

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 situation of human rights defenders and the Special Rapporteur on freedom of religion or belief

Ref.: AL ZMB 1/2024
(Please use this reference in your reply)

16 August 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 50/17, 51/8, 52/9 and 52/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of arbitrary arrests of opposition party leaders and members on various charges, including unlawful assembly, espionage, hate speech and seditious practices, as well as allegations of detention, harassment, intimidation and restrictions of meetings and gatherings against opposition leaders, religious leaders, journalists, human rights defenders, and ordinary citizens.

According to the information received:

Since January 2022, at least twenty-six incidences of arrests of opposition political party leaders and members of the Patriotic Front, Economic and Equity Party, Patriots for Economic Progress, National Democratic Congress, Socialist Party, Forum for Democracy and Development, Economic Freedom Fighters, and the Christian Democratic Party, as well as Members of Parliament, have been reported. Some leaders have repeatedly encountered restrictions on their freedom of movement and right to participate in public affairs whilst others have been summoned, arrested and detained on charges including espionage, hate speech, seditious practices, unlawful assembly, attempting to incite civil disobedience and disrupt the peace of the country, forgery and publication of information, incitement, terrorism and libel as well as undisclosed charges.

It is alleged that certain arrests stem merely from the expression of diverging, critical views and are aimed at intimidating and silencing those who speak. Whilst investigations should be done prior to arrests, arrests have reportedly taken place prior to or during investigations. Further, whilst some offences are bondable, delays in granting bond, even when sureties are provided, have resulted in unnecessary prolonged detention, in inhumane conditions. Evidence to inform court proceedings is often lacking, resulting in infringements on the right to be tried without undue delay. In other cases, court proceedings have lasted for years, with frequent adjournments, entailing hardships for litigants, including with respect to defence, accommodation and

transport costs and impact on their jobs and livelihoods. Allegedly, many summons, cases of intimidation, arrests, detentions and charges seek to curtail fundamental freedoms of opinion, expression, association and assembly; while delays in court proceedings aim to bind the accused in litigation and deter them from further exercising fundamental rights.

In May 2024, political party leaders and a political party member, an Independent Member of Parliament and a civil society activist were reportedly arrested and charged with espionage, hate speech and seditious practices. According to the information received, espionage charges carry up to a maximum 30 years in prison upon conviction while hate speech charges carry a punishment of up to five hundred thousand penalty units or two years in prison or both. Allegedly, these arrests and detentions came in the wake of a pronouncement on national television by the President of the Republic that he would be tougher on political opponents.

Reportedly, meetings of political parties and civil society have faced restrictions indoors, or outdoors, or as part of peaceful assemblies. Very few political demonstrations or rallies have been allowed to take place, with the Zambia Police Service citing lack of capacity and/or manpower to manage peaceful protests or rallies. On 10 July, the arrests and detention of four people protesting electricity cuts schedules at the Headquarters of the Zesco Ltd. were reportedly condemned by civil society and the Zambia Human Rights Commission.

Since January 2022, close to a dozen incidents (11) have been reported of inter-party attacks, clashes, intimidation and assaults, involving mostly United Party for National Development members and supporters, including youth, against opposition political party members, supporters and perceived supporters, mainly of the Patriotic Front, Socialist Party and Economic Freedom Fighters. At least four of these incidents occurred in the context of campaigns and by-elections.

Since December 2021, 16 reported incidents of intimidation, arrest, invasion of premises of media outlets have been reported. In several cases, the Zambia Police Service arrested and detained journalists on grounds of unlawful assembly, libel, and conduct likely to breach the peace. In several other incidents, it is alleged that ruling party members or supporters assaulted and threatened journalists and staff and invaded media premises, disrupted broadcasts and damaged equipment, reportedly while they were carrying out normal media coverage and reporting.

Further, according to the information received, arbitrary arrests also target evangelists on grounds of defamation and meetings of religious leaders are stormed by law enforcement officials.

Without wishing to prejudge the accuracy of the above-mentioned allegations, we express deep concern by the multiple allegations of arbitrary arrests, maladministration of justice, harassment and restrictions on gatherings. We are deeply troubled by the reported overall lack of accountability and repeated arrests seemingly aiming to intimidate opposition leaders, religious leaders, journalists, and human rights defenders.

These practices have resulted in increasing political polarisation and hesitancy by some political actors and civil society to engage in discussion and convene meetings on matters of national interest as well as self-censorship, and shrinking civic space, creating a notable chilling effect for freedom of expression, association and assembly. While Government actions to counter hate speech, maintain peace and stability, and promote national unity are to be welcomed, these must be on the basis of national laws that conform to international human rights standards.

We reiterate our concern about the allegations suggesting that the above-mentioned arrests and charges against opposition leaders and critical voices, journalists and human rights defenders seek to curtail their fundamental freedoms of movement, opinion, expression, association and assembly, as well as the right to privacy and participation in public affairs.

We would like to stress that these fundamental freedoms and rights are essential components of any democracy, allowing citizens of all ages to express their political opinions and creating the conditions for dialogue between the opposition and the majority that is essential to preserve the country's democratic gains.

Should they be confirmed, the allegations could amount to violations of several human rights norms contained in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), the latter ratified by Zambia on 10 April 1984. In particular, we refer to articles 2, 3, 7, 9, 10, 12, 14, 17, 19, 21, 22 and 25 of the ICCPR.

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 information concerning the legal grounds for the arrests, detentions, judicial charges and restrictions of human rights detailed above and indicate how these measures are compatible with international human rights law and standards as stated, inter alia, in the UDHR and the ICCPR.
3. Please provide information on measures taken by your Excellency's Government to carry out immediate, impartial, exhaustive and transparent investigations into the acts of alleged human rights violations perpetrated by law enforcement officials. Please also provide information on how article 14 (c) of the International Covenant on Civil and Political Rights is upheld, specifically with respect to the right of opposition political party leaders and members to be tried without undue delay. If no investigations are conducted, or if they have

been inconclusive, or proceedings, including trials, delayed, please explain why.

4. 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, including exercising their rights to peaceful assembly, association and expression, without fear of harassment, stigmatization or criminalization of any kind.
5. Please provide information on the status of legal and institutional reforms, including the adoption of the Public Gathering Bill, Review and Reform of the Penal Code, including articles 57, 60, 67, 70 (1), 71, 128, 131, 179, 191 and 192, as well as the Criminal Procedure Code, State Security Act, and the Cyber Security and Cyber Crimes Act to ensure their conformity with international norms and standards. Please also provide an update on the repeal of section 67 of the Penal Code that was declared unconstitutional by the High Court of Zambia.
6. Please provide an update on arrangements for the National Mechanism for Implementation, Reporting and Follow-up to start functioning and to, inter alia, follow-up to the recommendations of the international human rights mechanisms.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which a press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

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

Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ganna Yudkivska
Vice-Chair on communications 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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government of its international obligations under the International Covenant on Civil and Political Rights (ICCPR), acceded to by Zambia on 10 April 1984.

Article 19 of the ICCPR in particular provides that everyone shall have the freedom to seek, receive and impart information and ideas of all kinds through any media of his choice. This right applies online as well as offline and protects the freedom of the press as one of its core elements. Any restriction to the right to freedom of expression must be "provided by law" and meet the criteria established by international human rights standards. Under these standards, limitations 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. 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).

The Human Rights Committee, in its general comment No. 34 on article 19, stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including "political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse" (paragraph 11) and it asserted that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (paragraph 23). The Committee also emphasized that "the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential" (paragraph 20) remarking as well that "all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition" (paragraph 38).

Article 20, paragraph 2 of the ICCPR, calls upon States to prohibit, and take active positive measures to address advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence which inhibit the practical and effective enjoyment of Covenant rights, including freedom from discrimination and freedom of religion or belief. Yet, the prohibition has a high threshold as it requires the fulfilment of three components: a) advocacy of hatred; b) advocacy which constitutes incitement and c) incitement likely to result in discrimination, hostility or violence (A/67/357, paragraph 43).

In this regard, we would like to draw your Excellency's Government attention to a particularly useful suggestion in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4), to use a six-part threshold test for those expressions that are criminally prohibited, implying an analysis of the context, speaker, content or form (which implicitly also refers to "the form of art"), extent of the speech, and likelihood, including imminence (A/HRC/22/17/Add.4).

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 recall that in the report to the Human Rights Council (A/HRC/55/60), the Special Rapporteur on freedom of peaceful assembly and of association has developed in collaboration with the United Nations Office on Drugs and Crime (UNODC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR),¹ pursuant to Human Rights Council resolution 50/21, the Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests.

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 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.