

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA
SWZ 1/2015:

25 March 2015

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 25/2, 25/18, 26/7, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged arbitrary detention, conviction and solitary confinement of Mr. Thulani Maseko.**

Mr. Maseko is a prominent lawyer and human rights defender in Swaziland. He previously faced charges under Swaziland's Sedition and Subversive Activities Act, brought against him in 2009, for which he has never been brought to trial. He was the subject of two previous communications. A joint urgent appeal was sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders on 12 June 2009 (see A/HRC/13/22/Add.1, para. 2134-2138). More recently, Mr. Maseko was the subject of another joint urgent appeal sent to your Excellency's Government on 2 April 2014 by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur the independence of judges and lawyers (see A/HRC/27/72, case no. SWZ 1/2014). We deeply regret that to this date we did not receive a response from your Excellency's Government.

According to the new information received:

Mr. Thulani Maseko had been arrested on 17 March 2014 on two charges of criminal contempt of court. He was refused bail on several occasions.

Mr. Maseko was convicted by the High Court of Swaziland on 17 July 2014, and sentenced to two years of imprisonment without opportunity for bail on 25 July 2014, although convictions for contempt of court typically carry 30-day sentences or fines. His conviction and sentence were based on a charge of contempt of court for having allegedly violated and undermined the dignity, repute and authority of the High Court of Swaziland by writing and publishing an article critical of a judge's handling of a criminal case.

It is reported that on 3 December 2014, the Supreme Court of Swaziland decided not to dismiss the charges against Mr. Maseko on appeal. The appeal is scheduled to be heard in 2015.

Mr. Maseko is currently being held in a special correctional facility known as Big Bend Correctional Facility ("Big Bend"). Mr. Maseko allegedly faces inadequate prison conditions. The prison has no heat, yet winter temperatures drop below 5 degrees Celsius. Prisoners sleep on the floor on tiny canvas mats and no bedding is provided. They are also forced to sleep naked. Their meals are allegedly inadequate, consisting only of cabbage, beans, and a very small quantity of chicken.

Since 19 March 2015, Mr. Maseko has reportedly been held in solitary confinement and has been denied any visits from family members or his lawyers. The restriction on visits was allegedly ordered by the Commissioner of Correctional Services in reprisal to Mr. Maseko's publishing of a letter on the one year anniversary of his imprisonment.

Grave concern is expressed that the detention, conviction and sentence of Mr. Maseko may be directly related to his legitimate exercise of his professional functions as a lawyer and his right to freedom of expression. Further serious concern is expressed at the allegations that Mr. Maseko is being detained in solitary confinement. Particular concern is expressed with regards to the allegations according to which his solitary confinement was ordered as a form of punishment for his legitimate exercise to the right to freedom of expression for publishing a letter on the anniversary of his detention. General serious concern is also expressed regarding the physical and mental integrity of Mr. Maseko while in detention.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular, we would like to draw the attention of your Excellency's Government to article 7 of the International Covenant on Civil and Political Rights

(ICCPR) and the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), both ratified by Swaziland on 26 March 2004, which establish the absolute nature of the prohibition of torture and other forms of ill-treatments. Article 14 of the ICCPR also guarantees that everyone shall be entitled a fair and public hearing by competent, independent and impartial tribunal.

We recall that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 of the ICCPR and call on Swaziland to take measures towards the abolition of solitary confinement as a punishment (see article 7 of the Basic Principles for the Treatment of Prisoners).

We would also like to refer to article 19 of the ICCPR, which provides that everyone shall have the right to freedom of opinion and expression and that restrictions are not allowed on grounds not specified in paragraph 3 of Article 19 of the ICCPR; these must be provided by law and conform to the strict tests of necessity and proportionality. The mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties and the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty (see General Comment No. 34 of the Human Rights Committee).

The right to freedom of expression of lawyers is also enshrined in the UN Basic Principles on the Role of Lawyers (principle 23). We also stress that the right to freedom of opinion and expression does not apply differently while in detention, the same requirements apply before imposing any restrictions to the legitimate exercise of the right.

We would further like to refer to 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 6 and 12.

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. Maseko 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 grounds for the conviction and sentencing of Mr. Maseko and explain how these measures are compatible with the ICCPR, in particular article 19.

3. Please provide detailed information concerning the decision to place Mr. Maseko in solitary confinement, including the legal grounds for such measure, and how these are compatible with international norms and standards as stated, inter alia, in the ICCPR and the UNCAT. Please provide information on appeal or other procedures available to challenge such decision and how this has been made accessible to Mr. Maseko and his lawyers.

4. Please provide information concerning the conditions of Mr. Maseko's detention, and how these measures are compatible with international norms and standards as stated, inter alia, in the ICCPR and the UNCAT.

5. Please explain what measures have been taken to protect the right of everyone, including lawyers and human rights defenders, to freedom of opinion and expression. Please also indicate what measures have been taken to ensure that all persons, human rights defenders and associations' members, in the Kingdom of Swaziland can carry out their peaceful and legitimate activities without fear of judicial harassment or other restrictions.

While awaiting a reply, we urge that all necessary interim measures be taken to immediately end the solitary confinement of Mr. Maseko, guarantee the protection of his rights, in particular his physical and mental integrity, and immediately release Mr. Maseko.

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.

David Kaye
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Gabriela Knaut
Special Rapporteur on the independence of judges and lawyers

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment