

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

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

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24)
ZWE 6/2012

17 August 2012

Excellency,

We have the honour to address you in our capacity 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; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 16/4, 15/21, 16/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **arrest, detention and alleged ill treatment of 44 members of Gays and Lesbians of Zimbabwe (GALZ)**, an association advocating for social tolerance for sexual minorities and the repeal of homophobic legislation in Zimbabwe.

An allegation letter was transmitted to your Excellency's Government on 17 June 2010 by the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, concerning the arrest and detention of three members of GALZ. A response has yet to be received from your Excellency's Government on this case.

According to information received:

On 11 August 2012, the office of Gays and Lesbians of Zimbabwe (GALZ) in Harare was raided by police. The raid followed a meeting earlier that afternoon to finalize the GALZ human rights report and to discuss a submission on changes to the draft Constitution. The meeting finished at 5 p.m., however a number of members remained on the premises following the event. At approximately 7.30 p.m., four police officers reportedly demanded entry to the GALZ offices, when this was denied they called for back-up and were joined by some 15 riot police officers who forced their way into the building.

According to reports, the police proceeded to beat the GALZ members with many managing to flee by scaling a wall. The 44 remaining members were arrested and taken to Harare Central Police Station where the males and females were separated. The male detainees were allegedly subjected to beatings throughout the night, with police officers issuing repeated demands for members to reveal the identities of political leaders and Ministers connected with GALZ and who are LGBT, along with the organisation's funding sources. Members were also reportedly accused of conspiring to re-write the Constitution.

Whilst in detention the GALZ members were denied access to their legal representatives from Zimbabwe Lawyers for Human Rights, who were reportedly turned away at the police station.

All of those detained were released without charge the following morning with the exception of one man who was taken to hospital by the police. It is reported that the individual, who suffers from asthma, collapsed following a beating whilst in detention and that he failed to receive medical attention at the hospital until his colleagues from GALZ came to his assistance. He was discharged from hospital later that morning. Another man also suffered significant injuries to his ear and is reportedly receiving treatment.

During the raid, the police took a variety of materials from the GALZ office including DVDs, binders, and copies of the human rights report. Personal belongings, including cell phones and money were also purportedly stolen.

Concern is expressed that the reported detention and allegations of police brutality against the 44 members of GALZ may be directly related to the organization's peaceful and legitimate work in protecting the rights of LGBT individuals in Zimbabwe. Furthermore, concern is expressed about the alleged lack of procedural safeguards, in particular the lack of access to legal assistance afforded to GALZ members while in detention along with the allegations of ill treatment at the hands of the police.

Without expressing at this stage an opinion on the facts of the case, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would further like to recall article 22 of the ICCPR, which provides that "[e]veryone shall have the right to freedom of association with others..."

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "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, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

Furthermore, we would like to further refer to the thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27), in which he “calle[d] upon States... [t]o ensure that the rights to freedom of peaceful assembly and of association are enjoyed by everyone and any registered or unregistered entities, including women; youth; indigenous peoples, persons with disabilities, persons belonging to minority groups or groups at risk, including those victims of discrimination because of their sexual orientation and gender identity, non-nationals, as well as activists advocating economic, social, and cultural rights” (para. 84(b)). He further stated that “[a]ny associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment” (para. 96).

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 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 7 which states that "Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance."
- 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, where 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.

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR and the ICCPR.

We would also like to draw your Excellency's Government's attention to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, Principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment." (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

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, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators of police brutality?
5. Please provide information concerning the legal grounds for the arrest and detention of the persons named above and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR, the ICCPR, and the Declaration on Human Rights Defenders.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit 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 above mentioned persons 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

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment