

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 rights to freedom of peaceful assembly and of association

REFERENCE:
AL ZWE 3/2020

24 August 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 42/22, 43/4 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning arrests and charges brought against human rights defenders and protesters in Zimbabwe in response to their work advocating against corruption in the country.

Mr. **Hopewell Chin'ono** is a freelance journalist and human rights defender who investigates instances of corruption and State financial mismanagement in Zimbabwe. In recent months he has covered the COVID-19 crisis, notably reporting on a case of corruption involving medical supplies, which led to the dismissal of one Government minister.

Ms. **Tsitsi Dangarembga** is a 61-year-old award winning feminist writer and novelist. In recent months she has used her platform to denounce human rights violations and corruption in Zimbabwe as well as the increased military presence on its streets.

According to the information received:

Mr. Hopewell Chin'ono

In July 2020, Mr. Hopewell Chin'ono made a series of posts on social media encouraging his followers to take part in demonstrations organised for 31 July. The demonstrations called for economic and political reforms in the country following a spate of recent corruption and financial mismanagement scandals. Mr. Chin'ono had helped uncover a recent corruption scandal in Zimbabwe in which the Government awarded a procurement contract for COVID-19 supplies to a company with alleged links to the President's family. There was reportedly no transparent public tender before the contract was awarded.

On 20 July 2020, a number of police officers arrested Mr. Hopewell Chin'ono from his home in Chisipite, Harare. Reportedly, no warrant was presented at the

time of arrest. He was arrested and detained in Harare Central police station where he was allowed to meet with his lawyers. It reportedly took five hours for formal charges to be brought against Mr. Chin'ono. He was eventually told that he faced "incitement to commit public violence". Authorities claim that three posts he made to Twitter were under investigations for "inciting the public to engage in violence" in the upcoming demonstrations.

On 21 July 2020, police brought Mr. Chin'ono back to his home to supervise a search of his house along with his lawyers. They were allegedly looking for the devices with which he made the posts under investigation. One of Mr. Chin'ono's lawyers had to request the search warrant from police numerous times before she was permitted to view a copy.

Police officers initially attempted to seize a camera at the home, but were prevented from doing so by his lawyer, since the warrant did not cover the camera. Police returned with a second warrant which did list the camera, however the first warrant was not cancelled, therefore making the second warrant invalid. Later in the evening, a group of around 30 armed police in riot gear raided Mr. Chin'ono's home and seized the camera. One of Mr. Chin'ono's lawyers was arrested on the spot and briefly detained. He was released without charge the same evening.

On 24 July 2020, the Harare Magistrate's Court denied Mr. Chin'ono's request for provisional release. His lawyers appealed the decision to the High Court of Harare, but this was dismissed on 6 August.

On 7 August 2020, Mr. Chin'ono was moved to Chikurubi Maximum prison. On 8 August one of Mr. Chin'ono's lawyers, went to visit him. She was informed at the second entry gate that only emergency visits were being allowed as part of the COVID-19 restrictions. After informing the prison security that she had been able to visit other clients, she was eventually allowed in for a supervised discussion with Mr. Chin'ono. According to information received, prison guards have refused to allow Mr. Chin'ono to consult privately with any of his lawyers. Mr. Chin'ono's lawyers have been prevented from bringing food or warm clothes to him, despite the fact that the prison has no more sweaters in stock and that Mr. Chin'ono cannot eat sazda, a dish commonly served in the prison, for medical reasons.

On 13 August the Harare Magistrate's Court hear a new appeal launched by Mr. Chin'ono's lawyers contesting his prison conditions. Media and the general public were not allowed to attend the hearing because the presiding magistrate reasoned that the evidence that Mr. Chin'ono was presenting may jeopardise prison security.

On 18 August, Mr. Chin'ono's lawyer was dismissed by the Magistrate for "scandalising the court" in relation to posts on a social media page it alleged that she wrote. Mr. Chin'ono was required to select a new lawyer.

31 July protests

In the run-up to the 31 July demonstrations, mentioned above, there was reportedly an increase in police and military presence on the streets of the city of Harare. A number of human rights defenders reported being followed by unmarked vehicles and intimidated or attacked by armed members of the security forces near their homes. Others found the premises of their non-governmental organisations broken into or their names placed on lists of "wanted" persons, which members of the public were encouraged to turn in for "inciting violence". We have received credible information that some journalists and their families were briefly abducted and severely beaten by State security forces.

Throughout July 2020, Ms. Tsitsi Dangaremba had been vocal on social media in support for the anti-corruption demonstrations. She was also critical of the arrest of human rights defender Mr. Hopewell Chin'ono and others arrested in the lead-up to the national protests.

On 31 July 2020, Ms. Tsitsi Dangaremba was arrested by a group of police officers as she participated in peaceful anti-corruption demonstrations in Borrowdale, in the city of Harare. Ms. Dangaremba was one of numerous reporters, human rights defenders and protesters who were accused of inciting the public to violence. She was arrested by a police officer who told her "what you are doing is illegal". Ms. Dangaremba was silently and peacefully protesting with a banner reading "We want better reform". According to information received, in the run up to and during the demonstrations, there were at least 48 unlawful detentions and 68 instances of unprovoked police assault.

On 1 August 2020, Ms. Dangaremba was released on bail of 5 000 ZWL (approx. 1 300 USD) and is charged with "participating in a gathering with the intention to incite public violence." She is due to appear in court in September.

Without prejudging the accuracy of the allegations, we wish to express our serious concern over the arrest and intimidation of human rights defenders in Zimbabwe for exercising their right to freedom of expression and peaceful assembly. We are particularly concerned about the recent clampdown on civil society in the country in light of communications ZWE 2/2020 and ZWE 1/2020, which not only highlight the criminalisation of the work of human rights defenders and those that are critical of Government actions, but also report on how security forces repeatedly use excessive force against them for carrying out their legitimate activities. We are concerned by the multiple irregularities in Mr. Chin'ono's arrest and detention as well as the factual basis behind the charges that Ms. Dangaremba and peaceful protesters at the 31 July demonstrations face. We fear that in certain circumstances freedom of expression in

Zimbabwe is being unduly restricted, to the extent that it may discourage others from exercising their fundamental freedoms.

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 any comment(s) you may have on the above-mentioned allegations.
2. Please provide details on the factual and legal basis for the arrests and charges faced by Mr. Hopewell Chin'ono and Ms. Tsitsi Dangaremba, and how their actions amount to "incitement to violence".
3. Please provide details on why Mr. Chin'ono has not been permitted to privately consult with his lawyer.
5. Please provide information on how the measures put in place to ensure that policies and decisions taken to fight against the spread of COVID-19 do not undermine the legitimate work of human rights defenders and other civil society actors.

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.

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.

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Irene Khan
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

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.

Under international human rights law, the right to freedom of expression may only be restricted in accordance with article 19 (3) of the ICCPR. Any limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. In its General Comment No. 34 (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism'. Further, the Human Rights Committee made clear that "It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information".

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 recall that article 9 of the ICCPR requires that arrests be carried out in accordance with the law and the procedure prescribed by it. Paragraph 3 stipulates that anyone who is deprived of his liberty by arrest or detention is entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the individual's detention and order their release if the detention is not lawful. Paragraph 4 requires that detention in custody of persons awaiting trial shall be the exception rather than the rule. It should not be the general practice to subject defendants to pre-trial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Pre-trial

detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances (Human Rights Committee, General Comment No. 35, para. 38).

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.