

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; 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 2/2023
(Please use this reference in your reply)

18 October 2023

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; 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 45/3, 51/8, 50/17, 52/4, 53/12 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **abduction, subsequent enforced disappearance and ill-treatment of Mr. Womberaiishe Nhende and Mr. Sanele Mukhlani**. Both are activists and members of the largest opposition party in Zimbabwe, the Citizens Coalition for Change (CCC). We would also like to bring to the attention of your Excellency's Government information about the alleged **arrest and detention of human rights defenders and lawyers, Mr. Douglas Coltart and Mr. Tapiwa Muchineripi** when attending to their clients Mr. Nhende and Mr. Mukhlani.

Concerns regarding allegations of repeated assaults and successive detentions of Mr. Douglas Coltart in connection to his legitimate human rights work, were raised by Special Procedures mandate holders in a previous communication dated 9 December 2022 (AL ZWE 3/2022). We regret that a reply has not been received from your Excellency's Government.

According to the information received:

On 23 August 2023, Zimbabweans went to the polls to vote in the councillor, parliamentary and presidential elections. According to information received, there has been an unprecedented surge in cases of enforced disappearances, abductions, torture and ill-treatment against political activists and opposition party members in the context of the elections.

Following the announcements of the elections results, Mr. Womberaiishe Nhende, who was in the running, was declared as the councillor-elect for Ward 26 in Glen Norah, Harare.

On 2 September 2023, at around 16:00 hrs, Mr. Nhende and Mr. Mukhlani were sitting in a parked vehicle in Belvedere, Harare, when two unlicensed

Toyota Hilux D4D vehicles pulled in front and blocked their car. Reportedly, seven men believed to belong to the State security forces got out and informed Mr. Nhende and Mr. Mukuhlani that they were under arrest, without presenting a warrant or providing reasons for their arrest. They were allegedly handcuffed, jackets were put over their faces and they were put into the vehicle and flanked by two men. Mr. Nhende and Mr. Mukuhlani were ordered to switch off their mobile phones and surrender them. While the car was in motion, the officers reportedly tasered the two men.

Upon reaching an unknown destination, Mr. Nhende and Mr. Mukuhlani were reportedly taken out of the vehicle and the jackets were removed from their faces. They observed a group of about twelve men, ten wearing masks. Mr. Nhende and Mr. Mukuhlani were forced to strip naked and lie on the ground, before being severely beaten with leather whips and baton sticks all over their bodies for about an hour while being interrogated. The State security officers interrogated Mr. Nhende and Mr. Mukuhlani about whether there were planned protests ahead of the presidential inauguration event which was scheduled for 4 September 2023. Both Mr. Nhende and Mr. Mukuhlani sustained injuries on their backs, hands and legs. One of the abductors took Mr. Nhende and placed his leg underneath one of their car's rear wheels. A man reversed the car to run over Mr. Nhende's leg, but he managed to partially remove his leg before being run over, though still sustaining injuries to his toes.

Following the interrogation, after a few hours, Mr. Nhende and Mr. Mukuhlani were allegedly bundled into the back of an unlicensed car, travelled a distance of about 15 kilometres along a muram road, then 20 kilometres along a tarmacked road before being dumped at a lay-by along a highway. They walked to a house where they were told that they were in the town of Mapinga, which is 50 kilometres from Harare. They were given clothes to wear and a cell phone to call for help and returned to their homes.

Mr. Nhende and Mr. Mukuhlani were examined by doctors and are receiving treatment for their injuries at the Parktown Hospital in Waterfalls. It is further reported that the human rights defenders and lawyers Mr. Douglas Coltart and Mr. Tapiwa Muchineripi, who were representing Mr. Nhende and Mr. Mukuhlani, filed a complaint about their abduction, and the police attempted to question and take statements from them while in the hospital on 4 September 2023. When Mr. Coltart and Mr. Muchineripi informed the police that the victims were under medical care and could not make a statement, the police left the hospital. However, it is reported that they returned an hour later and the officer in charge ordered the arrest of Mr. Coltart and Mr. Muchineripi, who were then arrested, detained, and charged with obstructing the course of justice, impeding the police from discharging their professional duty. The human rights defenders allegedly remained in detention overnight.

While we do not wish to prejudge the accuracy of these allegations, we are expressing our most serious concern at the abduction, enforced disappearance and acts of torture and other cruel, inhuman or degrading treatment or punishment against Mr. Womberaishe Nhende and Mr. Sanele Mukuhlani, which appear to be in retaliation against both men for exercising their rights to freedom of peaceful assembly

and of association. We are alarmed at the reports that their experience meets an allegedly existing pattern of abuses and threats against activists, lawyers, human rights defenders, and opposition party members in the context of the elections in Zimbabwe in August 2023 and beyond. Concerns are also expressed at the atmosphere of fear in the civic space that has been instilled due to the increased number of deprivations of liberty of dissidents without formal arrest, which impedes the free exercise of the detainees' freedom of expression and assembly. We are also concerned at the alleged arrest and detention of the human rights defenders Mr. Douglas Coltart and Mr. Tapiwa Muchineripi who were targeted while discharging their legitimate professional duties as human rights defenders and lawyers. Should the allegations be confirmed, they would contravene, inter alia, articles 6, 7, 9, 10, 14, 16, 18, 19, 21 and 22, of the International Covenant on Civil and Political Rights, read alone and in conjunction with its article 2(3), to which Zimbabwe acceded on 13 May 1991. We further recall that the United Nations Declaration on the Protection of All Persons from Enforced Disappearances establishes that no State shall practice, permit or tolerate enforced disappearances, in particular, we wish to highlight articles 9, 10, 11 and 12 of the Declaration.

In relation to legal representation, we are concerned about the allegedly restricted access to lawyers, the reported breaches of the right to legal counsel of one's choosing of those arrested and their right to confer with a lawyer – all of which are key elements of due process. The legal profession and its free exercise are an essential element of the rule of law, the protection of human rights and the functioning of an independent judicial system. The free exercise of the legal profession contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees. According to international standards, States must guarantee that those who practice law can do so free from intimidation, obstacles, harassment or interference.

Moreover, 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, which is an international norm of *jus cogens*, and as reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

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 indicate what measures have been taken to ensure that members of opposing political parties and human rights defenders in Zimbabwe are able to carry out their legitimate work and exercise their rights to freedom of peaceful assembly and of association, in a safe and enabling

environment without fear of threats or acts of intimidation and harassment of any sort.

3. Please provide detailed information as to how the abduction, subsequent enforced disappearance and ill-treatment of Mr. Womberaiishe Nhende and Mr. Sanele Mukuhlanani are compatible with the obligations of your Excellency's Government under international human rights norms and standards, particularly with articles 6, 7, 9, 10, 14, 16, 18, 19, 21 and 22 of the ICCPR, read alone and in conjunction with its article 2.3, and the *jus cogens* norms enshrining the prohibition of torture and enforced disappearance.
4. Please provide detailed information on the measures which have been taken, or which are foreseen, to ensure thorough, independent and impartial investigations, independent medical examinations, and judicial or other inquiries in relation to the allegations of enforced disappearance, arrest and detention, torture and other cruel, inhuman or degrading treatment or punishment. If measures have been undertaken, please make available the results of investigations. If no such measures have been taken, please explain how this is compatible with the international human rights obligations of Zimbabwe.
5. Please provide information on measures adopted or envisaged to be undertaken by the Government of Zimbabwe to ratify the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of All Persons from Enforced Disappearances
6. Please provide information on measures adopted by your Excellency's Government to ensure the right of Mr. Womberaiishe Nhende and Mr. Sanele Mukuhlanani to effective remedy for human rights violations, including enforced disappearance, arrest and detention, torture and ill-treatment. If no such measures have been taken, please explain how this is compatible with the international human rights obligations of Zimbabwe.
7. Please provide information on the factual and legal ground for the arrest and subsequent detention of Mr. Douglas Coltart and Mr. Tapiwa Muchineripi, the lawyers of Mr. Womberaiishe Nhende and Mr. Sanele Mukuhlanani, and how this is compatible with Zimbabwe's obligations under international law.
8. Please indicate what measures have been taken to ensure that human rights defenders and lawyers in Zimbabwe are able to carry out their peaceful and legitimate work in a safe and enabling environment without discrimination, fear of threats or acts of intimidation and harassment of any sort.

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.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication 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 present communication 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.

Aua Baldé

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

Matthew Gillett

Vice-Chair of the Working Group on Arbitrary Detention

Clement Nyaletsossi Voule

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Mary Lawlor

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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 the above alleged facts and concerns, we would like to remind your Excellency's Government of its international obligations under 6, 7, 9, 10, 14, 16, 18, 19, 21, 22 and 25, read alone and in conjunction with article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), to which Zimbabwe acceded on 13 May 1991, which protect the right to life, right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, to be promptly brought before a judge or other officer authorized by law, to a trial within a reasonable time or to release, to challenge the lawfulness of his detention, to a fair and public hearing before an independent and impartial tribunal without undue delay and with legal assistance of their choosing, right to freedom of expression, the rights to freedom of peaceful assembly, the right to freedom of association, and the right to "take part in the conduct of public affairs, directly or through freely chosen representatives" respectively.

We note that article 21 of the ICCPR recognizes that the right to freedom of peaceful assembly should be enjoyed by everyone, as provided for by article 2 of the Covenant and resolutions 15/21, 21/16 and 24/5 of the Human Rights Council. In its resolution 24/5, the Council reminded 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 and human rights defenders (A/HRC/26/29, para. 22.). We also recall article 22 of the ICCPR protects the right to freedom of association, which protects the rights of everyone to associate with others, to pursue common interests. Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies. These rights can only be restricted in very specific circumstances, where the restrictions serve a legitimate public purpose as recognized by international standards and the restrictions must be a necessary and proportionate means of achieving that purpose within a democratic society, with a strong and objective justification.

Arresting or detaining an individual as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR constitutes a violation of article 9 (CCPR/C/GC/35, para 17). According to article 9 of the ICCPR, any arrest or detention shall be carried out in accordance with the grounds and procedures established by law. In addition, anyone deprived of his liberty shall be entitled to challenge the legality of such detention before a court or judicial authority; this is a self-standing human right, the absence of which constitutes a human rights violation (A/HRC/30/37). Moreover, the deprivation of liberty as punishment for the legitimate exercise of rights guaranteed by the ICCPR and the UDHR is arbitrary, this includes protections for the rights to freedom of opinion and expression, as well as freedom of assembly and association (CCPR/C/GC/35), this has been confirmed by the jurisprudence of the Working Group on Arbitrary Detention (A/HRC/36/38, para. 8(b)).

We also make reference to the Declaration on the Protection of All Persons from Enforced Disappearances, which establishes that no State shall practice, permit or tolerate enforced disappearances (article 2) and 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 (article 7). It also proclaims that each State shall ensure the right to be held in an officially recognized place of detention, in conformity with national law, and to be brought before a judicial authority promptly after detention; and accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest (article 10). The Declaration outlines the obligation of States to promptly, thoroughly and impartially investigate any acts constituting enforced disappearance (article 13) and that the victim and his/her family shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible (article 19). We are further drawing your Excellency's Government's attention to the absolute and non-derogable prohibition of enforced disappearances (articles 2 and 7) which has attained the status of jus cogens.

We also make reference to the study by the Working Group on Enforced or Involuntary Disappearances on enforced disappearance and economic, social and cultural rights (A/HRC/30/38/Add.5), in particular paragraph 33-37 which highlight the chilling effect of the disappearance of journalists and human rights defenders and States are called on to, "ensur[e] the existence of and respect for cultural diversity and the existence of space where multiple opinions, positions and interpretations of history can find their expression in the public sphere diminishes the level of vulnerability of those questioning in one way or another mainstream ideas and positions, and so prevents against targeting of human rights defender" (para. 49).

We would like to draw your attention to article 6 of the ICCPR, which protects the right to life through the prohibition on the arbitrary deprivation of life. The Human Rights Committee, charged with monitoring compliance with the Covenant, has indicated that the obligation under article 6 entails taking all necessary measures to prevent arbitrary deprivations of life, including by soldiers tasked with law enforcement missions, (CCPR/C/GC/36, para. 13). Furthermore, in its paragraphs 57 and 58, the Human Rights Committee states that, extreme forms of arbitrary detention that are themselves life threatening, in particular enforced disappearances, violate the right to personal liberty and personal security and are incompatible with the right to life. As such enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life, as such results to a violation of the right to life as well as other rights recognized in the ICCPR. (CCPR/C/GC/36, paras 57-58).

In relation to the allegations indicating that some of 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. We would also like to make specific reference to article 12 (2) of the Declaration, which states that 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 Declaration.

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 9 (3) (c) which provides that everyone has the right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.
- Article 11 which provides that everyone has the right to the lawful exercise of his or her occupation or profession.

Finally, we would also like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-7 September 1990).

- Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.
- Principle 18 provides that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. This principle must be read in conjunction with principle 16 (c), referred to above, which requires national authorities to adopt all appropriate measures to ensure that lawyers are not subject to, or threatened with prosecution or any other administrative, economic or disciplinary sanctions for actions undertaken in good faith in the exercise of their professional duties and responsibilities.