

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 ZWE 1/2019

29 January 2019

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 33/30, 35/15, 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of the violent repression of protests and excessive use of force by Zimbabwean security forces and the arrest of a number of human rights defenders, including Mr. Japhet Moyo.

Mr. Peter Mutasa is the President of the Zimbabwe Congress of Trade Unions (ZCTU). The ZCTU works to defend and promote workers' and trade union rights and is the most representative workers' organisation in Zimbabwe

Mr. Japhet Moyo is the General Secretary of the ZCTU.

Mr. Okay Machisa is the National Executive Director of the Zimbabwe Human Rights Association. Mr. Machisa has been the subject of one previous joint communication sent by Special Procedures mandate holders dated 29 March 2010, case no. ZWE 2/2010. We regret that no response was received in relation to this communication.

According to the information received:

On 13 January 2019, a statement made by President Emmerson Mnangagwa announced that fuel prices would rise by approximately 200%. The announcement led to widespread protests against austerity measures and the sharp fuel price increase.

On 14 January 2019, the ZCTU called upon its members to initiate a three day “Stay Away” until 16 January 2019, whereby workers would stay at home, rather than travelling to their places of employment. During this time, a large number of protesters took to the streets in Harare and Bulawayo. The protests were suppressed by security forces equipped with live ammunition, who fired into the crowds causing approximately twelve deaths and injuring a number of others according to allegations received. In addition, approximately 600 people have been arrested in connection with the protests, including a number of trade union officials, opposition leaders and human rights defenders. Between 14 and 18 January, internet access was severely disrupted, reportedly to hinder communication between protest organisers and to prevent footage of the security forces from being uploaded and broadcast online.

On 14 January 2019, persons believed to be security personnel entered the home of Mr. Peter Mutasa in order to arrest him. Mr. Mutasa managed to escape and has remained in hiding since. Two of his relatives who were found in his home were beaten by security personnel.

On the night of 17 January 2019, the house of the National Executive Director of the Zimbabwe Human Rights Association (ZimRights), Mr. Okay Machisa, was surrounded by approximately 20 plainclothes police officers, who intimidated the human rights defender and his family and tried to remove them from their house. Mr. Machisa and his family were able to temporarily escape to a safe location and returned to their house later that night.

On 21 January 2019, in the afternoon, Mr. Japhet Moyo was arrested at Harare airport upon his arrival back in Zimbabwe from a trip abroad and brought to the Central Police Station. Although Mr. Moyo was released later that afternoon, he was rearrested that night on charges of “subverting a constitutionally elected government”, under section 22 of the Criminal Law Act.

Further reports suggest widespread acts of violence, intimidation and surveillance against protesters, opposition leaders and human rights defenders across Harare and Bulawayo, with police and military entering houses, carrying out door-to-door searches, arbitrarily detaining occupants, vandalising property and dragging people into the street to beat them. A large number of people have also been kept for prolonged periods in pre-trial detention. Reports also allege that other members of ZimRights were targeted, despite being outside of the country at the time of the protests.

We express serious concern over the violent repression of protests in Harare and Bulawayo, especially with regards to the use of live fire causing a number of deaths and injuries. We further express concern regarding the arrest and charges against human Mr.

Japhet Moyo, along with the intimidation against Mr. Peter Mutasa, Mr. Okay Machisa and other members of ZimRights.

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.

We would like to draw attention to articles 6, 9, 17, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) acceded to by Zimbabwe on 13 May 1991, which guarantee the right to life, the right to liberty and security of person, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or reputation, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and the right to freedom of association respectively.

We would further like to draw your Excellency's Government's attention to the Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66), which states that "States have an obligation not only to refrain from violating the rights of individuals involved in an assembly, but to ensure the rights of those who participate or are affected by them", including the right to bodily integrity (A/HRC/31/66, para. 13). Furthermore, the report states that "the principle of legality requires that States develop a domestic legal framework for the use of force, especially potentially lethal force, that complies with international standards (see A/HRC/26/36, para. 56). The normative framework should specifically restrict the use of weapons and tactics during assemblies, including protests, and include a formal approval and deployment process for weaponry and equipment" and that "the use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality" (A/HRC/31/66, paras. 51 & 57).

We would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges States to ensure that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials. The Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, though not binding, provide an authoritative interpretation of the limits on the conduct of law enforcement forces. According to these instruments, law enforcement officials may only use force

when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Medical assistance should be provided as soon as possible when necessary.

With respect to the disruption of internet services, we would like to remind your Excellency's Government of Human Rights Council Resolution 32/13, paragraph 10, which "condemn[ed] unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law, and call[ed] upon all States to refrain from and cease such measures."

We would finally like to refer to 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 articles 1, 2 and 5(a and b), which state that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels, that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms and that everybody has the right, individually and in association with others, to meet and assemble peacefully and to form, join and participate in non-governmental organisations, associations or groups.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 the above-mentioned person(s) in compliance with international instruments.

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. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on measures taken by your Excellency's Government to carry out an immediate, impartial, and transparent investigation into the acts of violence, harassment and intimidation carried out by Zimbabwean security forces in the context of the current protests. If no investigations have been undertaken, or if they have been inconclusive, please explain why.

3. Please provide detailed information the legal and factual bases for the arrest of and charges against Mr. Japhet Moyo and kindly explain how these charges are compatible with international human rights norms.
4. Please provide detailed information about the disruption of internet services, including precise information about the geographical scope of these disruptions, and explain how this is compatible with Zimbabwe's obligations under international human rights law, in particular Article 19 of the ICCPR.
5. Please indicate what measures have been taken to ensure that human rights defenders in Zimbabwe are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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 responsible of the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal 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 appeals in no way prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders