

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the right to education; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL ZWE 2/2022
(Please use this reference in your reply)

15 February 2022

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 right to education; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/16, 44/3, 41/12 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the years-long harassment of members of The Amalgamated Rural Teacher's Union of Zimbabwe, including the recent arrest of 16 members while exercising their right to assemble peacefully.

The **Amalgamated Rural Teacher's Union of Zimbabwe** (ARTUZ) is a trade union that works in rural areas, defending the rights of educators and teachers. The organisation, which has 35,000 members, advocates against inadequate working conditions, wages, and accommodation for rural teachers as well as poor provision of training.

We have previously communicated concerns to your Excellency's Government on the repression of demonstrations advocating for labour rights in communication ZWE 1/2019 sent on 29 January 2019. We thank your Excellency's Government for the reply received, however, we regret that the response denies many of the issues raised by the UN Special Procedures mandate holders, while we continue to receive information on targeting of defenders of labour rights in the context of demonstrations.

According to the information received:

On 16 January 2019, the Secretary General of ARTUZ Mr. Robson Chere was reportedly abducted at the school where he works in Harare by members of the Military Intelligence. He was accused of orchestrating protests that had taken place over the previous two days against the rise in fuel prices. He was taken to Goromonzi police station and charged with "intimidating and assaulting military officers". He was later acquitted of intimidation charges but convicted of assault and sentenced to 30 days in prison, a sentence he did not consume by paying the corresponding fine.

Two days later, on 18 January 2019, Military Intelligence officers entered the home of the National President of ARTUZ Mr. Obert Masaraure around midnight, and violently arrested him. He was handed over to police at Harare Central police station and was charged with "subversion" and "inciting public

violence”. He spent 16 days in Chikurubhi prison after which he was released under strict bail conditions. At the beginning of his bail period, he was not permitted to post on social media or address public gatherings. His bail conditions have since been relaxed, requiring him to report to the police station once every three months. His trial is due to begin on 31 March 2022.

On 27 April 2019, four human rights defenders, including Mr. Chere, were abducted from a meeting of ARTUZ in Greystone Park in Harare by a group of suspected intelligence agents, dressed in plainclothes. Their training materials were confiscated, and they were taken in for questioning to the Central Intelligence Organisation section of the Harare Central police station. They reportedly were not given access to their lawyers during questioning and two of the human rights defenders were beaten by the officers. They were accused of “participating in gathering with intent to promote public violence, breaches of the peace or bigotry” under article 37 of the Criminal Law (Codification and Reform) Act before charges were dropped the same day. The human rights defenders were released with the warning that they could be charged again if further evidence was found. Two of the human rights defenders reportedly made a complaint about the ill-treatment suffered at the hands of the police but never received information about any formal investigation.

On 13 February 2020, the four human rights defenders were once again charged with “participating in gathering with intent to promote public violence, breaches of the peace or bigotry”. They were acquitted of all charges by the Harare Magistrate Court on 21 August 2020.

On 12 January 2022, a demonstration was held by members of ARTUZ in front of the National Social Security Authority offices in Harare where the National Joint Negotiating Committee were holding a dialogue on teacher’s working conditions. Demonstrators were reportedly advocating for safe re-opening of schools in the context of the COVID-19 pandemic, and for wages to be restored to the levels that they had been receiving before a wage cut in October 2018.

According to the information received, anti-riot police violently interrupted the peaceful demonstration, instructing demonstrators to lie on the ground, some of whom they reportedly beat with batons. A number of demonstrators were arrested, among whom were 16 human rights defenders from ARTUZ. They were initially questioned at Harare Central police station without the presence of their lawyers, though they were allowed access later that day. They did not receive medical attention for their injuries sustained until the evening. The 16 human rights defenders were reportedly charged under Section 37(1)(a) of the Criminal Law (Codification and Reform) Act for “participating in a gathering with intention to promote violence, bigotry and breaches of peace”. They were presented before Harare Magistrates Court on 14 January 2022 after which they were transferred to Harare Remand prison. The 16 were released on bail of 5,000 ZWL (approx. 15.50 USD) on 17 January 2022 and are cited before court on 17 February 2022.

Without wishing to prejudge the accuracy of the above-mentioned allegations, we express our deep concern at what appears to be the systemic and arbitrary targeting

of human rights defenders at ARTUZ who are working to promote the right to education and the right to an adequate standard of living for educators in rural areas. We are deeply concerned in particular by multiple allegations of arbitrary arrests, excessive use of force, and ill-treatment by police officers against the human rights defenders. We are concerned that such severe attacks, along with the frequent charges and harassment of its members are an attempt to stifle the work the organisation. We are furthermore concerned for the effect that such targeting may be an attempt to dissuade others from standing up and peacefully assembly for the right to education in the country.

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 information concerning the legal grounds for the arrest and detention of the abovementioned human rights defenders, and how these measures are compatible with international norms and standards as stated, *inter alia*, in the UDHR and the ICCPR. Please provide information on whether all detainees have access to family members, legal counsel, and medical personnel.
3. Please explain the factual and legal basis for the charges against the 16 human rights defenders following their participation in a peaceful demonstration on 12 January 2022.
4. Please provide information on the factual and legal basis for the charges faced by Mr. Obert Masaraure.
5. 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, and ill-treatment perpetrated by Zimbabwean police. If no investigations have been undertaken, or if they have been inconclusive, please explain why.
6. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

We would appreciate receiving a response within 60 days. Past 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

Koumbou Boly Barry
Special Rapporteur on the right to education

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

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

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.

Article 21 of the ICCPR protects the right to peaceful assembly, stating that no restrictions may be placed on the exercise of the right 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. The Human Rights Committee in its General Comment No. 37 (2020) on the right of peaceful assembly (article 21), stated that the authorities must show that any restrictions on the right to freedom of peaceful assembly meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21. The onus is on the authorities to justify any restrictions and where this onus is not met, States violate article 21 of the ICCPR. The imposition of any restrictions should aim at facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect (GC 37, para 36). The prohibition of a specific assembly can be considered only as a measure of last resort. Where the imposition of restrictions on an assembly is deemed necessary, the authorities should first seek to apply the least intrusive measures (GC 37, para 37). General Comment 37 also stated that blanket restrictions on peaceful assemblies are presumptively disproportionate; and that restrictions on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participants and the assembly concerned (GC 38, para 38).

Additionally, General Comment 37 stressed the obligations of States "to investigate effectively, impartially and in a timely manner any allegation or reasonable suspicion of unlawful use of force or other violations by law enforcement officials, including sexual or gender-based violence, in the context of assemblies. Both intentional and negligent action or inaction can amount to a violation of human rights. Individual officials responsible for violations must be held accountable under domestic and, where relevant, international law, and effective remedies must be available to victims." (GC 37, para. 90).

We also would like to bring to your Excellency's Government attention the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on Access to justice in the context of the protection of those rights, where he states that "(...) everyone has the right to legal assistance by counsel of their choice at any time during custody or detention, including immediately after their apprehension, and such access is to be provided without delay [...]. Consequently, during the first hours following apprehension, individuals should always have the ability to access legal assistance, legal aid or a lawyer of their own choosing, and their meetings should be held in full respect of confidentiality" (A/HRC/47/24, para. 40).

The right to freedom of association under article 22 of the ICCPR requires States parties to take positive measures to establish an enabling environment for associations, including trade unions. It is crucial that individuals exercising this right are able to operate freely without fear that they may be subjected to, for example, any threats, acts of intimidation or violence. States additionally have a negative obligation not to unduly obstruct the exercise of the exercise of the right. Associations, pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection (A/HRC/20/27, paras. 63 and 64).

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).

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 5 (a) To meet or assemble peacefully; and (b) to form, join and participate in non-governmental organizations, associations or groups;
- 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.

The right of everyone to education is enshrined in article 13 of the International Covenant on Economic, Social and Cultural Rights, acceded to by Zimbabwe in 1991. As underlined by the Special Rapporteur on the right to education, the concrete implementation of the right to education for all largely relies on the commitment of a sufficient number of trained teachers who are able to take part in decision-making processes on how best to ensure that right (A/HRC/44/39, para. 57). States should ensure the rights of teachers and other education workers in particular their rights to the enjoyment of just and favourable conditions of work, to form and join trade unions of their choice, to social security, including social insurance, and to the enjoyment of the highest attainable standard of physical and mental health (articles 7, 8, 9 and 12 of the International Covenant on Economic, Social and Cultural Rights) (Ibid., para 83 q). Good relationships and mutual trust among Governments, teachers, associations and trade unions of teachers and other education workers, as well as parents and communities, should be established, at both the national and local levels (Ibid., para 83 s).

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under international law that must be respected and protected under all circumstances.

This absolute and non-derogable prohibition also applies to extra-custodial settings, when the use of force does not pursue a lawful purpose (legality) or is unnecessary for the achievement of a lawful purpose (necessity), or inflicts excessive harm compared to the purpose pursued (proportionality). Moreover, failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations with a view to avoiding the unnecessary, excessive or otherwise unlawful use of force contravenes the State's positive obligation to prevent acts of cruel, inhuman or degrading treatment or punishment within its jurisdiction. In this connection, States must regulate and control the extra-custodial use of force and must ensure that all of their agents are trained, equipped and instructed so as to prevent any act of torture and cruel, inhuman or degrading treatment or punishment within their jurisdiction.¹

¹ The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials <https://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx> and the Code of Conduct for Law Enforcement Officials <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>