

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 41/12, 44/5, 43/4, 43/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **severe restrictions to fundamental freedoms in the context of the "Pro-Democracy Protests" in the country**. In particular, we have received various allegations of summary executions during the protests, excessive use of force by police officers, arrests and criminal prosecution of protesters, attacks on activists and journalists, as well as restrictions to internet and telecommunications access.

According to the information received:

There is no legally recognized political party in the country due to a ban from 1973. Despite the adoption of the 2005 Constitution, which guarantees human rights and the country's international human rights obligations, the law has yet to allow for the formation, registration, and participation of political parties in elections.

On 7 May 2021, a 25-year-old law student at the University of Eswatini disappeared. His family appealed to the police to properly investigate the facts and find his whereabouts. It is alleged that the inadequate investigations by the police prompted the family to initiate searches themselves. On 14 May 2021, the family found his corpse in a field in Nhlambeni, about 10km outside Manzini, at a place that the police had supposedly already searched. Concerns have been raised that the police might be complicit in the crime, in light of the alleged negligence in their conduct and statements regarding the matter.

The news of the death of the student went viral on the social media including Twitter in the days following the discovery of his corpse. This triggered protests from students and professors on 21 May 2021, where the police reportedly used tear gas against peaceful protesters. According to information received, five persons were arrested during the protest.

In the following days, protests multiplied with demands of political and legal reforms at the heart of demonstrators' demands but issues regarding the

economic situation of the population were also raised. According to information received, multiple petitions of peaceful protesters were handed to members of parliament in the early days of the protests. However, allegedly the Government did not reply to these petitions or engage in a meaningful dialogue with the protesters.

On 2 June 2021, protesters marched to the parliament demanding a multiparty democracy “in which the police are accountable to the people and not only to the King”.

On 20 June 2021, another protest took place in a village in the Manzini district, where people demanded the right to elect the Prime Minister directly themselves. It was reported that authorities responded by banning protests and deployed police forces to disperse protesters. Reportedly stunt grenades and live bullets were fired into the crowd.

On 25 June 2021, another protest took place at Msunduzi, near the capital Mbabane. Reportedly, hundreds of young protesters clashed violently with the police. Shops were looted and one of them was set ablaze during the clashes, while the unrest continuing into the night. Police fired tear gas, stun grenades, rubber bullets and water cannon to disperse the protesters.

Protests continued until 30 June 2021, mainly in the cities of Manzini and Mbabane.

On 1 July 2021, the Government announced that the army would be deployed to maintain public order. The army had reportedly already been deployed the previous night when a national curfew was declared between 6 p.m. and 5 a.m.

On 4 July 2021, two journalists that covered the funeral of a person that had allegedly been killed by security forces during the protests, were detained by soldiers on a highway near the central town of Matsapha. The journalists were allegedly threatened at gunpoint, their cameras were seized and they were forced to delete footage and photographs from the funeral, including interviews with people who were shot and injured. After intervention by their lawyers, they were released the next day.

On 7 July 2021, the Government confirmed that 27 people died during the protests, but protesters claim the number of persons killed is higher. At least 150 protesters have been hospitalized for injuries, including gunshot wounds sustained from live ammunition fired by the police.

Reportedly at least eight human rights defenders and activists were among those killed during the protests. It is alleged that many of them have been subjected to an orchestrated campaign of intimidation, including being placed under unlawful surveillance with state helicopters hovering over their homes.

Since the start of the protests, it is reported that Eswatini authorities have worked with independent telecommunications companies to impose a blackout on communication and internet to curtail the sharing of information online. On 30 June 2021, many media groups sent a joint petition to the Prime Minister to demand that the internet, social media platforms, and all other communication

channels are open, secure, and accessible regardless of the protests are currently taking place in Eswatini.

While we do not wish to prejudge the accuracy of these allegations, we express our deep concern about allegations of excessive and disproportionate use of force by security forces against demonstrators and human rights defenders, resulting in a high number of injuries and deaths. While we recognise the challenges posed by the large scale and at times violent form of demonstrations, we express our serious concern about allegations of detentions of demonstrators that may constitute arbitrary deprivations of liberty.

We are also seriously concerned about the Government's response in allegedly ordering military deployment to safeguard the situation and curfews against the population. In this regard, the State is reminded that "only law enforcement officers trained in the policing of assemblies, including on relevant human rights standards, should be deployed for this purpose. Training should make officers aware of the specific needs of individuals [...] when participating in peaceful assemblies. Military personnel should not be used to monitor assemblies, but if in exceptional circumstances and on a temporary basis they are deployed as support, they must have received appropriate human rights training and must meet the same international standards and norms as law enforcement officials" (CCPR/C/GC/37, para. 80).

We are also concerned about the lack of guarantees and protection for peaceful demonstrators, journalists and human rights defenders, which seriously affects the rights to freedom of expression, peaceful assembly and association.

We are also concerned about network disruptions that violate numerous human rights norms. Internet shutdowns to prevent peaceful assemblies are a violation of human rights, as detailed in the below Annex.

We also express serious concern about the conditions in which people are alleged to have been detained during demonstrations, the possible use of physical aggression against those detained, the alleged failure to respect due process in the detentions carried out, and the disproportionate and arbitrary use of the figure of "transfer for protection" which authorises the police to "transfer" a person to an "assistance or protection centre" for "their protection" or that of third parties and as "the only means available to avoid risk to life or integrity".

If the allegations we have received are confirmed, they would contravene numerous international human rights norms and standards. In this regard, we wish to highlight the duty of the State to respect, protect and guarantee the right to life, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and security of the person, the right not to be subjected to arbitrary detention, the right to peaceful assembly and association, the right to freedom of expression, including the possibility for the press to report on events without being intimidated or harassed, the right of the public to receive such information, and the right to defend rights. In this regard, we place particular emphasis on the State's duty not to carry out any arbitrary arrests, nor to exercise any form of violence against peaceful demonstrators. We also stress the State's obligation to carry out thorough, prompt, effective, impartial and independent investigations into all alleged human rights violations committed by police authorities in policing protests, in accordance with international human rights law; the State must ensure that

these investigations are carried out with a view to prosecuting and punishing those responsible for such violations.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the details of any investigation, and judicial or other inquiries which may have been carried out in relation to allegations of human rights violations that may have been committed by police officers against the protesters, in particular the number of deaths and injuries caused by security forces during the protests. If no inquiries have taken place, or if they have been inconclusive, please explain why. Please also indicate any measures taken by your Excellency's Government to ensure that the victims of violations committed by police have access to effective remedy, including adequate compensation.
3. Please provide the results of autopsy reports of the alleged victims of arbitrary killings and of the 25-year-old law student killed in May 2021, and indicate whether these were conducted by an independent forensic pathologist, or in the presence of an independent observer, and in accordance with international standards, including the Minnesota Protocol.
4. Please provide information on the regulations and operational procedures for law enforcement agents concerning the use of force in the context of law enforcement during assemblies and arrests and whether it is compatible with international standards in particular on the use of force and firearms.
5. Please provide information on the number of persons arrested during the protests and the legal grounds to justify any continued detentions, as well as the fundamental safeguards ensured for detainees, including the right to contact relatives, the right to contact a lawyer, the right to a lawyer's assistance to defend oneself against charges, and the right to be privately examined by independent medical personnel in order to be screened for potential signs of ill-treatment.
6. Please provide information regarding the safeguards implemented by Eswatini to ensure that journalists can carry out their legitimate work without fear of reprisals.
7. Please provide information regarding the safeguards implemented by Eswatini to ensure political leaders and civil society organisations are

able to carry out their work and enjoy their fundamental freedoms including their political rights.

8. Please explain how the alleged restrictions to internet access were necessary and proportionate to achieving a legitimate objective and consistent with your Excellency's Government's obligations under international human rights law.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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. We also respectfully urge your Excellency's Government to take steps to ensure that the formulation and application of the above mentioned laws are in compliance with your obligations under international human rights law.

We may 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.

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

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Special Rapporteur on the rights to freedom of peaceful assembly and of association

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan
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 the attention of your Excellency's Government to the international standards and norms applicable to the matters set out, in particular to Articles 2, 6, 7, 9, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Eswatini on 26 March 2004, which guarantee the right of everyone to life and security of person, and which provide that no one shall be arbitrarily deprived of his life, subjected to torture and other cruel, inhuman or degrading treatment or punishment and that everyone shall have the right to freedom of opinion and expression, and to freedom of peaceful assembly respectively.

We also remind your Excellency's Government that the Human Rights Committee in its individual communications and general comments has recognised that the obligation to guarantee Covenant rights under article 2 (1) implies not only direct respect by all State authorities for these freedoms, but also protection against acts by private persons or private entities that impede their enjoyment.

We would also like to refer to the compilation of practical recommendations for the proper management of assemblies (A/HRC/31/66) elaborated by the mandates of the Special Rapporteur on the right to peaceful assembly and freedom of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions, in particular recommending that the use of force by law enforcement officials should be exceptional and that firearms should never be used to break up a demonstration or against a crowd. We would also like to remind your Excellency's Government that, even in the event that specific acts of looting or vandalism against private property by demonstrators may occur, this does not justify the disproportionate use of force or the denial of the right of access to justice and due process.

In addition, we would like to refer to the Human Rights Committee's General Comment 37, paragraph 36, which states that while the right to peaceful assembly may be limited in some cases, it is incumbent on the authorities to justify any restrictions. Authorities must be able to demonstrate that restrictions meet the requirement of legality and are necessary and proportionate in relation to at least one of the permissible grounds of restriction listed in Article 21, as set out below. If this obligation is not fulfilled, Article 21 is violated. The imposition of any restriction should be guided by the objective of facilitating the right, rather than seeking to limit it unnecessarily and disproportionately. Restrictions must not be discriminatory, compromise the essence of the right, or be intended to discourage participation in assemblies or have a deterrent effect.

With regard to freedom of expression in article 19(2) of the Covenant, we recall the State's duty to respect and guarantee freedom of expression for all persons under its jurisdiction, without distinction of any kind. Any attack by State agents against persons exercising their freedom of expression is contrary to the Covenant. Under its positive obligations, the State must exercise due diligence to prevent attacks on individuals for exercising their freedom of expression. Failure to do so may result in the joint violation of article 6 or 9 on the right to life and security of person, and article 19. Furthermore, in relation to freedom of opinion and expression, we consider

it relevant to refer to Human Rights Council resolution 12/16, which urges states to guarantee the right to freedom of expression as a fundamental pillar of a democratic society. The resolution underlines the importance of full respect for the freedom to disseminate information and the importance of access to such information for democratic participation, accountability and the fight against corruption.

We would also like to refer to Human Rights Council General Comment 34, paragraph 23, which states that states parties should take effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 cannot be invoked as a justification for silencing defenders of multiparty democracy, democratic principles and human rights. Nor can attacks on an individual, including such forms as arbitrary detention, torture, death threats and murder, be compatible with Article 19 under any circumstances. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are those who gather and analyse information on the human rights situation or publish reports on human rights, including judges and lawyers. All such attacks must be actively and promptly investigated, the perpetrators brought to justice and adequate reparation provided to the victims or, where victims have lost their lives, to their representatives.

We would also like to refer to General Comment No. 36 of the Human Rights Committee, which states that an unnatural death in custody creates a presumption of arbitrary deprivation of life by State authorities that can only be rebutted on the basis of an adequate investigation to determine the State's compliance with its obligations under article 6. States parties also have an obligation to investigate alleged violations of Article 6 where State authorities have used or appear to have used firearms or other potentially lethal force outside the immediate context of an armed conflict, for example, where live ammunition has been fired at demonstrators, or where civilians have been found to have been killed in circumstances consistent with a pattern of alleged violations of the right to life by State authorities.

In its General Comment No. 36, the Committee also stated that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates and should be independent, impartial, prompt, thorough, effective, credible and transparent. The Minnesota Protocol (2016) also indicates that States are under the obligation to provide all relevant documentation to the family of the deceased, including the death certificate, medical report and reports on the investigation held into the circumstances surrounding the death (para. 17).

We would also like to draw the attention of your Excellency's Government to the Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In particular, principle 12 of the Basic Principles provides that "everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the ICCPR. Governments and law enforcement

agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.” These provisions restrict the use of firearms to situations of violent assemblies and provide that force and firearms may only be used as a last resort when unavoidable and require exercising the utmost restraint. In addition, pursuant to principle 5(c), law enforcement officials should ensure the provision of timely medical assistance to anyone injured as a result of the use of force or firearms.

Moreover, the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 9, recall the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. As also confirmed by the Human Rights Committee in its General Comment No. 31, a failure to investigate and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR.

With regard to the internet shutdown happening during the protests, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has already expressed the incompatibility of Internet shutdowns with article 21 of the Covenant. First, to meet the requirement of legality, restrictions on assemblies must have a formal basis in law, as must the mandate and powers of the restricting authority. Laws must be publicly accessible, clearly and narrowly drafted, and sufficiently precise to limit the discretion of the authorities while allowing an individual to act accordingly. National laws must also be in line with relevant international norms and standards (A/HRC/47/24/Add.2. Para. 17). Furthermore, regional bodies have also emphasized that internet shutdowns infringe upon human rights norms. The ACHPR affirmed the principle of non-interference with access to internet and stressed that States shall not engage in or condone any disruption of access to the internet and other digital technologies for segments of the public or an entire population. (A/HRC/47/24/Add.2. Para. 14).

As indicated by the Human Rights Committee, ‘restrictions on peaceful assemblies must not be used, explicitly or implicitly, to stifle expression of political opposition to a government, challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-determination. They should not be used to prohibit insults to the honour and reputation of officials or State organs’ [CCPR/C/GC/37, para. 49]. As such, internet shutdowns may never be invoked as a justification for suppressing advocacy of democracy and human rights" (A/HRC/47/24/Add.2. Para. 17).

We would also like to draw the attention of your Excellency's Government to the fundamental norms set out in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. In particular, we would like to refer to articles 1 and 2 which state that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels and that each State has the primary responsibility and duty to protect, promote and fulfil all human rights and fundamental freedoms. Similarly, Article 12 provides that the State must ensure the protection of everyone against any threat, retaliation, or pressure resulting from the exercise of the rights authorised by the Declaration, as well as the right to effective protection of the laws when reacting to or opposing, by peaceful means, activities that cause violations of

human rights and fundamental freedoms.

Furthermore, we would like to refer to Human Rights Council resolution 22/6 which urges States to publicly recognise the important and legitimate role played by human rights defenders in the promotion of human rights, democracy and the rule of law, as well as resolution 13/13 of the same Council which urges States to take concrete steps to end threats, harassment, violence and attacks by States and non-State entities against those engaged in the promotion and protection of human rights and fundamental freedoms for all.

In accordance with Article 9 of the Covenant, everyone has the right to liberty and security of person and to be free from arbitrary detention, which must be strictly respected even in short-term detention. Law enforcement and security officials must follow the procedures set out in advance in the laws regulating acts of deprivation of liberty. Detained persons must be informed of the reasons for the arrest and must be brought, without delay, before the judicial authority and must be guaranteed an effective opportunity to challenge the legality of the deprivation of their liberty. Furthermore, detainees should be informed of the criminal charges against them as soon as possible and be guaranteed access to a lawyer from the moment of arrest. In addition, the Human Rights Committee and the Working Group on Arbitrary Detention have established that a detention is in principle arbitrary if it results from discriminatory motives, in contravention of articles 2, 3 or 26 of the Covenant, as well as if it is used as a punishment for the legitimate exercise of rights protected by the Covenant, such as freedom of opinion, expression, assembly, association and political participation, under articles 19, 21, 22 and 25 (CCPR/C/GC/35, par 17).

Finally, we would like to bring to the attention of your Excellency's Government the following provision of the UN Declaration on Human Rights Defenders. Article 12, paragraphs 2 and 3, which provides that 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.