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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 the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

REFERENCE: AL G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (33-27)
ZAF 2/2012

28 June 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to Human Rights Council resolution 17/5, 16/5, and 16/4.

In this connection, we would like to draw the attention of your Excellency's Government to information received regarding the killing of **Mr. Thapelo Makhutle**. He was a member of LEGBO, an advocacy group based in Northern Cape which provides support and training to rural LGBTI communities, victims of stigma and harassment. Mr. Makhutle actively spoke out against LGBTI discrimination and conducted workshops with LGBTI youth on human rights, HIV and AIDS and other social issues.

According to the information received:

In the early hours of 9 June 2012, two unidentified men followed Mr. Thapelo Makhutle to his home in Kuruman, in the John Taolo Gaetsewe district, Northern Cape province. This occurred shortly after an argument between them on Mr. Makhutle's sexuality.

The same day, his body was found on his bed, covered with a blanket and with the throat cut open. It is further reported that no arrests have been made in connection with the killing.

In light of the aforementioned received, we are concerned about the killing of Mr. Makhutle and about information suggesting that it may be related to his sexual orientation, his legitimate activities in the defense of LGBTI rights as well as the exercise of his legitimate right to speak out about LGBTI issues.

While we commend the efforts made by your Excellency's Government to bring issues related to discrimination based on sexual orientation and gender identity to the international agenda, we should like to appeal to your Excellency's Government to seek

clarification of the circumstances of the present case, without in any way, prejudging the accuracy of the information brought to our attention.

We wish to underline that every individual, without discrimination of any kind, has the inherent right to life and no individual shall be arbitrarily deprived of his or her life under articles 2 and 6 of the International Covenant on Civil and Political Rights (ICCPR), which South Africa ratified on 10 December 1998. In this respect, we also refer to the resolution A/HRC/RES/17/19 in which the Human Rights Council expressed “grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.”

As stated by the Human Rights Committee in its General Comment No. 31, States Parties have the duty to protect individuals “not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. ... These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as summary and arbitrary killings.” (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18).

We also wish to bring to the attention of your Excellency’s Government the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65) which stipulate that “[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions”. Furthermore, “[t]he purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death.” (principle 9). In accordance with principle 18, “Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice”.

We would further 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 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.”

Furthermore, we 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”.

We would like to bring to the attention of your Excellency’s Government article 12 paragraphs 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regard to article 7 of the Declaration, the Special Rapporteur on the situation of human rights defenders has stated that the right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This includes the right to discuss and advocate for human rights ideas and principles that are not necessarily new but that, in some contexts, may be perceived as new or unpopular because they address issues that might challenge tradition and culture. In this connection, the former Special Representative of the Secretary-General on the situation of human rights defenders has, in her 2007 report to the General Assembly (A/62/225, paras. 46 and 99), called on States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. Furthermore, the current Special Rapporteur has encouraged States, in her report to the Human Rights Council in 2011 (A/HRC/16/44, para. 23), to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

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 on behalf of the victim?
3. 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.

4. 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?
5. Please provide information on what measures are in place to ensure that human rights defenders working on LGBTI rights can undertake their legitimate work in an enabling environment where their psychological and physical integrity is guaranteed.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government **to take all necessary measures to carry out a prompt, impartial and thorough investigation into the alleged violations.** In the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Christof Heyns

Special Rapporteur on extrajudicial, summary or arbitrary executions

Frank La Rue

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

Margaret Sekaggya

Special Rapporteur on the situation of human rights defenders