

**Mandates of the Working Group on Arbitrary Detention; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders**

REFERENCE:  
AL TZA 4/2017

7 November 2017

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 33/30, 34/18, 32/32, 33/9 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of thirteen persons, including three lawyers and their clients, in connection with their participation at consultations on possible strategic litigation challenging the government's ban on drop-in centres serving key populations at the risk of HIV.

According to the information received:

On 17 October 2017, Tanzanian police raided a workshop at the Peacock Hotel in Dar es Salaam, and arrested Ms. Sibonigle Ndashe, the executive director of the NGO Initiative for Strategic Litigation in Africa (ISLA); Mr. John Kashiha, the director of Community Health Services and Advocacy (CHESA), along with other meeting participants and the director of the hotel. The thirteen people arrested include two South African citizens and a Ugandan citizen. Following the raid on the hotel, the thirteen individuals were taken to the police station, and released on bail later the same day, without being formally charged.

On 20 October 2017, the bail initially set was revoked, allegedly without justifications and twelve of the thirteen individuals were taken into custody again, and informed that a fresh investigation process had been initiated into the case. The police allegedly sought an order to perform medical examinations on those detained, including anal examinations, which was not granted. The persons were detained until 27 October 2017 in the central police station in Dar es Salaam, before being released on bail. Charges against the persons detained have not been specified until the date of this communication. As such, it is alleged that the detention was arbitrary and illegal. The three foreign lawyers, including Ms. Sibonigle Ndashe, were deported from Tanzania following their release from

detention, without being provided a reason for their deportation. Mr. John Kashiha's passport has also been taken and several laptops confiscated. The registration of CHESA has been revoked as well. The Tanzanian nationals who were detained were reportedly ordered to report to the police following their release on 27 October 2017.

Concerns are expressed regarding the arrest and detention of thirteen participants of a workshop on strategic litigation aimed at discussing the government's public health policies. Concerns are expressed that the detention might have had the aim to prevent those detained from initiating legal proceedings seeking remedy for alleged human rights violations. Concerns are expressed that the detention has taken place without charges being specified against those detained and may have been arbitrary and illegal. Additional concerns are expressed regarding the alleged medical examination sought by police, which may amount to inhuman or degrading treatment if confirmed to be true.

We are further seriously concerned that these arrests and detentions may have a chilling effect on civil society involvement on human rights related issues in Tanzania, particularly in light of the reported revocation of the registration of CHESA. Concerns are further expressed that they may deter lawyers and NGOs from providing legal assistance and representation to victims of human rights violations, jeopardizing access to justice and remedy, and the human rights to equality before the law and equal protection of the law, and access to information. Additional concerns are expressed regarding the characterization in a public statement by police of a meeting regarding potential strategic litigation concerning public health services as one "promoting homosexuality".

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Has a complaint been lodged by the individuals concerned?
3. Please clarify the legal basis of the arrest and detention of, and charges against, of the thirteen individuals arrested on 17 October 2017, and how

these are compatible with Tanzania's obligations under international human rights law.

4. Please provide information about the allegations of medical examinations sought by police and how such examinations are compatible with Tanzania's obligations under international human rights law.
5. Please provide information regarding the reported revocation of the registration of CHESA.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

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

Annalisa Ciampi  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

Michel Forst  
Special Rapporteur on the situation of human rights defenders

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to article 19 of the ICCPR, which provides that "everyone shall have the right to hold opinions without interference" as well as 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." As highlighted by the wording of the provision, this right applies to "everyone", regardless of their status.

We would also like to refer your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights, acceded by Tanzania on 11 June 1976. Article 12 of ICESCR states that the right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to *respect*, *protect* and *fulfil*. In turn, the obligation to fulfil contains obligations to facilitate, provide and promote. Violations of the obligation to *respect* are those State actions, policies or laws that contravene the standards set out in article 12 of the Covenant and are likely to result in bodily harm, unnecessary morbidity, and preventable mortality. Examples include the suspension of legislation or the adoption of laws or policies that interfere with the enjoyment of any of the components of the right to health (General Comment 14 of the CESCR, Paras.33 and 50)

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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 (a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone 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.

We further refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms,

In this connection, we would like to draw your attention to the report of the Special Rapporteur on the right to health to the General Assembly in 2016 (A/71/403, para. 25) where he stated that as a key precondition for the full realization of all human rights, including the right to health, civil society actors working on health-related issues should be able to carry out their work in a safe and enabling environment. In this report, the Special Rapporteur expressed concern about the limited space for civil society in many countries, including those actors working on health-related rights.