

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 26/7, 26/12, and 25/13.

In this connection we would like to bring to the attention of your Excellency's Government information we have received regarding **the alleged arbitrary arrest of, charges and serious threats against Mr. Kgotso Nthontho, a prominent lawyer representing members of the Lesotho Defence Force (LDF) accused of plotting a mutiny.**

This event happened in a context of increasing threats and attacks against the independence of the judiciary and lawyers and decline of the rule of law in Lesotho following the arrest and detention of a number of LDF soldiers and the killing of Brigadier Mahao, former Commander of the LDF. The Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, raised serious concerns relating to this situation in an Urgent Appeal sent to your Excellency's Government on 30 November 2015 (see case no. LSO 1/2015, A/HRC/31/79).

In the Urgent Appeal, serious concern was expressed: a) about the physical and psychological integrity of the LDF soldiers in detention, in particular in light of the serious allegations of torture and other ill-treatment they were subjected to; b) that the

detention of the soldiers seemed arbitrary; c) about the threats and attacks against lawyers and the judiciary that seemed to form a pattern of interference by both the executive branch and LDF; d) about the apparent lack of independence and impartiality of the court martial convened to try the soldiers; and e) regarding the lack of independent investigation into the killing of Brigadier Mahao. A series of incidents of intimidation and threats against judges and lawyers were also reported in the Urgent Appeal, which noted that they seemed to form a pattern. In particular, it noted that a 'hit list' had been circulated on social media including the names of the lawyers defending the accused soldiers.

In the Urgent Appeal, reference was also made to the commission of inquiry into the killing of Brigadier Mahao and allegations regarding the mutiny plot established by the Southern Africa Development Community (SADC). The report of the commission of inquiry, which was released after the Urgent Appeal, concluded that the soldiers who were arrested were subjected to torture, that the charges against the soldiers were spurious, and that Brigadier Mahao was likely to have been murdered as his death did not occur in the course of resisting arrest.

We regret that, to date, no response has been received from your Excellency's government in relation to this Urgent Appeal.

According to the new information received:

Mr. Kgotso Nthontho was arrested on 12 February 2016, between 5 and 6 p.m. His arrest appears to be directly related to his efforts in challenging the arrest and detention of three mutiny-accused LDF soldiers who are his clients. The charges against him, although unconfirmed at this stage, would relate to alleged perjury. In 2015, Mr. Nthontho had obtained court orders granting the release of his clients, but the LDF had refused to comply with the order to release the three detainees. He had therefore sought to bring contempt of court proceedings against the LDF to compel his clients' release. In early December, shortly before he filed an affidavit requested by the court setting out the facts of non-compliance with the order of release, his clients were released under 'open arrest' (a form of military bail) without his knowledge. It is alleged that this event could be the basis of the accusation of perjury against Mr. Nthontho.

Soon after Mr. Nthontho's arrest on 12 February 2016, a large group of lawyers applied for his release. They obtained an urgent High Court order requesting his immediate and unconditional release which was served on the police that same evening. The police was also called upon to justify the arrest of Mr. Nthontho on 15 February. Mr. Nthontho was eventually released under heavy security shortly before midnight on 12 February. While he was under arrest, his family home and

vehicle were damaged by what appears to have been gunshots. A complaint relating to these incidents was filed with the police.

It is further reported that one of his client, who remains under ‘open arrest’, may have been threatened with being re-arrested if he did not provide evidence against his lawyer. Besides, LDF informants have allegedly confirmed that Mr. Nthontho’s life is in danger.

Earlier in the year, during habeas corpus proceedings, Mr. Nthontho had been directly threatened and physically prevented from consulting with a client in court by members of the LDF. He has also reportedly been followed and monitored. The name of the five lawyers representing the soldiers detained on mutiny charges, including Mr. Nthontho, also appeared on a ‘hit list’ circulated in November 2015. Their homes and offices have also been broken into.

While we take note of the release of Mr. Kgotso Nthontho, we express serious concern that his arrest and the charges and threats against him appear to be directly related to his legitimate work as a lawyer, in particular his representation of LDF soldiers accused of mutiny. Further serious concern is expressed at the persisting threats against Mr. Nthontho’s life and the increasingly dangerous environment for lawyers in Lesotho. Concern is again expressed that such threats and attacks appear to be symptomatic of a pattern of interference by both the executive branch and the LDF into the independence of lawyers and judges.

Without expressing at this stage an opinion on the facts of the case and on whether the arrest of Mr. Nthontho was arbitrary or not, we would like to appeal to your Excellency’s Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty, in accordance with articles 9 of International Covenant on Civil and Political Rights (ICCPR), to which Lesotho acceded on 9 September 1992.

Concerning the alleged threats and attacks against Mr. Nthontho and other lawyers in Lesotho, we would like to remind your Excellency’s Government of the UN Basic Principles on the Role of Lawyers, which state that Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and that they shall not suffer prosecution or other sanctions for any action taken in accordance with recognized professional duties (principle 16). The Basic Principles further stipulate that lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions (principle 18), and that where the security of lawyers is threatened as a result of discharging their functions they must be adequately safeguarded by the authorities (principle 17).

We would like to refer your Excellency's Government to paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which it is incumbent upon States to provide "effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats". We wish to stress that everyone has the fundamental right to life and security of the person as set forth in article 6(1) of the ICCPR.

Further, we would also like to draw the attention of your Excellency's Government to paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture."

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Kgotso Nthontho in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide detailed information on the legal ground for the arrest and charges issued against Mr. Nthontho.
3. Please provide information on the measures taken to protect the security of Mr. Nthontho, his family, and other lawyers. Moreover, please provide information on the measures adopted to ensure the independence of the legal profession in Lesotho.

We also recall that the questions addressed to your Excellency's government in our Urgent Appeal dated 30 November 2015 remain unanswered to this date.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We also wish to inform your Excellency's Government that we reserve the right to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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