

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences**

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24) G/SO 214 (89-15)  
ZWE 5/2012

30 March 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolution 16/4, 15/21, 16/5, 17/2, 16/23, and 16/7.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **the conviction and sentencing of six activists reportedly for watching a video on the Arab Spring; and the subsequent arrest of some of their supporters who were standing outside the Court during the trial.**

The arrest and detention of some of the activists mentioned in this communication were the subject of a previous communication sent by the Special Rapporteur on the promotion and protection of the right to freedom of expression, the Special Rapporteur on the situation of human rights defenders and the Working Group on arbitrary detention to your Excellency's Government on 28 February 2011. The Special Rapporteurs regret that, to date your Excellency's Government has not transmitted responses to the aforementioned communication.

According to the information received:

On 19 February 2011, police arrested 45 persons who were attending a meeting in Harare, where a video on the uprisings in Egypt was shown.

On 21 March 2012, six out the 45 persons arrested in February 2011 – M. Munyaradzi Gwisai, Ms. Antonater Choto, M. Tatenda Mombeyarara, M. Eddson Chakuma, M. Hopewell Gumbo and M. Welcome Zimuto – appeared before the Harare Magistrate's Court. They were reportedly convicted of conspiring to commit public violence in violation of section 188 of the Criminal

Code, on the grounds that they intended to engage in an uprising similar to the one they watched on video.

They were sentenced to fines of US\$500.00 each; 24 months suspended imprisonment; and 420 hours of community service each. The judge suspended one year of the sentence on condition that the activists completed 420 hours of community service during weekends and further suspended another year on condition that the activists would not commit another similar offense.

It is reported that the conviction and sentencing violate the activists' rights to freedom of expression and peaceful assembly and further aim to induce fear among pro-democracy activists.

According to the information received, the six activists spent 27 days in prison before being granted bail on stringent conditions where they were reportedly tortured by the police with the aim to extract confessions that the activists were planning an uprising against the government. The six activists were reportedly forced to lie on their stomachs and were beaten on the soles of their feet, the palms of their hands, their backs and buttocks with broomsticks, wooden planks and metal pipes. They were denied medical treatment for their injuries. It is also reported that Ms. Antoneta Choto, who had brain surgery three times in her life prior to her detention, dramatically suffered from the jail conditions. Her condition required medical treatment which she was denied during detention. It is reported that the Court did not investigate the defendants' allegations of torture.

Serious concerns are expressed that the conviction and sentencing of the activists could be related to their dissenting views and legitimate exercise of fundamental freedoms, notably the freedoms of expression and of peaceful assembly. In addition, concern is expressed that the conviction forms part of an ongoing trend of harassment against individuals and organizations working to ensure greater respect for human rights in Zimbabwe. Serious concerns are also expressed that the activists have been subjected to torture and ill treatment.

Furthermore, following the sentencing of the six activists on 21 March 2012, seven students – Mr. Joram Chikwadze, Mr. Pride Mukono, Mr. Tinashe Chisaira, Mr. Tinashe Mtyaso, Ms. Cozet Chirinda, Mr. Francis Mufambi and Mr. Tryvine Musokeri – who had been demonstrating in support of the accused outside the court, were arrested. They have been charged with disorderly conduct in a public place and were released on bail on 23 March 2012. The case will reportedly resume on 17 April 2012.

Severe concerns are expressed that the arrest and charges against the students could be related to their dissenting views and legitimate exercise of fundamental freedoms, notably their right to freedom of peaceful assembly.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of the above-mentioned persons.

We wish to refer to article 21 of the ICCPR which provides that “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this 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.”

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely,... 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.”

In this connection, 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6, point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

- article 12, paras 2 and 3 of the Declaration which provide 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. 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.

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment." Paragraph 7b of this resolution further urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture".

We further recall article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women.

Furthermore, we would like to bring to your Excellency's Government's attention article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of states to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

While we believe that the aforementioned civil society activists should not be prosecuted in relation to the exercise of their legitimate rights to freedom of expression and freedom of peaceful assembly, we wish to underline that they are entitled to a fair trial before an independent and impartial court under article 14 of the ICCPR and principle 6 of the Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985).

Furthermore, we wish to stress that evidence against suspects which is believed, on reasonable grounds, to have been obtained through recourse to unlawful methods - which constitutes a grave violation of the suspect's human rights - shall not be used in court, and all necessary measures should be taken to ensure that those responsible for

using such methods are brought to justice in accordance with guideline 16 of the Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

Given our concern that the situation of the aforementioned activists may be directly related to the exercise of their right to freedom of opinion and expression, we would like to remind your Excellency's Government of its obligation to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." As it is indicated in the General Comment No.34 of the Human Rights Committee, this right includes "the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20 of the ICCPR, including political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expressions, and religious discourse".

We wish also to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with article 19, paragraph 3 of the ICCPR, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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 cooperation and your observations on the following matters:

1. Are the facts alleged in the summary accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case.

4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

5. Please provide the details on how the reported prosecutions against the forementioned activists are compatible with the international norms and standards of the right to freedom of opinion and expression and the right of peaceful assembly and of association.

6. Please provide information concerning the legal grounds for the arrest and the charges against the students in relation to the 21 March demonstration and how these are compatible with article 21 of the International Covenant on civil and political rights.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

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

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freedom of opinion and expression

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