

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 Independent Expert on the promotion of a democratic and equitable international order; and the Special Rapporteur on the right to privacy

REFERENCE:
AL ZAF 1/2018

28 September 2018

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 situation of human rights defenders; Independent Expert on the promotion of a democratic and equitable international order; and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 34/18, 34/5, 36/4 and 37/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the intimidation of and threats against **Mr. Thabiso Zulu**.

Mr. Thabiso Zulu is a human rights defender and former African National Council (ANC) youth leader. He has been speaking out against government corruption in South Africa since 2010. At least two individuals have reportedly been convicted and a number of others have been arrested as a result of Mr. Zulu's work against fraud and corruption in several South African municipalities and government departments.

According to information received:

A wave of threats and intimidation against Mr. Zulu began in 2017, after he spoke out about the weaknesses of the police force and denounced the authorities' failure to quash corruption.

The threats and intimidation against Mr. Zulu escalated after September 2017 when he gave evidence to the Moerane Commission of Inquiry, which was tasked with investigating political killings that occurred in the province of KwaZulu-Natal since 2011. Mr. Zulu exposed several instances of corruption in his statement to the Commission.

After testifying to the Commission, Mr. Zulu began receiving phone calls where no one would speak, cars began pulling up outside his house as if to surveil him, and armed individuals began appearing at the sports field where Mr. Zulu trained young people.

In February 2018, Mr. Zulu received a phone call from a police intelligence officer shortly before he was due to depart for a wedding. Although he had not

informed anyone of his intentions to attend the ceremony, the officer told him that he would be killed if he went.

In April 2018, Mr. Zulu was told by a councillor in the municipality of Richmond in KwaZulu-Natal that he should “watch his back”.

On the evening of 6 May 2018, Mr. Zulu returned to his place of residence on foot. Conscious of the possibility of being monitored, he re-entered through a different gate than he had exited earlier that evening. It was dusk and immediately after entering the courtyard he saw a light coming from the street. He looked out and saw an unfamiliar car with three men inside. Once the men saw him, the car left at high speed.

In late 2017, the Public Protector of South Africa, an independent state institution established by the Constitution, carried out an investigation into the Minister of Police and South African Police Service’s handling of the threats and intimidation targeting Mr. Zulu. On 10 August 2018, the “Report on an Investigation into Allegations of Undue Delay, Improper Conduct, Gross Negligence, and Maladministration by the Minister of Police and South African Police Service in its failure to Provide Whistle-Blowers with Security at State Expense after it was Recommended that they needed Protection” was issued. It found that the allegation that the Minister of Police and the South African Police Services (SAPS) failed to provide Mr. Zulu with protection at State expense was substantiated and that their failure to do so was exposing him to the risk of being assassinated. The report describes the Minister of Police and the SAPS’s conduct in dealing with the request to provide protection to Mr. Zulu as “grossly negligent”.

On 1 September 2018, Mr. Zulu met with an individual close to a councillor in a municipal government, who warned him that there was an ongoing plot to assassinate him. The individual named people involved in the plot, including the councillor, police officers, and politicians. The individual suggested that an intelligence official would brief the Minister of Police to tell him that Mr. Zulu should not be provided with body guards.

Mr. Zulu’s phone lines are occasionally down or delayed, possibly due to interception. On one of his email accounts, he can receive emails but cannot send them.

We express grave concern at the ongoing threats against, intimidation and alleged surveillance of Mr. Zulu, which appear to be directly related to his peaceful and legitimate defence of human rights, particularly in promoting transparency and denouncing corruption in South Africa. We express particular concern in light of the Public Protector’s report, which not only identifies the real and potentially imminent threat to Mr. Zulu’s life, but also uncovers the State’s abject failure to provide Mr. Zulu with protection despite their knowledge of this mortal threat. We would like to highlight

that basic protections are critical to an effective right to freedom of expression, the public's right to know, accountability and democratic governance. When threats and intimidations are condoned or perpetrated by authorities in leadership positions, they consolidate a culture of silence, secrecy and fear within institutions and beyond, deterring future disclosures that are vital for democratic governance.

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.

Please refer to the **Reference to International Law Annex** attached to this letter.

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/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the reason for which the recommendations outlined in the Public Protector's report have not been implemented.
3. Kindly provide information on the steps taken to begin carrying out an investigation aimed at bringing those responsible for subjecting Mr. Zulu to threats, intimidation, and surveillance to justice in accordance with international human rights law.
4. Kindly indicate what measures have been taken to ensure that human rights defenders in South Africa are able to carry out their legitimate work in an enabling environment without fear of threats or intimidation of any kind.

We would appreciate receiving a response within 60 days. 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(s) responsible for the alleged violations.

We may intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s 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.

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

Livingstone Sewanyana
Independent Expert on the promotion of a democratic and equitable international order

Joseph Cannataci
Special Rapporteur on the right to privacy

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 2, 6, 9, 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by South Africa on 10 December 1998, guaranteeing the right of any person whose rights or freedoms are violated to have access to an effective remedy, notwithstanding the violation has been committed by persons acting in an official capacity; the inherent right to life; the right to liberty and security of person; the right not to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence; and the right to freedom of opinion and expression.

As highlighted by the Human Rights Committee, States should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (CCPR/C/GC/34). In this connection, we would also like to refer your Excellency's Government to Human Rights Council Resolution A/HRC/RES/35/25, which recognizes the importance of creating a safe and enabling environment for civil society, whistle-blowers, witnesses, anti-corruption activists, journalists, prosecutors, lawyers and judges, and of protecting these individuals from any threats arising from their activities in preventing and fighting against corruption.

Moreover, as the Human Rights Council has also stated in its resolution 12/16, restrictions should never be applied, inter alia, to discussion of Government policies and political debate and reporting on human rights, Government activities and corruption in Government.

We furthermore refer to the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/70/361, where he calls on States to thoroughly investigate acts of reprisals and other attacks against whistle-blowers.

Furthermore, we would like 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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. We would also like to refer your Excellency's Government to articles 6, 9, 12, 14, which state that everyone has the right to know, seek, hold, and impart information on all human rights and fundamental freedoms; that in the promotion and protection of human rights, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights; that the state shall take all necessary measures to ensure the protection by the competent authorities of everyone against any threats or arbitrary action as a consequence of their legitimate exercise of their human rights.

Finally, we wish to refer to the General Assembly's emphasis of unlawful or arbitrary surveillance as a highly intrusive act, which violates the right to privacy and may contradict the tenets of a democratic society' (A/RES/68/167). The Human Rights Committee stated in its General Comment 32 (par. 8) that the positive obligations on States Parties under ICCPR are only fully discharged if individuals are protected by the State, not just against violations of their rights by its agents, but also against acts committed by private persons or entities. We would like to stress that the preservation of democracy requires checks and balances to ensure that surveillance is undertaken to protect a free society. Prior authorisation of surveillance and the subsequent oversight of surveillance activities is a key aspect of the safeguards and remedies needed for a democratic society to preserve its fundamental freedoms.