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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

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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 resolutions 16/4, 24/5, 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**.

On 17 August 2012, we sent your Excellency's Government a communication concerning the alleged arrest, detention and ill treatment of 44 members of the Gays and Lesbians of Zimbabwe Association (GALZ). On 17 October 2012, we sent a second communication concerning alleged judicial harassment against leaders of GALZ and the Zimbabwe Human Rights NGO Forum (ZHR NGO Forum). We regret that we have not received responses to these communications to this date.

According to information received:

- In August 2012, GALZ and its members faced the following consecutive acts of harassment: a) On 11 August 2012, police officers from the Harare Central Police and riots squad members violently arrested 31 men and 13 women members of GALZ, using baton sticks, open hands and clenched fist. All of the GALZ members were released within a day. The mentioned arrests followed the launching of GALZ lesbian, gay, bisexual, transgendered, intersex (LGBTI) rights violations report; b) On 20 August 2012, the police showed up without prior notice at GALZ offices and after verifying that GALZ staff were not there left the site; c) On 21 August 2012, unidentified members of the Zimbabwe National Army patrolled the surroundings of

GALZ offices and enquired about GALZ recent visitors; d) On 23 August 2012, the police carried out a search warrant at the GALZ offices and confiscated documents and computers and; e) On 23 August 2012, the police charged Ms **Martha Tholanah** with managing an unregistered organization on the ground that Ms Tholanah had unlawfully continued to carry out activities of an unregistered organization in contravention of the country's laws.

- On 22 November 2013, the Harare Rottenrow Magistrate Court acquitted Mr **Abel Chikomo**, Executive Director of the ZHR NGO Forum due to the lack of evidence that Mr Chikomo had committed an offense under the Private Voluntary Organization Act (PVO) of which she had been accused on 25 July 2012.
- On 4 December 2013, the Harare Rottenrow Magistrate Court summoned Ms Martha Tholanah, Chairperson of the GALZ, to appear before the Court on charges of running an unregistered organization. Part of the summons reportedly reads "...Gays and Lesbians Association being represented by Martha Tholanah, the co-director of Gays and Lesbians, not registered, unlawfully took part in the management of the group by gathering its members while engaging in gays and lesbians in contravention of the said Act."
- On 14 December 2013, Zimbabwe's High Court Judge ordered the police to return the GALZ property which was seized on 23 August 2013.
- Ms Tholanah's trial should have started on 29 January 2014.

We are concerned that the reported events amount to acts of harassment against human rights associations and their members, which may prevent them from exercising their right to freedom of association. We are further concerned that the charges brought against GALZ, similarly to the ones brought against ZHR NGO Forum, do not comply with international law and standards related to freedom of association.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the following provisions of the International Covenant on Civil and Political Rights (ICCPR):

- article 19 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."
- article 22 which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In this connection, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and 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, 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”.

We further wish 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”.

Moreover, 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 further 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, as 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 we would be grateful for your observations on the following matters:

1. Are the facts alleged above 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 indicate how these measures are compatible with international norms and standards.

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 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
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