

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 ZWE 4/2019

12 July 2019

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 allegations about the criminalisation and arbitrary detention of six human rights defenders which appears to be directly motivated by their legitimate and peaceful human rights activities.

Ms. Stabile Dewa works on women's rights at the Women's Academy for Leadership and Political Excellence, and **Ms. Rita Nyampinga** defends the rights of female prisoners through her work with the Female Prisoners Support Trust. **Mr. George Makoni** works on issues related to local governance at the Centre for Community Development Trust. **Mr. Nyasha Frank Mpahlo** works with Transparency International Zimbabwe and **Mr. Tatenda Mombeyarara** is a member of Citizens Manifesto. **Mr. Gamuchirai Mukura**, through his work at the Community Tolerance Reconciliation and Development Trust, seeks to contribute to the process of peacebuilding in the country.

Mr. Tatenda Mombeyarara was the subject of one other communication sent by Special Procedures mandate holders to your Excellency's Government on 28 February 2011 (JUA ZWE 2/2011). Together with 44 other human rights defenders, Mr. Tatenda Mombeyarara had been arrested after a meeting in Harare. We regret that no response was provided to this letter.

According to the information received:

In May 2019, all six human rights defenders attended a capacity-building workshop on peaceful civil engagement organised by the Serbian organisation Center for Applied Nonviolent Action and Strategies in the Maldives.

On 20 May 2019, upon return from the Maldives, Mr. George Makoni, Mr. Tatenda Mombeyarara, Mr. Gamuchirai Mukura and Mr. Frank Nyasha Mpahlo were arrested at the Robert Mugabe International Airport in Harare. Ms. Stabile Dewa and Ms. Rita Nyampinga were arrested on 27 May 2019 as they disembarked their flights in Harare.

All six individuals are being charged with “subversion of a constitutional government” under Article 22 (2) (a) (iii) of the Criminal Law Act, a treason charge which carries a sentence of up to 20 years in prison. Zimbabwe Republic police alleges that the six human rights defenders were trained on how to mobilise citizens against the government and to engage in acts of civil disobedience.

Upon their arrest they were not immediately informed of the reason for their arrest and denied access to their lawyers for at least five hours, even after specific requests to have their lawyer present. Their laptops and mobile phones were seized and handed over to the Postal and Regulatory Authority of Zimbabwe “for extraction of evidence”. They were unable to contact their families and were subjected to several hours of intense interrogation. The human rights defenders were transferred to the Chikurubi Maximum Security Prison.

Ms. Rita Nyampinga, who is 61 years old and needs medication for a chronic condition, was not immediately granted access to her doctors and only taken to a hospital after her lawyers insisted.

On 7 June 2019, Mr. George Makoni, Mr. Tatenda Mombeyarara, Mr. Gamuchirai Mukura, and Mr. Frank Nyasha Mpahlo were granted bail. On 10 June 2019, Ms. Stabile Dewa and Ms. Rita Nyampinga were granted bail under stringent conditions - they are obliged to report to police stations daily and have to reside at the same address until the finalisation of their case.

All six human rights defenders are currently awaiting trial.

Without prejudging the accuracy of the information received, we would like to express our serious concern about the arrest, arbitrary detention and ongoing judicial proceedings against Mr. George Makoni, Mr. Tatenda Mombeyarara, Mr. Gamuchirai Mukura, Mr. Frank Nyasha Mpahlo, Ms. Stabile Dewa, Ms. Rita Nyampinga. We are particularly concerned about the alleged use of treason charges to criminalise their work defending human rights in Zimbabwe and that their arrest coincided with their return from a human rights related training abroad. We furthermore wish to express our deep concern at the allegations of the denial of adequate medical treatment to Ms. Rita Nyampinga while she was in detention.

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 the observations of your Excellency's Government 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 the legal procedure and grounds invoked for detaining and charging Mr. George Makoni, Mr. Tatenda Mombeyarara, Mr. Gamuchirai Mukura, Mr. Frank Nyasha Mpahlo, Ms. Stabile Dewa, and Ms. Rita Nyampinga, and how these are in compliance with international human rights standards.
3. Please provide information concerning any steps taken to guarantee the physical and psychological integrity of detained people in Zimbabwe, including to ensure that they receive all the medical attention and medication that they require.
4. Please provide information as to what steps 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, free from any physical, judicial or other harassment.

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

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.

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.

Leigh Toomey
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

Clement Nyaletsossi Voule
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 relation to the above mentioned facts and concerns, we would like to remind your Excellency's Government of its international obligations under articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Zimbabwe on 13 May 1991. Article 19 provides that everyone shall have the freedom to seek, receive and impart information and ideas of all kinds through any media of his choice. Intimidation or retaliation of any kind against a person for holding and expressing an opinion, such as an opinion critical of the government or police, is a violation of ICCPR article 19(1). Articles 21 and 22 guarantee the right to freedom of peaceful assembly and of association, and note that restrictions on these rights must be prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

We also wish to remind your Excellency's government that the right to liberty and security of persons is enshrined in article 9 of the ICCPR, and ensures the freedom from arbitrary arrest or detention. Arresting or detaining an individual as punishment for the legitimate exercise of the rights as guaranteed by the Covenant constitutes a violation of article 9 (CCPR/C/GC/35 para 17).

We also wish to remind your Excellency's Government of article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by Zimbabwe in May 1991, which establishes the right to physical and mental health. The Committee on Economic, Social and Cultural Rights observed in General Comment No. 14 (2000) that States must refrain from denying or limiting equal access for prisoners or detainees to preventive, curative and palliative health services (para. 34).

In addition, the revised Standard Minimum Rules for the Treatment of Prisoners (the so-called "Mandela Rules," adopted unanimously by the UN General Assembly in by resolution 70/175 of November 2015) establish States' responsibility to provide adequate access to health care for prisoners (Rules 24 to 35).

In relation to the allegations indicating that the individuals mentioned above are being targeted because of their activities defending human rights, 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 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 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.