

Mandate of the Special Rapporteur on the independence of judges and lawyers

Ref.: AL ZWE 3/2023
(Please use this reference in your reply)

18 December 2023

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 53/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the assault, arrest and judicial harassment of Mr. Kudzayi Kadzere, lawyer working on human rights cases. This episode has taken place in a context characterized by allegedly widespread interferences with the free exercise of the legal profession, relating particularly to attacks on the independence of lawyers and deliberate interference in the discharge of their professional functions, in the context of the upcoming elections.

According to the information received,

On 14 January 2023, Mr. Kadzere is reported to have been beaten by Zimbabwe Republic Police (ZRP) officers in Harare while on his way to meet with clients. He had been called in his capacity as a human rights lawyer to offer legal support to 25 leaders and members of minority opposition party, Citizens Coalition for Change, who had been arrested during a political meeting.

While nearing the police station, it is reported that Mr. Kadzere was assaulted using truncheons and bare fists by the ZRP officers after identifying himself as a legal practitioner. He suffered from bruising and sustained injuries including a fractured hand which required a plaster cast. After being detained for four hours in the police station, Mr. Kadzere's lawyers secured his release in order for him to receive the required medical assistance.

When Mr. Kadzere returned to Harare Central Police Station on 15 January to file a report on the assault that he had experienced, he was arrested again and charged with criminal nuisance and escaping from lawful custody under the criminal law. Mr. Kadzere is not currently in custody but he is reportedly scheduled to appear in court to answer to the above charges.

While I do not want to prejudge the accuracy of these allegations, I express my serious concerns regarding the reports received. If confirmed, the interference with the assault on Mr. Kadzere and the subsequent charges pressed against him would amount to a serious breach of a number of international and regional standards relating to the free and independent exercise of the legal profession. This situation may adversely impact the effective realization of the right to fair trial in the country as a whole, and in particular the right of everyone to be assisted by a counsel of one's own choosing.

In particular, I am very concerned regarding the description of a context where lawyers, are allegedly subject to severe interference in the exercise of their professional functions, including intimidation, hindrance, harassment and – in the

most serious cases – severe assault amounting to torture or other cruel, inhuman or degrading treatment, arbitrary arrest and unlawful prosecution.

The legal profession and its free exercise are an essential element of the rule of law, the protection of human rights and 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. States must guarantee that those who practice law can do so free from intimidation, obstacles, harassment or interference.

According to international standards, States must put in place all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. In particular, States must ensure that lawyers are not subject to, or threatened with, prosecution or any administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics. International and regional standards also expressly prohibit the identification of lawyers with their clients or their clients' causes in the discharge of their professional duties.

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 detailed information on the legislative and other measures adopted by the Republic of Zimbabwe to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (Principle 16 (a) of the Basic Principles on the Role of Lawyers), to prevent that they are subject to, or be threatened with, prosecution or administrative, economic or other sanctions as a result of their identification with their clients or their clients' causes as a result of discharging their functions (Principle 18) and to ensure the effective protection of the right of freedom of expression of lawyers (principle 23 of the Basic Principles), in particular their right to take part in public discussions on matters concerning the law, the administration of justice and the promotion and protection of human rights.
3. Please provide information on the legal and factual grounds invoked for, arrest and detention of Mr. Kudzayi Kadzere and explain how these are compatible with international law.
4. Please provide any updates about the investigation into the assault of Mr. Kadzere.

I 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, I 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 my highest consideration.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), acceded by Zimbabwe on 13 May 1991.

I would like to refer to article 9 ICCPR enshrining the right to liberty and security of person and establishing 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 well as the right to legal assistance from the moment of detention. Article 9 (4) also entitles everyone detained to challenge the legality of such detention before a judicial authority. In its General Comment No. 35 (2014), the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22) and freedom of religion (art. 18). It has also stated that arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary.

Furthermore, article 14 upholds the right to a fair trial and equality of all persons before the courts and tribunals.

Article 14 (1) of the ICCPR provides a set of procedural guarantees including a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 of the ICCPR provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. She should also be able "to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34).

I 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.