

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 9/2012

16 November 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 draw the attention of your Excellency's Government to information we have received regarding the **alleged unjustified search of the offices of the Counselling Services Unit, a non-governmental organization (NGO) which provides psychosocial support to victims of torture and trauma.**

On 17 August 2012, an urgent appeal was sent to your Excellency's Government concerning the arrest, detention and alleged ill treatment of 44 members of the NGO Gays and Lesbians of Zimbabwe (GALZ), whose office was raided by police on 11 August 2012. A response to this communication from your Excellency's Government is yet to be received.

According to the information received:

On 5 November 2012, approximately ten police officers searched the offices of the Counselling Services Unit (CSU) in Harare with the assistance of riot police who reportedly threatened to fire tear gas into the building. Patients who were waiting at the CSU premises to receive treatment had to be left unattended for four hours during the search.

It is reported that this search aimed at recovering "offensive and subversive material" from the organization. The search warrant indicated that the association

was in possession of material that “defaces any house, building, wall, fence, lamp post, gate, elevator without the consent of the owner or occupier thereof,” in contravention of section 46 of the Criminal Law (Codification and Reform) Act. The police reportedly confiscated a couple of documents and the association’s computer containing confidential medical records. It is reported that the search warrant did not authorize the confiscation of the association’s computer.

The police reportedly arrested five employees of the CSU: Messrs Fidelis Mudimu, Zachariah Godi, James Zidzimu, Tafadzwa Gesa and Penn Bruno. Messrs James Zidzimu and Penn Bruno were reportedly released from police custody in the evening of 5 November.

On 7 November 2012, Mr. Fidelis Mudimu, CSU National Program Director, Mr. Zachariah Godi, CSU Program Manager, and Mr. Tafadzwa Geza, a Clinical Officer, were transported by the police to Bulawayo. On 8 November 2012, they were charged with causing malicious damage to property, in contravention of Section 140 of the Criminal Law, before being later released on bail. It is reported that they are suspected of defacing a bill board and an information centre in Bulawayo.

Concern is expressed that these investigations may prevent associations, particularly those working on human rights issues, from exercising their right to freedom of association. Concern is further expressed that such investigations may form part of an ongoing campaign of harassment aimed at intimidating NGOs operating in Zimbabwe.

Without expressing at this stage an opinion on the facts of the case, we would also like to remind your Excellency’s Government of 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.”

Similarly, we would like to recall article 22 of the ICCPR, which provides that “[e]veryone 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 context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “[c]alls 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.”

In addition, 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".

Finally, 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;

- article 11 which provides that everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession; and

- article 12 paras 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.

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, 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 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 cases accurate?
2. Has a complaint been lodged by or on behalf of the concerned association?
3. Please provide information concerning the legal grounds for the search of CSU's office, including confiscation of the organization's computer containing confidential medical records, and how these measures are compatible with international norms and standards.
4. Please provide information concerning the legal grounds for the arrest of Messrs. Fidelis Mudimu, Zachariah Godi and Tafadzwa Gesa, and how these measures are compatible with international norms and standards as stated, inter alia, in the ICCPR, and the Declaration on Human Rights Defenders.

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
Special Rapporteur on the situation of human rights defenders