



ZIMBABWE

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

Note No. 139/2020

The Permanent Mission of the Republic of Zimbabwe to the United Nations Office and Other International Organisations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to forward the attached message from the Government of Zimbabwe in response to the following communications from Special Procedures:

1. Joint Communication from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on violence against women, its causes and consequences dated 2 June 2020.
2. Joint Urgent Appeal from the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health dated 3 June 2020.
3. Press Release issued on 10 June 2020.

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 Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 16 June 2020

**Office of the United Nations
High Commissioner for
Human Rights
Palais des Nations
1211 Geneva 10**



RESPONSE TO THE JOINT COMMUNICATION FROM THE SPECIAL PROCEDURES MANDATE HOLDERS ON THE CASE INVOLVING THREE MDC ALLIANCE PARTY YOUTH ASSEMBLY MEMBERS

Reference is made to the Joint Communication from the following 5 Special Procedures mandate holders: Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on enforced or involuntary disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on violence against women, its causes and consequences. Subsequently a News Release was issued containing an abridged version of the same issues raised in the formal communication to the Government of Zimbabwe alleging arbitrary detention, enforced disappearance, torture and ill-treatment of Honourable Joannah Mamombe, Ms Cecelia Chimhiri and Ms Netsai Morowa, all members of the MDC Alliance Party Youth Assembly.

It is important to state at the outset that the promotion and protection of human rights of all Zimbabwean citizens is the primary responsibility of the Government of Zimbabwe working with national institutions, civil society, and the people themselves. Secondly, the Government of Zimbabwe is categorical that it does not engage in or permit any of its agencies and institutions to use methods that include torture, forced disappearance or abductions.

Further, Zimbabwe takes the important work of the Special Procedures mechanisms seriously, which why it has co-operated with them in the past, including extending an invitation to a number of Special Procedures mandate holders in December 2018 to visit Zimbabwe and see for themselves the progress that the country has made in the promotion and protection of human rights. In response to that invitation, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr Clément Nyaletsossi Voule and the Special Rapporteur on the right to food, Ms Hilal Elver, paid visits to Zimbabwe in September and November 2019 respectively. This was a demonstration by government that it is open to constructive and honest engagement.

Unfortunately, in the case at hand, instead of engaging all the relevant stakeholders, including the investigating authorities of the State, the 5 Special Procedures mandate holders rushed to draw conclusions after hearing only from one side, that is the alleged victims. The communication by the 5 Special Procedures mandate holders curiously avoids to acknowledge that the three persons are before the courts for

participating in a public protest, in deliberate violation of lockdown measures as detailed in Statutory Instrument 77 of 2020, which are meant to protect the public from the COVID-19 pandemic. It is our view that the 5 Special Procedures mandate holders behaved in a manner that is not in accord with their code of conduct as detailed in Article 6 (a) of the Code of Conduct for Special Procedures Mandate-Holders of the Human Rights Council which states that they should, *“Always seek to establish the facts, based on objective, reliable information emanating from relevant credible sources, that they have duly cross-checked to the best extent possible.”* Our expectation is that Special Procedures mandate holders should discharge their mandates with due respect to the time-honoured and universally accepted principles of independence, transparency, impartiality, objectivity, and non-selectivity.

The case involving Hon. Mamombe, Ms Chimbiri and Ms Morowa is currently under a multi-agency investigation which seeks to establish the facts around the alleged abduction and bring the matter to its logical conclusion. There is also a separate investigation and due process concerning the three individuals’ alleged participation in an illegal demonstration in the suburb of Warren Park in Harare on 13 May 2020. It is therefore concerning that in their News Release of 10 June 2020 the 5 Special Procedures mandate holders rushed to state that, *“The charges against the three women should be dropped”*. This is clearly overreach and a violation of Article 7 of the Code of Conduct for Special Procedures Mandate-Holders which makes it clear that, *“It is incumbent on the mandate-holders to exercise their functions in strict observance of their mandate and in particular to ensure that their recommendations do not exceed their mandate or the mandate of the Council itself.”* The Prosecutor General and the Judiciary are independent in Zimbabwe as clearly provided for in the Constitution, the Prosecutor General, *“is independent and is not subject to the direction or control of anyone and must exercise his or her functions impartially and without fear, favour, prejudice or bias,”* and as for the judiciary, *“neither the State nor any institution or agency of the government at any level, and no other person, may interfere with the functioning of the courts.”* In any case, the rule of law demands that a criminal case be tested in a court of law.

In the Joint Communication and the News Release, the 5 Special Procedures mandate holders allege that the case at hand was not isolated as there were 49 other cases of abductions and torture reported in 2019. The number of cases is disputed, but suffice to say that several past alleged abductions, including the current one just happened to coincide with major international and regional events – in this case the convening of the Southern African Development Community (SADC) Troika Summit and the

presence, in Harare, of several Regional Heads of State and Government is significant.

The 5 mandate holders also urged the government to allow official visits of UN human rights experts with a view to assessing the human rights situation in the country. As indicated earlier, the government of Zimbabwe did invite several Special Procedures mandate holders, two of whom visited Zimbabwe in 2019. It is important that Special Procedures mandate holders conduct proper and full investigations when granted such visits and not prejudge situations while also seeking to usurp due process through premature and unsupported pronouncements.

Finally, in the Joint Communication the Special Procedures mandate holders made reference to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association which they say reported the existence of a broader pattern of abductions and torture. It is important to state that the report in question, which is yet to be presented before the Human Rights Council, is disputed and the Government of Zimbabwe gave a full response to the flawed nature of the report, a point which the 5 Special Procedures mandate holders chose to ignore while taking what the report alleges as fact.

Generally, the Government of Zimbabwe expresses its serious concern that the 5 Special Procedures mandate holders fell short of the standards that they are expected to comply with in their work and failed to uphold their moral authority and credibility. Their Joint Communication and News Release are punctuated by subjective language and are over prescriptive on matters still under investigation. Domestic remedies had not been exhausted in this matter, so it was unreasonable and premature for the 5 Special Procedures mandate holders to involve themselves at this stage.

**Permanent Mission of the Republic of Zimbabwe
Geneva**

15 June 2020