



ZIMBABWE

**PERMANENT MISSION TO THE UNITED NATIONS
AND OTHER INTERNATIONAL ORGANISATIONS AT GENEVA**

Note No. 1612014

The Permanent Mission of the Republic of Zimbabwe to the United Nations Office and other International Organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to forward herewith the response of the Government of Zimbabwe to the communication from Special Procedures joint allegation letter ALG/SO215 (67-17) Assembly and Association (2010-1)GSO 214 (107/9) ZWE1/2014 concerning allegations of harassment of GALZ members by the Zimbabwe Republic Police.

The Permanent Mission of the Republic of Zimbabwe to the United Nations and other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

OHCHR REGISTRY

15 OCT 2014

Recipients: SPD

Geneva, 10 October 2014

The Office of the
High Commissioner for Human Rights
Geneva

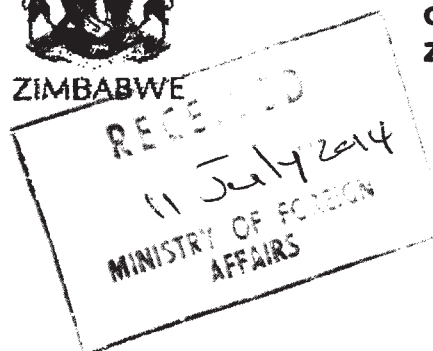


Telephone
774620-7/774589-94
774560

Fax: 772999



ZIMBABWE



Reference:
MINISTRY OF JUSTICE AND
LEGAL AFFAIRS
Private Bag 7751
Causeway
Zimbabwe

Ref : J/75/12

CX/E/279

ZGEN/INTEROG/2

8th July 2014

Mr. Marodza. M.I. and follow up

Jan. 14/07/2014

The Secretary for Foreign Affairs

Re : COMMUNICATION FROM SPECIAL PROCEDURES JOINT ALLEGATION LETTER AL G/SO 215
(67-17) ASSEMBLY AND ASSOCIATION (2010-1) G/SO 214(107/9) ZWE1/2014

The above matter refers.

We received correspondence from the Permanent Mission of Zimbabwe to the United Nations on the above matter, referenced ZGEN/INTEROG/2 and dated 14 February 2014. This was received on 22nd April 2014 but because the copy was not legible in some parts, we had to make a request for a legible copy of the Communication which was received via e-mail on 9 May 2014.

A request for comments or response on the allegations raised ,was made to the Police. We have now received those comments and respond to the Communication as follows:

ALLEGATIONS

The allegations raised basically concern the alleged arrest, detention and ill treatment of 44 members of the Gays and Lesbians of Zimbabwe Association(GALZ) . Police are alleged to have violently arrested the GALZ members using baton sticks, open hands and clenched fists , after which they were all released within a day. Further it is alleged that the Police carried out a search of the GALZ offices and confiscated documents and computers as well as charging its Co-director Ms Martha Tholanah, for managing an unregistered organization.

These reported events are considered by the Council to amount to acts of harassment against human rights associations and their members, which may prevent them from exercising their right to freedom of association. Our observations are now required on the following matters:

1. Are the facts alleged above accurate.
2. Has a complaint been lodged by or on behalf of the aforementioned associations and their members.
3. To provide information concerning the charges brought against Ms Martha Tholanah and how these measures are compatible with international norms and standards.

ACCURACY OF THE FACTS

According to the comments by the Police, these facts are not accurate and are actually a distortion of the circumstances. No member of the Gays and Lesbians of Zimbabwe Association was ever violently arrested with the use of baton sticks, open hands or clenched fists as alleged. The 44 members had unlawfully gathered without notifying the Police in contravention of Section 25(1) the Public Order and Security Act (Chapter 11:17), which provides as follows:

"25 Notice of processions, public demonstrations and public meetings

(1)The convener shall not later than-

(a) seven days before the date on which a procession or public demonstration is to be held, give notice of the procession or public demonstration in writing signed by him or her to the regulating authority for the district in which the procession or public demonstration is to be held.'

This is a mandatory provision which the GALZ members were obliged to comply with, but chose not to. The Police, being constitutionally mandated to maintain law and order and protecting lives and property , and on the basis of the above mentioned unlawful conduct on the part of GALZ members, arrested the said 44 people but never used any force or instrument as alleged. There was no reason for any force to be used.

The arrest was on reasonable suspicion that an offence had been committed and the arrest was aimed at verifying the identities of those people and assessing whether or not all of them could be charged. The 44 members were released the same day. After release, Police later discovered that all these people had given false identity particulars for which they could not be re-arrested after they had disappeared.

WHETHER OR NOT ANY COMPLAINT WAS LODGED .

The comments from the Police are that no complaint was ever lodged by or on behalf of the Association or any member thereof.

CHARGES BROUGHT AGAINST MS MARTHA THOLANAH AND HOW THESE MEASURES ARE COMPARTIBLE WITH INTERNATIONAL NORMS AND STANDARDS.

Martha Tholanah , being a Co-director to the organization was arrested for contravening Section 6 of the Private Voluntary Organisations Act (Chapter 17:05) for taking part in the management or control of an unregistered private voluntary organization. That Section provides as follows:

" 6 (1) No private voluntary organization shall-

(a) Commence or continue to carry on its activities ; or

(b)

unless it has been registered in respect of the particular object or objects in furtherance of which it is being conducted.

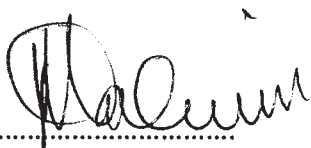
(3) No person shall in any manner take part in the management or control of the private voluntary organization, knowing that the organization is contravening subsection(1)"

These provisions are couched in peremptory terms thereby obliging any person to comply with the law. It is not in dispute that as a director, Ms Tholanah was taking part in the management of an organization she knew was not registered in terms of the law.

In terms of our Constitution, and in particular Section 219 (1) (d) and (e) thereof, police are responsible for maintaining law and order; and upholding the Constitution and enforcing the law without fear or favour. Similarly in terms of Section 2(2) of the Constitution, the obligations imposed by the Constitution are binding on every person and one of these obligations is the respect for the rule of law, being one of the principles and values upon which Zimbabwe is founded as provided for in Section 3(1) (b) of that Constitution.

By arresting Ms Martha Tholanah under these circumstances, in the enforcement of the law and in upholding the Constitution, we believe these measures are compatible with international norms and standards. Whilst human rights defenders enjoy the rights and freedoms provided for in the Constitution, they also have an obligation to respect the same Constitution and the laws of the Country.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'C. P. Manhiri', is written over a horizontal dotted line.

C. P Manhiri (Mr)

For : The Secretary for Justice, Legal and parliamentary Affairs