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Mandate of the Special Rapporteur on the independence of judges and lawyers

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 17/2.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the **suspension and possible removal from office of Mr. Thomas S. Masuku, Judge in the High Court of the Kingdom of Swaziland.**

According to the information received:

On 28 June 2011, the Judicial Service Commission of the Kingdom of Swaziland wrote a letter to Judge Thomas Masuku notifying him that a formal enquiry on alleged acts of misbehaviour had been initiated against him, which may lead to his removal from office. The letter alleges 12 acts of misbehaviour and was signed by Mr. Michael Ramodibedi, Chairman of the Judicial Service Commission and Chief Justice of the Kingdom of Swaziland.

Most allegations are of an administrative nature and insufficiently substantiated to justify the suspension and possible removal of Mr. Masuku from the High Court of Swaziland.

The charges relate inter alia to:

- Failures to properly discharge his mandate, namely failure to deliver judgments on time and unauthorized absence from work on 30 March 2010;
- Insulting the King, including by using the words 'forked tongue' with reference to him, within the judgment dated 17 January 2011 on the Mkhondvo Aaron Maseko vs. the Commissioner of Police and the Attorney General HC Case

No 1778/09. The judgment, dealing with a case of seizure of cattle, required the Commissioner of Police and the Attorney General to return the cattle to the Applicant and pay the costs due. It is reported that the judgment was appealed to the Supreme Court and overturned by the Chief Justice;

- “Touting himself to be appointed Chief Justice” and “destabilizing the High Court Judges”, “threatening the Chief Justice with resignation”, allegedly attacking the Chief Justice at a symposium on 29 July 2010 for banning Judges from giving interviews to the news media;

- “Actively associating with those who want to bring about unlawful change to the regime”; and

- Joining a protest by the Technical Center for Agricultural and Rural Cooperation staff on 17 June 2011.

It is further reported that the complainants are not clearly identified. The only discernible complainants are the Chief Justice M. Ramodibedi and the King of Swaziland. Mr. Ramodibedi is alleged to be at the same time a potential accuser and adjudicator in this case.

It is further reported that the letter invited Mr. Masuku to present his defence before 22 July 2011, as well as to attend an oral hearing on his case on 11 August 2011.

On 30 June 2011, the Judicial Service Commission wrote another letter to Judge Masuku, informing him of his suspension from the office until the resolution of the case brought against him by the Commission.

Concern is expressed that the allegations brought against Mr. Masuku are insufficiently substantiated to justify possible removal from office. Concern is also raised that the allegations against him may be in breach of the Constitution and relevant international human rights standards, which protect judicial officers from being charged for any action taken in the legitimate discharge of their professional duties. Concern is further expressed regarding the right to fair hearing for Mr. Masuku, bearing in mind the potential conflict of interest that might arise from the fact that the Chief Justice might act simultaneously as accuser and adjudicator in this case.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency’s Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. These principles provide for important safeguards to judges in the exercise of their duties, in particular:

- principle 17 states that a charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge;

- principle 18 provides that judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties;

- principle 19 emphasises that all disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct; and

- principle 20 states that decisions in disciplinary, suspension or removal proceedings should be subject to an independent review.

I wish to stress that judges, like any other individuals, are entitled to freedom of expression and peaceful assembly. In this respect, I would like to refer to principle 8, stipulating that “in accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary”.

I urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Thomas Masuku are respected and, in the event that your investigations support or suggest the above allegations of possible violations of his rights to be correct, the accountability of any person responsible of the alleged violations should be ensured. I also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the hearing to be held on 11 August 2011 on the case of Mr. Masuku, I would appreciate a response on the initial steps taken by your Excellency's Government to ensure the independence and impartiality of the judicial process, as well as the right to fair hearing of Mr. Masuku.

Moreover, it is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide reasons for the suspension and possible removal from office of Mr. Masuku, as well as on the compliance of these decisions with international norms on the independence of judiciary.
3. Please provide all available information on steps taken to ensure the impartiality of the hearing on the case of Mr. Masuku to be held on 11 August

2011, bearing in mind the potential conflict of interest of Mr. M. Ramodibedi's simultaneous exercise of the functions of accuser and adjudicator.

I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers