

Mandates of the Special Rapporteur in the field of cultural rights and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE: AL
ZMB 2/2015:

3 August 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to Human Rights Council resolutions 19/6 and 25/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged charges of conduct amounting to breach to peace against Mr. **Chama Fumba- aka Pilato (Pilate)** for singing a song in which he speaks about the president in a manner that is considered to have ridiculed him.

According to the information received:

On 8 June 2015 in Lusaka, Mr. Chama Fumba- aka Pilato (Pilate) -, a 31 year old musician, was arrested for a song in which he is said to have ridiculed the President and the ruling party. Mr. Fumba had been requested to present himself to the police for questioning prior to his arrest. He was denied police bond and detained in police detention despite the request from his lawyers that he be released pending trial.

The song concerned, called "*Alungu Anabwela*" (Lungu came), makes reference to a men called Lungu, from Chawama Compound, with a suit case full of Jameson whisky, ascending to leadership after the death of another leader.

On 9 June 2015, Mr. Fumba appeared before the Chief Resident Magistrate at Lusaka on a charge of "conduct likely to cause a breach of the public peace", contrary to Section 178 (f) of the Penal Code (Chapter 87 of the Laws of Zambia).

Mr. Fumba pleaded not guilty and was granted a cash bail of K 1,000.00 (Kwacha one thousand, roughly USD 130) with two working sureties in their own recognizance (without any cash payment). He paid the bail and was released. Trial

was set for 24 June 2015, but has been adjourned until 13 July 2015 because the prosecutor had no witnesses. On 13 July, the director of Public Prosecution entered a Nolle Prosequi and Mr. Fumba was freed.

The provision raised against Mr. Fumba appears under chapter xvii of the Zambian Penal Code regarding “Nuisance and Offences against health and convenience”, which could result in penalties such as “imprisonment for one month and/or a fine not exceeding sixty penalty units”. It is alleged that this arrest could have been aimed at intimidating Mr. Fumba with judicial procedure and that it could be linked with the upcoming presidential electoral campaign 2016.

Without expressing at this stage an opinion on the facts of the case and while taking note with satisfaction that the charges have been dropped and Mr. Fumba, freed, we remain concerned that the charges raised against Mr. Fumba were excessive, did not comply with applicable international human rights standards and may have solely been used to impede the exercise of his right to freedom of expression, including in the form of art. Concern is expressed that criminalizing any manifestation of the freedom of expression, including in the form of arts, as a means of limiting or censoring that freedom could have a considerable negative effect on the general climate for freedom of expression, particularly in light of the forthcoming presidential campaign.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations. They include in particular articles 9 and 19 of the International Covenant on Civil and Political rights (ICCPR), and article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your Government on 10 April 1984.

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 case accurate?
2. Although the charges have been dropped in Court, please explain how the legal grounds for the arrest of Mr. Fumba were considered appropriate measures against the song cited above, and how these are compatible with the international norms and standards on the right to freedom of opinion and expression, the right to take part in cultural life and the freedom indispensable for creative activities.
3. Please indicate what measures have been taken to ensure that artists can operate in an enabling environment and carry out their activities without fear of harassment, stigmatization and criminalization of any kind for their cultural and artistic outputs.

4. Please indicate which measures are taken to ensure that the rights to freedom of expression, including in the form of art and through the Internet, and to take part in cultural life without any discrimination, are granted to all citizens of the Zambia during the electoral campaign.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent re-occurrence of such situations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Farida Shaheed
Special Rapporteur in the field of cultural rights

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government attention to article 9 of both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which your Excellency's Government has ratified on 10 April 1984.

We would also 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 "Everyone 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." This right is also recognized in article 9 of the African Charter on Human and Peoples' Rights which your country has ratified on 10 January 1984.

We would also like to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that article 19, paragraph 3 of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We also refer to the Human Rights Committee General Comment No. 34 (2011), on the right to freedom of opinion and expression. Accordingly, "in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties." The General Comment further establishes that "the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."

Furthermore, we would like to refer your Excellency's Government to article 15 of International Covenant on Economic, Social and Cultural Rights (ICESCR), which your Excellency's Government has ratified on 10 April 1984, recognizing the right of everyone to take part in cultural life. Under this provision, States Parties have undertaken to respect the freedom indispensable for scientific research and creative activity. As stressed by the Special Rapporteur in the field of cultural rights, all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and

creations. In particular, decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision. (A/HRC/23/34, paras. 85 and 89 d). The right to freely take part in cultural life is also recognized in article 17 of the African Charter on Human and Peoples' Rights.

In the same report, the Special Rapporteur in the field of cultural rights also recalled that public figures, including those exercising the highest political authority, are legitimately subject to criticism and political opposition. Therefore, using laws to sanction disrespect for authority of the head of State and the protection of the honour of public officials, raise concerns in regards to the rights of everyone to take part in cultural life and to freedom of expression, including in the form of arts (A/HRC/23/34, para 45).