

**Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; 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 violence against women, its causes and consequences**

REFERENCE:  
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2 June 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; 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 violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 34/19, 36/6, 34/18, 41/12 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arbitrary detention, enforced disappearance, torture and ill-treatment of Hon. **Joannah Mamombe**, Ms. **Cecelia Chimbiri** and Ms. **Netsai Marowa**, members of the MDC Alliance Youth Assembly.

According to the information received:

On 13 May 2020, the Hon. Mamombe, Ms. Chimbiri and Ms. Marowa were in Warren Park, a suburb in Harare, where they were planning to participate in a protest organized by MDC Alliance Youth Assembly. At around 1500hrs, on route to the protest, the three women were arrested at a police check point while driving towards the Harare Central Business District, for allegedly violating lockdown measures. They were taken to the Harare Central Police Station, where they could contact their lawyers.

Lawyers promptly attended at Harare Central Police Station and made inquiries from the Cell Controller who advised that the three women had not been processed through his office and they were not being detained in the holding cells at the station. The lawyers attempted to verify the whereabouts of Hon. Mamombe, Ms. Chimbiri and Ms. Marowa at other police stations around Harare such as Milton Park, Warren Park, Mbare, Stoddart, Matapi, Braeside and Rhodesville as well as at the Harare Central Operation shed and the CID Law and Order Section, however the police officers at all these locations similarly denied having the women in their custody. The lawyers verified this information at least three times throughout the night on 13 May 2020 but there was no change in the information received.

During their search, the lawyers also cross checked various police check points between Harare Central Business District and Warren Park using both Samora Machel Avenue and Kirkman road in an effort to locate the three women but did not succeed. Calls to the three women's mobile phones went unanswered from approximately 1530hrs on 13 May 2020, although messages to their WhatsApp were delivered and read, they were not responded to.

On 14 May 2020 the Police Spokesperson initially confirmed to the State-run newspaper *The Herald* that the three women had been arrested, but the Police later tweeted denying that they were in custody. Later that day, lawyers wrote to the police urging them to release the women or to advise about their whereabouts upon receipt of the letter.

In the early morning on 15 May 2020, the three missing women were found dumped at Muchapondwa shops popularly known as "paSupa" in Musana, Bindura South. The three women were found to have been subjected to ill-treatment, their clothes were torn and they appeared traumatised. Hon. Mamombe and Ms. Marowa were having difficulty in walking while Ms. Chimbiri complained of severe head pain. They were admitted to a medical facility accompanied by MDC officials, a team of lawyers and some nine police officers from the Law and Order section.

According to the information we received, the three women were first taken to Harare Central Police station but later transferred to another location in a black *Toyota Wish* vehicle. The men who drove them covered their faces with what looked like sacks. They were taken to a forest and put in a pit where they were brutally sexually assaulted. They were subjected to physical abuse and mistreated including being forced to drink each other's urine.

After being admitted to hospital, a doctor working for the Government and a female police officer from the ZRP Forensic Department visited the three women in the evening of 15 May 2020 and asked to take photographic images of the injuries as evidence for the investigation. The three women consented to have the photographs taken and images were captured including various body sections. On 18 May 2020, sensitive photographs captured on 15 May 2020, were circulating on various social media platforms.

On 27 May 2020, the three women appeared before the Magistrate Court after being charged under Section 37 of the Criminal Code for allegedly gathering with the intent to promote public violence and breach of peace, as well as Section 5 (3) and (1) of the COVID-19 Regulations SI 99 of 2020 on gatherings. The Prosecutor alleges that the three women took part in a demonstration in Warren Park on 13 May 2020. The initial remand proceedings were held at the hospital where the three were receiving treatment following their abduction, torture and sexual assaults.

It is reported that this abduction is not an isolated case. In 2019 alone, NGO reports indicate that a total of 49 cases of abduction and torture might have taken place, allegedly as part of a broader pattern and strategy to silence dissent in Zimbabwe. These violations are said to be happening with impunity as no investigations are carried out and perpetrators are not held to account.

While we do not wish to prejudice the accuracy of these allegations, we express our most serious concern at the reported arbitrary detention, enforced disappearance of Hon. Joannah Mamombe, Ms. Cecelia Chimbiri and Ms. Netsai Marowa prior to their intended participation in a protest organised by MDC Alliance Youth Assembly. The targeting of these youth leaders seems to be in direct retaliation to the exercise of their fundamental freedoms, especially their rights to freedom of peaceful assembly and freedom of expression protected in articles 21 and 19 of the International Covenant on Civil and Political Rights (ICCPR). The three women are also alleged to have been denied of their due process rights after their arrest to either be promptly charged with a recognizable criminal offence and brought before an independent and competent judicial authority or immediately released. The facts alleged, if confirmed, would be in contravention of Articles 9, 10, 14 of the ICCPR, and Principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Their subsequent disappearance between 13 and 15 May, violates the principle dispositions of the Declaration on the Protection of all Persons from Enforced Disappearance, especially articles 2, 10, 11, 12 and 19.

We further express our most serious concern about the torture to which these three women were reportedly subjected, including sexual assault and other cruel, inhuman or degrading ill-treatment. We remind your Excellency's Government in the strongest terms, of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, codified in human rights treaties, including in Article 7 of the International Covenant on Civil and Political Rights, which Zimbabwe acceded to on 13 May 1991.

We welcome the opening of an investigation into the allegations of torture and ill-treatment of Hon. Joannah Mamombe, Ms. Cecelia Chimbiri and Ms. Netsai Marowa and urge your Excellency's Government to conduct the investigation in a prompt, thorough, impartial and independent manner and in accordance with the guidelines laid out in the Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). At the same time, we express our strongest concern about the reported existence of a broader pattern of abductions and torture, especially as similar findings were reported by the Special Rapporteur on the rights to freedoms of peaceful assembly and of association following his country visit in September 2019. We herewith reiterate his serious concerns over patterns of rape and sexual assault on the part of military and police officials, the threats issued by public authorities to suppress protests and dissent, the misuse of the judicial system to impose unlawful charges and the use of excessive force resulting in massive violations against protestors.

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 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. Please provide detailed information on the factual and legal grounds for the arrest and what appears to be the arbitrary detention, including their incommunicado detention, of Hon. Joannah Mamombe, Cecelia Chimberi and Netsai Marowa. Please explain how these measures are compatible with international human rights law and standards.
3. Please provide detailed information on the investigation which has been undertaken with regards to the alleged acts of torture, sexual violence and ill-treatment detailed above. Please also explain what steps have been taken in order to bring the perpetrators to justice and to provide redress to the victims, including due compensation and rehabilitation.
4. Please provide precise information about the measures taken to protect these three women from possible further acts of intimidation, harassment and violence; as well as the measures taken to ensure the safety and security of all women and men participants in peaceful assemblies so as to guarantee that everyone is able to freely exercise their right to freedom of peaceful opinion, expression, assembly and association in Zimbabwe.

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.

While awaiting a reply, we strongly 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 may 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.

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

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Luciano Hazan

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Dubravka Šimonovic

Special Rapporteur on violence against women, its causes and consequences

## **Annex**

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

In connection with the above allegations and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, is reflected *inter alia*, in article 5 of the Universal Declaration of Human Rights (UDHR), articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and article 5 of the African Charter on Human and Peoples' Rights.

We would like to bring to the attention of your Excellency's Government articles 9, 14, 19 and 21 of ICCPR, which establish the right not to be deprived arbitrarily of liberty, the guarantees of due process, the protection of the rights to freedom of opinion and expression and the rights to freedom of peaceful assembly, respectively, no restrictions may be placed on the exercise of these rights 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.

We wish to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance and in particular article 2 which prohibits enforced disappearances and article 7 that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. Further, the Declaration establishes that any person deprived of liberty shall be held in an officially recognised place of detention (article 10.1), that an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention (article 10.3). In this connection, we stress that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration.

Furthermore, we recall the general comment on women affected by enforced disappearances (A/HRC/WGEID/98/2) issued by the Working Group on Enforced or Involuntary Disappearances, which stresses, *inter alia*, the differentiated effects of enforced disappearances in women and girls. In particular, States must recognize the particular types of harm women suffer based on their gender, including instances of sexual violence and forced impregnation, and the resulting psychological damage and social stigma as well as the disruption of family structures

Furthermore, the Declaration sets out an obligation for States to take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control (article 14).

It is incumbent upon States to provide redress to the victims of acts of enforced disappearance and their family, ensuring the right to adequate compensation that includes the means for as complete a rehabilitation as possible. The right to remedy is also provided for in articles 8 of the Universal Declaration of Human Rights and article 2 paragraph 3 of the International Covenant on Civil and Political Rights (ICCPR). States have an obligation to effectively investigate allegations of torture as expressed in paragraph 7b of Human Rights Council Resolution 16/23, which urges States “(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

In connection with the above alleged facts and concerns, we would like to bring to your Excellency’s attention Article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Similarly, Article 2 provides that violence against women shall include: (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution and (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

We further recall Article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women.

The Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency’s Government in 1987), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes,

including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that “under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.