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including the right to development**

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

Comments by the State*

* The present document is being issued without formal editing.

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ABBREVIATIONS

ACHPR	African Charter on Human and Peoples Rights
CBO	Community Based Organisation
CSOT	Community Share Ownership Trust
CSO	Civic Society Organisation
EU	European Union
GoZ	Government of Zimbabwe
HRC	Human Rights Council
MOU	Memorandum of Understanding
MPOA	Maintenance of Peace and Order Act
NGO	Non-Governmental Organisation
NPO	Non-Profit Organisation
POLAD	Political Actors Dialogue
POSA	Public Order and Security Act
PPAA	Protected Places and Areas Act
PVO	Private Voluntary Organisation
SADC	Southern African Development Community
SR	Special Rapporteur
UN	United Nations
UPR	Universal Periodic Review
ZACC	Zimbabwe Anti-Corruption Commission
ZCDC	Zimbabwe Consolidated Diamond Company
ZHRC	Zimbabwe Human Rights Commission
ZIDERA	Zimbabwe Democracy and Economic Recovery Act
ZRP	Zimbabwe Republic Police

I. Introduction

A. Introduction

1. The Government of Zimbabwe expresses its gratitude to the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Mr. Clement Nyaletsossi Voule, for accepting the Government of Zimbabwe's invitation to visit the country to assess the situation of the rights to freedom of peaceful assembly and of association in the country.
2. This invitation demonstrates Zimbabwe's commitment to the promotion and protection of its citizens' rights and is also a clear expression of the Government's willingness to constructively engage with international human rights mechanisms in fulfilment of its international obligations.
3. The Government of Zimbabwe hereunder outlines its position in response to the report by the Special Rapporteur, which covers: Political, economic and social background; the legal, normative and institutional frameworks; good practices and challenges; exercise of the rights to freedom of peaceful assembly and of association; Conclusions and Recommendations, among others.

B. General overview

4. Generally speaking, the Special Rapporteur's report falls short of the standards set out in the Code of Conduct for Human Rights Council Special Procedures Mandate Holders which, *inter alia*, enjoin mandate holders to always conduct their work in an impartial, transparent and independent manner. This is so because his report is heavily punctuated by subjective language and biases against the Government, as well as being over prescriptive in some instances. Such an approach by the Special Rapporteur therefore leaves the report unbalanced and biased.
5. The report restricts the rights to freedom of peaceful assembly and of association to the political arena and makes no effort to interrogate the exercise of the rights in respect of influencing discussions and policy making in other aspects of Zimbabwean life such as social justice, religious freedoms, health, community and sustainable development, women and children's rights, among others. It is therefore misleading to claim that the Government of Zimbabwe is not consistent in guaranteeing and promoting an enabling environment for the enjoyment of the freedoms to associate and assemble.
6. The target population and key informants used by the Special Rapporteur are way below a reasonable standard to inform findings of a human rights mission of this magnitude which should, in the minimum, embody a national outlook. The Special Rapporteur interacted with only two of the Ministers of State for Provincial Affairs and Devolution and incidental provincial government structures. He also used only two provincial non-state actor experiences to assess how government implements the rights to freedom of assembly and association. This is notwithstanding the fact that Zimbabwe is divided into 10 provinces with similar sub-structures in the form of districts, wards, villages down to the family unit. It is regrettable that the Special Rapporteur objected to a specific request for an audience by community groups representing the residents of Chimanimani and Chipinge, two districts that were ravaged by Tropical Cyclone Idai in March 2019.
7. Thus, the Special Rapporteur's sample evidently fails to embody national realities of the status of implementing the rights to freedom of peaceful assembly and of association in Zimbabwe.
8. Furthermore, the Special Rapporteur relied on unnamed non-state actor groups such as civil society organisations, community based organisations and labour unions. In this regard, he ended up in many instances pointing to what he baldly referred to as "*some sources*", leading to several general and sweeping statements.

9. In view of the above, the report by the Special Rapporteur is not reflective and representative of the state of affairs in Zimbabwe regarding the implementation of the two rights.

II. Political, economic and social background and legal framework

A. Background

10. Zimbabwe does not subscribe to some contents of the report by the Special Rapporteur as outlined hereunder.

11. The Special Rapporteur describes the land reform programme in Zimbabwe as "highly criticized". This assertion ignores the fact that the Zimbabwean land reform programme is a progressive policy designed to redistribute the primary means of production in developing countries, whose people have suffered from the policies of disempowerment by the former colonial masters.

12. For the record, Zimbabwe inherited a skewed land tenure system from the colonial era whereby a minority 4 500 white farmers owned a total of 12.5 million hectares arable land, while 7.4 million indigenous people owned only 2.5 million hectares of the total 15 million hectares of arable land in the country. An agreement was reached during the 1979 Lancaster House Independence Conference for a willing seller willing buyer land redistribution programme following financial pledges made by the then Conservative Government in Britain and the United States Government to support the exercise.

13. However, in 1997, the new British Labour Government unilaterally abrogated all the provisions that had been agreed to at Lancaster House and cut all funding previously directed at land reform. On the ground, not much progress had been made towards redistributing land as many of the white farmers were unwilling to sell land to the Government.

14. In order to remedy this situation, the Government embarked on a fast track land reform programme in 2000 to ensure that the indigenous people of Zimbabwe would finally have access to land. To date, over 360 000 families have since been resettled.

15. For the record, after the land reform programme, tobacco production has improved over the years, increasing from 228 million kilogrammes in 2000 to 258 million kilogrammes during the 2018/2019 farming season. Given proper funding, technical assistance and access to modern farming implements, indigenous farmers can achieve greater levels of productivity and significantly contribute more to the national economy. Thus, the Special Rapporteur's attempt to dismiss the land reform programme as one of the major causes of problems in Zimbabwe today is misplaced.

16. However, the fast track land reform programme also regrettably led to international isolation and the imposition of sanctions on Zimbabwe by some Western countries. These sanctions are illegal and unjustified because they violate Article 41 of the United Nations Charter, which states that sanctions can only be decided on by the UN Security Council. The USA's so-called Zimbabwe Democracy and Economic Recovery Act (ZIDERA) directs US Directors in the international financial institutions to block the granting of development finance to Zimbabwe.

17. As a result, Zimbabwean companies have been denied access to international credit lines and the country has not received enough foreign direct investment. This has negatively affected economic performance and worsened the living conditions of the people. The Government of Zimbabwe maintains that these measures are punitive, unjustified and outdated as they actually hinder the broad reform agenda that the Government has set for itself and, once again, calls for their unconditional removal.

18. It is evident that the Special Rapporteur was selective in his chronology and application of Zimbabwean history to buttress a skewed position that portrays the picture of a dearth of democracy and a deliberate or systematic restriction of freedoms. However, the

reality is that dissenting voices have played a meaningful contribution in the country's trajectory in many ways, including during the landmark Constitutional Commission Referendum of 2000, in which the pro-opposition parties' 'NO' Vote triumphed over the 'Yes' Vote favoured by the ruling party. This demonstrates that the playing field has always been level and the democratic space has always been open to allow citizens to exercise their rights to freedom of assembly and association.

19. An assertion by the Special Rapporteur that '...through constitutional amendments, the country was transformed from a parliamentary democracy to a presidential autocracy, where little attention to the rule of law was paid', is not factual and unwarrantedly damaging. Where such an assertion is made in a mission report of this magnitude, one would ordinarily expect an evidence based demonstration to follow by giving concrete examples.

20. In fact, the nineteen amendments to the Constitution of Zimbabwe prior to the current 2013 Constitution were all executed in terms of the laid down procedures of amending the Constitution, which usually require a higher threshold of Parliamentary approvals. Land mark amendments were witnessed during the period in question, including the expansion of representative democracy by reintroducing the upper house of Parliament in 2005¹, entrenching the non-reversibility of land reform² and establishment of human rights institutions such as the Zimbabwe Human Rights Commission (ZHRC) and the Zimbabwe Anti-Corruption Commission (ZACC)³.

B. Normative and institutional framework

21. The Special Rapporteur misrepresented facts when he highlighted that Zimbabwe is only compliant with the Universal Periodic Review (UPR) mechanisms. The Government of Zimbabwe is actively fulfilling its reporting obligations in respect of some of the core international and regional human rights treaties, as shown in **Table 1** below:

Table 1: Core International Human Rights Treaties to which Zimbabwe is party

Treaty	Status	Reservations/ Derogations
International Covenant on Economic, Social and Cultural Rights	Ratified 13 May 1991	None
International Covenant on Civil and Political Rights	Ratified 13 May 1991	None
International Convention on the Elimination of All Forms of Racial Discrimination	Ratified 10 April 1997	None
Convention on the Elimination of All Forms of Discrimination against Women	Ratified 13 May 1991	None
Convention on the Rights of the Child (CRC)	Ratified 8 March 1990	None

¹ Constitution of Zimbabwe Amendment No. 17 of 2005.

² Ibid.

³ Constitution of Zimbabwe Amendment No. 19 of 2009.

Optional Protocol to the CRC on the involvement of children in armed conflict	Ratified 22 May 2013	None
Optional Protocol to the CRC on the sale of children, child prostitution and child pornography	Ratified 14 February 2012	None
Convention on the Rights of Persons with Disabilities	Ratified Sept 2013	None

22. It is important to observe that even the Special Rapporteur on the Right to Food, Professor Hilal Elver, on her visit to Zimbabwe between 18 and 28 November 2019, acknowledged the safeguard of fundamental human rights and freedoms, as well as the robustness of remedies in their protection and promotion through a meticulous set of human rights based laws and the Constitution.

23. The Special Rapporteur also failed to acknowledge Zimbabwe's commitment to the regional human rights mechanisms. For instance, Zimbabwe was recently reviewed by the African Commission on Human and Peoples' Rights (ACHPR) in November 2019, and to this end, the Government of Zimbabwe is up to date with its obligations under the ACHPR.

24. Zimbabwe has also responded timeously to the communications from the various regional and international human rights mechanisms. Examples of communications responded to by the Government of Zimbabwe whose subject matters related to issues raised by the Special Rapporteur were received between April and May 2019 and they are as follows:

(a) Communications by the HRC Special Procedure Mandate Holders Regarding Allegations of Violent Repression and Excessive Use of Force in the 14-16 January 2019 demonstrations;

(b) Letter of appeal from the ACHPR Country Rapporteur on the human rights situation in the Republic of Zimbabwe regarding the allegations of violent suppression of protests, extra-judicial killings and the shutting down of the internet on 15-17 January 2019;

(c) ACHPR Special Rapporteur on Freedom of Expression and Access to Information in Africa regarding the Situation of Freedom of Expression and Access to Information in the Republic of Zimbabwe; and

(d) Letters of Appeal from the Special Rapporteur on Human Rights Defenders and Focal Point on reprisals in Africa with regards to allegations of Arbitrary Detention of Human Rights Defender Mr. Rashid Mahiya; arbitrary arrest and judicial harassment against Mr. Okay Machisa and Mr. Evan Mawarire.

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

A. Legal framework

25. The Special Rapporteur raised concerns pertaining to what he refers to as "... the restrictive provisions contained in the legislation ... (and) ... regrets that it was adopted without taking due consideration of them" in respect of the Maintenance of Peace and Order Act (MPOA). However, when the Special Rapporteur met the Honourable Minister of Justice, Legal and Parliamentary Affairs during the period of his mission visit, it was explained to him that the enactment of the MPOA was a bipartisan process in both Houses of Parliament, namely, the National Assembly and the Senate.

26. The Special Rapporteur reports that Section 7, 8 and 12 of the MPOA are restrictive and should be amended. However, the Government of Zimbabwe states that amending the same has the effect of rendering the Act insignificant as a legal instrument to govern management of assemblies. Provisions of the MPOA were informed by, amongst other issues, the recommendations of the Commission of Inquiry into the 1 August 2018 Violence, which include the need for the enforcement of law and order to prevent a recurrence of the events of 1 August 2018 and the need to ensure accountability in respect of the alleged perpetrators of the violence and where such violence erupts during civil commotion.

27. Contrary to the Special Rapporteur's view, the MPOA is not restrictive, but promotes the right to assembly as follows:

Section 7 on notices: It has to be noted that the notice procedure to hold a procession, demonstration or meeting is not cumbersome as alluded. Conveners of these gatherings give notice to a regulating authority. The Interpretation Section of the MPOA gives the meaning of the Regulating Authority as a police officer in charge of a police district. The Act makes a provision that the notice can be served at any police station, which makes it easy for the conveners not to travel long distances.

Section 8 (Consultations, Negotiation, Amendment of Notices and Conditions with Respect to Gatherings to avoid Public Disorder). Under sub-Section (1), the regulating authority has to notify the convener of a public demonstration within 72 hours of receiving the notice on the proposed demonstration. If the police officer has no objections that this will not cause any disruption or disorder, then he or she will notify the convener. This is a positive development because previously under Section 26 of the predecessor law, the Public Order and Security Act (POSA), no time-limit was specified. So, conveners could be kept in the dark until the last minute before being told about the position of the police. Thus, the police are now limited to 72 hours to respond to the notice, which is reasonable.

28. Further, under sub-section (3), the Act lays out that if the police receives credible information that the proposed demonstration will result in serious disruption to vehicular or pedestrian traffic or injury to participants, the regulatory authority will invite the conveners to a consultative meeting for necessary amendments, if any, which is also progressive as it allows the police and those intending to demonstrate to engage each other.

29. Section 12 (Civil Liability in Certain Circumstance of Convener of a Gathering). Under this Section, if a demonstration is held without following the laid-out procedures in the Act, the convener will be held liable for any damages or injuries caused. The aggrieved persons can seek compensation or other forms of redress through the courts of law. The reason for making the conveners liable for any damages or injuries sustained is legally logical. The Act makes the convener liable for damages in circumstances where the dictates of the law in convening the gathering are not followed. This type of sanction is fair, reasonable and justifiable as it would render the law useless if there is no liability placed upon those who disregard it.

30. It is worth noting that the Act is *intra vires* the Constitution and does not hinder the enjoyment of the fundamental rights of peaceful assembly and association.

B. Good practices and challenges

1. The exercise of right in practice

31. The Special Rapporteur's observation that when managing assemblies the general presumption that prevails is in favour of maintaining the law and order rather than the one of facilitating and guaranteeing the holding of assemblies and enable the exercise of the right to freedom of peaceful assembly does not reflect the true character and status of Zimbabwe's commitment to implement its obligations relating to the right to freedom of assembly and other rights contained in its Bill of Rights.

32. As highlighted earlier in paragraph 21, Zimbabwe has signed core international human rights treaties to which it accounts itself to the relevant Treaty Bodies when the reports are due. The Government of Zimbabwe has subjected itself to other international human rights mechanisms. Further, Zimbabwe adopted a progressive Constitution with a comprehensive Bill of Rights, including the rights under review. Accordingly, the Special Rapporteur's observation that Zimbabwe does not care about facilitating and guaranteeing the holding of assemblies is not factual.

33. The Special Rapporteur wrongly alleges the disproportionate use of force by the police leading to deaths as informed by his unnamed sources. It is worth noting that in Zimbabwe, the Police is cognizant of the fact that their primary mandate as provided under section 219 (1) of the Constitution is, *inter alia*, the protection and security of the lives and property of the people as well as the maintenance of law and order.

34. It should be emphasised that the Police used proportionate force in all circumstances during the 1 August 2018 disturbances. Due regard was given to the standards of proportionality, legality, accountability and necessity whenever force was to be used. Furthermore, the law empowers, in situations of 'resisting arrest', the Police to use force which is reasonably justifiable and proportionate in the circumstances to overcome such resistance.⁴

35. Concerns by the Special Rapporteur on the disappearance of Itai Dzamara since 2015 and the alleged disappearance of Dr. Peter Magombeyi in September 2019, are shared by the Government of Zimbabwe. The manner in which the relevant government authorities conducted themselves in constitutionally executing their mandates to ensure the return of the two is on record. In the case of Itai Dzamara, there is a standing judicial decree that the authorities, including the Zimbabwe Republic Police, should report to the High Court of Zimbabwe fortnightly on the measures undertaken to find him. Such measures are a matter of public record as they have been reported at several fora of human rights monitoring mechanisms, including the Human Rights Council Universal periodic Review mechanism and the Human Rights Treaty Bodies, which Zimbabwe has appeared before since 2015. Thus, the whereabouts of Itai Dzamara and other missing persons remain a priority. Regarding the alleged disappearance of Dr. Peter Magombeyi, the Government ensured that Dr. Peter Magombeyi was found through high level engagements and discussions in Cabinet, following which the Commissioner General of Police and the Minister of State for National Security commissioned an inquiry into the matter, which resultantly led to the resurfacing of Dr. Peter Magombeyi.

36. Of interest and worth highlighting is the disturbing trend of negative events that always happen in Zimbabwe whenever there are international events or visits to the country as demonstrated by the following incidents that took place in 2019:

(a) Peter Magombeyi was allegedly abducted on the eve of the visit by the Special Rapporteur Mr. Clement Voule, which was also two days before attendance at the UN General Assembly by the President of the Republic of Zimbabwe.

(b) Johanne Mundaiza was allegedly abducted a week before 30 August International Day of Victims of Enforced disappearances.

(c) Obert Masaraure was allegedly abducted on 6 June, two days after the Commemoration of the International Day of Innocent Children Victims of Aggression.

(d) Samantha Kureya was allegedly abducted soon after an unsanctioned demonstration.

37. All these cases demonstrate that this is not mere coincidence but a ploy by Zimbabwe's detractors to tarnish the image of the country. Thus, the Special Rapporteur's attempt to project the government as a culprit in abductions and disappearances is rejected outright.

⁴ section 42 (1) of the Criminal Procedure and Evidence Act [Chapter 9:07].

2. The events of August 2018 and January 2019

38. The Special Rapporteur's dismay to hear allegations of politically motivated sexual violence through the testimonies of some women who reported to have been raped by presumed military and police elements is shared. However, the following aspects should be noted pertaining to the Special Rapporteur's concerns:

In expressing its concern over the alleged sexual assault by the uniformed forces, the Government, through the Zimbabwe Republic Police (ZRP), reached out through the media and a press conference on 29 January 2019 to all the victims, calling on them to visit the nearest police stations and get assistance from the Victim Friendly Unit sections. However, there was no response from such victims.

Furthermore, the Zimbabwe Gender Commission invited any victims to approach the Commission or other Commissions and Civil Society Organisations, but none came forward to report. Only one case of sexual abuse was received by the Police from an area called St. Mary's in Chitungwiza, near Harare, during the period of the protests, which was however not directly related to the protests but to a domestic violence issue.

The Zimbabwe Republic Police, in executing its mandate, does not sweep cases under the carpet. In fact, when members of the public fail to report, the Police always appeals for information in order to undertake investigations.

39. The Government of Zimbabwe does not subscribe to the assertion by the Special Rapporteur that there was no legal framework for involvement of the military in the violent and illegal demonstrations which took place on 1 August 2018. The Special Rapporteur's allegations are preposterous as Section 213 (2) (b) of the Constitution provides for the deployment of the Defence Forces in support of the Police in the maintenance of public order.

40. The deployment of the military to assist the Police in maintaining law and order was governed by Section 37 of the Public Order and Security Act (*Chapter 11:17*) which stated that:-

"(1) If, upon a request made by the Commissioner General of Police, the Minister is satisfied that any regulating authority requires the assistance of the Defence Forces for the purpose of suppressing any civil commotion or disturbance in any police district, he may request the Minister responsible for Defence to authorise the Defence Forces to assist the police in the exercise of their functions under this Act in the police district concerned."

41. The above provision entails that the Defence Forces can only come in to assist the Police upon request. Put differently, the military cannot on its own accord deploy itself to quell public disorder situations. The law clearly stipulated that whenever the Defence Forces are called in to assist the Police, they shall be under the command of the Police (regulating authority concerned), which is what transpired on 1 August 2018.

42. The legal parameters within which the request for and subsequent deployment of the army to assist the police was made was in terms of the Constitution and the then Public Order and Security Act. Thus, it is not true that there was no legal framework for such deployment.

43. It should also be noted that on both occasions, demonstrations were characterized by wanton acts of violence; arson worth millions of dollars; traffic barricades; harassment of motorists and indiscriminate looting of supermarkets and tuck-shops. This left the government in a dilemma of balancing two equally important interests: the rights of those who genuinely took part in the demonstrations to exercise their right to peaceful assembly, which were hijacked by looters, and the rights of those citizens who looked up to the State to protect them from the violent demonstrators. The State had a constitutionally enshrined duty to protect such citizens and to stop the loss of life. As a result, government deployed the police in both cases to stop the violent demonstrations.

44. The Special Rapporteur highlights in paragraph 62 that he became "... conscious of political polarisation, poor governance and a fragile economic situation which prompted a spiral of instability which in turn escalated, exacerbated and multiplied discontentment that lead to demonstrations and strikes ...". Further, he advises that "... Government should look

at the root causes of the different crisis and strengthen the dialogue among the different political, social and economic actors throughout the country ...”

45. However, the Government of Zimbabwe is worried that after making such observations, the Special Rapporteur ignored the major cause of economic fragility, namely, the sanctions imposed on Zimbabwe by some Western countries prescribing restrictive measures against Zimbabwe. The impact of sanctions on the economy has been acknowledged by the Southern African Development Community (SADC), the African Union and other countries and organisations, as well as the Special Rapporteur on the Right to Food, Professor Hilal Elver, when she visited Zimbabwe on a similar mission in November 2019.

46. The recently enacted Zimbabwe Democracy and Economic Recovery Amendment Act (ZIDERA) of 2018 demonstrates the resolve of the US government to sustain its embargo against Zimbabwe, which the Government of Zimbabwe finds worrisome and unfortunate. Zimbabwe notes with concern the strengthened sanctions regime under ZIDERA, which is an extra territorial law enacted against the UN framework for the imposition of sanctions on member States.

47. The Government of Zimbabwe acknowledges the Special Rapporteur’s advice that the root causes of the crisis should be addressed and dialogue should be strengthened. The Government of Zimbabwe calls for the unconditional lifting of all manner of sanctions which will assist the country and sustain peace and development going forward. Conscious of this view point, the government is currently seized with re-engagement efforts with all nations open to dialogue with Zimbabwe. Zimbabwe adopted a robust engagement and re-engagement policy anchored on transactional economic diplomacy, through which it seeks mutually beneficial relations with all nations. Government and the European Union launched a formal political dialogue process in accordance with Article 8 of the Cotonou Agreement (2000). The formal political dialogue seeks to create greater understanding between Zimbabwe and the EU. The dialogue is conducted in a frank, constructive and cordial atmosphere and paved way for enhanced cooperation between Zimbabwe and the EU. The thrust of the dialogue is investment, trade and economic development; climate change and humanitarian assistance; human rights, democracy, good governance and the rule of law; development cooperation; and regional and international cooperation.

48. Furthermore, the government launched a national Political Actors Dialogue (POLAD) consisting of 21 leaders of different political parties in 2019. The leaders signed a Code of Conduct that governs their participation in the dialogue. The platform is designed to proffer solutions to the challenges that confront the nation, through peaceful, open and transparent discourse. Since its inception, POLAD developed an institutional framework for dialogue, formed four thematic committees and conducted several meetings. A road map and plan of action to guide the implementation of resolutions has been adopted and is being implemented during POLAD meetings and its activities.

49. While the Government of Zimbabwe is deepening its commitment towards dialogue, engagement and politics of rapprochement by honestly engaging its stakeholders at both domestic and international levels, other stakeholders at home have chosen to shun dialogue with the view to pursue divisive politics and call for sanctions, which the Special Rapporteur ignored to include in his report.

3. Protests in relation to the exploitation of natural resources

50. The Special Rapporteur reported that the Marange mines are protected under the Protected Places and Areas Act (PPAA) and is militarised, implying that the area should have been left unprotected and porous to anyone who is desirous to enter the area. In 2016, Government established the Zimbabwe Consolidated Diamond Company (ZCDC) to regularise diamond mining in Marange. ZCDC has continued to invest in the security of the diamond resource to curb illegal mining and illicit trade in diamonds. This is also in line with the expectations of the Kimberly Process Certification Scheme (KPCS). The ZCDC continues to invest in technology to deal with security threats to the diamond mining business.

51. While the security services are mandated to protect the area, Government does not subscribe to the picture of militarisation being painted by the Special Rapporteur, as it is untrue. The security details manning the area are meant to enforce order in the mining area and to ensure that only those licensed to practise environmentally friendly mining do so without disturbances and threat from invading illegal miners. The security personnel there has co-existed well with the community over the years. The Special Rapporteur's bald assertion without evidence-based data of the security's harm to the community is a cause for concern. In any event, the security's mandate has no concern with the Community Based Organisations (CBOs), which organise for the purpose of peacefully engaging or holding government to account on its facilitation of the exploitation of diamond resources in Marange. Protection of diamond deposits, gold and other special mineral resources is not only unique to Marange area nor is it unique to Zimbabwe, but an established world-wide good practice.

52. The Special Rapporteur reported what he called "...an increasing frustration in relation to the governance of natural resources by rural communities who feel directly affected by activities that are not in compliance with national legislation and that leave them very little benefit after the exploitation of the resources". This reportage by the Special Rapporteur is misleading and is not backed by any evidence of such frustration. The Special Rapporteur ignored the evident devolution and community empowerment policies being championed by the Government in Marange, especially under the Community Share Ownership Trust (CSOT) called Zimunya Marange CSOT. The CSOT is an inclusive initiative which is spearheaded by local actors and stakeholders including Chiefs, Rural District Council Officials (Local Authority), and District Administrators, opinion leaders, women and youth based CBOs.

53. The CSOT has been working closely with the Government state owned venture/enterprise called Zimbabwe Consolidated Diamond Company. The ZCDC has formulated a sustainable corporate social responsibility programme which has contributed to economic and social advancement in Marange. ZCDC goes beyond having profit-making objectives as it seeks to develop the society within its reach and accordingly, takes initiatives to contribute towards the welfare of various segments of society by undertaking socially, environmentally and economically useful programmes for sustainable development of the community. ZCDC belongs to an interdependent ecosystem comprising Shareholders, Associates, Employees, Government, Environment and Society and there is a commitment by all these stakeholders.

54. The Special Rapporteur became aware of worrying allegations related to the co-opting by the ZCDC of the members of trusts and associations, who have been dissuaded from their activism and asked to adopt a favourable position in benefit of the ZCDC image among the local communities. The Government of Zimbabwe rejects this allegation as it is not true. What the Government has done is to adopt an open-door policy to all members of trusts and associations willing to engage with it and ZCDC. More often, ZCDC has embraced views of the community and suggestions, particularly of which community projects to be prioritized.

IV. The exercise of the right to freedom of peaceful association

A. Legal framework

55. The Special Rapporteur precisely identifies the Private Voluntary Organisations Act (PVOA) and Trusts as mechanisms through which Non-Governmental Organisations (NGOs) are governed and registered in Zimbabwe to provide social and welfare services to the country in various areas of governance, human rights and livelihoods.

56. The Special Rapporteur, however, criticized the legislative and administrative monitoring mechanisms prescribed to ensure that the PVOs which more often than not are non-profit making, operate in public interest. The measures in place are in line with international standards in registration of PVOs and Trusts. This is especially crucial when the National Risk Assessment of Non-Profit Organisations (NPOs) world-wide has identified NPOs as conduits of money laundering and financing of terrorism.

57. Government regulation is merely for the purposes of entrenching the public interest principle, which more often has been violated by some NPOs that end up deviating from their intended mandate to adopting partisan positions. This is not desirable since these non-state actors are expected to be apolitical in their distribution of various charitable and developmental goods and social services to the communities. Entering into Memorandum of Understanding (MOU) is one such way of engendering a public interest principle to be upheld by the PVOs. The fears by the Special Rapporteur are therefore unfounded.

B. Good practices and challenges

58. The Special Rapporteur alleged “...a high level of control and even persecution that certain organisations that do not opt to be registered under the PVOA or aligned to government views” are subjected to. This is not factual and is not backed by comprehensive evidence of widespread practice. Zimbabwe has one of the highest numbers of active non-state actors operating freely at both national and sub-national levels. All organisations which are registered in Zimbabwe adhere to legislation and laid down procedures in terms of their registered mandate and operate without any persecution or undue control as alleged by the Special Rapporteur. Routine checks of modes of operation by relevant authorities, including verification of Articles of Association and accompanying constitutive documents is provided for by the law of Zimbabwe.

59. The Government denies the assertion by the Special Rapporteur of restrictions of activities of CSOs in the country. These CSOs are currently involved in immense operations that have positively informed Government policies such as HIV and AIDS Policy and the National Gender Policy, among others. The Special Rapporteur has failed to mention the names of the specific organisations or groups that he alleges to have been restricted from operating or that have been raided by the Police.

V. Conclusions and recommendations

A. Conclusions

60. In his conclusions, the Special Rapporteur watered down the impact of sanctions on the economic situation in Zimbabwe and that the divisive and hostile foreign policy of Western countries against Zimbabwe has fuelled discontentment and triggered off civil disobedience, which has posed a real risk of blighting the credentials of the Government of Zimbabwe in managing assemblies. A comment on the Special Rapporteur’s disregard of the impact of sanctions on the economy and as a major cause of problems leading to difficulties in managing assemblies, is alluded to above.

B. Recommendations

61. Recommendations that were proffered are noble, save for a few. Firstly, it must be noted that most recommendations are work in progress, such as aligning legislation to the Constitution with the view to give effect to progressive provisions in the Bill of Rights, particularly regarding the rights to freedom of assembly and association by way of legislation. This has been achieved through repeal of POSA and the ongoing amendment of the AIPPA.

62. However, the recommendation that Government should withdraw all criminal charges and release all those arrested because of the exercise of their rights to freedom of peaceful assembly and of association, in particular those arrested in connection with the August 2018 and January 2019 protests, is impracticable and unjust. There are no cogent reasons as to why the State should cause the withdrawal of charges in cases where there is *prima facie* or overwhelming evidence pointing towards the commission of criminal offences. Is that justice in the eyes of the Special Rapporteur? Furthermore, the Executive is not mandated by law to interfere with the proper administration of justice. Thus, it will be illegal to implement this recommendation.

63. Recommendations pertaining to amending the MPOA to remove the good practice safeguards against abuse by violent and spontaneous demonstrators and the PVOA to remove public interest safeguards may be difficult to implement as these laws are in sync with the Constitution of Zimbabwe.

64. The recommendation on cooperation with stakeholders is very noble and progressive as Zimbabwe continues to cooperate with its domestic and international stakeholders such as the Office of the High Commissioner for Human Rights and the Human Rights Council mechanisms to improve its human rights situation. The Government is already working closely with the UN Country Team on several projects to entrench human rights based approaches in its human rights programming.

VI. Conclusion

65. In conclusion, the Government of Zimbabwe appreciates the visit by the Special Rapporteur, but regrets the fact that the Special Rapporteur departed from his role of gathering evidence because in some instances he overstepped his mandate by becoming an active participant in a manner that eliminates objectivity. His use of subjective language and insinuations and references to unnamed sources as well as being over prescriptive renders the report unbalanced and biased towards certain opinions.

66. It should be noted, however, that although the Government of Zimbabwe is hamstrung by hostile foreign policies and sanctions, which have hindered expeditious constitutional development and legislative reform to ensure a robust civil and political human rights regime, it remains committed to discharging its responsibility of upholding the rights to freedom of peaceful assembly and association for the benefit of its citizens.

67. The Government remains grateful for the invaluable assistance that it continues to receive from UN Agencies and other development partners in its human rights programming activities.
