSIONER OF POLICE 1989 (3) ZLR 287 (S) it was held that the onus is upon the person making the arrest to prove that the arrest was lawfully justified. Further it was held in the case of MUYAMBO V NGOMAIKARIRA AND OTHERS (HC 5195/09) [2011] ZWHHC 138 (07 JULY 2011) that;

*In order to establish the lawfulness of an arrest without a warrant, the onus lies upon the defendant to show probable cause or reasonable suspicion. In exercising the power of arrest, he must act as an ordinary honest man would act, on suspicions which have a reasonable basis, and not merely on wild suspicion. The arrestor must act on such circumstances as would ordinarily lead a reasonable man to form the suspicion that the arrestee has committed an offence. It is not the function of the police to arrest at*

*large and to use the interrogatory process in order to determine whom to charge. The deprivation of personal liberty is an odious interference and constitutes a serious infraction of fundamental rights, attracting an exemplary assessment of reparation.*

#### **9.4 The best interests of the child**

9.4.1 The findings reveal that children's best interests were not taken into consideration as children were harassed, assaulted and tortured without much thought that they were children. In one incident the children who were taken from their homes asked to show the riot police their school identity cards but the police refused. Instead they set dogs on the defenseless children which clearly violates the constitutional right of the best interests of the child.

#### **9.5 The right of the Child Not to be Detained Except as a Measure of Last Resort**

9.5.1 The findings reveal that children were just detained without adherence to the provisions of the law. Initially they were detained in the same cells with adults and they received the same amount of torture. One child was even taken from his mother's and father's care and the comfort of his own home. The conditions that they were subjected to were the same with those of adults and they were detained for 5 days until they were released on bail.

#### **9.6 The right of the child to education and health care services**

9.6.1 The findings also revealed that the children are all enrolled in school and must sit for their O' Level Examinations at the end of the year. They missed their mid-year exams when they were detained for a week. The children could also hardly walk due to wounds from dogs, baton sticks and being kicked and punched by the riot police. Their right to education was violated. They also did not receive the necessary health services as they were given Tetanus and Anti Rabies Vaccinations but nothing was provided for the pain as they were in pain due to the wounds.

### **10. Recommendations**

In light of the findings from this investigation, the following recommendations are put forward;

## **ZIMBABWE REPUBLIC POLICE**

- 10.1 That the **COMMISSIONER GENERAL OF POLICE** be directed to investigate cases of the criminal violations of human rights that occurred on the 4<sup>th</sup> of July in Epworth and to report to the Commission on the results of the investigations in terms of Section 243 (1) (h) of the Constitution.
- 10.2 The ZHRC recommends after investigation by the Commissioner General of Police (in 10.1) ensure that the prosecution of police officers who violated human rights on the 4<sup>th</sup> of July 2016, in terms of section 243 (1) (g), which must be sanctioned by deterrent sentencing, so as to eliminate impunity and send out a strong message to would be public officials' human rights violators of the repercussions of violation of human rights.
- 10.3 That the training of police officers on human rights be regular and continuous so as to uphold the fundamental human rights and freedoms as enshrined in the Declaration of Rights, Chapter 4 of the Constitution or any other law or Conventions and Treaties to which Zimbabwe is a party.

## **GOVERNMENT OF ZIMBABWE**

- 10.4 That it expedites the call to ratify and domesticate the Convention against Torture (CAT) so as strengthen the legal obligations on public officials to promote, protect and respect human rights, in particular the right to freedom from torture or cruel, inhuman or degrading punishment.

## **NATIONAL PEACE AND RECONCILIATION COMMISSION**

- 10.5 In line with its Constitutional mandate must come up with measures to on how conflict can be prevented through early detection of potential conflicts and promote peace, facilitate a conciliatory approach to disputes that may arise and develop programmes to ensure that persons subjected to torture receive rehabilitative treatment and support.

## **GENERAL PUBLIC OF ZIMBABWE**

- 10.6 That in as much as Section 59 of the Constitution guarantees the freedom to demonstrate and petition, these rights must be exercised peacefully without endangering the public at large. Citizens of Zimbabwe are reminded to exercise their rights in a manner that is consistent with the Constitution.

## **11. Pictorial Evidence of Torture by Anti-Riot Police**

11.1 The pictorial evidence of torture of the complainants at the hands of the anti-riot police is attached here as '**ANNEXURE A.**'

**ANNEXURE A**



**ANNEXURE A**



**ANNEXURE A**

