

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; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL ZAF 1/2020

3 June 2020

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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/18, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged verbal and physical assaults against journalist Mr Paul Nthoba by police officers.

Mr Paul Nthoba is a journalist, owner and editor of a community newspaper called Mohokare News, which is published every Wednesday.

According to the information received:

On 15 May 2020, Mr. Paul Nthoba, who was working on a news story about police presence enforcing the Covid-19 lockdown in the township of Meqheleng, took photographs of a group of about six South African police officers who had parked on an elevated hill overlooking the Caledon River with a view to illustrating his reporting. Subsequently, although Mr. Nthoba self-identified as a journalist, one of the officers insulted him, while another officer slapped him across the face and three others punched and kicked him, saying he did not have permission to photograph them.

After the incident, Mr. Nthoba went to the Ficksburg police station to file a complaint against the police officers that had verbally and physically assaulted him. While he was explaining his story, he was again subjected to physical attacks by the same police officers who had just arrived at the police station. Instead of receiving his complaint, police officers asked Mr. Nthoba to sign a statement which stated that he had provoked police officers in the street and took a photograph without their permission. Mr. Nthoba was also charged with "obstructing law enforcement", as per Sec 31 (1) (b) of the Disaster Management Act of 2002, which carries a fine and up to six months in prison, and was then placed in the police station cell.

During his time at the police station, Mr. Nthoba was denied the relevant J88 form to document his assault, and could only obtain it after a friend of his, a former police officer, joined him at the station later in the day.

After being held in the police station cell for four hours, Mr. Nthoba was released and went to a local hospital where he was treated for trauma, bruises, and swelling in his face, mouth, and head, as well as internal injuries.

Since his arrest, it is reported that a number of police cars have been repeatedly patrolling slowly past his house. Fearing for his safety, Mr. Nthoba went into hiding in neighbouring Lesotho. He also filed a complaint with the Independent Police Investigative Directorate, which reportedly opened a case under the reference number 402/05/2020.

While we do not wish to prejudge the accuracy of the information received, we express concern over the alleged verbal and physical attacks against Mr. Paul Nthoba, especially due to the allegations that it was perpetrated by members of the police. Further concern is expressed at the possibility that the alleged attack was in retaliation for Mr. Nthoba's work as a journalist monitoring the observance of human rights. We also express our serious concern over the alleged unwillingness of police to investigate the attack and subsequent charges brought against him. If confirmed, the above allegations would be in contravention of the right to security of the person, the right to freedom of expression and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 information on the measures taken by your Excellency's Government to conduct an effective, prompt, impartial and independent investigation into the allegations that police officers used physical and verbal attacks against Mr Nthoba, including an update on the complaint lodged with the Independent Police Investigative Directorate. If no investigation has taken place, please explain why.
3. Please provide information on the legal and factual basis for the charges against Mr Nthoba. In absence of such a basis, please provide information as to when the charges brought against Mr Nthoba will be dropped.

4. Please provide information on measures taken to ensure that Mr Nthoba can safely return to South Africa so that he can pursue his journalistic work, particularly when monitoring the observance of human rights, free from intimidation and violence from security forces or anyone else.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 7, 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR), which South Africa ratified on 10 December 1998, which codify the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, as well as the right to security of person and the right to freedom of expression, respectively.

We would further like to draw your Excellency's Government's attention to articles 2 and 16 of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), which South Africa ratified on 10 December 1998, which impose obligations on States Parties to prevent occurrences of torture or ill-treatment, as well as articles 7 and 12 which require prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed along with the prosecution of perpetrators of such acts.

We would like to bring to your attention article 5 of the Code of Conduct for Law Enforcement Officials, which states that "no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment". Furthermore, we would like to recall that "States have a duty to prevent and redress unjustifiable use of force in law enforcement" (CCPR/C/GC/35, para. 9).

Concerning allegations that Mr Nthoba might have targeted in retaliation of his journalistic work, we would like to recall that any restrictions on freedom of expression must be strictly limited and meet the high threshold set out in article 19(3) of the ICCPR. Any limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. In its General Comment No. 34 (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions referred to above as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. Further, the Human Rights Committee made clear that "It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information".

Furthermore, we would like to bring to the attention of your Excellency's Government article 6(c) and article 12, paragraphs 2 and 3 of the UN Declaration on Human Rights Defenders which guarantees the right study, discuss, form and hold opinions on the observance of all human rights and fundamental freedoms and to draw public attention to those matters. The State shall take all necessary measures to ensure the protection of everyone 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.