

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 1/2021

24 August 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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, 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 the arrest and charging of human rights defender Alice Kuvheya**.

Ms. **Alice Kuvheya** is a human rights defender, director of the Chitungwiza Residents Trust (CHITREST), a community level trust advocating on human rights issues such as the right to health, education and a healthy environment, including in the context of the Covid-19 pandemic. Since 2019, CHITREST has expressed concern about the demolition of informal trading structures in Chitungwiza by local authorities.

According to the information received:

On 10 June 2021, Ms. Kuvheya obtained a High Court order preventing the demolition of informal trade structures and homes in Chitungwiza and Harare.

On 11 June 2021, the Provincial Development Coordinator in Harare made a public video statement in response to the order obtained by CHITREST. In the statement, the Provincial Development Coordinator stated that the courts had been mischievously presented with misinformation by the applicants in the case and their lawyers, and that the authorities would be appealing the decision. In response, Ms. Kuvheya released a video on social media calling on the authorities to respect national legislation if evicting residents and informal traders in Chitungwiza and Harare, and urging peaceful resistance to any illegal acts.

On 14 June 2021, Ms. Kuvheya was arrested in the presence of her lawyer upon voluntarily presenting herself at St. Mary's Police Station in Chitungwiza. She was reportedly not initially informed of the reason for her arrest, before subsequently being charged with inciting participation in a gathering with intent to promote public violence, under s.187 (1) (a) of the Criminal Law Act as read with s.37 (1) (a), as well as with incitement to commit public violence, under s.187 (1) (a) as read with s.36 (1) (a) (b). Both charges were allegedly connected to the above-mentioned video she had released on social media. Prior to presenting herself at the station, police had been searching for Ms. Kuvheya at her home for approximately a week, with the human rights defender moving into hiding.

On 16 June 2021, Ms. Kuvheya appeared before the Chitungwiza Magistrates Court, where her release from detention on remand was ordered. At the hearing, an investigation into complaints made by the human rights defender of alleged violations of due process by police officers during her arrest, including the failure of police to inform her of the reason for her arrest, was also ordered.

Two subsequent hearings in Ms. Kuvheya's case took place on 17 and 23 June 2021, before a fourth hearing before the Chitungwiza Magistrates Court on 28 June 2021. During this hearing, the court ruled that the statement by Ms. Kuvheya forming the base of the prosecutors case against the human rights defender did not amount to incitement, as defined by s.187 (1) (a) of the Criminal Law Act, and removed her from remand on the charge of inciting participation in a gathering with intent to promote public violence. However, the court upheld the remand order against Ms. Kuvheya on the second charge of incitement to commit public violence. Ms. Kuvheya is currently released under bail, with her next hearing set for 27 August 2021.

Without wishing to prejudge the accuracy of the above detailed allegations, we wish to express concern at the arrest of Ms. Kuvheya, which we fear to have been carried out in direct response to her peaceful human rights work. We express further concern at the charges brought against her, which strongly appear to have the effect of falsely conflating the legitimate exercise of her freedom of opinion and expression, and assembly and association in peaceful opposition to alleged illegal demolitions and evictions with incitement to violence.

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 details as to the legal and factual basis for the arrest of Ms. Kuvheya, as well as the charges against her.
3. Please provide information as to any investigation that has been carried out into the alleged violations of due process by police officers during Ms. Kuvheya's arrest.
4. Please provide information as to what concrete 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, and the fear thereof. If no such steps have been taken, please indicate a forum wherein we may engage with your Excellency's Government as to the development of such steps.

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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 9, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Zimbabwe on 13 May 1991. Article 9 of the ICCPR, and guarantees the right to freedom from arbitrary arrest or detention, as well as the right to be informed at the time of arrest of the reasons for one's arrest. 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).

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).

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 of articles 21 and 22 which 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.

Finally, we would like to refer to the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (A/RES/53/144, adopted on 9 December 1998), 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. We would further like to refer to articles 5 (a) and 6 (a) and (b) of the Declaration, which guarantee that everyone has the right, individually and in association with others, to meet and assemble peacefully for the purpose of promoting and protecting human rights and fundamental freedoms and to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms.