

**Opinion No. 15/2009 (Zimbabwe)****Communication addressed to the Government on 20 March 2009****Concerning Messrs. Lloyd Tarumbwa, Fanny Tembo and Ms. Terry Musona****The State is a party to the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. The Working Group welcomes the cooperation of the Government, which has submitted information concerning the allegations of the source.
3. (Same text as paragraph 3 of Opinion No. 17/2008.)
4. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case, in the light of the allegations made and the response of the Government thereto, as well as observations by the source.
5. The case summarized below was reported to the Working Group on Arbitrary Detention as follows.
6. Mr. Lloyd Tarumbwa, 39 years old, a Zimbabwe citizen, Co-ordinator at Mashonaland West Province of the Movement for Democratic Change (MDC), was arrested on 30 October 2008 at around 3 a.m. at his home by members of the Zimbabwe Republic Police (ZRP) and State security agents referred to as Central Intelligence Organisation (CIOs), who did not show any arrest warrant. Mr. Tarumbwa's arrest was witnessed by his relatives.
7. Ms. Terry Musona, aged 55, a Zimbabwe national, Vice Secretary of the MDC at Mashonaland West Province, resident in Gumbo Road, Kuwadzana Township, Banket; and Ms. Fanny Tembo, 41 years old; also a Zimbabwe citizen, elected local government official (Councilor) for the MDC, were picked up from 445 Muonde Street, Kuwadzana Township, Banket, by four unknown men. One of the men identified himself as Mpfu and told the family members to attend to Banket Police station.

8. The whereabouts of the above-mentioned three persons were unknown for 58 days. They were initially held in unacknowledged custody of the Police before being moved and placed clandestinely in the custody of CIOs agents. During this period they were held in incommunicado detention, handcuffed and were victims of acts of ill-treatment and torture. They were not allowed access to their lawyers nor relatives and were denied basic pretrial rights.

9. Given that their detention was beyond the statutory limitation of 48 hours, in November 2008 the High Court of Zimbabwe, in accordance with the Criminal Procedure and Evidence Act, ruled that the detention of these three people was unlawful from the onset and ordered their release (Case of *Fidelis Chiramba and 11 others vs. Minister of Home Affairs and others*; Reference: HC 6420/08). In his resolution, Justice Hungwe stated that the continued detention of these MDC activists was unlawful and that they should be released. The High Court also stated that the Police would have to continue by way of summons if they wanted to institute any proceedings against them. Despite this judicial order, these three persons were released into the hands of the CIOs and continued to be held in detention. The High Court order remains defied to date.

10. In order to ascertain the whereabouts of these persons as they were not being held in an official place of detention, lawyers had to file another writ, this time an Urgent Chamber application with the High Court of Zimbabwe (*Lloyd Tarumbwa and 11 others vs. The Minister of State Security, Lands, Land Reform and Resettlement in the President's Office*; Reference: HC 23/09). The above-mentioned three persons were brought before Justice Chitakunye J., a judge of the High Court. The judge, as well as the lawyers of these three persons and the State lawyers, were allowed to question them under very strict and limited conditions. Their lawyers were not allowed to consult with them in private.

11. The above-mentioned three persons stated that they had been told to say, under threats of torture, that they were in Police protective custody as they were now considered State witnesses. In January 2009, the Judge advised the ZRP and CIOs and State representatives that they were obliged to comply with existing judicial orders and sanctioned the immediate release of the above-mentioned three persons from unlawful custody. However, this order was also defied.

12. These persons are held in detention under police protective custody and as State witnesses. They are housed in a single room, where their right to free movement is severely restricted. Permission to use the bathroom is at times denied. In instances where this is allowed they are blindfolded during their transit. Blankets are not provided. According to the source, their new status as protected State witnesses motivated, in January 2009, the end of the torture these three persons were suffering. However, Mr. Tarumbwa has been denied access to medical services. He is complaining of pain all over the body as a consequence of the assaults with hosepipes he suffered and as a result of having been kicked with booted feet for long periods.

13. The source further reports that these persons do not want to be State witnesses as they do not have any knowledge of what they are supposed "to have witnessed". They are requested to give evidence in a case concerning other MDC activists who were also arbitrarily detained, abducted and temporarily subjected to enforced disappearance before they were subsequently released into the hands of the Police and who are now under prosecution. These people included MDC activists Fidelis Chiramba, Jestina Mukoko, Concilia Chinanzvavana (Mashonaland West Women's Assembly Provincial Chairperson); Manuel Chinanzvavana, Pieta Kaseke, Colleen Mutemagau, Violet Mupfuranhewe, Broderick Takawira and others accused of plotting insurgency; banditry and sabotage.

14. The source considers that the above-mentioned three persons have been arbitrarily detained during more than four months. They were abducted, technically disappeared, tortured and were not charged with a recognizable criminal offense nor voluntarily brought before a judicial authority. They were denied their most basic rights including freedom of association, right to engage in political activities without intimidation and harassment, and treated as hostages. The limited access to their relatives was by court order and not voluntary. The source also points out that Mr. Fanny Tembo, as an elected MDC Councillor, is impeded from conducting his political duties on behalf of the constituency that voted him into office.

15. In its response the Government confirms that Lloyd Tarumbwa, Terry Musona and Fanny Tembo had been picked up by the law enforcing agencies following information that certain persons from Banket, in collaboration with foreign elements, were involved in training bandits and insurgents. On investigation it transpired that the above named persons were not involved in these acts but willing to give information/evidence to the police in this regard. These persons were thus retained in protective custody at a safe place to prevent the actual perpetrators from harming them.

16. The Government further states that the High Court ordered the release of Fidelis Chiramba and his co-accused. In that (court order) list were included the names of Lloyd Tarumbwa, Terry Musona and Fanny Tembo "but these had not been formally charged with the offence and had at that time been released from police custody". A further Urgent Chamber Application was made on behalf of these individuals before the High Court. The judge on 16 January 2009 visited the three named individuals in police protective custody and confirmed the position of the State. According to the Government response, the Judge did not order their release.

17. The Government confirms that the three named individuals indicated to the police that they had been away from their homes for a long time and stated that they wanted to go back home to which the Government agreed and after deposing affidavits, were allowed to go home.

18. The Government, in its response, also refutes the allegation of the source regarding ill treatment and torture stating that they willingly agreed to become State witnesses and were brought to Court on 2 June 2009 by a police officer and after being interviewed, returned to their homes. The following day an Urgent Chamber Application was filed on behalf of the three named individuals alleging abduction. The Government states that the Judge asked for the three to be produced before the Court who confirmed, in the presence of the judge, that they had never been abducted and had been brought into Harare for purposes of an interview at the Attorney General's Office. In light of this evidence the Judge asked the petitioners to withdraw the application filed on behalf of the trio, which they did.

19. The above presented information received from the Government was sent to the source to comment upon who responded as follows: At the outset the source describes, as misleading, the response of the Government stating that the three named individuals had been detained with their consent, especially since the Government response in no way denies the arrest and detention of these persons.

20. The source then produced evidence comprising a provisional order (case No. HC 872/09) dated 6 March 2009 wherein the Judge declared the abduction and detention of Lloyd Tarumbwa, Fanny Tembo and Terry Musona beyond 48 hours as wrong and unlawful. The Judge also declares the conduct of the respondents in refusing to allow the relatives of their abductees to meet them as wrong and unlawful. Further, the order also declares unlawful the refusal of the State functionaries to allow the lawyers of the above

named persons. Finally, the order commands the State and her functionaries to refrain from re-abducting the said persons and immediately release them.

21. The Working Group, on the basis of the information made available to it, notes the information set out below.

22. There are a number of discrepancies in the response of the Government, which inference is also supported by the information provided. For instance, the Government acknowledges that the three individuals were “picked up”; were not involved in any wrong-doing, but that their detention was required and prolonged due to their requirement as State witnesses in a case. The Government further states that these individuals willingly remained in the protective custody of the police. Yet, a copy of the affidavits of the three supporting this fact attached by the Government in its response has a number of giveaway sentences that point to the non-consensual nature of their detention.

23. Lloyd Tarumbwa in his deposition states that: “I do not have any problems over my being kept under protective custody but I now want to go home and stay with my family, despite the security threats being highlighted to me”. Fanny Tembo, in his deposition makes a similar plea saying that “I now feel I must be with my family which I always think of. My wife is ill and I also feel that it is my responsibility to take care of her”. Terry Musona states, “I do not have any problems over general upkeep whilst in protective custody but I feel I have overstayed and thus need to go home”.

24. The Working Group also notes that the information given by the Government stating that the High Court did not order the release of the three detainees is at variance with its own stance that these persons were free to go and not detained beyond a certain time. A copy of the High Court order provided by the source contains a provisional order to the contrary, declaring continued detention of these persons in protective custody as wrong and illegal and demanding their immediate release from police custody.

25. The information provided both by the Government and by the source shows all three persons as political activists and members of the main opposition party MDC and working as office-bearers in various capacities. This has not been denied by the Government and is a common element in the profiles of all three detainees. There is no indication in the response of the Government to suggest that the three detainees would not be available to give evidence as State witnesses.

26. Therefore the Working Group is of the view that there is no legal basis for their continued detention.

27. In light of the foregoing, the Working Group expresses the following Opinion:

The arrest and detention of Mr. Lloyd Tarambwa, Ms. Terry Musona and Mr. Fanny Tembo is arbitrary, being in contravention of articles 7, 9, 10, 11, paragraph 1, 13, paragraph 1, and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, and fall under categories I and III of the categories applicable to the consideration of cases submitted to the Working Group.

28. Consequent upon the Opinion rendered, the Working Group requests the Government to take necessary steps to remedy the situation of Mr. Lloyd Tarambwa, Ms. Terry Musona and Mr. Fanny Tembo by releasing them from custody of the Police forthwith and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

29. Finally, the Working Group requests that, in accordance with article 9, paragraph 5, of the aforementioned Covenant, the detainees be accorded an enforceable right to compensation for loss of earnings, health and personal life during the period of arbitrary detention described above.

Adopted on 3 September 2009