

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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 the situation of human rights defenders.

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
ZWE 8/2012

17 October 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 16/4, 15/21, and 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **acts of harassment against leaders of two associations promoting and defending human rights.**

Acts of harassment against members of the Gays and Lesbians of Zimbabwe association (GALZ), which is a human rights association advocating for social tolerance of sexual minorities and for the repeal of homophobic legislation, were the subject of two communications sent to your Excellency's Government on 17 June 2010 and on 17 August 2012. Responses to these communications have yet to be received.

According to the information received:

On 25 July 2012, a summons issued against Mr. Abel Chikomo, the executive director of the Zimbabwe Human Rights NGO Forum, charging him with running an "unregistered" organization, were withdrawn and the case has reportedly been postponed *sine die*. The charges allege that the Forum commenced its activities without registering as a private voluntary organization, in contravention of the Private Voluntary Organisation (PVO) Act.

It is reported that Mr. Abel Chikomo denied the charges against him, alleging that the PVO Act exempts associations like the NGO Forum from registering, since its member organizations are registered entities under the PVO Act. It is further

reported that the aforementioned summons came after the Forum had conducted a survey on transitional justice in Harare's Highfield suburb.

On 23 August 2012, Ms. Martha Tholanah, the co-chairperson of GALZ, was charged with running an "unregistered" organization in contravention of Section 6 (iii) of the PVO Act.

It is reported that GALZ is a membership organization providing services primarily to its members, and in accordance with article 2 (h) (v) of the PVO Act does not need to register. It is reported that the association is a universitas according to Common Law, which entitles it to the same rights as any association registered under the PVO Act.

Concern is expressed that the reported measures constitute acts of harassment against human rights associations and their members, which may prevent them from exercising their right to freedom of association. Concerns are further expressed that the charges brought against members of the aforementioned associations do not comply with international law and standards related to freedom of association.

We would like to appeal to your Excellency's Government to take all necessary measures to guarantee the respect of the rights to freedom of association, in accordance with article 22 of the International Covenant on Civil and Political Rights (ICCPR).

In addition, we would like to draw your Excellency's Government's attention to resolution 15/21 of the Human Rights Council in which the Council "calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely [...] including persons espousing minority or dissenting views or beliefs and human rights defenders [...] seeking to exercise or to promote these rights."

Furthermore, the Special Rapporteur on the rights to freedom of peaceful assembly and of association makes reference to paragraph 96 of his thematic report A/HRC/20/27, in which he calls upon States to ensure that "any associations, including unregistered associations, be allowed to function freely, and their members [be able to] operate in an enabling and safe environment". He also refers to paragraph 56 of this same report, in which he emphasized that "[i]ndividuals involved in unregistered associations should indeed be free to carry out any activities ... and should not be subject to criminal sanctions ... This is particularly important when the procedure to establish an association is burdensome and subject to administrative discretion, as such criminalization could then be used as a means to quell dissenting views or beliefs".

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and

fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations;

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; and

- article 12 paragraphs 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regard to article 7 of the Declaration on human rights defenders, the Special Rapporteur on the situation of human rights defenders has stated that the right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This includes the right to discuss and advocate for human rights ideas and principles that are not necessarily new but that, in some contexts, may be perceived as new or unpopular because they address issues that might challenge tradition and culture. In this connection, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

We would also like to recall resolution 17/19 of the Human Rights Council, in which the Council expressed grave concern at acts of violence and discrimination, in all

regions of the world, committed against individuals because of their sexual orientation and gender identity.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the cases accurate?
2. Has a complaint been lodged by or on behalf of the aforementioned associations and their members?
3. Please provide information concerning the charges brought against Ms. Martha Tholanah and Mr. Abel Chikomo and how these measures are compatible with international norms and standards as stated in the International Covenant on Civil and Political Rights.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the associations GALZ and Zimbabwe Human Rights NGO Forum and its members are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders