

NATIONS UNIES
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AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
SWZ 2/2012

26 April 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 16/4, 15/21 and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **de-registration of the Trade Union Congress of Swaziland and the excessive use of force during peaceful demonstrations**.

According to the information received:

In early April 2012, the Swazi Government de-registered the Trade Union Congress of Swaziland (TUCOSWA) and declared it illegal. It is reported that the TUCOSWA received its validity registration certificate on 25 January 2012 without any objection. According to the information received, the de-registration of the TUCOSWA is related to a statement calling for the boycott of the 2013 elections, issued by leaders of the organization.

On 12 April 2012, Swazi police forcibly disrupted a peaceful demonstration in Mbabane commemorating the 1973 ban on political parties and calling for democratic reforms in Swaziland, organized by the TUCOSWA and other civil society groups. It is reported that 15 trade union members were arrested, including Mr. Muzi Mhlanga, Secretary General of the National Teachers' Union SNAT.

On 14 April 2012, police reportedly disrupted a prayer gathering in the Lutheran Church in Manzini and further arrested prominent church leader Mr. Sydney

Nyembe, who is an executive of the Commission of Concerned Church Leaders, which is a member of the Swaziland Coalition of Civic Organisations (SCCCO).

It is reported that these measures form part of an on-going campaign aimed at intimidating and silencing those calling for political reforms. According to the information received, the authorities are working on a censorship law that would ban *Facebook* and *Twitter* users from criticizing His Majesty the King.

Should this information be corroborated, serious concerns are expressed that the de-registration of a civil society organization and the aforementioned allegations of excessive use of force against peaceful protesters could be related to their dissenting views and their legitimate exercise of fundamental freedoms. Concerns are also expressed about the preparation of bills that could hamper the work of human rights defenders.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." As it is indicated in the General Comment No.34 of the Human Rights Committee, this right includes "the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20 of the ICCPR, including political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expressions, and religious discourse". Furthermore, General Comment No. 34 of the Human Rights Committee provides that the scope of the article 19 of the ICCPR, paragraph 2, "protects all forms of expression and the means of their dissemination", including "electronic and internet-based modes of expression".

We wish also to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with article 19, paragraph 3 of the ICCPR, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the ICCPR, which provides that "The right of peaceful assembly shall be recognized. No

restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.”

Furthermore, we wish to appeal to your Excellency’s Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the ICCPR, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

We also wish to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”

Finally, we would like to bring to your Excellency’s Government attention the 2009 report of the Special Rapporteur on the situation of human rights defenders to the General Assembly, where it is stated that “the registration authority should be allowed to involuntarily terminate an NGO only for the most flagrant violations, and all involuntary terminations should be subject to judicial review” (A/64/226, para. 114) and furthermore that “sanctions for the failure of filing reports or complying with other provisions of the law governing civil society organizations should provide for adequate warning and an opportunity to correct such administrative infractions” (A/64/226, para. 118).

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the civil society organizations are respected and that accountability of any person guilty of the alleged violations is ensured. We also

request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide information concerning the legal grounds for the de-registration of the TUCOSWA.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
6. Please provide the details on how the reported actions and measures undertaken by public officials with regard to the affected persons, organizations and groups are compatible with the international norms and standards of the right to freedom of opinion and expression and of the right of peaceful assembly and of association.
7. Please indicate what measures have been taken to ensure that the legitimate right to meet and assembly peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

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

Frank La Rue
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freedom of opinion and expression

Maina Kiai
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Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders