

**REDRESS**

*Seeking Reparation for Torture Survivors*

# **THE CASE OF HENRY DOWA:**

**THE UNITED NATIONS & ZIMBABWE  
UNDER THE SPOTLIGHT**

**THE REDRESS TRUST  
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## **Introduction**

In May 2003 REDRESS learned that an allegedly notorious Zimbabwean police torturer, Henry Dowa, was in Kosovo. Sources inside and outside of Zimbabwe confirmed that there were numerous serious allegations of torture linked to him, and further investigations revealed that Dowa was part of the United Nations Interim Administration Mission in Kosovo (UNMIK) civilian police force (CIVPOL). CIVPOL is made up of several thousand police officers drawn from UN Member States, including Zimbabwe.

Early in June 2003 REDRESS dispatched a comprehensive dossier to the head of UNMIK, comprising affidavits from Zimbabwe torture survivors detailing what they had suffered allegedly at Dowa's hands, including electric shock torture and beatings on the bare soles of the feet, supported by medical evidence. The dossier also contained an analysis of current human rights violations in Zimbabwe, especially torture, and demonstrated that it is virtually impossible to bring violators to justice under domestic law under current conditions. Finally, the attention of UNMIK was drawn to the relevant international laws under which it is obliged to act, and in particular the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

In September 2003, the UN asked the Zimbabwe government to withdraw Dowa, which it did. He is now back in Zimbabwe, once again beyond the reach of justice. In this report REDRESS documents the issues arising from the case of Henry Dowa.

## **Zimbabwe: a country in the grip of political terror**

Zimbabwe, formerly the British colony of Rhodesia, achieved independence in April 1980 after two black nationalist liberation movements waged a long and bitter guerrilla war against the illegal white-minority regime of Ian Smith.<sup>1</sup> Robert Mugabe, the leader of Zanu-PF, won the first democratic election and has ruled the country for nearly 24 years, first as prime minister and then as president. His main rival was Joshua Nkomo who led the other nationalist movement, PF-Zapu, which Mugabe brutally crushed after

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<sup>1</sup> The two movements were the Zimbabwe African National Union (Zanu, later called Zanu-PF) and the Zimbabwe African Peoples Union (Zapu, later called PF-Zapu). Smith led the racist settler government which made a Unilateral Declaration of Independence (UDI) in 1965. The UDI 'State' was never recognized by any country and became subject to UN trade sanctions and an arms embargo.

independence before absorbing it into his party in 1987.<sup>2</sup> Until 1999 the country was a *de facto* one party state, with Mugabe firmly in command. However, by 1999 a combination of political and economic factors had led to the formation of a trade unionist based opposition party, the Movement for Democratic Change (MDC), led by Morgan Tsvangirai. The MDC posed a serious electoral threat to Mugabe's hegemony, illustrated by his government losing a crucial constitutional referendum, intended to entrench his position even further, early in 2000. Very soon after this political defeat the present crisis began when Mugabe unleashed all his forces, firstly against the country's white commercial farmers and then against the MDC, to maintain his grip on power.

Since 2000 Zimbabwe has plunged into chaos, and is today suffering from an economic, political, social, agricultural and human rights disaster. Even before 2000 HIV/AIDS posed a very serious problem, but now the country's difficulties have been hugely exacerbated by rampant inflation and unemployment, and wholesale political repression. The MDC, although nominally legal, is under constant physical attack, and the disruption to food production caused by the confiscation of almost all the commercial farms, combined with drought, has left half the population on the brink of starvation. In this context torture is now endemic. The rule of law has been abandoned, and the independence of the judiciary, particularly at the highest level, has been destroyed.<sup>3</sup>

Mugabe has a range of forces at his disposal to terrorise the population: so-called 'veterans' from the liberation war (many of them toddlers in 1980), youth militias trained under a new 'national service' programme whose primary function is to attack the MDC, the secret Central Intelligence Organisation (CIO), the army, various official Zanu-PF bodies, and the Zimbabwe Republic Police (ZRP). The ZRP, once a largely professional body, has become little more than an extension of Zanu-PF, especially at leadership level. It is now in the forefront of human rights violations, participating directly in the torture of detainees as well as co-operating in this with the more 'traditional' torturers in the CIO. Another aspect which illustrates the ZRP's increasing culpability for the growth of systematic and gross human rights abuses is its blatant failure to investigate and arrest those in and outside of its ranks (especially amongst the war veterans and youth militias) who have committed horrific criminal acts, including political murder, torture and life-threatening assaults.

Today Zimbabwe is a 'rogue' State under the dictatorship of Mugabe and his Zanu-PF henchmen. Until democracy is established there is no reasonable prospect of any of the

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<sup>2</sup> An estimated 20,000 unarmed civilians were massacred, and thousands of others tortured, at the hands of Mugabe's forces during the period 1982-1987. There is overwhelming evidence that what happened constituted a crime against humanity, and possible genocide. The period is known as the *Gukurahundi*.

<sup>3</sup> See for example *Report of the Zimbabwe Mission 2001*, International Bar Association, London, April 2001. When the MDC almost won the June 2000 general parliamentary election Mugabe intensified his war against what was left of democracy, culminating in the government orchestrated violence of the March 2002 presidential election in which Mugabe fraudulently retained power. This in turn led to Zimbabwe's suspension from the Commonwealth, and to EU and USA travel and financial sanctions against the Zanu-PF leadership. In December 2003 Mugabe pulled Zimbabwe out of the Commonwealth altogether after it had voted to continue the suspension.

human rights violators being brought to justice in the country or for the many thousands of human rights victims to receive effective reparations.<sup>4</sup>

### **The Zimbabwe - United Nations - Kosovo connection**

After the NATO intervention in the former Yugoslavia, war-ravaged Kosovo came directly under the control of the United Nations in 1999.<sup>5</sup> The civilian presence known as the United Nations Interim Administration in Kosovo (UNMIK) was established, headed by a Special Representative of the Secretary-General (SRSG).<sup>6</sup> Within UNMIK an international police force was established, comprising a Civilian Police Unit (CIVPOL), a Border Police Unit and a Special Police Unit. The role of CIVPOL was and is to oversee civilian police operations and to supervise the establishment of the Kosovo Police Service. One of the main responsibilities of UNMIK (and thus of all three Police Units) is specifically *protecting and promoting human rights*.<sup>7</sup>

Zimbabwe is one of the UN Member States contributing police officers to Kosovo. The number sent has varied since UNMIK was set up, but at present there are over sixty Zimbabweans in a total force of more than 4000.<sup>8</sup> The usual tour of duty is 12 months, although officers can serve for six or nine months.<sup>9</sup> All CIVPOL officers continue to receive their normal salaries from their home countries, but in addition the UN pays them a daily Mission Subsistence Allowance (MSA) of US\$71 a day to defray the cost of room and board and other personal items required by the officers during their tour.<sup>10</sup>

At present the Zimbabwe economy is in a state of collapse, with an official annual inflation rate of 620%, and one US dollar fetching around 6000 Zimbabwe dollars on the parallel market.<sup>11</sup> In these circumstances postings to Kosovo are highly desirable. If an officer sets aside only 10% of his MSA over a 12 month period, the sum of US\$2591 saved would be worth about Z\$15,549,000 on the parallel market – enough to buy a house in Zimbabwe. There is little doubt that Zimbabwean police officers, used to harsh

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<sup>4</sup> For a comprehensive survey and analysis of Zimbabwe from the perspective of torture survivors see: *Reparations for Torture: A Survey of the Law and Practice of Reparation for Torture in 30 Countries: Zimbabwe Country Study*, REDRESS, London, March 2003:

<http://www.redress.org/publications/Audit/Zimbabwe.pdf>. The *Zimbabwe Country Study* covers the pre-independence (UDI) period, the *Gukurahundi* of the 1980s, and the present gross and systematic human rights violations which commenced in 2000. It shows that Zimbabwe has had a culture of impunity under both white-minority rule and under black-majority rule.

<sup>5</sup> United Nations Security Council Resolution 1244 (1999) adopted 10 June 1999 [S/RES/1244 (1999)].

<sup>6</sup> For general as well as detailed information on the establishment, aims, functions, responsibilities and operations of UNMIK see <http://www.unmikonline.org>, last accessed December 2003.

<sup>7</sup> S/RES/1244 (1999), para. 11 (j).

<sup>8</sup> In mid-2002 there were 49 participating countries contributing 4468 international police, of whom 61 were Zimbabweans: <http://www.unmikonline.org/civpol/factsfigs.htm> According to information REDRESS received the number of Zimbabweans serving in CIVPOL during 2003 remained more than sixty.

<sup>9</sup> *Ibid.* According to information REDRESS received Zimbabweans serve for 12 months and are then replaced by a fresh contingent.

<sup>10</sup> *Ibid.* The daily MSA for the first month is \$95, and thereafter \$71 a day. An additional \$200 clothing and equipment allowance is paid for each full year of service. A junior police officer in Zimbabwe earns about Z\$140 000 *a month* – about \$23.

<sup>11</sup> These figures are as at December 2003. Inflation continues to grow at the rate of some 100 percentage points *a month*. Unofficially, annual inflation is more than 1000%. There is a semi-official parallel market in foreign currency, while the official exchange rate is US\$1=Z\$824.

service and living conditions back home, are capable of saving considerably more than 10%, and that only those police officers who have found favour with the authorities are sent to Kosovo as a reward for their unswerving loyalty to Zanu-PF.

### **Chief Detective Inspector Henry Dowa: alleged torturer**

It is not certain precisely when Dowa joined CIVPOL Kosovo, but it appears to have been around March 2003, as he was still seen in Harare the month before.<sup>12</sup> In May 2003 his presence in Prizren, Kosovo was confirmed, as were serious allegations of his involvement in torture in Zimbabwe. According to victims seen by REDRESS, Dowa was well known to MDC activists in Harare, with a feared reputation for brutality. Since at least 2000, when the current wave of human rights violations began, he was attached to the Law and Order Section of the Criminal Investigation Department (CID) of the ZRP, based at the country's main police station, Harare Central, in the capital. By the time he went to Kosovo he had reached the rank of Chief Detective Inspector. The Law and Order Section of the non-uniformed CID dates back to pre-independence days and specialises in 'political offences', which are still very broadly defined.<sup>13</sup>

The involvement of the ZRP, including the CID, in torture is well documented. In a report which covered events in Zimbabwe from January 2001 to August 2002, it was found that the State agents most frequently cited as being responsible for gross human rights violations were the ZRP.<sup>14</sup> Within the ZRP the uniformed branch is the main perpetrator, followed by the CID.<sup>15</sup>

A victim seen by REDRESS alleged that in 2002 at Harare Central he was beaten with a wooden pole in the presence of Dowa and then, after his hands were handcuffed behind his back, an electrical wire was attached behind his ear and he was subjected to repeated electric shocks ranging from ten seconds to about a minute. This torture continued for several hours during which time Dowa and others screamed questions and accusations at him. Between shocks he was kicked, slapped and punched. He was also beaten on the soles of his bare feet with batons. Medical reports compiled soon after the torture confirmed that all his injuries were consistent with what the victim described.<sup>16</sup>

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<sup>12</sup> According to reports received by REDRESS.

<sup>13</sup> The main piece of legislation used both before and after independence was the Law and Order (Maintenance) Act (Chapter 11:07). This was the central legislative weapon used by the white-minority regime to repress African nationalism: see *Zimbabwe Country Study* (supra), page 8, footnote 39. It was only repealed in 2002, and replaced by the almost equally repressive Public Order and Security Act (Chapter 11:17).

<sup>14</sup> *Torture by State Agents in Zimbabwe: January 2001 to August 2002*, Zimbabwe Human Rights NGO Forum, March 2003, pages 12-13. In 99% of the violations torture was reported, often accompanied by other forms of abuse or ill treatment such as unlawful arrest and illegal detention.

<sup>15</sup> Ibid. The percentages found were 61% and 14% respectively.

<sup>16</sup> This victim's affidavit evidence, along with the medical reports, was sent to UNMIK.



Another victim told REDRESS that on two different occasions in 2001 Dowa participated in his torture at Harare Central. The first time he was shackled to the leg of a table and made to lie face down on the floor while Dowa and another took turns to beat him repeatedly on the soles of his bare feet with a rubber baton. On the second occasion several months later Dowa attacked him with a long wooden plank, striking him several times on the buttocks; the victim, who was handcuffed, was then repeatedly whipped by Dowa and others all over the head, back and buttocks with pieces of thick electrical cable.<sup>17</sup>

In addition, media reports from inside Zimbabwe alleged that he had been involved in other acts of torture. For example, Tichaona Munyanyi, the MDC Member of Parliament for Mbare East, accused Dowa of leading the torture on him in police custody in 2002.<sup>18</sup> Dowa was also said to have lead a team of police officers who harassed mourners and disrupted proceedings at the funeral wake of another MDC MP who had died in police custody while on remand for murder.<sup>19</sup> According to the MDC, most of the people allegedly tortured by Dowa were its supporters.<sup>20</sup>

### Prospects for justice in Zimbabwe

On learning of Dowa's presence in Kosovo, the immediate concern was that if he returned to Zimbabwe there would be no realistic prospect of him being brought to justice, as the rule of law no longer exists there. UN officials themselves have pointed this out. For example, the UN Special Rapporteur on the Independence of Judges and Lawyers, Mr Dato' Param Cumaraswamy, has on more than one occasion expressed his grave concern over the arrest and detention of judges in Zimbabwe and the deterioration of the rule of law.<sup>21</sup> The total impunity of human rights perpetrators has also been thoroughly documented and roundly and regularly condemned in reports by national<sup>22</sup> and international human rights organisations.<sup>23</sup>

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<sup>17</sup> An affidavit of this victim's evidence was also sent to UNMIK

<sup>18</sup> *Daily News*, Harare, 18 July 2003.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.* REDRESS has details of several other MDC supporters allegedly tortured by Dowa before he went to Kosovo. The victims whose affidavits were sent to UNMIK were MDC activists.

<sup>21</sup> In a UN Press Release dated 19 February 2003 he described a recent incident as "but one in a series of institutional and personal attacks on the judiciary and its independent judges over the past two years, which have resulted in the resignations of several judges and which have left Zimbabwe's rule of law in tatters." In a Press Release of 2 September 2002 he referred to "the Government of Zimbabwe's disregard for the independence of the judiciary and contempt for the rule of law." See also his Report submitted in accordance with Commission on Human Rights resolution 2001/39, E/CN.4/2002/72 of 11 February 2002; also his Report submitted in accordance with Commission on Human Rights resolution 2002/43, Addendum, Situations in specific countries or territories, E/CN.4/2003/65/Add.1 of 25 February 2003.

<sup>22</sup> For example, *Torture by State Agents in Zimbabwe* (supra). This is just one of many reports published by the Zimbabwe Human Rights NGO Forum since it was formed in 1998. For others see *Zimbabwe Country Study* (supra), especially pages 6-7, footnotes 30, 31 and 32.

<sup>23</sup> See for example REDRESS' *Zimbabwe Country Study* (supra), as well as numerous Amnesty International reports including *Zimbabwe Under Siege*, AFR 46/012/2003 of 2 May 2003, and *Zimbabwe: Toll of Impunity*, AFR 46/034/2002 of 25 June 2002. These and other reports show how police officers themselves directly participate in torture in the knowledge that they will not be held accountable; other perpetrators also enjoy impunity in that the police are under political instruction not to investigate and arrest those who commit human rights violations.

REDRESS therefore prepared a comprehensive *Memorandum of Law* for UNMIK, which included a synopsis of the present human rights crisis in Zimbabwe, with emphasis on the role of the ZRP and the impunity enjoyed by torturers within its ranks.<sup>24</sup> Attention was drawn to the inescapable fact that as the police themselves are part of the repressive State-machinery, and as they and others are carrying out a deliberate unlawful policy to keep Zanu-PF in power, they will not investigate and prosecute themselves. An example given was the 1999 torture in custody of two journalists, Mark Chavunduka and Raymond Choto, where despite an order of the Supreme Court the police failed to carry out any investigation.<sup>25</sup> UNMIK was also informed that where the victims are known members of the MDC (as in the instant case) there is no chance at all of torture allegations being investigated.<sup>26</sup>

Given the total domestic impunity that Dowa and others like him enjoy, it was made very clear that it was wholly unrealistic to expect that any effective investigation and/or any independent and impartial prosecution would take place in Zimbabwe. Unless he was dealt with outside of Zimbabwe, he would escape justice. REDRESS therefore turned to the legal issues arising from Dowa's presence in Kosovo.

### **Kosovo and the United Nations Convention against Torture**

Before examining the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), it was necessary to confirm the status of CAT in Kosovo, given the territory's unique position and the upheavals in the Balkans since 1990.

Kosovo was part of Serbia when the latter entity joined with others in a federal State, the Socialist Federal Republic of Yugoslavia.<sup>27</sup> Despite a bid for complete independence Kosovo remains part of Serbia, albeit a province under direct UN control. What remained of the former Yugoslavia, namely Serbia and Montenegro, ratified CAT in 2001.<sup>28</sup> As Kosovo was and is still part of Serbia, CAT would apply to it too. Even before this ratification, and by resolution of UNMIK in 1999, CAT was also specifically

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<sup>24</sup> The full text of the *Memorandum* is on the REDRESS Trust website <http://www.redress.org>.

<sup>25</sup> *Chavunduka & Anor v Commissioner of Police & Anor* 2000 (1) ZLR 418 (S). The former Attorney-General Patrick Chinamasa (now Minister of Justice) had reneged on an undertaking to order the Commissioner of Police Augustine Chihuri to investigate. Both Chinamasa and Chihuri are an integral part of the ruling-party machine involved in keeping Mugabe and themselves in power at all costs, and they and others will do nothing to bring perpetrators to justice. See also *Enforcing the rule of law in Zimbabwe*, Zimbabwe Human Rights NGO Forum, Special Report 3, September 2001, which records that in four out of every five cases where complaints have been lodged with the police *specifically about unlawful police activities including torture*, the authorities do nothing at all. That was in 2001, and matters are far worse now.

<sup>26</sup> For example, in 2000 two MDC members (Tichaona Chiminya and Talent Mabika) were brutally murdered in the presence of the police by two members of the CIO (Mwale and Zimunya). Despite a High Court judge calling on the authorities to investigate the named perpetrators, nothing has been done, and Mwale continues to commit human rights abuses in the east of the country. This case is notorious in Zimbabwe and has been cited in numerous national and international reports, for example, *Zimbabwe; the Toll of Impunity*, Amnesty International (supra), pages 42-44. The High Court case is *Buhera North Election Petition* HH 67/2001 HC 8139/2000 (cyclostyled judgement).

<sup>27</sup> After World War II. The State ratified CAT on 10 September 1991.

<sup>28</sup> On 12 March 2001. The Federal Republic of Yugoslavia itself officially ended in 2003 with the formation of what is now called the State Union of Serbia and Montenegro.

incorporated into the law applicable in Kosovo.<sup>29</sup> This was recorded in the dossier sent to Michael Steiner, the SRSG and Head of UNMIK, in late May 2003, which he received early in June. Interestingly, it was only in September 2003 that the Secretary-General himself acknowledged that CAT "is part of the applicable law in Kosovo."<sup>30</sup> Before that the SRSG had referred merely to "the importance of the principles enshrined in [CAT]," without any reference to the clear *legal obligations* arising from it.<sup>31</sup>

### **The obligation to ensure that alleged torturers are brought to justice**

Dowa allegedly committed torture in Zimbabwe, not in Kosovo. As a result, the aspects of CAT which incorporate the concept of *aut dedere aut judicare* - the duty to extradite or prosecute - were central to the UN's duty. In the broad sense that was to ensure that the alleged perpetrator faced justice: as the preamble says, *inter alia*, CAT's purpose is "to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment *throughout the world*" (emphasis added).

CAT expressly provides that:

"Each State Party shall...take such measures as may be necessary to establish its jurisdiction over [the alleged offender] in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him..."<sup>32</sup>

This is supported by the further provision that:

"The State Party in the territory under whose jurisdiction a person alleged to have committed any offence [of torture] is found shall in the cases contemplated in Article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution."<sup>33</sup>

This *obligation* under CAT for a State to 'extradite or prosecute' (*aut dedere aut judicare*) is clear.<sup>34</sup> It is a reflection of the prohibition against torture having attained the status of *jus cogens*, the highest status in international law.<sup>35</sup> Torture is internationally recognised as so heinous a crime that all courts are competent to hear the case, jurisdiction being based on the nature of the act rather than on connections to

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<sup>29</sup> UNMIK/REG/1994/24 of 12 December 1999 on the Law Applicable in Kosovo.

<sup>30</sup> In a letter to REDRESS dated 19 September 2003, written on the Secretary-General's behalf by Jean-Marie Guehenno, Under-Secretary-General for Peacekeeping Operations, UN Department of Peacekeeping Operations (DPKO) in New York. See below page 11 et seq.

<sup>31</sup> In a letter to REDRESS dated 3 July 2003. See below page 9.

<sup>32</sup> Article 5(2).

<sup>33</sup> Article 7(1).

<sup>34</sup> The obligation under CAT to 'extradite or prosecute' was clearly confirmed by the House of Lords in 'Pinochet (No.3)': "If the states with the most obvious jurisdiction...do not seek to extradite, the state where the alleged torturer is found must prosecute or, apparently, extradite to another country" – per Lord Brown-Wilkinson in *R v Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte* (24 March 1999) [1999] 2 WLR 827, p. 841.

<sup>35</sup> The term *jus cogens* is defined in Article 53 of the 1969 Vienna Convention on the Law of Treaties as: "...a peremptory norm of general international law...[that is] accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

the State.<sup>36</sup> All States have a clear obligation to prevent impunity for such crimes, and to ensure that all alleged perpetrators are tried and punished regardless of where the torture occurred.

There was therefore no doubt that the Kosovo courts, under the authority of UNMIK, had jurisdiction over Dowa in regard to the allegations of torture in Zimbabwe. It was clear from the affidavits of the victims presented to UNMIK that he was specifically and directly implicated in several serious allegations of torture, and that there was no prospect of an impartial prosecution in Zimbabwe. All of this, together with supporting medical and other background evidence, constituted a strong *prima facie* case of Dowa having perpetrated acts of torture in 2001 and 2002, including electric shock torture and beatings on the bare soles of the feet (*falanga*). The dossier also recorded that the victims were willing and able to travel to Kosovo to give oral evidence and/or to assist the authorities there in any way, including identifying the suspect.

In the circumstances CAT provides:

“Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence [of torture] is present, shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.”<sup>37</sup>

Furthermore:

“Such State shall immediately make an inquiry into the facts.”<sup>38</sup>

Although it was no doubt obvious, REDRESS explicitly advised UNMIK that it was extremely likely that Dowa would seek to avoid being held accountable by asking his government to remove him urgently to the safety of Zimbabwe, and that even if he didn't specifically request this the Zimbabwe government would endeavour to recall him to avoid the political and diplomatic embarrassment of him being investigated and prosecuted externally for alleged torture committed in Zimbabwe.<sup>39</sup>

UNMIK was therefore requested to take all appropriate measures in terms of CAT to secure Dowa's continued presence within the jurisdiction, to conduct a full investigation with a view to prosecution (in the absence of a *bona fide* extradition request), and,

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<sup>36</sup> See *Reparation: A sourcebook for victims of torture and other violations of human rights and international and humanitarian law*, REDRESS Trust, London, March 2003, page 26, especially footnote 103, <http://www.redress.org> There is a growing international legal literature on universal jurisdiction: see [www.u-j.info](http://www.u-j.info) There is no dispute as to its specific incorporation into CAT: see 'Pinochet (No. 3)' (supra).

<sup>37</sup> Article 6 (1).

<sup>38</sup> Article 6 (2).

<sup>39</sup> Perhaps equally obviously, UNMIK was told that the Zimbabwe government would not wish Dowa's conduct to be the subject of proceedings, as any such proceedings would in turn directly expose the government to further international scrutiny and criticism for its appalling human rights record.

pending such a full investigation, to immediately suspend his privileges and responsibilities as an UNMIK official.<sup>40</sup>

**“We regret that UNMIK cannot pursue criminal prosecution”**

The dossier reached UNMIK in early June 2003, and following further correspondence stressing the urgency of the matter, the SRSG Michael Steiner replied in a letter dated 3 July 2003:

“We acknowledge the gravity of allegations made against [Dowa] and the importance of the principles enshrined in [CAT]. However, after very careful consideration and in consultation with UN Headquarters, we have with regret concluded that UNMIK cannot pursue criminal prosecution of the officer in Kosovo...

In reaching this conclusion we have given particular attention to the presence outside of Kosovo of a significant body of evidence relevant to the case to which UNMIK does not have assured access. In addition, UNMIK’s judiciary has a very limited number of international judges and prosecutors to whom the case would have to be referred.”<sup>41</sup>

The plea of ‘scarce resources’ did not take into account the *obligations* arising from CAT, including the making of an immediate inquiry into the facts in terms of Article 6 (2).<sup>42</sup> The SRSG’s letter simply failed to mention what, if anything, was going to be done in respect of the Zimbabwe torture allegations. On behalf of the victims REDRESS therefore turned firstly to the UN Secretary-General, and then to the media.

A letter was immediately dispatched to Kofi Annan, briefing him fully on the whole case and asserting that Steiner’s response was “...utterly unacceptable, and certainly contrary to the aims and purposes of the United Nations, under whose auspices the Convention against Torture was agreed...”<sup>43</sup> Among other points made to the Secretary-General was that it was ironic that as a CIVPOL officer Dowa was supposed to be offering ‘best practice’ to new Kosovan police recruits emerging from conflict. The Secretary-General was asked to resolve the matter urgently.

<sup>40</sup> *Memorandum of Law* (supra). The *Memorandum* also detailed that there were no applicable immunities barring prosecution, and that UNMIK had a duty to remove officials implicated in serious international crimes from office. In these regards see also below, footnote 69. A full set of all the papers relating to the case was also sent to Professor Theo van Boven, Special Rapporteur of the Commission on Human Rights on the Question of Torture, Office of the Commissioner for Human Rights, at the UN’s Commission Office in Geneva, asking him for support, particularly in ensuring respect for Article 5 (2) of CAT, and in advising the SRSG of these obligations.

<sup>41</sup> The letter concluded with the following cryptic statement: “Our decision in this case should not preclude you from pursuing the matter through other channels.” As Steiner was directly accountable to the Secretary-General, with whom it appears he had already consulted (“...in consultation with UN headquarters...”), he presumably did not mean that REDRESS could approach his superior. He may instead have been suggesting the possibility of extradition; however, under CAT the obligation is to ‘extradite or prosecute’, which does not mean that UNMIK had the *right* not to prosecute on the off-chance that *after the decision not to prosecute* some other State *might* seek to extradite. Such an approach is entirely misconceived and flies directly in the face of CAT’s clear provisions.

<sup>42</sup> See above page 7.

<sup>43</sup> Letter dated 4 July 2003. The letter was copied, with supporting documents, to Mr. Bertrand Ramcharan, the UN Acting High Commissioner for Human Rights in Geneva.

Soon afterwards REDRESS also issued a press statement outlining UNMIK's refusal to pursue the criminal prosecution on the grounds of "scarce resources" and re-iterating that the UN had a clear legal and moral duty to bring the alleged torturer to account.<sup>44</sup>

*The Guardian* in London carried the story under the headline '*Torturer' safe in UN Kosovo role*'<sup>45</sup> and the news was picked up by the independent press inside Zimbabwe and widely publicised. The Harare *Daily News* commented:

"...[REDRESS'] determination to see that justice is done for Zimbabwean victims of torture should strike as much fear into the hearts of the perpetrators of political violence as it must surely give hope to torture victims that their tormentors will not go unpunished...It would be foolhardy for the people who have sanctioned and performed horrific and barbaric acts of torture and violence in Zimbabwe in the past three years to believe that they can commit these crimes with impunity."<sup>46</sup>

The effect in Zimbabwe was marked. According to anecdotal evidence from a number of different sources in the country, and particularly as far as the Law and Order officers in Harare were concerned, there was a sharp drop in the practice of torture. The attempt to have Dowa arrested had come as shock to his colleagues, who must have also been concerned that they too could be in trouble if they were 'lucky' enough to be posted to Kosovo. Suddenly the prospect of earning foreign currency was no longer so appealing.

In Kosovo itself, and no doubt stung by the media publicity, UNMIK began to adopt a different position. By coincidence, Steiner's tour of duty as SRSB was about to end, which may have facilitated the new stance, as it was soon reported that Dowa had been withdrawn from duties "where he might interact with the public" and that he was restricted to doing administrative work.<sup>47</sup> Nevertheless, the media also said it had been told that no further action could be taken because Dowa was not accused of committing any crimes whilst in Kosovo, and that UNMIK did not have the capacity to vet police officers before they travelled to the territory.<sup>48</sup>

In Kosovo it was learned that Dowa had tried to travel out of the territory 'on leave' but that UNMIK had prevented him from doing so.<sup>49</sup> While waiting for the Secretary-General to respond, and in consultation with victims resident in London, REDRESS approached the UK Attorney General with a request that he should instruct the Metropolitan Police to

<sup>44</sup> See <http://www.redress.org> for the full statement.

<sup>45</sup> 14 July 2003, page 12.

<sup>46</sup> 19 July 2003, under the heading '*Justice will prevail.*' The police closed down the *Daily News*, the country's only independent daily newspaper, in September 2003 after a Supreme Court ruling widely condemned as extremely dubious. See, for example, comments by Sir Louis Blom-Cooper QC in *The Times* of London on 14 October 2003, where he described the Supreme Court decision as "astonishing" and "grimgrubber nonsense": <http://www.zwnews.com/print.cfm?ArticleID=7749>

<sup>47</sup> BBC News World Service Africa Report on 21 July 2003. The reporter was Barnaby Phillips: <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/Africa/3>

<sup>48</sup> Ibid. An experienced Zimbabwe correspondent, Phillips had been forced to operate from South Africa after the BBC was barred from Zimbabwe. His report was based on what an UNMIK spokesman in Kosovo had told him.

<sup>49</sup> Although Dowa was never taken into custody it was later officially confirmed that steps were taken to keep him in Kosovo until September 2003.

carry out an investigation of the alleged crimes, with a view to requesting the extradition of Dowa. A correspondence was entered into with the Attorney General, and documents and legal arguments were submitted to him as well as directly to the police and the Crown Prosecution Service.<sup>50</sup> The possibility of extraditing Dowa to face trial in the UK was still being explored in September 2003 when a letter was received from the UN, and soon afterwards REDRESS learned from sources inside Zimbabwe that Dowa had returned.

### The Secretary-General decides

The UN letter came not from UNMIK but from New York, written on behalf of the Secretary-General by Jean-Marie Guehenno, Under-Secretary-General in the Department for Peacekeeping Operations (DPKO).<sup>51</sup> It confirmed that UNMIK had decided not to pursue the criminal prosecution of Dowa, and then went on to state:

“However, pursuant to [CAT], which is part of the applicable law in Kosovo, UNMIK has carried out an internal enquiry into the allegations against Mr.Dowa. To this end, UNMIK took the necessary steps to ensure the presence of Mr.Dowa in Kosovo while the enquiry was being completed.”

The “internal inquiry” was presumably in terms of Article 6 (2), held belatedly as it ought to have occurred *immediately* the authorities were aware that an alleged torturer was in Kosovo.<sup>52</sup> Furthermore, it is not clear what was meant by an “internal” inquiry and how that differed from the *inquiry* provided for in Article 6 (2). Finally, Article 6 (2) requires an immediate inquiry *into the facts*. How far UNMIK’s “internal inquiry” went is not known, as the only other information given on this point was that it “included an interview with Mr.Dowa.” The reference to “...[taking] the necessary steps to ensure the presence of Mr.Dowa...” was clearly in terms of Article 6 (1)<sup>53</sup> and was consistent with what REDRESS had already learned unofficially.<sup>54</sup> It appears that although he was never physically detained his movement, at least out of Kosovo if not beyond Prizren, was prevented.

The letter also contained two references to extradition. Firstly, it stated that by keeping Dowa in Kosovo while the inquiry was being completed:

“This also afforded any interested State sufficient opportunity to request Mr. Dowa’s extradition to stand trial for the crimes that he is alleged to have committed.”

Secondly, after dealing with developments after the inquiry, the letter said:

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<sup>50</sup> There was no legal *obligation* on the UK authorities, either under domestic or international law, to seek extradition. REDRESS argued that the UK *could* (and should) seek to extradite Dowa in terms of domestic extradition legislation and bi-lateral and European extradition treaties, given that under Section 134 of the Criminal Justice Act 1988 torture committed outside the UK is indictable in UK courts. The UK is a signatory to CAT and has incorporated its provisions into domestic legislation. However, requesting extradition remains at the discretion of the UK authorities, even given the presence of victims in the country.

<sup>51</sup> It was dated 19 September 2003.

<sup>52</sup> See Article 6 (2) above, page 8.

<sup>53</sup> Ibid.

<sup>54</sup> See above page 10.

"As the Kosovo authorities have not received any request for Mr. Dowa's extradition, it is our view that it is now the legal responsibility of the Zimbabwe authorities..."

REDRESS believes that the references to extradition were an attempt by the UN to be seen to have tried to comply with CAT. After receiving Michael Steiner's letter early in July 2003 REDRESS had let it be known at various levels in UNMIK and through other relevant organs of the UN that it was trying to persuade the UK to seek extradition, but that this was not a straightforward process. The UN was aware from the start that the alleged torturer's presence in Kosovo had not been raised by another State but by a non-governmental organisation, obviously with no direct power to seek the removal of Dowa to another jurisdiction to stand trial. The Zimbabwe victims themselves had even less chance as individuals to influence events. In the circumstances it can be asked what "sufficient opportunity to request Mr. Dowa's extradition" actually existed?

Little more than two months after UNMIK had informed REDRESS that it did not have the resources to do anything, the UN facilitated Dowa's return to Zimbabwe.<sup>55</sup> The UN, under whose auspices CAT and the broad international campaign for human rights is supposed to be co-ordinated, had paid little more than lip-service to the anti-torture movement when finding an alleged perpetrator *within its own ranks*. Its priority appears to have been to side-step an embarrassing problem instead of "desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world."<sup>56</sup> The possibility of extradition is discussed further below.<sup>57</sup>

The Secretary-General's letter went on to state that UNMIK had forwarded the results of its "internal inquiry" to the Kosovo Department of Justice "as the competent authority in Kosovo for taking any decision on Mr. Dowa's investigation and possible prosecution," and that:

"After reviewing the matter, the Department of Justice concluded that it lacked the necessary human and financial resources to conduct a satisfactory investigation."

The forwarding of the results to the Department of Justice was apparently the submission in terms of Article 7 (1).<sup>58</sup> Any decision of the competent authorities is also governed by CAT:

"These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State."<sup>59</sup>

REDRESS acknowledges that the authorities in Kosovo have to deal with a huge burden of gross and systematic violations of human rights, including war crimes, genocide, crimes against humanity and torture arising from recent conflict. In the circumstances prosecutions have to be prioritised, which would have made it difficult to divert limited

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<sup>55</sup> By requesting the Zimbabwe government to withdraw him: see below page 13.

<sup>56</sup> Part of the preamble to CAT.

<sup>57</sup> Page 13-14.

<sup>58</sup> See above, page 7.

<sup>59</sup> Article 7 (2).



resources to this admittedly unusual case. The Secretary-General's letter confirms that the reason for not proceeding in Kosovo was that which UNMIK gave earlier: lack of resources. Less easy to accept is the reasoning and decision which followed:

"As the Kosovo authorities have not received any request for Mr. Dowa's extradition, it is our view that it is now the legal responsibility of the Zimbabwe authorities to conduct a prompt and full investigation into the allegation against him, with a view to his possible prosecution. This being so, we have formally requested the Government of Zimbabwe to withdraw Mr. Dowa from service in Kosovo so that he may return home to participate in that process. We have also officially requested that we be kept informed of the outcome of those proceedings, and have indicated our expectation that any investigation shall be carried out in a manner commensurate with the gravity of the offence that Mr. Dowa is alleged to have committed."

To begin with, there is no provision in CAT for a State Party to have an alleged perpetrator removed from its jurisdiction unless it is in pursuance of a *bona fide* extradition request from another State Party.<sup>60</sup> Zimbabwe has not ratified CAT, nor did it seek to extradite Dowa. Far from the UN having correctly focused on Zimbabwe as having in all the circumstances "the legal responsibility," it is highly questionable whether the UN had the *right* under CAT to transfer its obligations to another country (Zimbabwe) in the absence of a genuine extradition request. As REDRESS said at the time, it appeared as if the UN had itself failed to comply with its own treaty.<sup>61</sup> Furthermore, even within the constraints of international diplomacy and *realpolitik*, it is at best naïve if not entirely disingenuous to regard the Zimbabwe authorities as capable of mounting an impartial investigation and prosecution.

The letter did not purport to offer any legal basis for the decision to '*neither* extradite *nor* prosecute': pragmatism simply rode roughshod over legality.<sup>62</sup> By opting for this 'unique solution' has the UN not set a precedent for State Parties to find an unwritten exception hidden somewhere in CAT? After all, many State Parties have heavy burdens on their judicial machinery; what is to stop them sending home alleged foreign torturers found within their jurisdictions if another State Party does not quickly seek to extradite? As a Zimbabwe journalist put it:

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<sup>60</sup> Articles 5 (2) and 7 (1); see above, page 7.

<sup>61</sup> Press statement issued on 1 October 2003; see <http://www.redress.org> The same point was made in REDRESS' letter of reply to Jean-Marie Guehenno of DPKO dated 24 September 2003: "It is our strong view that to designate the responsibility for this case to the Zimbabwean courts under current conditions goes against Kosovo's obligations under the Torture Convention, and particularly Article 5 (2), which clearly sets out the obligation to investigate and prosecute in the absence of an extradition request. In this context we question whether the UN has the option under the Convention to transfer its obligations to another country unless a *bona fide* extradition request has been made." No reply was received.

<sup>62</sup> The obligation to provide an effective remedy for violations of human rights, including torture, is set out in Article 2 (3) of the International Covenant on Civil and Political Rights, which Zimbabwe ratified on 13 May 1991. Zimbabwe is of course also subject to all the norms of customary international law, including those which have been recognized as governing human rights which have developed under the auspices of the UN since World War II. However, the whole *corpus* of international law cannot be used to side step the clear provisions of CAT, *especially and directly by the UN itself, let alone by a State Party.*

"What is the UN doing? By sending [Dowa] back here they are allowing him to torture another day. If the UN does not help us, who is going to protect us from known torturers?"<sup>63</sup>

If lack of resources indeed made it virtually impossible for UNMIK to deal with the matter after the "internal inquiry," *then surely this should have been the very reason to give far more time for extradition to be explored?* Why the haste to return him to Zimbabwe, knowing that once there nothing would happen to him? Article 6 (1) provides for measures to ensure an alleged perpetrator's presence "...for such time as is necessary to enable...extradition proceedings to be instituted." Even in ideal circumstances where one State Party is directly involved from the start in alerting another State Party to the presence of an alleged perpetrator within the latter's jurisdiction, adequate time for instituting extradition proceedings must be granted. What this *necessary* time is will obviously depend on the facts and circumstances of each case, but it is unlikely ever to be less than many weeks if not several months. How much more so, therefore, in this case, with all its complications and ramifications: UNMIK, Kosovo, UN headquarters, REDRESS, the UK, and Zimbabwe?

It is submitted that the UN ought to have put *extra* effort into exploring realistic, lawful options instead of rushing into one which has undermined the very purpose of CAT. Even if it had become unequivocally clear in due course that the UK was not going to seek extradition (and REDRESS was still communicating with the UK authorities on the issue when it received the letter on behalf of the Secretary-General), other State Parties might have been prepared to seek extradition. Yet a third option could have been to at least consider setting up a limited *ad hoc* bench in Kosovo to deal with this one case, financed and resourced outside of the UNMIK budget with the co-operation of other human rights organs of the UN.<sup>64</sup>

## How did it happen in the first place

An additional important question is how Dowa came to be in Kosovo to begin with. Zimbabwe has been a member of the UN since 1980, and like all Member States it is entitled and encouraged to participate in its activities, including peacekeeping. The UN Department of Peacekeeping Operations (DPKO) deals with all aspects of the deployment of UN soldiers as well as UN civilian police officers to the world's trouble-spots. It is worth examining some issues relating to the selection of civilian police personnel which have developed since they were first used in the 1960s.<sup>65</sup>

<sup>63</sup> Quoted in the South African newspaper *Mail & Guardian*, 3 October 2003; see <http://www.mg.co.za/Content/13.asp?ao=21389>

<sup>64</sup> UN organs which ought to have had an interest in seeing Dowa brought to justice include the Special Rapporteur on the Question of Torture, The Human Rights Committee and The Committee Against Torture. It is not suggested that these organs necessarily had the power or the mandate to get directly involved; the point is that the Secretary-General and UNMIK ought to have looked *creatively* for a solution, instead of simply sending Dowa back to Zimbabwe. Given the speed with which events happened it appears unlikely that there was any serious liaison amongst the human rights experts and officials within the UN as a whole. Instead, the 'easy option' was chosen: an option which missed a golden opportunity to bring an alleged torturer *within the UN's own ranks* to trial.

<sup>65</sup> Generally on the role of DPKO see <http://www.un.org/Depts/dpko/dpko/home.shtml>

UNCIVPOL states in its *Selection Standards and Training Guidelines* ('the *Guidelines*')

"The important role and complex responsibilities of UNCIVPOL monitors in current missions demand that only the best-suited police officers from the Member States are deployed as monitors."<sup>66</sup>

According to the *Guidelines*, the *Benchmark Selection Standards* include:

"Personal and Professional Integrity. Any police officer volunteering for service as a UNCIVPOL monitor must have exemplary personal and professional integrity. This implies an international outlook, independence from direction from governments and organisations external to the United Nations and both the knowledge of and ability to act impartially while on mission."<sup>67</sup>

It would appear that DPKO's main concern is the conduct and behaviour of UN police officers *whilst on UN duty*, as opposed to what they did (and do) in the Member State from whence they came. This is understandable. Nevertheless, police officers from a Member State who have acted with brutality and impunity at home are not the sort of persons who ought to be part of any UN police force abroad. This is so obviously a basic matter of principle that there should be no need to even raise it, and yet the Dowa case illustrates the fundamental problems which can arise. The question is what steps, if any, can be taken to prevent this sort of problem from recurring?

There is, of course, the much wider problem of how to overcome domestic impunity in Member States where human rights violations by the police, including torture, are endemic and condoned. The development of international criminal law, including CAT, is part of the solution. The specific issue for DPKO, though, in the case of Zimbabwe and similar countries where gross and systematic human rights violations are taking place, is whether it is possible to prevent police torturers finding their way into UNCIVPOL.<sup>68</sup>

The most radical solution would be to stop drawing UN police officers from such Member States altogether. However, until such time as Zimbabwe (for example) has become the subject of some form of official UN sanctions, there is nothing to stop it offering personnel, and it would be diplomatically impossible and inconsistent with the functions of the UN for DPKO to 'blacklist' it in the absence of such sanctions. The practical issue, therefore, given the reality of police officers from Zimbabwe and similar countries joining UNCIVPOL, is whether any sort of vetting procedure can be instituted.

At the moment it appears that there are no initial vetting procedures at all, and that effectively everything is left to each Member State to put forward whomsoever it wishes.<sup>69</sup> What DPKO lays down in the *Guidelines* are the basic necessary practical and

<sup>66</sup> *United Nations Selection Standards and Training Guidelines for UNCIVPOL*, [http://www.un.org/Depts/dpko/training/training/training\\_material/cdrom/civilian\\_police/selstand\\_civpol/selst\\_and\\_civpol.pdf](http://www.un.org/Depts/dpko/training/training/training_material/cdrom/civilian_police/selstand_civpol/selst_and_civpol.pdf) The various documents in the *Guidelines* are said not to constitute official UN policy.

<sup>67</sup> Ibid.

<sup>68</sup> Zimbabwe is obviously and by no means the only culprit. Numerous other Member State governments effectively condone torture by the police; see for example: *Reparations for Torture: A Survey of Law and Practice in Thirty Selected Countries* (loc cit).

<sup>69</sup> On 3 November 2003 REDRESS wrote to UNMIK raising, inter alia, the following: "It is our understanding that when Zimbabwe is asked to send officers to Kosovo and elsewhere the only official requirement from

technical qualifications and requirements, for example, police skills and experience, language and literacy proficiencies, knowledge of firearms, the ability to drive vehicles, physical and mental fitness, and so on. DPKO then provides further training in relevant police and related skills, including the teaching of basic human rights norms. If it transpires that during such training, or afterwards when posted to UNCIVPOL duties, officers are not up to the minimum standards, or if they commit crimes or otherwise misconduct themselves, there are clear mechanisms to deal with such eventualities, including early repatriation.<sup>70</sup> Even 'rogue' Member States will wish to avoid the expense and embarrassment of early repatriation, and will therefore presumably seek to ensure that only properly qualified officers volunteer. However, there is nothing to stop torturers or other perpetrators of human rights abuses coming forward, provided that they have the necessary police skills, and provided further that they 'curtail' their brutality while on UN duty.

REDRESS submits that the UN in general and DPKO in particular need urgently to address this problem. The *Guidelines* state that the policy is to draw UNCIVPOL officers from as wide a geographical spread of Member States as possible.<sup>71</sup> While it is true that every police force in the world has its bad elements, it is also true that in many countries under authoritarian rule police brutality is commonplace; in extreme cases, such as Zimbabwe, the police play an open, crucial and bloody role in keeping a corrupt and unlawful government in power. There is a real and constant danger, therefore, that in looking to such Member States to supply UN police officers, torturers are going to be amongst them.

Any UN and DPKO 'preventative screening mechanisms' must obviously apply across the board to all Member States, as it would be difficult and invidious if not illegal to discriminate against a country with a negative human rights record. For a start, it should be made clear to all Member States that no police officer 'with dirty hands' is ever acceptable in UNCIVPOL. While at present this is implied, it should be made an explicit condition of all bilateral and multi-lateral civilian police peacekeeping agreements. Furthermore, Member States need to be subject to clear procedures if they

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DPKO is that they are fluent in English and have a valid driver's licence. In order to allay our concerns we would be grateful if you could confirm the other requirements requested in relation to the potential candidate's experience and skills." No reply has yet been received.

<sup>70</sup> Thus an UNMIK document obtained by REDRESS entitled *General Background, Mandate, Mission, Functions, Organisation and Requirements* includes the following: "Early Repatriation. If a CIVPOL is repatriated for either failure to meet the necessary requirements, or disciplinary reasons, all costs associated with his/her travel home and arrival of his/her replacement to complete the tour of duty will be at the expense of the CIVPOL's government." The same document also deals with the "Legal Status" of CIVPOL as follows: "Civilian Police are considered as experts on mission within the meaning of Article VI of the Convention on the Privileges and Immunities of the United Nations (1946) and they enjoy the privileges, immunities and facilities specified in that article wherever they perform missions for the United Nations. These privileges and immunities are granted in the interest of the United Nations and not for the benefit of individuals. The secretary-general has the right and duty to waive the immunity in any case where, in his opinion, the immunity would impede the course of justice. Such a waiver shall be without prejudice to the interest of the United Nations." It is clear that this provision does not cover conduct that occurred outside of Kosovo *prior* to an officer joining CIVPOL. It is equally clear and has long been recognized as a principle of international law that there can be no immunities barring the prosecution of those accused of crimes under international law, particularly crimes recognized as *jus cogens* – see the *Memorandum of Law* (supra), page 3 and especially footnote 16 thereat.

<sup>71</sup> Some 49 Member States have sent police officers to Kosovo.

knowingly or negligently breach this requirement - something needs to happen in addition to the mild sanction of merely bearing the costs of repatriation and replacement.<sup>72</sup>

For example, a Member State who consistently breaches the rule could be barred from participating in UNCIVPOL. Such a rule would necessitate a proper investigation *by the UN* where allegations of serious *past* human rights violations are raised in respect of a serving UNCIVPOL officer, including the *right* of the UN to send investigators to the Member State concerned if the allegations are disputed. These arrangements would not, of course, be a substitute for all the existing obligations under CAT and other international treaties and international law norms generally, but would be in addition to them. While some Member States might object that this would constitute an unwarranted infringement of their sovereignty, or that political opponents could use it to frivolously undermine a legitimate authority, these arguments are no different to those usually raised in negotiating international agreements, and safeguards can be found to prevent *male fide* accusations being made for ulterior motives.

If the UN adopted a more vigorous approach to the selection of civilian police peacekeepers, it would not only help to ensure higher standards for UNCIVPOL, but it would also send a message to Member States that their domestic police forces should and will be the subject of closer scrutiny if they wish to participate in international operations. Member States such as Zimbabwe would be forced to consider the financial and diplomatic advantages in cleaning up their act, or at least in not brazenly rewarding those individuals who have established reputations for barbarity.

### **Dowa in action back in Zimbabwe**

This review of the case of Henry Dowa would not be complete without mentioning some of the latest news relating to him since he left Kosovo in September 2003.

In October 2003 a Zimbabwe organisation of human rights lawyers said in a statement that he had actively participated in unlawfully preventing lawyers from having access to clients illegally detained in the Law and Order section at Harare Central police station, following a political demonstration in the capital.<sup>73</sup>

In November 2003 a Zimbabwe press report confirmed that Dowa remained active and had been involved in the arrest of lawful political protesters the previous month.<sup>74</sup>

It has also been recently alleged that Dowa ordered members of the ZRP Riot Squad to severely beat a detainee, which they did.<sup>75</sup>

Finally, in December 2003 a Mugabe newspaper carried a report of thirty-six ZRP officers leaving for UN peacekeeping duties in Kosovo, and five heading for Liberia. The Commissioner of Police addressed the police officers as follows:

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<sup>72</sup> It is presumed that this is what happened in Dowa's case.

<sup>73</sup> Zimbabwe Lawyers for Human Rights, Harare, 22 October 2003: "*Human Rights Defenders Under Siege.*"

<sup>74</sup> The Independent, Harare, 7 November 2003: "*Human Rights Violators on the Loose.*"

<sup>75</sup> Zimbabwe NGO Human Rights Forum, Harare: *October 2003 Violence Report.*

“We had to prematurely call back one officer from the contingent you are going to replace in Kosovo not for misconduct but because he had been subjected to stressful treatment after a group called REDRESS had falsely accused him of torturing suspects here at home. We are not in the habit of torturing people in this country and allegations are always made now and then.”<sup>76</sup>

The career of Chief Detective Inspector Henry Dowa continues...

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<sup>76</sup> The Herald, Harare, 11 December 2003.