

**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 Chair-Rapporteur of the Working Group on Arbitrary Detention; the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; 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: UA G/SO 218/2 G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)  
ZWE 7/2011

22 December 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; 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 General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/16, 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 alleged renewed acts of surveillance and intimidation against Ms. **Jestina Mukoko**, a human rights defender and the director of the Zimbabwe Peace Project, an organization whose mission is to work for sustainable peace through monitoring, documentation, research and publications, and community peace building interventions; and the arrest and detention in Zimbabwe of Mr. **Fadzai December** and Ms. **Molly Chimhanda**, project officers of the Media Monitoring Project of Zimbabwe (MMPZ) and Mr. **Gilbert Mabusa**, member of the MMPZ.

Ms. Mukoko was previously the subject of an urgent appeal letter sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders on 4 December 2008. An urgent appeal letter was also sent by the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances on 9 December 2008; and an allegation letter was sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders on 7 May 2009. No reply has been received from your Excellency's

Government in relation to any of these communications.

According to the information received:

On 15 November 2011, between 8:10 and 8:45 a.m., Ms. Jestina Mukoko was reportedly followed around greater Harare by an unidentified man driving a four door black Rhino car. According to the source, cars of this type may be owned by, or associated with, State agents. The source further reported that Ms. Mukoko was previously subjected to similar acts of surveillance and intimidation before becoming a victim of an enforced disappearance on 3 December 2008. She was released later that month.

On 24 November 2011, the MMPZ organized a workshop in Gwanda, Zimbabwe, in connection with the 2012 elections. The workshop was attended by at least 22 participants. On 29 November 2011, Mr. Fadzai December, Ms. Molly Chimhanda and Mr. Gilbert Mabusa, all members of the MMPZ and involved in the organization of the above workshop were summoned by Gwanda police.

On 5 December 2011, Mr. December, Ms. Chimhanda and Mr. Mabusa proceeded to Gwanda Police station accompanied by a lawyer from Zimbabwe Lawyers for Human Rights (ZLHR). Once at the police station, their lawyer was barred from attending their questioning and only allowed presence for the recording of their statements and charges. Mr. December, Ms. Chimhanda and Mr. Mabusa are being charged with violations of section 25(1)(b) of the Public Order and Security Act (POSA) for allegedly “participating in a gathering without seeking authority from the regulating authority” and section 37(1)(b) of the Criminal Law (Codification and Reform) Act for allegedly “distributing material that is likely to provoke a breach of peace”.

It is reported that during the workshop Mr. December, Ms. Chimhanda and Mr. Mabusa had distributed a DVD produced by MMPZ. This DVD allegedly contains a message calling upon the media to contribute to peaceful elections through fair, accurate and balanced coverage of election campaigns by Zimbabwean political parties. Although the DVD was produced by the MMPZ it also contains a recording that was aired by Zimbabwe Broadcasting Holdings during the electoral period of 2008. Moreover, we are informed that Mr. December and Ms. Chimhanda have made several appearances before the African Commission on Human and Peoples’ Rights in relation to the situation of the freedom of expression in Zimbabwe.

On 7 December 2011, Mr. December, Ms. Chimhanda and Mr. Mabusa appeared at Gwanda Magistrate’s Court. Their lawyer filed an application for bail. During the hearing, the State Prosecutor argued that the defendants were likely to interfere with State witnesses. The prosecutor also claimed that the MMPZ members were being charged with serious crimes and there were prospects of imprisonment and, if released, they would flee the country. Moreover, the Prosecutor stated that the release on bail of Mr. December, Ms. Chimhanda and Mr. Mabusa would undermine the ongoing investigations by Harare police.

On 9 December 2011, Mr. December, Ms. Chimhanda and Mr. Mabusa appeared for a bail ruling at the Gwanda's Magistrate's Court. They were granted bail at US 50 dollars each by Gwanda Magistrate with no reporting conditions. However, the State Prosecutor invoked Section 121 of the Criminal Evidence and Procedure Act (CPEA) which has the effect of suspending a bail order for seven days pending the filing of an appeal by the State in the High Court. The source reports that the State had added an alternative charge against the defendants of undermining the authority of, or insulting the President of Zimbabwe, in contravention of Section 33 of the Criminal Law (Codification and Reform) Act.

In addition, we are informed that on 6 December 2011, Harare police officers allegedly raided the premises of the MMPZ, confiscated DVDs belonging to the organization and arrested MMPZ's Project Coordinator Mr. Andrew Moyse. It is reported that Mr. Moyse was arrested for allegedly possessing some materials on the alleged mass killings that took place in 1980 in Matabeleland, also known as Gukurahundi. Mr. Moyse was allegedly interrogated for several hours by the police and released shortly thereafter without charge.

Mr. December, Ms. Chimhanda and Mr. Mabusa are being held at Gwanda Remand Prison.

Concern is expressed that the alleged acts of continued surveillance and intimidation against Ms. Jestina Mukoko may be directly related to her peaceful and legitimate human rights work. Further concern is expressed that, taking into account the similarity between the intimidation to which she was reportedly subjected on 15 November 2011 and that which reportedly preceded her enforced disappearance on 3 December 2008, Ms. Mukoko may be at further risk of enforced disappearance. Concern is also expressed that the arrest and detention of Mr. December, Ms. Chimhanda and Mr. Mabusa are solely based on their activities in peaceful exercise of the rights to freedom of opinion and expression. In addition, concern is expressed that the alleged acts of surveillance and intimidation against Ms. Jestina Mukoko, as well as the arrest and detention of Mr. December, Ms. Chimhanda and Mr. Mabusa, and the raid of the MMPZ premises and interrogation of its Project Coordinator Mr. Moyse, form part of a wider pattern of harassment against human rights defenders and advocates of the right to freedom of opinion and expression in anticipation of elections in the near future.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. December, Ms. Chimhanda and Mr. Mabusa is arbitrary, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

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.”

We also wish to refer to article 21 of the ICCPR which provides that “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” In the context of the 2012 elections, individuals should be able to meet, engage on issues of national interest and express their grievances and aspirations freely. As a result, a process of notifying the authorities of intent rather than seeking permission should always be favoured when it comes to the organization of assemblies, and no one should be criminalised for non-compliance with the law governing civil society organizations, particularly when activities for the defence of human rights are concerned.

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 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 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.

Regarding the right to access and communicate with international bodies, we would draw the attention of your Excellency's Government article 5, paragraph c) of the Declaration which states that in order to promote and defend human rights and fundamental freedoms everyone has the right, individually or collectively, both nationally and internationally, "c) to communicate with non-governmental or intergovernmental organizations." Similarly, article 9, paragraph 4, states that "(a) (...) everyone has the right, individually or collectively, in conformity with applicable international instruments and procedures, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms."

In relation to the allegations according to which Ms. Jestina Mukoko may be at risk of enforced disappearance, we would like to bring to your Excellency's Government's attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and in particular:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);
- article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction); and
- article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance).

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Jestina Mukoko, Mr. Fadzai December, Ms. Molly Chimhanda and Mr. Gilbert Mabusa 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.

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 Ms. Jestina Mukoko, Mr. Fadzai December, Ms. Molly Chimhanda and Mr. Gilbert Mabusa 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 Ms. Jestina Mukoko, Mr. Fadzai December, Ms. Molly Chimhanda and Mr. Gilbert Mabusa?
3. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information concerning the legal grounds for the arrest and detention of Mr. Fadzai December, Ms. Molly Chimhanda and Mr. Gilbert Mabusa and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
5. Please provide information on the measures taken to ensure the safety of Ms. Jestina Mukoko, Mr. Fadzai December, Ms. Molly Chimhanda and Mr. Gilbert Mabusa.
6. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

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.

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

El Hadji Malick Sow  
Chair-Rapporteur of the Working Group on Arbitrary Detention

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  
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