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Совет по правам человека
Сорок четвертая сессия
15 июня – 3 июля 2020 года
Пункт 3 повестки дня
Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Посещение Зимбабве

Доклад Специального докладчика по вопросу о правах на свободу мирных собраний и ассоциации* **

Резюме

Специальный докладчик по вопросу о правах на свободу мирных собраний и ассоциации Клеман Ниалетсосси Вуле официально посетил Зимбабве 17–27 сентября 2019 года для оценки положения в области прав на свободу мирных собраний и ассоциации в стране в соответствии с резолюциями 15/21 и 41/12 Совета по правам человека.

После двух вводных частей в разделах III и IV Специальный докладчик рассматривает ряд примеров передовой практики и проблем в области законодательства и практической деятельности, касающихся осуществления прав, предусмотренных его мандатом.

Наконец, в разделе V Специальный докладчик излагает свои выводы и рекомендации.

* Настоящий доклад был представлен после истечения установленного срока в связи с необходимостью включения в него самой последней информации.

** Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен.

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Annex

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his visit to Zimbabwe

I. Introduction

1. The Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, visited Zimbabwe from 17 to 27 September 2019 at the invitation of the Government. The purpose of the visit was to assess the exercise, promotion and protection of the rights under his mandate in a moment of transition following the adoption of the new Constitution in 2013 and the recent change of leadership.

2. The Special Rapporteur valued the invitation extended to him and the relevance of being the first special procedure mandate holder to visit the country. In his view, this is a gesture of the State's willingness to engage with the international community in a frank, constructive and open way in order to improve the human rights situation in the country. He therefore presents his findings in a spirit of shared commitment, supporting the efforts that Zimbabwe has undertaken on its path towards the change of a new regime.

3. The Special Rapporteur thanks the Government for its cooperation before, during and after the visit. He had constructive discussions with high-ranking government officials, and members of the parliament and of the judiciary. He also held meetings with representatives of independent institutions, international organizations and the diplomatic corps and with a wide range of civil society representatives.

4. The Special Rapporteur held meetings in Harare and outside the capital where he met with government and local authorities. He travelled to: Bulawayo, where he met with the Minister of the State of Bulawayo and with its Mayor; Hwange, where he met with a group of women advocating for the right to freedom of peaceful assembly; and Mutare, Arda Transau and Marange, where he met with the Minister of the Province of Manicaland, the Mayor of Mutare and with local chiefs.

5. The Special Rapporteur expresses his appreciation to the staff of the United Nations Resident Coordinator Office, the country team and to the Human Rights Adviser for their excellent and invaluable support during the preparation and conduct of the visit.

6. The Special Rapporteur believes that the effective enjoyment of the rights to freedom of peaceful assembly and of association is particularly important and timely in Zimbabwe, in light of the most recent political changes.

II. Political, economic and social background and legal framework

A. Background

7. Following its independence in 1980, Zimbabwe adopted policies in favour of the majority population, such as expanding education and health care, increasing minimum wages and improving working conditions. However, the failure to address underlying issues, such as economic, political and social stability, inequality, consolidation of peace and reconciliation, land reform and good governance, quickly laid the ground for conflict and increased instability.

8. In 1987, following a brutal military campaign in Matabeleland (Gukurahundi), a unity agreement between the ruling party, Zimbabwe African National Union – Patriotic Front, and the opposition, the Patriotic Front of the Zimbabwe African Patriotic Union, led to a strong dominant party system headed by Robert Mugabe, resulting in 37 years of exclusive rule until 2017 with little space left for the work of political opposition, civil society and trade unions.

9. In 2000, a criticized fast-track programme was adopted to address the issue of land redistribution, and parliamentary elections were called into question for being fraudulent, despite various political parties having run, and for the widespread use of violence. As a result, the Movement for Democratic Change consolidated itself as the main opposition party.

10. The presidential elections in 2002 further polarized society and the international community as they were not considered to be free and fair and added to the deterioration of the country's relations with the international donor community. This situation prompted the imposition of targeted sanctions by the European Union, the United States of America and several Commonwealth countries, which persisted at the time of the visit.

11. Over time, it became clearer that governance during the post-colonial years did not have a significant impact on structural changes in law, society or the economy. In fact, a new elite emerged operating in a way in which only a few in power were beneficiaries of the change. Through a series of constitutional amendments, the country was transformed from a parliamentary democracy into a presidential autocracy.

12. In 2008, through controversial parliamentary and presidential elections, the Zimbabwe African National Union – Patriotic Front once again consolidated its power. Elections were marred by unrest and tensions that resulted in a power-sharing agreement between the main political actors and gave rise temporarily to the Government of National Unity, which led efforts to draft a new Constitution (adopted in March 2013).

13. Under the new Constitution, elections were held and Robert Mugabe was re-elected, putting an end to the power-sharing agreement. In 2017, President Mugabe resigned from power after the Zimbabwe Defence Forces withdrew their support. Although not an easy succession, former Vice-President Emmerson Mnangagwa led the transition until he won the general elections in August 2018 under the "new dispensation" of the Zimbabwe African National Union – Patriotic Front.

14. Although a relatively sophisticated and diversified economy was inherited at the time of independence, a large fiscal deficit, low economic performance, high unemployment, price controls and a lack of foreign currency were the main factors that overtime – with the exception of a brief recovery period between 2009 and 2012 – contributed to economic deterioration and resulted in the current crisis. Zimbabwe was demoted from a middle-income country with a relatively low debt load to a low-income country with high debt levels.[1]

15. In recent years, the economy has weakened dramatically, experiencing inflation, food, water, fuel and cash shortages, power outages and increased levels of extreme poverty.[2] In addition to the poor management of public funds, natural resources and national infrastructure, environmental and climate pressures, such as El Niño droughts and Cyclone Idai, have added to the economic decline and generated a humanitarian crisis.[3]

16. The current administration has adopted the Transitional Stabilization Programme to address the fiscal consolidation and other currency and structural reforms to State-owned enterprises with the aim of improving the business climate to attract international private-sector investment and reducing corruption. With the Programme agreed with the International Monetary Fund, Zimbabwe has officially declared itself open for business.

17. The population of Zimbabwe is estimated to be 16 million. Between 2000 and 2014, approximately 3 million Zimbabweans left the country owing to the persistent economic, political and social pressures.[4] The majority of the population rely on small-scale agriculture and mining in the informal sector; their livelihoods are vulnerable to rushed and ideologically driven changes with clear differences between urban and rural areas.

[1] See *World Economic Situation and Prospects 2019* (United Nations publication, Sales No. E.19.II.C.1).

[2] See www.worldbank.org/en/country/zimbabwe/overview.

[3] See https://reliefweb.int/sites/reliefweb.int/files/resources/ROSEA_Zimbabwe_HumanitarianAppeal Revision_06082019.pdf.

[4] See https://blogs.worldbank.org/voices/zimbabwe-how-can-diaspora-contribute-development.

18. In 2018, the Human Development Index of Zimbabwe was 0.563, putting it in 150th place among United Nations-recognized territories.[5] Based on consistent time-series data and new goalposts,[6] the index increased 13.2 per cent, from 0.498 to 0.563, between 1990 and 2018, while the standard of living, measured by gross national income per capita, decreased by about 1.2 per cent.

B. Normative and institutional framework

19. Zimbabwe has ratified several international human rights treaties[7] and International Labour Organization (ILO) conventions.[8] It has not issued a standing invitation to the special procedure mandate holders; however, in 2018, it extended invitations to six mandate holders.[9]

20. Zimbabwe was reviewed under the universal periodic review in 2011 and 2016 and will be reviewed again in November 2021. During the previous review, concerns were raised with regard to the exercise of civil and political rights and the need to align legislation and policies with the new Constitution. More specifically, recommendations referred to, among other things, repealing the Public Order and Security Act and the Access to Information and Protection of Privacy Act, halting the ban on public demonstrations, creating an environment that fostered the exercise of the rights to freedom of expression, assembly and association, including respect for the independence of civil society organizations, and ensuring the operationalization of its key independent institutions (A/HRC/34/8).

21. Zimbabwe has a mixed legal system of English common law, Roman-Dutch civil law and customary law. The Constitution of Zimbabwe is the supreme law of the State and contains legal safeguards for the protection of human rights and fundamental freedoms.

22. The Constitution contains a declaration of rights, which refers to fundamental human rights and freedoms. It guarantees the freedom of assembly and of association and the right not to assemble or associate with others and the freedom to demonstrate and petition, indicating that every person has the right to demonstrate and to present petitions, but these rights must be exercised peacefully. It also prescribes the limitations to fundamental human rights and freedoms, including during a public emergency.

23. At the time of the visit, the right to peaceful assembly was governed by the Public Order and Security Act, which was repealed in November 2019 by the Maintenance of Peace and Order Act. The right to freedom of association is mainly regulated by the Private Voluntary Organizations Act and the Deeds Registries Act.

24. Two independent constitutional institutions with whom the Special Rapporteur met were the Zimbabwe Human Rights Commission and the National Peace and Reconciliation Commission. The Zimbabwe Human Rights Commission has a mandate to promote, protect and enforce human rights and fundamental freedoms and has taken an active role in monitoring the rights to freedom of peaceful assembly and of association despite its limited resources. The Zimbabwe Human Rights Commission has been accredited A status by the Global Alliance of National Human rights Institutions.

25. The Constitution stipulates the framework of the independent commissions supporting democracy and governs the activities of the Zimbabwe Human Rights Commission and the National Peace and Reconciliation Commission, among other independent institutions.

[5] See *Human Development Report 2019 – Beyond Income, Beyond Averages, Beyond Today: Inequalities in Human Development in the 21st Century* (United Nations publication, Sales No. E.20.III.B.1).

[6] See United Nations Development Programme, “Briefing note for countries on the 2019 Human Development Report, Zimbabwe” (2019). Available at http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/ZWE.pdf.

[7] See the Treaty Body database: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=195&Lang=EN.

[8] See the Information System on International Labour Standards: www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103183.

[9] A/HRC/40/38/Add.1, p. 17, footnote 5.

III. The exercise of the right to freedom of peaceful assembly

A. Legal framework

26. The legal framework regulating the exercise of the right to freedom of peaceful assembly has been characterized as restrictive and its implementation inherited from colonial times. The Law and Order (Maintenance) Act of 1960 was used as an instrument of repression to supress civil unrest as the liberation struggle intensified, leaving limited space for the exercise of this freedom. Although the Act was repealed in 2002 and replaced by the Public Order and Security Act, its provisions replicated many of the limitations imposed by the Law and Order (Maintenance) Act and its application was, more often than not, selective, abusive and misinterpreted, aiming to silence dissenting voices and heavily restricting the exercise of fundamental freedoms.

27. The right to freedom of peaceful assembly is a constitutional right regulated by the Maintenance of Peace and Order Act, which came into force in November 2019. Before concluding his visit, the Special Rapporteur raised his concerns[10] with different authorities regarding the restrictive provisions contained in the legislation and he regrets that it was adopted without taking due consideration of them.

28. Under the Maintenance of Peace and Order Act, peaceful assemblies are regulated by the following provisions, which the Special Rapporteur considers worrying as they do not align with international human rights standards:

(a) Section 7 requires conveners of public gatherings to give the local regulating authority advance notice of their gatherings. Failure to give notice will be a criminal offence rendering the defaulting convener liable to imprisonment. The information to be provided is particularly bureaucratic as it includes the anticipated number of participants in the gathering, the exact and complete route (for demonstrations), the number and names of marshals, etc.;

(b) Sections 5 to 8 require advance notice to be given of all gatherings, leaving no room for spontaneous assemblies regardless of the number of individuals exercising the right. If 2 or more persons demonstrate in a street or public space, or conduct a procession, or if more than 15 persons hold a meeting in a public space, they will need to notify the regulating authority. There are no exceptions to allow demonstrations to be held in immediate response to matters of public concern. Section 8 allows the regulating authority to impose conditions on the holding of the gathering and even to prohibit the gathering if its convener objects. Failure to comply with any conditions imposed by the regulating authority will render the convener liable to imprisonment or to a fine;

(c) Section 10 bans public gatherings close to Parliament, courts and places protected under the Protected Places and Areas Act;

(d) Section 12 states that, if conveners fail to give the regulating authority notice of their gatherings, or fail to comply with the directives, notices or orders given by a regulating authority, they will be civilly liable for any damage, injury or death “occasioned by any public disorder or breach of the peace caused by the gathering”;

(e) Section 13 allows police officers to disperse a gathering if the gathering is “unlawful by virtue of any prohibition notice or any direction or order under section 8” or if “any act is committed that constitutes a danger to persons and property”;

(f) Section 15 allows a police officer to establish a cordon around any area if considered reasonably necessary to contain public disorder or violence within the area or protect the area from public disorder or public violence. Individuals who leave the cordoned area are guilty of an offence and liable to a fine, imprisonment or both;

(g) Section 18 allows the Minister of Home Affairs and Cultural Heritage to request the President to authorize the Defence Forces to assist the police in suppressing any civil commotion or disturbance.

[10] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25041&LangID=E.

29. The Special Rapporteur notes that many of the restrictive provisions of the Public Order and Security Act are replicated in the Maintenance of Peace and Order Act with few exceptions, such as section 27 of the Public Order and Security Act, which was declared unconstitutional by the Constitutional Court of Zimbabwe.[11]

30. The Special Rapporteur finds that the newly established legal framework does not address long-underlying concerns and is not conducive to free and unhindered exercise of the right to freedom of peaceful assembly, negatively affecting the exercise of the rights to freedom of association and expression.

31. The Special Rapporteur firmly believes that the exercise of this right should not be subjected to prior authorization by the regulating authority, including when it amounts to a de facto authorization as stipulated by section 7. At most, a prior notification requirement is sufficient to facilitate peaceful assemblies and demonstrations and to take measures to protect public safety and order and the rights and freedoms of others. Such a notification should be subject to a proportionality assessment, not unduly bureaucratic and be required a maximum of, for example, 48 hours prior to the day the assembly is planned to take place. The Special Rapporteur is of the opinion that notification should be required only for large assemblies or for assemblies where a certain degree of disruption is anticipated.

32. The Special Rapporteur notes that the Maintenance of Peace and Order Act does not protect spontaneous assemblies. Such a lack of protection is not considered to be a best practice in legislation on the right to freedom of assembly. Spontaneous assemblies should be recognized in law and exempted from prior notification, and simultaneous assemblies should be allowed, protected and facilitated, whenever possible.

33. In relation to the location of the assemblies, the Special Rapporteur considers that section 10 is intrusive in imposing prohibitions on the location of gatherings. He believes that spaces in the vicinity of iconic buildings, such as presidential palaces, parliaments or memorials, should also be considered public spaces, and peaceful assemblies should be allowed to take place in those locations. Any imposition of restrictions on venue, time and manner should meet the test of necessity and proportionality.

34. While the Special Rapporteur acknowledges that organizers should make reasonable efforts to comply with the law and to encourage the peaceful conduct of an assembly, organizers should not be held responsible for the unlawful behaviour of others. To do so would violate the principle of individual liability, weaken trust and cooperation among assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights. The Special Rapporteur stresses that no person should be held criminally, civilly or administratively liable for the mere act of organizing or participating in a peaceful protest.

35. The Special Rapporteur opposes provisions related to containment or cordoning an area and underscores the utmost importance of genuine dialogue, including through negotiation, between law enforcement authorities and organizers in order to ensure the smooth conduct of a public assembly.

36. Finally, in relation to section 18, the Special Rapporteur is of the view that, as a general rule, the military should not be used to police assemblies and that, in the exceptional circumstances in which this becomes necessary, the military must be subordinate to civilian authorities. For this purpose the military must be fully trained, adopt and be bound by international human rights law and principles and any law enforcement policy, guidelines and ethics, and be provided with adequate training and equipment.

[11] See *Democratic Assembly for Restoration and Empowerment and 3 Others v. Saunyama N.O and 3 Others* (CCZ 9/18, Civil Appeal No. CCZ 5/18) [2018] ZWCC 9), 17 October 2018.

B. Good practices and challenges

1. The exercise of the right in practice

37. The Special Rapporteur has noticed that, in the management of assemblies, the general presumption that prevails is in favour of maintaining law and order rather than facilitating and guaranteeing the holding of assemblies and enabling the exercise of the right to freedom of peaceful assembly.

38. The Special Rapporteur was informed that peaceful assemblies that aligned with the views of the ruling party tended to be authorized more easily; however, during the meeting with the Minister of Home Affairs and Cultural Heritage, he was reassured that, on certain occasions, even Zimbabwe African National Union – Patriotic Front demonstrations were not allowed. Despite several requests for official information on the number of requests to assemble that had been granted and refused, the Special Rapporteur regrets that this information was not made available to him.

39. The Special Rapporteur learned about the difficulties that some civil society actors working on sensitive issues had encountered in trying to exercise that right and the extent to which they had relied on the judicial system in order to challenge decisions by the regulating authority in order to obtain favourable court orders to allow them to peacefully voice their views.

40. The Special Rapporteur is aware that exercising the right to freedom of peaceful assembly in the current polarized environment is not only challenging but entails serious risks, such as threats, harassment, physical abuse and torture, disproportionate and excessive use of force, illegal dispersals and arbitrary arrests, detentions and even disappearances.

41. An emblematic case, although not an isolated one, is the well-documented disappearance of human rights defender and journalist Itai Peace Kadizi Dzamara, who was abducted and allegedly tortured in 2015, presumably as a result of his activities as the spokesperson for the National Youth Action Alliance and for leading the movement Occupy Africa Unity Square.[12] The Special Rapporteur regrets the lack of response from the Government to the concerns transmitted through a joint urgent appeal and that no individual has been held accountable for his disappearance.

42. Equally concerning is the large number of allegations related to arrests, detentions and even abductions of trade union leaders that have taken place in connection with the exercise of the right to freedom of peaceful assembly despite trade union activities falling outside of the scope of the Public Order and Security Act. During his visit, the Special Rapporteur was particularly worried about the alleged abduction of Peter Magombeyi, acting President of the Zimbabwe Hospitals Doctors Association, who had led a series of strikes over working conditions and poor pay in the health sector. Although his situation was addressed by the Special Rapporteur with the Government before the visit concluded, the Special Rapporteur is concerned to see a number of similar situations. In fact, other trade union leaders with whom he met claimed that those members who were vocal in opposing the Government were living in an environment of constant retaliation and fear. The Special Rapporteur is worried that, in practice, law enforcement agents have used the Public Order and Security Act in a discretionary manner in respect of trade union public gatherings, marches and protests.

43. The Special Rapporteur wishes to emphasize that assemblies should not be feared and repressed but rather they should be encouraged for there is a value in expressing disagreement and differences peacefully and publicly, particularly in light of the current political and socioeconomic situation, as there is no better “release valve” for people than the right to assemble freely.

2. The events of August 2018 and January 2019

44. In the aftermath of the presidential election, on 1 August 2018, political opposition party supporters took to the streets of Harare and gathered outside the offices of the Electoral Commission to demand the immediate release of the results of the election. Although the

[12] ZWE 1/2015.

demonstrations started in a spontaneous and peaceful manner, given the delay in announcing the results, the situation turned riotous with property, such as cars and private businesses, destroyed. The police, and later the national army, deployed to control the chaotic situation used excessive force, which resulted in the deaths of six persons.

45. The Commission of Inquiry (Motlanthe Commission) appointed by President Mnangagwa to investigate those events concluded that six persons had been killed, several injured and extensive damage and destruction of property caused.[13]

46. Regarding the use of force, the Commission concluded that "the use of live ammunition directed at people especially when they were fleeing was clearly unjustified and disproportionate"[14] and it added that "[t]he use of sjamboks, baton sticks and rifle butts to assault members of the public indiscriminately was also disproportionate".[15]

47. In its final report, the Commission presented recommendations, such as measures aimed at: compensation for the losses and damage caused, including support and school fees for the children of the deceased; promotion of political tolerance, as well as responsible and accountable leadership and citizenry; adoption of electoral reforms aimed at enhancing transparent and expeditious election results; building the capacity of law enforcement authorities; holding the alleged perpetrators accountable; and nation-building and reconciliation, including an initiative for multi-party dialogue and cooperation.

48. The Government informed the Special Rapporteur that legislative and administrative measures were being undertaken to ensure that the Commission's recommendations were implemented and that, in March 2019, an inter-ministerial task force was established to lead political, electoral and legislative reforms.

49. While the Special Rapporteur welcomes the report of the Commission, he wishes to stress that its significance lays in the implementation of its recommendations, particularly in relation to the management of assemblies, holding perpetrators accountable and ensuring justice for the victims and their families.

50. In January 2019, following the Government's announcement of a 150 per cent increase in fuel prices, the Zimbabwe Congress of Trade Unions, the largest labour organization, together with other civil society organizations, called for a national stay-away from 14 to 16 January 2019 to protest against the harsh measures taken in an already difficult economic situation.

51. Although in some cities the call by the Congress was followed, demonstrations erupted in the country and the situation quickly deteriorated, becoming riotous, particularly in the high-density neighbourhoods of Harare and other main cities, where people gathered to enforce the stay-away by barricading roads using boulders, rocks and vehicles. Around the country, people burned tyres and went on a violent and chaotic rampage through the streets of some cities, where businesses, service stations and police posts were attacked and burned.

52. The Government deployed police and military units in cities and residential areas around the country. According to multiple accounts relayed to the Special Rapporteur, the security forces used excessive force, which included indiscriminate beatings, arrests, torture and other forms of ill-treatment.

53. The Zimbabwe Human Rights Commission issued a monitoring report[16] in the aftermath of the stay-away, in which it concluded that at least eight persons had been killed and many others had sustained multiple injuries as a result of the use of indiscriminate and excessive use of force, including the firing of live ammunition. The Special Rapporteur also received information to indicate that the disproportionate response by the security forces could have resulted in at least 17 killings, including 14 men and 3 women, with more than

[13] *Report of the Commission of Inquiry into the 1st of August 2018 Post-Election Violence*. Available at: www.postelectionviolencecommission.gov.zw/wp-content/uploads/2018/12/Final%20Report%20of%20the%20Commission%20of%20Inquiry%2018%20%20DEC%2018.pdf.

[14] Ibid., p. 47, para. 6.4 (b).

[15] Ibid., para. (c).

[16] See www.zhrc.org.zw/monitoring-report-in-the-aftermath-of-the-14-january-to-16-january-2019-stay-away-and-subsequent-disturbances.

300 people treated for serious injuries, including 70 for gunshot wounds. He was also informed that one police officer in Bulawayo had died as a result of the violence during these events.

54. The findings of the Zimbabwe Human Rights Commission revealed that armed and uniformed members of the Zimbabwe National Army and the Zimbabwe Republic Police had instigated systematic torture, targeting individuals near areas where barricades had been placed and near areas that had been torched or looted by protestors. The Zimbabwe Human Rights Commission also verified reports of massive door-to-door searches and unlawful entry into private homes, particularly from councillors and Members of Parliament representing the Movement for Democratic Change and the Zimbabwe Congress of Trade Unions, as well as leaders of targeted civil society organizations who were even abducted from or arrested at their homes.

55. The Special Rapporteur also received reports of mass and widespread arbitrary arrests, recording at least 843 detentions in the aftermath of the protests and a total of 1,055 persons being tried by the courts countrywide in charges related to the protests. A large number of those arrested were not involved in the protests, while others were targeted because of their political affiliation or for their dissenting views or activism, including trade union leaders. Also, he received reports that only 48 adults were granted bail, while 995 were denied bail or did not have access to a lawyer.

56. During the stay-away, the Special Rapporteur was dismayed to hear allegations of politically motivated sexual violence through the testimonies of some women who reported having been raped by presumed military and police elements. From the reports received, at least 17 cases have been documented in Harare. The survivors explained that, considering the trauma, the environment of fear and the lack of trust in the police system, they were reluctant to make formal complaints to the police. The Special Rapporteur raised these grave concerns with the authorities who indicated that they were aware of the reports but unable to take action in view of the lack of formal complaints. The Special Rapporteur believes that it is the responsibility of the State to create an environment that empowers victims to come out and speak without fear of societal judgment and reprisals, with the aim of ensuring proper investigation and accountability.

57. Restrictions on access to Internet services were also reported during the protests. On 15 January 2019, the Government instructed the main service providers to shut down the Internet, pursuant to the Interception of Communications Act, in an attempt to supress information-sharing among protesters and control the situation. Telephone communications were also affected with limited connectivity in major areas. Although Internet services were reinstated intermittently, social media platforms that are widely used by the population, such as Twitter, Facebook and WhatsApp, remained blocked for longer.

58. The Government’s directive to suppress Internet services was challenged in the High Court, which ruled that the order to suspend the Internet was illegal as the Minister of State for National Security did not have the authority to issue any such directive based on the Interception of Communications Act. The Court’s decision led to the unblocking of all Internet services by telecommunications companies on the same day. The Special Rapporteur commends the ruling and reiterates that network disruptions are in clear violation of international law and cannot be justified under any circumstances.

59. In the light of such events, the Special Rapporteur is deeply troubled to observe that, following these major events, which occurred between August 2018 and January 2019, there has been a considerable deterioration of civic space in the country, which has re-established an environment of persecution and fear.

60. Despite constitutional and legal provisions allowing for the deployment of the military to maintain public order or manage a public emergency, the Special Rapporteur is concerned that, in both events, military forces have been deployed without a clear mandate in law enforcement operations and in the management of assemblies, and that the Parliament was not informed in a timely manner of the details of such deployment.

61. The Special Rapporteur has not received any information on the prosecution or indictment of any alleged perpetrators of the human rights violations committed during and

in the aftermath of these particular protests, including any compensation for the loss of private property of individuals who closed their businesses as a result of the violence on the streets.

62. The Special Rapporteur is conscious that political polarization, poor governance and a fragile economy exacerbated discontentment with the Government and prompted demonstrations and strikes. He believes that the Government should look at the root causes of the different crises and strengthen the dialogue among the different political, social and economic actors throughout the country.

3. Restrictions targeting particular groups

63. The Special Rapporteur acknowledges restrictions against those representing dissenting voices, human rights defenders, trade union leaders, students, youth groups, women, and journalists and media workers.

64. For example, the Special Rapporteur is concerned about the application of section 22 (on subverting a constitutional government) of the Criminal Law (Codification and Reform) Act to prosecute human rights defenders, civil society and opposition leaders suspected of having played important roles in protests. This offence is similar to treason and could result in imprisonment for up to 20 years.

65. During the visit, it transpired that leaders calling for protests, supporting protests through public statements or social media and participating in protests had been charged with that crime. The Special Rapporteur was informed that, in 2019 alone, 22 individuals were facing this criminal charge.

66. Through a communication addressed to the Government,[17] concerns were raised with regard to the arrest and detention of six human rights defenders in May 2019, following their return from participating in a capacity-building workshop abroad on peaceful civil engagement. The activists were charged with seeking to subvert the constitutional order and charges were still pending at the time of the visit. The Special Rapporteur regrets not having received any reply to the communication.

67. Independent and vibrant media plays an important role in the democratic life of a society. During his visit, the Special Rapporteur learned that, during protests, journalists and media workers covering demonstrations faced serious threats and harassment. Some have been victims of assault and unlawfully arrested for covering the protests, and in some instances their equipment has been confiscated. It is important that, during demonstrations, the independence of the media and the safety of journalists and media workers is guaranteed and that any violations are duly investigated.

68. The Special Rapporteur is aware of structural limitations to freedom of expression and access to information, particularly through the application of the Access to Information and Protection of Privacy Act, which stipulates that all journalists and media companies should register, while providing for sanctions for unlicensed journalists, including on criminal charges carrying sentences for up to two years of imprisonment.

4. Protests in relation to the exploitation of natural resources

69. An environment that allows for the robust exercise of the rights to freedom of peaceful assembly and of association is essential for fair and transparent management of natural resources, which benefits local communities.

70. In Hwange, the Special Rapporteur met with the spouses of workers at the Hwange Colliery, who described the desperate situation that had resulted in them initiating a series of protests on behalf of their husbands due to unpaid salaries. Since the workers feared persecution and dismissal from work, their wives decided to bring attention to the situation by protesting peacefully and camping at the company's premises to demand their husbands' salaries. The women recounted the difficulties and hardships they had faced within their

[17] ZWE 4/2019.

homes as well as the pressure and threats from anonymous sources possibly linked to the company.

71. In this context, the Special Rapporteur believes that the role that non-State actors play in creating an environment of fear and silencing the voice of the most desperate is a matter of concern, which warrants attention by State authorities in order to prevent and respond to such acts in an effective manner.

72. From his meeting with the Minister of Mines and Mining Development and representatives of the Zimbabwe Consolidated Diamond Company, the Special Rapporteur became aware of improvements in legislation and its implementation that seek to enhance transparency, development of additional community-based projects, sustainable mining and better environmental standards. However, this information contrasted with the situation on the ground, particularly when the Special Rapporteur visited the Marange diamond fields and met with the traditional leaders from Zimunya and Marange, as well as with different community-based organizations located in the area.

73. The Marange mines have been exploited for the past 10 years. The Government declared sections of the community's land protected areas under the Protected Places and Areas Act. Under the Act, access to the area is restricted and freedoms, particularly the freedom of movement, is limited for its inhabitants and even more so for outsiders who wish to conduct activities or engage with communities in the area. The area is militarized with soldiers and armed police stationed at various checkpoints; residents are obliged to carry identification cards permanently. The history of human rights abuses resulting from the exploitation of the mines has been extensively documented by human rights organizations and the media over the past years.

74. Despite recent efforts, the Special Rapporteur is concerned about the perceived secrecy in the granting of licences, which is allegedly carried out without adequate consultation of the local communities and proper environmental impact assessments and under a veil of perceived corruption.

75. Moreover, the Special Rapporteur noticed that there is increasing frustration in relation to the governance of natural resources felt by rural communities who feel directly affected by activities that are not in compliance with national legislation and from which they derive little benefit after the exploitation of the resources.

76. The Special Rapporteur was informed of efforts led by community-based organizations and associations of environmentalists aimed at raising the visibility of the complexity of the situation through peaceful gatherings and demonstrations and petitions to Parliament and the Kimberley Process, with concrete proposals on diamond mining activities. He also learnt about the worrying allegations related to the co-opting by the Zimbabwe Consolidated Diamond Company of the members of trusts and associations, who have been dissuaded from their activism and asked to adopt favourable positions for the benefit of the company's image among the local communities.

77. The Special Rapporteur notes that the activities of environmental human rights defenders and community-based groups are increasing in the country. It is imperative to safeguard an enabling space in which these sensitive discussions can take place without fear of reprisals or unlawful restrictions on fundamental rights. He believes that such restrictions are counterproductive, divisive and undermine the confidence of communities in gaining access to information, participating in public discussions and in providing their free, prior and informed consent when the concessions for the exploitation of natural resource are put out to tender.

78. In order to reverse this situation, the Special Rapporteur believes that a first step is to carry out genuine consultations so that projects for the exploitation of natural resources align with the Guiding Principles on Business and Human Rights.

79. The Special Rapporteur strongly believes that protests related to the exploitation of natural resources should be seen as a call for the authorities to be more transparent and accountable and not as an attempt by communities to sabotage the economic growth of the country or to threaten its security.

80. Finally, the Special Rapporteur wishes to stress the need to compensate communities that have been relocated in order to exploit their land. In particular, he would like to refer to the Marange communities relocated in Arda Transau with whom he met and verified that many of their concerns, particularly in relation to the enjoyment of economic, social and cultural rights, have not been addressed by the Government.

5. The value of social movements

81. Inspired by their long legacy of activism, the Special Rapporteur acknowledges the emergence and value of spontaneous social movements, which have surged as an alternative means to expose long held grievances and the dissatisfaction of communities.

82. Recent examples include Occupy Africa Unity Square, ignited by the disappeared journalist Itai Dzamara, whose lone protest expanded into an influential movement; the National Vendors Union Zimbabwe, who supported workers from the informal sector in urban areas; Twitter-based #ThisFlag, rallying against poverty, injustice and corruption, which sought to break people's fear of speaking out and had an enormous impact on creating activism within the diaspora; #Tajamuka/Sesjikile, which strongly opposed the Mugabe regime and led protests against corruption; and election-focused movements, such as #SheVotes2018 and the Young Voters Platform, which mobilized citizens to register and vote during the 2018 elections.

83. Common characteristics shared by these movements are their call for non-violent and peaceful protests, the preponderance of youth groups and students in their composition, their reliance on the use of the Internet and social media platforms to organize and disseminate information and their connection with other diaspora groups.

84. The Special Rapporteur learned that these movements have not been spared from government harassment and repressive tactics, which, in some cases, have resulted in their leaders stepping down because of concerns related to their safety. Equally worrying are the reports of Internet shutdowns and surveillance and intimidation of leading figures that affect not only their ability to operate, but also impinge on the exercise of fundamental freedoms.

85. The Special Rapporteur emphasizes that the work of social movements is essential in bringing together a broad base of support from different sectors of society. It can have a huge transformative effect on contributing towards the expansion of civic space in the country as long as the social movements work in an independent and non-partisan manner.

IV. The exercise of the right to freedom of association

A. Legal framework

86. The right to freedom of association is a constitutional right and, although different forms of association are legally recognized, the main not-for-profit organizations are private voluntary organizations, trusts and unincorporated associations. The primary framework governing private voluntary organizations is the Private Voluntary Organizations Act, which retains many features of the Welfare Organizations Act from pre-independence times.

87. The registration body for private voluntary organizations is the Registrar and the Private Voluntary Organizations Board, which is composed of representatives of six ministries and three private voluntary organizations. Registration for private voluntary organizations who want to operate in the country is mandatory. The Act prohibits any individual from managing or collecting funds on behalf of an unregistered association and establishes a pecuniary sanction or imprisonment in case of violation.

88. The Special Rapporteur considers that the law provides for an onerous, lengthy and complex registration procedure that requires a significant amount of detailed information about an association and the submission of additional documents at the discretion of the Registrar. Applications are required to include proof of a public notice in national newspapers providing for objections to be made. If an association is denied registration due to their

political activities or under vague circumstances there is no system to challenge such a decision.

89. In the case of foreign organizations, the private voluntary organization must conclude a memorandum of understanding with the Government before starting the registration process under the Private Voluntary Organizations Act. These memorandums of understanding can be requested at the national or local level depending on the jurisdiction in which the organization intends to operate. General Notice 99 of 2007 requires an international organization to file its application with the Registrar of private voluntary organizations. Application documents must include a curriculum vitae and an Interpol or local police clearance certificate for the country representative, as well as the additional requirements established by the Private Voluntary Organizations Act.

90. In addition to the requirements under the Private Voluntary Organizations Act, as a matter of practice, domestic associations are also required, based on inconsistent criteria, to sign memorandums of understanding with local authorities in order to operate in the country. From his meetings with local authorities, the Special Rapporteur understood that the memorandums of understanding were useful for strengthening the coordination efforts of various development initiatives at provincial and district levels to ensure that the operations of private voluntary organizations were in fact complementary to ongoing government initiatives. The Special Rapporteur believes that signing a memorandum of understanding should not be used to undermine an organization's independence or create additional obstructions in their operations. Additionally, he is concerned about allegations in relation to onerous processes, including payment of additional fees, interference with an organization's activities and, in some instances, unilateral termination of memorandums of understanding.

91. The Private Voluntary Organizations Act does not foresee limitations in terms of the number of founders, nor a minimum amount of capital for the establishment of a private voluntary organization. However, there is an express prohibition on individuals who have been convicted of a criminal offence involving dishonesty under statutory or common law within the past five years from holding a position in an organization.

92. Section 21 of the Private Voluntary Organizations Act grants wide discretionary powers to the Minister of Public Service, Labour and Social Welfare and to the Private Voluntary Organizations Board to interfere in the internal governance of an organization, under different grounds, including perceived lack of compliance with its objectives or constitution, maladministration, illegal activities, or when "necessary or desirable" in the public interest. Another barrier relates to the authority of the Minister under section 20 to inspect "any aspect of the affairs or activities" of any association.

93. The law is silent in providing a time period for the review process and informing the organization of the full reasons for suspending its registration. Any affected individual may appeal against the decision of both the Board and the Minister based on the Administrative Justice Act.

94. Considering the excessive limitations, multiple challenges and harsh sanctions provided in the Private Voluntary Organizations Act, many non-governmental organizations have resorted to register as trusts under the Deeds Registries Act. Trusts can pursue unlimited objectives, the only limitation being the wishes of the trustees in the trust deed. Although the process to establish a trust is more costly, it is more expeditious and allows associations greater flexibility to work on different issues.

B. Good practices and challenges

1. Civil society actors

95. Despite a restrictive operating environment that poses severe constraints on the exercise of freedom of association, civil society actors remain active and find creative ways to carry on their activities. The Special Rapporteur particularly notes that disruptive actions by the Government take place typically during periods of increased political activity and when there is greater demand for humanitarian services.

96 In this regard, the Special Rapporteur is aware that interference may take the form of repeated requests for information or threats to suspend activities when the authorities believe that organizations are operating outside the terms of their registered mandates or they are following different operational guidelines.

97. The Special Rapporteur has noted patterns, which were confirmed during his visit, in relation to the targeting and harassment of certain organizations, which seem to be continuing under the new administration. For example, organizations with dissenting political views, those working on human rights[18] or on sensitive issues, such as advocacy on issues affecting lesbian, gay, bisexual and transgender persons, or promotion of women's rights, have had their offices raided by the police and, in certain cases, as a form of intimidation, received requests to show proof of registration or provide details of their board members and activities. In addition, the Special Rapporteur is aware of high levels of harassment, surveillance and threats against their leaders, resulting in considerable levels of pressure that, under certain circumstances, have forced them to flee the country.

98. In this regard, the Special Rapporteur learned of the suspension, by a local governor, of the Community Tolerance, Reconciliation and Development Trust, a youth-oriented organization, because it was established as a trust. The decision was nullified by the High Court on grounds of unlawfulness and confirmed that the organization was properly registered at the Deeds Registry. The Special Rapporteur notes that this is not an isolated case and that there is a high level of control and even persecution that certain organizations face that choose not to be registered under the Private Voluntary Organizations Act or align themselves with government views.

99. The Special Rapporteur also detected certain levels of intimidation and acts of harassment directed towards certain organizations working in rural areas whose activities were perceived to be aligned with the opposition party.

100. A relative easing of restrictions on doing community programming has been brought to the Special Rapporteur's attention by organizations working in the Provinces of Matabeleland North and Matabeleland South, who reported being able to hold community and other activities without disruption or arrests and to discuss sensitive issues with greater freedom. The Matabeleland Collective reported having discussed with the President key issues affecting their region and the Special Rapporteur believes that this is a positive step that should be closely monitored and replicated nationwide.

101. The Special Rapporteur believes that the current polarized environment affects the work and space of civil society. He acknowledges ongoing discussions by civil society actors on strengthening independent and autonomous advocacy work on policy that contributes to achieving stronger and more efficient outcomes.

2. The situation of trade unions

102. The Special Rapporteur is aware of the difficult environment in which labour unions operate. Their ability to safeguard workers' rights is restricted by a number of factors, which have significantly weakened their ability to exert influence on legal reforms and the formulation of public policies and put their leaders in dangerous positions as a result of State repression.

103. In terms of legislation, of particular concern to the Special Rapporteur are sections 102 and 104 of the Labour Act. Section 102 defines "essential services" and provides wide discretion to the Minister of Labour to declare what constitutes an essential service, whose workers are denied the right to strike. In turn, section 104 provides that workers seeking to go on strike should give 14-day written notice to the regulating authority. Failure to do so renders the strike illegal, and such workers will not enjoy the right to protest. For example, the Special Rapporteur learned that, in 2016, 1,357 workers of the National Railways of Zimbabwe had been dismissed after the Labour Court ruled that they had not complied with set procedures, ignoring the fact that the same workers were owed a significant amount of money in unpaid salaries.

[18] See ZWE 1/2014, ZWE 8/2012, ZWE 2/2012, ZWE 7/2011 and ZWE 3/2011.

104. Similarly, the Special Rapporteur considers equally worrying sections 107, 109 and 112 on collective job action, which provide for excessive penalties in case of unlawful collective industrial action.

105. The Special Rapporteur is concerned about the charges brought under the Criminal Law (Codification and Reform) Act and the Public Order and Security Act against workers' representatives who have been, under certain circumstances, arrested or even abducted for exercising their rights to freedom of peaceful assembly and of association. Equally worrying are the allegations related to State interference in the activities of trade unions and the acts of intimidation and harassment against their leaders, particularly in the context of the call for the national stay-away in January 2019.[19]

106. In addition, the protracted economic deterioration and depleted labour force have also affected the action of trade unions, with those in employment focusing on protecting their situation rather than joining trade unions. In addition, as has occurred with other civil society actors, the politically polarized context has resulted in workers associated with unions becoming entrenched in political parties, creating a distorted perception of their mandates and interests and giving some of them a pseudo-political role in an already complex political situation.

107. Despite these factors, the Special Rapporteur believes that the actions of Government need to be consistent with the Constitution and its international commitments, allowing for a more enabling space for trade unions to operate. In this regard, he considers that a positive step is the adoption of legislation in the context of the Tripartite Negotiating Forum, which he hopes will provide for a more robust platform for dialogue among the Government, workers and employers.

108. The Special Rapporteur wishes to acknowledge the work done by the ILO Conference Committee on the Application of Standards, the follow-up to the implementation of the Commission of Inquiry's recommendations and the most recent observations issued by the Committee of Experts on the Application of Conventions and Recommendations.

3. Participation of civil society in the process of achieving the Sustainable Development Goals

109. The Special Rapporteur acknowledges the establishment of an institutional framework to guide implementation of the Sustainable Development Goals and particularly the Steering Committee in charge of providing overall guidance and strategic leadership to the whole process, in which civil society has participated.

110. The Special Rapporteur notes the preparation and presentation of the voluntary national review on the Sustainable Development Goals in 2017,[20] which incorporated key stakeholders, including civil society representatives. The consultations contributed to encouraging an inclusive and participatory approach and promoting accountability and transparency. Of note is the work done by the National Association of Non-Governmental Organizations, which is a member of the Steering Committee, as well as by the civil society reference group on dialogue on the Sustainable Development Goals, as it provided diverse views on inputs and insights that were included in the final outcome.

111. The Special Rapporteur recognizes the importance of the engagement of civil society in this process and the work carried out by the National Association of Non-Governmental Organizations. These efforts are encouraged in the preparation of future progress on the Sustainable Development Goals and voluntary national reports, as well as in the preparation of the country's National Development Plan.

112. The Special Rapporteur believes that government support in facilitating an enabling space for civil society participation in policy dialogue and in the development of national

[19] See ZWE 1/2019.

[20] See *Zimbabwe Voluntary National Review (VNR) of SDGs for the High-Level Political Forum (July 2017)*. Available at https://sustainabledevelopment.un.org/content/documents/15866Zimbabwe.pdf.

policies contributes to building a better legal, political, economic and social environment that addresses the most basic needs of the poorest and most marginalized groups.

V. Conclusions and recommendations

A. Conclusions

113. **Grounded in its Constitution, the Government is implementing reforms with a renewed intention to deliver on its commitments.**

114. **In this process and considering the constraints of the current economic, political and social environment, it is essential that the exercise of the rights to freedom of peaceful assembly and of association is guaranteed as it will contribute to openness and create a space for meaningful pluralistic dialogue, transparency, accountability and shared development.**

115. **The Special Rapporteur believes that the existing political polarization profoundly affects the opportunity for progress. In this regard, he urges that trust be built on adherence to the rule of law and respect for the Constitution; strengthening of the judiciary and independent constitutional institutions; the fight against corruption and impunity; and support for the work of civil society.**

116. **As Zimbabwe has taken steps to show that it is open for business, the Special Rapporteur believes that economic reforms need to go hand in hand with the ability of individuals to exercise their fundamental freedoms and that legislation and policies need to be compliant with international human rights norms and standards. He stresses that a society without space for critical voices to speak freely and peacefully is unsustainable.**

117. **The Special Rapporteur believes in the resilience and adaptability of Zimbabweans and encourages the Government to capitalize on these values and facilitate unfettered exercise of fundamental freedoms.**

118. **The Government raised with the Special Rapporteur the issue of the detrimental effects of unilateral restrictive measures imposed on Zimbabwe and their impact on the economy and the enjoyment of social, economic and cultural rights.**

119. **In recent developments, the Council of the European Union has decided**[21] **to extend support for economic development, primary health care, resilience-building and humanitarian assistance, while maintaining an arms embargo and targeted asset freeze against a Zimbabwean defence company.**

120. **While being mindful of the impact of these restrictive measures, the Special Rapporteur believes that, irrespective of such measures, the Government has a duty to fulfil its human rights obligations. He therefore calls on the Government to take action to end corruption, improve the human rights situation, and ensure accountability and the rule of law in order to encourage the lifting of the remaining unilateral measures imposed on the country, which have a negative impact on its economy.**

121. **The Special Rapporteur is confident that the Government will see the following recommendations as an opportunity to contribute to consolidating the transitional process towards the realization of the rights to freedom of peaceful assembly and of association.**

122. **In this regard, the Special Rapporteur stands ready to provide technical cooperation as needed.**

[21] See www.consilium.europa.eu/en/press/press-releases/2020/02/17/zimbabwe-council-adopts-conclusions-and-renews-its-arms-embargo-and-targeted-assets-freeze-against-one-company.

B. Recommendations

123. **The Special Rapporteur would like to offer the following general recommendations to the Government of Zimbabwe:**

(a) **Ensure in law and in practice that the rights to freedom of peaceful assembly and of association are freely exercised with the aim of their playing a decisive role in the transition towards and maintenance of an effective democratic system and as a channel for dialogue, pluralism, inclusiveness, tolerance and broad-mindedness;**

(b) **Repeal legislation that is inconsistent with the Constitution, particularly any affecting the exercise of fundamental freedoms, and undertake a comprehensive reform of legislation related to the security sector, governance, electoral system and the fight against corruption;**

(c) **Enact legislation as required by the Constitution, particularly in relation to the establishment of an independent oversight body, in line with section 210 of the Constitution;**

(d) **Ensure a conducive and safe environment for everyone exercising or seeking to exercise his or her rights to freedom of peaceful assembly and of association and that there is no discrimination in the application of the laws governing the rights to freedom of peaceful assembly and of association, in particular regarding the groups most at risk and those expressing dissenting voices;**

(e) **Provide individuals exercising their rights to freedom of peaceful assembly and of association with the protections offered by the right to freedom of expression;**

(f) **Ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor subjected to threats, harassment, persecution, intimidation and reprisals;**

(g) **Withdraw all criminal charges and release all those arrested because of their exercising the rights to freedom of peaceful assembly and of association, in particular those arrested in connection with the August 2018 and January 2019 protests;**

(h) **Ensure that any restrictions on the rights to freedom of peaceful assembly and of association are prescribed by law, necessary in a democratic society and proportionate to the aim pursued, do not harm the principles of pluralism, tolerance and broad-mindedness and are subject to an independent, impartial and prompt judicial review;**

(i) **Ensure that victims of violations and abuses of the rights to freedom of peaceful assembly and of association have the right to an effective judicial remedy and obtain redress;**

(j) **Support the work, independence and operation of all independent constitutional institutions and implement the observations and recommendations made by the Zimbabwe Human Rights Commission in relation to respect for human rights and particularly the rights to freedom of peaceful assembly and of association;**

(k) **Ensure that a wide range of civil society actors with diverse views are systematically consulted before the adoption of any legislative initiative or policy;**

(l) **Ensure that section 210 of the Constitution is operationalized through a consultative process in order to ensure the accountability of law enforcement officials who violate the right to freedom of peaceful assembly and of association through an independent oversight body, in line with the Constitution, court decisions and the law;**

(m) **Provide a response to all communications sent by the mandate holder;**

(n) **Set up a national independent committee with adequate institutional, political and financial resources to implement regional and international recommendations made by, inter alia, the relevant government institutions, the Zimbabwe Human Rights Commission and other independent constitutional institutions, representatives of civil**

society, United Nations entities and the donor community. Such a committee will help the Government to benefit from the expertise of regional and international mechanisms.

124. **With regard to the right to freedom of peaceful assembly, the Special Rapporteur recommends that the Government:**

(a) **Amend the Maintenance of Peace and Order Act in full consultation with civil society and other relevant stakeholders. In particular to:**

(i) **Adopt a clear presumption in favour of holding peaceful assemblies and demonstrations;**

(ii) **Endorse a prior notification regime for all peaceful assemblies and demonstrations with a view to protect and facilitate peaceful assemblies and demonstrations;**

(iii) **Recognize and provide for the facilitation of spontaneous peaceful assemblies and demonstrations in law, which should be exempt from notification;**

(iv) **Ensure that restrictions imposed on peaceful assemblies and demonstrations can be appealed against before an impartial and independent court;**

(v) **Revise the sanctions so as not to dissuade the holding of future peaceful assemblies and demonstrations;**

(vi) **Uphold the principle of individual liability, rather than vicarious liability, of participants;**

(vii) **Ensure that the definition of the use of force by law enforcement officials complies with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;**

(b) **Ensure that civil society and other relevant stakeholders are consulted in the development of any regulation regarding the implementation of the Maintenance of Peace and Order Act;**

(c) **Implement the recommendations issued by the Motlanthe Commission;**

(d) **Develop and revise law enforcement protocols with a view to ensuring their compatibility with international human rights norms and standards on the proper management of assemblies (A/HRC/31/66);**

(e) **Ensure that all law enforcement officers receive systematic training on the proper management of assemblies and use of force, especially in the context of demonstrations, and the employment of non-violent means for crowd control;**

(f) **Ensure that all allegations of excessive use of force against protesters by the security forces are promptly, thoroughly and independently investigated, that the alleged perpetrators are prosecuted and sanctioned and that adequate remedy is provided to the victims;**

(g) **Ensure that those monitoring assemblies, including journalists, media workers and human rights defenders, are allowed to do so and are protected at all times during assemblies and that violations are duly investigated;**

(h) **Take the necessary measures to address online hate speech;**

(i) **Refrain from introducing restrictions on access to and the use of the Internet, including shutdowns.**

125. **With regard to the right to freedom of association, the Special Rapporteur recommends that the Government:**

(a) **Amend the Private Voluntary Organizations Act in full consultation with civil society and other relevant stakeholders and avoid enacting regressive legislation in the future. In particular to:**

(i) **Adopt a regime of declaration or notification whereby an organization is considered a legal entity as soon as it has notified its existence to the regulating authorities;**

(ii) **Ensure that the registration procedure for national and international organizations is more simple and expeditious;**

(iii) **Abolish the practice of using memorandums of understanding that render the operation of associations burdensome and limit their autonomy and independence;**

(iv) **Avoid interference in the activities of organizations through the use of inspectors;**

(v) **Alleviate reporting requirements;**

(vi) **Facilitate the ability of organizations to access funding and resources without interference;**

(vii) **Avoid the use of excessive sanctions, particularly incarceration, for omissions in law;**

(b) **Ensure that all administrative authorities at the national and local levels that are responsible for implementing the right to association receive training on international human rights standards in order to create a favourable and enabling environment for civil society;**

(c) **Engage in meaningful consultation with civil society on all relevant legislation, including at the policy, drafting, review and implementation stages, particularly when such initiatives could affect the rights or obligations of associations, including trade unions;**

(d) **Avoid interfering with the functioning of organizations and ensure that they are able to hold private meetings without the need to inform the police or any other authority about the holding of such meetings and without the presence of any government authority;**

(e) **Increase efforts to ensure that a meaningful proportion of public funds is allocated, in an accessible, transparent and inclusive way, to a wide range of civil society organizations representing diverse views of society;**

(f) **Continue enlarging the civic space for a wide range of civil society actors by combating hate speech and incitement to hatred, and condemn the use of discriminatory or threating statements in public discourse, including those by public figures;**

(g) **Ensure that the security and safety of civil society actors, including human rights defenders, when reasonably required, is provided without unduly restricting their right to freedom of association;**

(h) **Increase efforts to promote the rights to form and join strong trade unions that could assist workers in claiming rights and better working conditions, and ensure the full implementation of the recommendations laid out in the reports of the ILO Committee of Experts on the Application of Conventions and Recommendations, the Conference Committee on the Application of Standards and the Motlanthe Commission.**

126. **The Special Rapporteur recommends that the representatives of the international presence in Zimbabwe and donors continue to support the work of the Government and civil society organizations in creating an enabling civic space.**

127. **The Special Rapporteur encourages the Zimbabwe Human Rights Commission to continue its important and remarkable work in the promotion and protection of the rights to freedom of peaceful assembly and of association.**

128. **The Special Rapporteur calls on civil society organizations to engage actively in monitoring the rights to freedom of peaceful assembly and of association;**

129. **The Special Rapporteur also calls on the United Nations, other intergovernmental organizations and other stakeholders to:**

(a) **Advocate with the relevant authorities on respect for and the protection and fulfilment of the rights to freedom of peaceful assembly and of association;**

(b) **Contribute to strengthening the capacities of the relevant authorities, the independent constitutional institutions and civil society organizations;**

(c) **Monitor the implementation of the recommendations contained in the present report.**

130. **The Special Rapporteur recommends that the resources available for the future work of Office of the High Commissioner for Human Rights in Zimbabwe be increased to support the establishment of a country office to support the Government's efforts to promote and protect human rights during this critical transition.**