

**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; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

Ref.: AL ZWE 3/2022  
(Please use this reference in your reply)

9 December 2022

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; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/16, 51/8, 43/4, 44/8 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the successive assaults and detentions carried out against **Mr. Douglas James Coltart** by Zimbabwean police and security forces, in connection with the legitimate exercise of his professional activities.

Mr. Coltart is a human rights lawyer who, since 2019, has reportedly faced intense harassment, repeated assaults, accusations, legal charges and detentions in the course of his regular work as a legal practitioner. Mr. Coltart has allegedly been beaten, detained, charged and prosecuted in multiple occasions for legitimately exercising his legal practitioner's prerogatives, essentially for accompanying his clients and filming peaceful protests, trying to access clients in custody to provide legal assistance, and questioning the legality of police raids on a clients' residence in face of a late-issued search warrant.

According to the information received:

On 27 April 2019, a peaceful meeting of teachers that was being facilitated by Mr. Douglas James Coltart, as a lawyer, was raided by state security agents. Participants, along with Mr. Coltart, were abducted, assaulted, detained and charged for 'participating in a gathering with intent to promote public violence'. The gathering, in which participants discussed a book titled "Pedagogy of the Oppressed" written by Brazilian educator Paulo Freire, was deemed illegal for supposedly spearheading civil disobedience in Zimbabwe. Mr. Coltart was eventually prosecuted following the incident but was acquitted of the charges. While in detention, during which period Mr. Coltart's laptop was surrendered to the police, there was a cyberattack on the server of his law firm.

On 23 August 2019, Mr. Coltart was assaulted and arrested while representing the Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ), which sought to hand over a petition to the government demanding better wages and advocating for teacher's well-being. The incident was filmed and published by

Mr. Coltart on Twitter<sup>1</sup>, where it is possible to see the police intercepting and detaining the participants with no explanation. It is also noticeable that no answer was given by the officers to Mr. Coltart's questions regarding the reason for the arrests. He ended up detained overnight along with the group of protesters, charged with 'criminal nuisance', and subsequently prosecuted. He was eventually acquitted of the charges after spending more than a year on remand.

On 23 November 2019, Mr. Coltart was assaulted, beaten and illegally detained inside the Harare Central Police Station, while trying to get access to his client, [REDACTED] who had been detained earlier in the same day. The incident was provoked by the Chief Inspector, who unjustifiably denied Mr. Coltart access to Mr. [REDACTED]. The refusal and consequent breach of his client's rights and his lawyer's prerogatives prompted Mr. Coltart to file a report of the incident to the Police Controller's Office. While filling the report, Mr. Coltart was violently seized by a group of anti-riot police into a corridor and assaulted with boot-clad feet, shin-pads and batons, kicked in his back and legs, had head and neck pressed against the floor and his left hand crushed. Very tight handcuffs were also used on him, causing deep cuts to his wrists. The Controller Officer witnessed the entire incident and reportedly did nothing to prevent the assault. Mr. Coltart was also detained that day and initially charged, but subsequently released and the charges were dropped.

On 21 July 2020, Mr. Coltart was again arrested and detained for acting in his lawyer's capacity while representing journalist [REDACTED]. At that occasion, Mr. Coltart was legitimately questioning the legality of a home search and the scope of the search warrant issued against his client, prompting the police officers carrying out the search to detain him as a response. He was subsequently released without charges.

On 24 December 2021, a complaint was filed against Mr. Coltart by a Political Party ZANU-PF activist, with the Law Society of Zimbabwe (LSZ), requesting Mr. Coltart's legal practicing license to be cancelled. The matter is still pending a final decision before the LSZ.

On 22 October 2022, Mr. Coltart was once again arrested, this time on fraud charges in connection to a case also initiated by an activist of the ZANU-PF Political Party, who is facing fraud allegations from a client that Mr. Coltart represents. The evidence suggests that the case was fabricated in retaliation for Mr. Coltart's work as a lawyer. Mr. Coltart presented evidence in his defence, but the Police refused to consider the evidence. He was released and asked to come to the court the following day, which he did. Mr. Coltart is challenging his placement on remand and still faces spurious fraud charges.

Without wishing to prejudge the accuracy of the above-mentioned allegations, we wish to express deep concern at the alleged repeated and successive harassment, assaults, detentions and allegations of torture and other cruel, inhuman or degrading treatment or punishment, and charges against Mr. Coltart in the course of his professional activities as a lawyer. We are particularly concerned that such incidents may be a form of retaliation against his legitimate work as a human rights lawyer,

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<sup>1</sup> [Douglas Coltart on Twitter](#)

hence may violate not only his personal rights and professional prerogatives, but also those of his clients. Moreover, the lack of investigation, disciplinary actions and overall lack of accountability of security forces agents involved in the incidents may contribute to have a chilling effect on other legal practitioners and generally on the exercise of the legal profession, as well as on human rights defenders and civil society organizations engaging in peaceful protests or any sort of civic manifestation.

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.

We are issuing this letter in order to safeguard the rights of Mr. Coltart from irreparable harm and without prejudicing any eventual legal determination.

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 explain the factual and legal grounds for the abovementioned arrests and detentions of Mr. Coltart and how these measures are compatible with international human rights norms and standards.
3. 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, torture and other cruel, inhuman or degrading treatment or punishment perpetrated by Zimbabwean police. If no investigations have been undertaken, or if they have been inconclusive, please explain why.
4. Please provide information your Excellency's Government may have concerning eventual disciplinary actions and/or administrative investigations against the police officers and state agents involved in the above events, and which accountability and remedy mechanisms are in place to address similar cases.
5. Please explain what measures have been taken to ensure that legal practitioners and generally human rights defenders can carry out their legitimate activities without fear of police violence and interference, harassment, assaults and other restrictions, including judicial harassment against their work.
6. Please inform if your Excellency's Government is following or plans to follow the aforementioned proceedings involving Mr. Coltart and explain how they are compatible with Zimbabwe's obligations under international human rights law and standards, particularly with regard to the right to exercise a profession, right to fair trial, right to defend rights, freedom of expression and freedom of association and assembly.

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.

We would like to inform your Excellency's Government that having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices 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

Mumba Malila  
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

Margaret Satterthwaite  
Special Rapporteur on the independence of judges and lawyers

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

## **Annex**

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

In connection with above alleged facts and concerns, we would like to refer to 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 (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders.

We would like to draw your attention to article 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realisation 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. Articles 5 and 6 guarantee the right to meet or assemble peacefully; as well as right to freely publish, impart or disseminate to others' views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we call particular attention to articles 9 (3), 11 and 12 of the Declaration:

#### **Article 9**

3. To the same end, everyone has the right, individually and in association with others, inter alia:
  - a. To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay.
  - b. To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments.
  - c. To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

#### **Article 11**

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and

international standards of occupational and professional conduct or ethics.

#### Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms

Moreover, we would like to refer to Human Rights Council Resolution 22/6, which provides that domestic law and administrative provisions and their application should facilitate the work of human rights defenders, including by avoiding any criminalization, stigmatization, impediments, obstructions or restrictions thereof contrary to international human rights law.

We also refer to Human Rights Council resolution 24/5, in which the Council “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law” (OP2).

We would also like to refer your Excellency’s Government to article 9 of the UDHR, prohibiting arbitrary detentions, and article 9 of the ICCPR, enshrining the right to liberty and security of person. The latter establishes, in particular, that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. As per the jurisprudence of the Working Group on Arbitrary Detention, any detention due to the peaceful exercise of rights may be arbitrary.

We further recall that the right to a lawyer is enshrined in article 14 (3) of the ICCPR, which specifically guarantees the right of detainees to have adequate time and facilities for the preparation of their defence and the right to communicate with counsel of their choosing. The right to have assistance of legal counsel, at any time

during the detention, including immediately after the moment of apprehension, and to communicate and consult with such counsel is also enshrined in principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention. We also wish to emphasize that principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court provides that legal counsel are to be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.

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 nonderogable 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.<sup>2</sup>

We would also like to remind your Excellency's Government of its obligation under article 19 of the ICCPR to secure the enjoyment of the right to freedom of opinion and expression, which is one of the essential foundations of a democratic society. Any restriction on the rights enshrined in article 19 (2) must be compatible with the requirements in article 19 (3). The scope of the right to freedom of expression includes even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19 (3), CCPR/C/GC/34 para. 11. However, it is not compatible with art. 19 (3), for instance, to invoke laws protecting national security or otherwise, in order to suppress or withhold from the public information of legitimate public interest that does not harm national security or use such laws to prosecute journalists or human rights defenders for having disseminated such information, *id.* para. 30. As indicated by the Human Rights Committee, under no circumstance can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest [...] be compatible with article 19", *id.* para. 23.

We would also like to emphasize that that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of

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<sup>2</sup> 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>

protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under ICCPR and non-violent exercise of these rights is not a criminal offence. Counter terrorism legislation should not be used as an excuse to suppress peaceful minority groups and their members.