



ZIMBABWE

PERMANENT MISSION TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANISATIONS AT GENEVA

Note No. 154/2019

The Permanent Mission of the Republic of Zimbabwe to the United Nations Office and Other International Organisations in Geneva presents its compliments to the Special Procedures branch of the Office of the High Commissioner for Human Rights (OHCHR) and with reference to the latter's Note No. UAZWE1/2019 dated 29 January 2019, has the honour to forward herewith the response by the Government of the Republic of Zimbabwe.

The Permanent Mission of the Republic of Zimbabwe to the United Nations Office and Other International Organisations in Geneva avails itself of this opportunity to renew to the Special Procedures branch of the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 20 April 2019

**Special Procedures Branch
Office of the High Commissioner for
Human Rights
Palais des Nations
1211 Geneva 10**



**RESPONSE BY THE GOVERNMENT OF THE REPUBLIC OF
ZIMBABWE**

To the

**COMMUNICATION BY THE HUMAN RIGHTS COUNCIL MANDATE
HOLDERS**

Regarding

**ALLEGATIONS OF VIOLENT REPRESSION AND EXCESSIVE USE OF
FORCE IN THE 14-16 JANUARY 2019 DEMONSTRATIONS**

1. INTRODUCTION

1.1. Background

- a. The Republic of Zimbabwe (hereinafter "Zimbabwe") is committed to upholding, respecting, promoting, enforcing, implementing and fulfilling local and international human rights obligations. The obligations arise from Zimbabwe's constitutional and legislative frameworks and international human rights instruments to which it is party.
- b. The Zimbabwean human rights architecture is anchored on a sound, modern political and legal system supported by a progressive 2013 Constitution. The Constitution enshrines an implementable separation of powers-matrix which facilitates the checks and balances interaction among the three cardinal organs of government: the Executive, Legislature and Judiciary.
- c. Furthermore, independent human rights institutions, in the fashion of Commissions which promote democracy and good governance, form part of the oversight institutions prescribed by the Constitution. The watchdog institutions, whose budgets are directly appropriated by Parliament are supported by enabling legislation and have been operationalized through relevant Statutory Instruments. They report directly to Parliament and the Government of Zimbabwe has demonstrated commitment to ensure that the independent institutions are in line with the Paris Principles of Human rights institutional independence.

- d. The gains outlined above have been positively bolstered by a new political dispensation which was ushered in by the resignation of the former President of the Republic of Zimbabwe on 17 November 2017 and was followed by the inauguration of the new government born out of a peaceful transition on 24 November 2018. The positive state of affairs was underwritten by the free, fair, peaceful and credible 30 July 2018 harmonised elections which were observed by the wider international community.
- e. The peaceful electoral outcomes have broadened democratic horizons and opened democratic space appropriate for a thriving multi-party, representative democratic political system which is transparent, just, accountable and responsive to the wishes and aspirations of its citizenry. Good governance, observance of the rule of law, constitutionalism and the principles of separation of powers remain the cornerstones on which Zimbabwe's governance system is anchored on.

1.2. Zimbabwe's International Human Rights Obligations

- a. Section 34 of the Constitution obliges the state to ensure that all international conventions, treaties and agreements to which Zimbabwe is a party are incorporated into domestic law.
- b. In keeping with this obligation, Zimbabwe is a signatory to various international instruments. She has ratified and domesticated several of these instruments and has designed and approved a Ratification

and Domestication Strategy to accelerate the ratification and domestication processes of outstanding ones.

- c. Section 46 of the Constitution envisages a broad interpretational framework by the courts, tribunals, forums and bodies which must take into account international law and all treaties and conventions to which Zimbabwe is a party.¹
- d. Some of the core international and regional human rights treaties to which Zimbabwe is a party are shown in **Table 1** below:

Table 1: Core International Human Rights Treaties to which Zimbabwe is party

Treaty	Status	Reservations/ Derogations
1. International Covenant on Economic, Social and Cultural Rights	Ratified 13 May 1991	None
2. International Covenant on Civil and Political Rights	Ratified 13 May 1991	None
3. International Convention on the Elimination of All Forms of Racial Discrimination	Ratified 10 April 1997	None
4. Convention on the Elimination of All Forms of Discrimination against Women	Ratified 13 May 1991	None
5. Convention on the Rights of the Child	Ratified 8 March 1990	None
6. Optional Protocol to the CRC on the involvement of children in armed conflict	Ratified	None
7. Optional Protocol to the CRC on	Ratified	None

¹ Section 46 (1) (c)

the sale of children, child prostitution, and child pornography	14 February 2012	
8. Convention on the Rights of Persons with Disabilities	Ratified Sept 2013	None

2. RESPONSES TO ISSUES RAISED IN THE COMMUNICATION

2.1. Provide any additional information and/or any comments you may have on the above-mentioned allegations

Response

- a. From the day the Republic of Zimbabwe obtained its independence after a protracted liberation struggle in 1980, it has adopted non-racial policies and laws which promote unity, a constitutional democratic developmental state where all Zimbabwean pursue their dreams peacefully.
- b. Underlining the democratic ethos above, an understanding that Zimbabweans would protect and promote their rights and freedoms through an elected Government confirmed by regular free and fair elections has been the fundamental principle permeating the democratic agenda in Zimbabwe since independence.
- c. In pursuit of achieving the objectives of the social contract, where in return for a mandate given to an elected government at any given time, the new dispensation which was ushered in on 17 November 2017 and confirmed through the 30 July 2018 elections has opened

democratic space and guaranteed civil and political freedoms and rights enshrined in the country's Constitution.

- d. Since then, the Government has allowed conducive environments for those who want to exercise their political rights to demonstrate, petition, picket and lobby it in any many manner as long it is done in a peaceful manner which does not violate the rights of others who also reserve their democratic right not to partake in such demonstrations.
- e. The events of 14- 16 January 2019 however present a different scenario where a few individuals disregarded the rule of law and abused the freedoms by systematically inciting premeditated and preplanned acts of violence against other citizens and property with the hidden and nefarious agenda of rendering the country ungovernable and tarnish its image amongst its peers in the international community.
- f. The people of Zimbabwe value peace and aspire to lead prosperous lives; thus violence against their fellow citizens and Government is uncharacteristic of their outlook. It was established beyond doubt that a treasonous agenda was behind the widespread arsons, vandalism of property and general anarchy fueling chaos was involved in the recent riots that occurred in the country.
- g. The riots that took place between 14 -16 January 2019 were characterized by:
 - Wanton acts of violence,

- Acts of arson on private and state property worth millions of dollars,
- Barricading the flow of traffic,
- Erecting unofficial passage ways, check points and tollgates;
- Harassing motorists;
- Direct attack and arson of the police posts and attempting to steal weapons from the armoury,
- Looting supermarkets and tuck-shops,
- Extortion from members of the public who went on their day today business,
- Killing and injuring police officers,
- Harassment of students, teachers and other civil servants who reported for duty on the said days,
- Abusing social media by spreading fake news whose treasonous slant was to incite the public to overthrow a constitutionally elected government.

h. The above violates Section 59 of the Constitution that provides that,

"Every person has a right to demonstrate and present petitions, but these rights must be exercised peacefully."

i. This constitutional view point on freedoms is strengthened by Section 86 (2) which provides that enjoyment of rights must take due regard to

"...the need to ensure that the enjoyment of rights and freedoms by any person does not prejudice the rights and freedoms of others..."

- j. Article 27 (2) of the African Charter on Human Peoples Rights buttresses this provision thus:; *"...the rights and freedoms of the individual shall be exercised with due regard to the rights of others, collective security, morality and common interest..."*
- k. The state had a constitutionally enshrined duty to stop rioters who blocked roads, intimidated, harassed, assaulted and burnt private and public vehicles upon refusal by the motorist to pay various fees demanded by rioters and violated:
- Section 51 of the Constitution on Right to human dignity;
 - Section 52 (a) on Right to personal security;
 - Section 58 (2) of the Constitution that *"...no person may be compelled to belong to an association or to attend a meeting or gathering."*
 - Section 66 (2) (a) on the freedom of movement
- l. Further, the rioters violated Article 5 (1) of the ICCPR which provides as follows:
- "...Nothing in the present Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant."*
- m. The rioters were organized to harass and extort other citizens and residents violating Sections 48 (1), 51, 52 (a), 58 (2), 64, 66 (2), 71 (1) 75 (1) (a) and 81, of the Zimbabwean Constitution and numerous

other laws protecting the rights and interest of the citizens and residents.

- n. Accordingly, it would have been remiss for the Government to helplessly watch the arsonists on a wanton destructive path without moving in to restore order to protect the interests of defence, public safety, public order, public morality and the general public interest.
- o. The State was compelled to act in order to safe guard the rights of the public and stop wanton destruction of property.
- p. In so doing, the State, through law enforcement officials such as the Zimbabwe Republic Police (ZRP) and the Zimbabwe Defence Forces (ZDF) issued a joint press statement calling for peace to prevail.
- q. In the exercise of their duties the security forces followed the law as each arrest was carried out on the basis of concrete reasonable suspicion that a criminal offense had been committed.
- r. However, when a grievance is made against the manner in which an arrest is effected, it is trite that the Constitution and Legislation of Zimbabwe provide remedies to those arrested.
- s. The proportionality and legality in determining the force used by the security forces was as prescribed by the law.
- t. The long arm of the law caught up with some of the rioters leading to 371 cases which were brought before the courts between 14 and 29 January 2019.
- u. The number of persons reasonably suspected of committing offences totaled 1055. Out of the 1055, a total of 48 adults were released on

bail, 12 children were released into the custody of either their parents or guardians or social workers.

- v. In addition, 995 suspects were denied bail in terms of the law, with 146 people having gone for trial to which 80 accused were convicted and 66 found not guilty and acquitted.
- w. The Judiciary has conducted its business impartiality to the effect that exogenous influence such as that by the Law Society of Zimbabwe members did not coerce it to deviate from its constitutionally entrenched mandate.
- x. In the particular case of the arrests of Mr. Okay Machisa and Mr. Peter Mutasa, procedural and substantive requirements of the law were followed and they are currently being processed by the justice system.
- y. In any event, Mr. Peter Mutasa was interrogated by the police and released on bail while the state carries out further investigations.
- z. However, the allegation communicated by Mr Machisa that 20 plain clothed police officers surrounded his house whereupon he escaped with his entire family and returned at the same house that evening are hard to believe as they unreasonably constitute an absurdity.
- aa. The fictitious complaint is frivolous and vexatious and should be disregarded for its absurdity.

2.2 Please provide information on measures taken by your Excellency's Government to carry out an immediate, impartial, and transparent investigation into the acts of violence, harassment and intimidation carried out by Zimbabwe security forces in the context of the current protests. If no investigations have been undertaken, or if they have been inconclusive, please explain why?

Response

- a. First and foremost, allegations that "*... acts of violence, harassment and intimidation carried out by Zimbabwe security forces...*" are not factual and are not backed by any evidence.
- b. It is a paradox that the very security forces who moved in to quell the acts of violence, harassment and intimidation carried out by arsonists and looters find themselves in that unfortunate characterization.
- c. The culprits who include looters and arsonists have been arrested and their cases are at different stages of the criminal justice system. [See statistics under Items 2.1 (q-s)].
- d. Furthermore, the Government of Zimbabwe has launched awareness through print and electronic media calling upon members of the public who were violated including those who suffered loss of property to report to the police, Ministry of Justice, Legal and Parliamentary Affairs, Ministry of Home Affairs and Cultural Heritage, Ministry of Defence and War Veterans Affairs, Independent Commissions as well as registered Civil Society Organisation for relief.
- e. The Zimbabwe Republic Police have also assured the public that they will investigate any allegations preferred against the looters regardless

of who are they including their members who might have been involved in criminal abuse of office for their personal gains without fear or favour.

- f. Independent Commissions such as the Zimbabwe Gender Commission have called upon the people of Zimbabwe, specifically women to report any violations which have a gender dimensions to them.
- g. The National Peace and Reconciliation Commission has triggered off initiatives to facilitate political dialogue among leaders of political parties which participated in the 2018 harmonised elections.
- h. The President of the Republic has also stressed the importance of peace at public gatherings.
- i. The Southern African Development Community, through its Chairperson and Executive Secretary has also delivered a solidarity statement in support of the steps taken by Zimbabwe to quell the violence which transpired between 14 and 16 January 2019.

2.3. Please provide detailed information the legal and factual bases for the arrest of and charges against Mr. Japhet Moyo and kindly explain how these charges are compatible with international human rights norms.

Response

a. Mr. Japhet Moyo was reasonably suspected of committing a criminal offence under the Criminal Law (Reform and Codification) Act [*Chapter 9:23*] (hereinafter "the Criminal Code").

b. The accused was charged in terms of Section 22 (2) (a) (iii) of the Criminal code that provides,

"...Any person who, whether inside or outside Zimbabwe organises or sets up, or advocates, urges or suggests the organisation or setting up of, any group or body with a view to that group or body....coercing or attempting to coerce the Government;... shall be guilty of subverting... constitutional government and liable to imprisonment for a period not exceeding twenty years without the option of a fine."

c. Furthermore, he was charged in terms of Section 187 (1) (b) of the Criminal Code which provides that,

"...Any person who, in any manner, communicates with another person...realising that there is a real risk or possibility that the other person may be persuaded or induced by the communication to commit a crime, whether in terms of this Code or any other enactment; shall be guilty of incitement to commit the crime concerned."

d. Thus, Mr Japhet Moyo was arrested on such grounds and in accordance with such procedures as are established by law not in a manner that is

contrary to the provisions of Article 9 (1) of the ICCPR which impugns arbitrary detention of accused persons.

- e. The factual basis of the arrest of Mr. Japhet Moyo arises from the Zimbabwe Republic Police's charge sheet. **Box 1** below outlines in summary the reasonable basis upon which reasonable suspicion was formulated in Mr. Moyo's arrest:

Box 1: Factual Basis Constituting Mr Japhet Moyo's Arrest

- The accused person is the Secretary General of the Zimbabwe Congress of Trade Unions (ZCTU).
- On unknown dates during the period extending from December 2018 to January 2019, the accused held several meetings in Harare both in his personal capacity and as the ZCTU's Secretary General and for the purpose of overthrowing a constitutionally elected Government of Zimbabwe.
- It is alleged that during the period, the accused convened several meetings at ZCTU offices, situated at Gorlon House 7, Jason Moyo Avenue in Harare with a number of pressure groups with the intent of advocating and inciting them to join hands in a plot to coerce and incite members of the public to subvert and overthrow a Constitutionally elected Government of Zimbabwe.
- During the meetings, the accused encouraged citizens to join hands with them and other various Trade Unions , opposition parties and Pressure Groups to resort to strikes and violent demonstrations in order to shutdown Zimbabwean in response to out-cries against austerity measures which had a minor effect on the cost of living experienced in the country during that period.
- During the period between 14 and 16 January 2019, in response to the messages circulating by the accused and others, members of the opposition, various Trade Unionists, Pressure Groups, Youth Forums and the general public in Zimbabwe committed various acts of public violence and hooliganism country wide.
- As a result of the nationwide public violence committed by the demonstrators following the incitement by the accused person and

others, lives were lost, multitudes of members of the public were injured, several police officers were injured, several police institutions were attacked, several police vehicles were damaged and some burnt beyond recognition.

- Furthermore, private and public properties including shops were burnt and vandalized.
- On 21 January 2019 at around 22:00 hours, in terms of CPEA accused was arrested at his residence situated in Unit "B" Seke, Chitungwiza after a police raid.
- The State and the Accused have both secured witnesses who have sworn to testify to the effect of proving whether or not the conduct of the accused resulted in advocating or inciting to overthrow, the Government of Zimbabwe, caused the general populace to respond by carrying out nationwide acts of public violence, murder, and rampant looting, vandalism, arson and rape disturbing the peace and harmony of Zimbabwe to a serious extent.

- f. The charge preferred against Mr. Japhet Moyo is compatible with international human rights norms in that Sections 22 (2) (a) (iii) and 187 (1) (b) of the Criminal Law Code quoted under Items 2.3 (b and c) in that Article 15 (2) of the ICCPR provides that,

"...Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations...."

- g. In terms of the laws of Zimbabwe reasonable suspicion of commission of an offence may cause an arrest which triggers off a deprivation of liberty and processes for one to be released on bail is left to the

Judiciary, which processes were followed given that Mr Moyo is no longer in detention.

- h. Article 9 (1) of the ICCPR provides that a person's liberty can be deprived on such grounds and in accordance with such procedures as are established by the law.
- i. Moreover, the charges preferred against the accused are not alien to Zimbabwe as almost all established democracies have criminal codes which contain crimes whose essential elements prohibit crimes against the state such as treason, subverting constitutionally elected governments.

2.4. Please provide detailed information about the disruption of internet services, include precise information about the geographical scope of these disruptions, and explain how this is compatible with Zimbabwe's obligations with international human rights law , in particular Article 19 of the ICCPR.

Response

- a. As highlighted above, the events which transpired between 14 and 16 January 2019 were characterized by unmitigated violence.
- b. The rioters and their alleged leaders from non-governmental organisations such as the ZCTU (Mr Peter Mutasa) and This Flag Movement (Mr. Evan Mawarire) used internet as an instrument through which they mobilized and incited themselves to co-ordinate widespread attacks as highlighted under item 1.1.
- c. The Government, as a measure of last resort deemed it fit to shut down internet services to quell potential civil unrest which, if it was left unchecked could have escalated to civil disobedience and escalated to civil unrest.
- d. Therefore, in order to interrupt the mobilization and coordination of the attacks, internet services were temporarily shut down for about twelve hours. Later on, email services were activated leaving popular media platforms such as twitter, Whatsapp and facebook shut down for not more than 72 hours.

j. The freedom of expression and freedom of the media and the freedom to access to information provided for in terms of Sections 61 and 62 of the Constitution of Zimbabwe are not absolute.

k. Section 86 (2) of the Constitution provides that:

"The fundamental rights and freedoms set out in [the bill of rights] may be limited only in terms of a law of general application and to the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom..."

l. Furthermore, Section 86 (3) outlines certain rights which cannot be derogated from or limited and the freedom of expression and freedom of the media and the freedom to access to information provided for in terms of Sections 61 and 62 are not part of that list hence can be limited as long as the *"...the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom..."*.

m. In view of the above and the circumstances of 14 to 16 January 2019 which transformed internet services into being an instrument through which rioters were mobilised to destroy property and incite people to commit various acts of crime, the shutting down of internet was justified.

n. The conduct of the Government of Zimbabwe to limit the right to information by shutting down internet services on the basis of the limitation clause (Section 86) is supported by Article 19 (3) of the ICCPR which provides that:

"The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) [for] respect of the rights...of others; (b) [for] the protection of national security or of public order ...or morals."

- o. The Government of Zimbabwe had reasonable basis to believe that internet services (social media platforms) were being used by Anarchist to plunge Zimbabwe into chaos and destabilize the nation.
- p. The synchronized attacks on State institutions, and sometimes using the same *modus operandi* in different geographical locations provided evidence to suggest that there were strategic and coordinated attacks on the state.
- q. Regionally, the Government of Zimbabwe considered Article 29 (3) of the African Charter on Human Peoples Rights which provides that citizens have a duty, *"...not to compromise the security of the State whose national or resident he is..."*
- r. The internet was being used by the Anarchist to organize riots and incite violence that was aimed at destabilizing the State into civil unrest compromising the security of the State.
- s. Therefore, limiting access to the internet was necessary in order to stabilise the situation fueled by citizens and residents through this medium.

2.5. Please indicate what measures have been taken to ensure that human rights defenders in Zimbabwe are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

Response

- a. The Government of Zimbabwe has opened up the democratic space and continues to guarantee civil and political freedoms as entrenched in the Constitution of the Republic.
- b. Human Rights Defenders are protected by the Constitution of Zimbabwe only to the extent that their conduct does not trigger the principles necessary to reasonably limit their conduct in terms of Section 86 of the Constitution.
- c. Moreover, the Government has set into motion alignment of laws to the Constitution. In this respect, the process to amend the Public Order and Security Act [*Chapter 11:17*] and unbundle the Access to Information and Protection of Privacy Act [*Chapter 10:27*] into two Acts which are in congruence with good international practices which promote the freedom of information and the media are at an advanced stage.
- d. Furthermore, Independent Commissions as set up in the Constitution are mandated to monitor Government's implementation of rights including prohibition of the state's intimidation of human rights defenders.

e. Further, there are institutions which combat crime and corruption such as the Judicial Services Commission, the National Prosecuting Authority and the Zimbabwe Anti-Corruption Commission which provide remedies against excesses of by the state against human rights defenders.