

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the independence of judges and lawyers

Ref.: AL SWZ 1/2023
(Please use this reference in your reply)

24 January 2023

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 43/16, 44/5, 50/17 and 44/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the assassination of human rights defender and lawyer Thulani Maseko**.

Mr. **Thulani Maseko** was a prominent human rights defender and lawyer. He was a senior member of Lawyers for Human Rights Swaziland and Chairperson of the Multi-Stakeholder Forum (MSF), a coalition of civil society organisations, women's groups, trade unions, businesses, faith groups and political parties calling for peaceful democratic reforms in Eswatini. He was also a founding member of the Southern Africa Defenders Human Rights Network. Mr. Maseko contributed to the promotion of justice and human rights in Eswatini and the Southern-African region.

Concerns as to alleged retaliation against Mr. Maseko for his legitimate exercise of freedoms protected under international human rights law, including through his alleged arbitrary detention and the initiation of abusive criminal proceedings against him, were previously raised with your Excellency's Government on several occasions, see UA SWZ 1/2015, sent on 25 March 2015, and UA SWZ 1/2014, sent on 2 April 2014. We deeply regret that no response was received from your Excellency's Government to either of these official communications.

According to the information received:

In the night of 21 January 2023, Mr. Maseko was assassinated at his home in the Manzini region of Eswatini by an unknown assailant. The human rights defender, lawyer and pro-democracy campaigner was shot dead in the presence of his wife and children, with the assailant reportedly firing through the window of their home. At the time of writing, it is unclear whether the gunman acted alone, with the perpetrators yet to be identified.

The assassination of Mr. Maseko came hours after a public announcement by the King of Eswatini, Mswati III, in which he reportedly issued a warning to

those spreading disharmony in the country, notably pro-democracy campaigners.

Authorities have stated they are investigating the killing.

We express our grave distress over and condemnation of the assassination of Mr. Maseko, which we strongly fear to have been carried out in direct retaliation for his human rights work and leadership role in the pursuit of the full protection, realisation and fulfilment of human rights in Eswatini.

Considering Mr. Maseko's work as a lawyer and in favour of strengthening the judiciary in Eswatini, we would like to emphasize that international human rights standards provide that lawyers are entitled to perform their professional functions without any threat, intimidation, or harassment. We take this opportunity to recall that international human rights treaties binding on the Kingdom of Eswatini have been interpreted to recognize the crucial role of lawyers in ensuring fair trial guarantees, providing legal assistance in the context of economic, social, and cultural rights, and providing equal access to the justice system.

We urge your Excellency's Government to ensure the thorough, prompt and impartial investigations of all suspected cases of unlawful killings, in line with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by Economic and Social Council resolution 1989/65, and the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the *Minnesota Protocol on the Investigation of a Potentially Unlawful Death* (2016)). A failure to conduct a proper investigation is regarded, in itself, as a violation of the right to life.

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 detailed information as to the measures taken to investigate the killing of Mr. Maseko, whether these investigations were conducted in compliance with the Minnesota Protocol, and to bring the perpetrators, including the crime's intellectual authors, to account, including information as to how these measures are in compliance with the State's obligation to investigate under international human rights law as outlined above.

3. Please provide detailed information as to the steps taken to support the family of Mr. Maseko in the aftermath of his killing.
4. Please provide information as to the measures taken by your Excellency's Government to ensure that human rights defender, civil society actors and pro-democracy activists in Eswatini can carry out their work and activities without fear of reprisal or retaliation of any sort.
5. Please indicate what measures have been taken to ensure that lawyers can operate in an enabling environment and carry out their legitimate activities without fear for their lives.

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 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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

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 norms and standards relevant to the above-detailed situation. In particular, we would like to recall the State's obligations under the International Covenant on Civil and Political Rights (ICCPR), acceded by Eswatini on 26 March 2004, in particular article 6, which protects the right to life. We stress that the right to life constitutes a supreme right from which no derogation is permitted under any circumstances.¹

The Human Rights Committee, in its General Comment No. 36 interpreting the scope of State obligations flowing from article 6, has made it clear that beyond the obligation to respect the right to life and refrain from engaging in any conduct which would result in its arbitrary deprivation, States parties to the Covenant must take measures to prevent and punish deprivation of life by criminal acts.²

Concerning human rights defenders specifically, the Committee stated that the duty to protect the right to life requires State parties to take "special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence" and that such persons "include human rights defenders".³ The Committee also stressed that State parties to the Covenant have an obligation, where they know of unlawful deprivations of life, "to investigate and, where appropriate, prosecute the perpetrators of such incidents."⁴ Such investigations must be independent, impartial, prompt, thorough, effective, credible and transparent.⁵

We would also like to draw your attention to article 14 (1) of the ICCPR, which sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 of the ICCPR provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing. In addition, the Committee on Economic, Social and Cultural rights recognized the role of lawyers in providing legal assistance, in its General Comment No. 7, E/1998/22 (1997), para. 15; and General Comment No. 15, E/C.12/2002/11 (2003), para. 56. The Committee on Elimination of Discrimination against Women and the Committee on Elimination of Racial Discrimination also recognized the crucial role of lawyers in ensuring fair trial guarantees and providing equal access to the justice system (General Recommendation No. 38, CEDAW/C/GC/38 (2020), para. 99; CERD General Recommendation No. 34 (2011), para. 35).

¹ Human Rights Committee, General Comment No. 36, CCPR/C/GC/36, para 2.

² Ibid., para 7

³ Ibid., para 23

⁴ Ibid., para 27

⁵ Ibid., para 28

We would also like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-7 September 1990). Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

We also wish to refer 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 further like to make specific reference to article 9 of the Declaration, which holds that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights, and to article 12 of the Declaration, which states 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.

We would also like to highlight the report of the Special Rapporteur on the situation of human rights defenders, delivered at the 46th session of the Human Rights Council in May 2021, on threats and killings of human rights defenders (A/HRC/46/35), and in particular the key recommendations made to States therein.

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 (2016)⁶, 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 (CCPR/C/GC/36).

⁶ <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.

The Minnesota Protocol affirms that “Persons whose rights have been violated have the right to a full and effective remedy. Family members of victims of unlawful death have the right to equal and effective access to justice; to adequate, effective and prompt reparation; to recognition of their status before the law; and to have access to relevant information concerning the violations and relevant accountability mechanisms. Full reparation includes restitution, compensation, rehabilitation, guarantees of non-repetition, and satisfaction. Satisfaction includes government verification of the facts and public disclosure of the truth, an accurate accounting for of the legal violations, sanctions against those responsible for the violations, and the search for the disappeared and for the bodies of those killed.”

“Investigative processes and outcomes must be transparent, including through openness to the scrutiny of the general public and of victims’ families. Transparency promotes the rule of law and public accountability, and (...) enables the victims (...) to take part in the investigation. States should adopt explicit policies regarding the transparency of investigations. States should, at a minimum, be transparent about the existence of an investigation, the procedures to be followed in an investigation, and an investigation’s findings, including their factual and legal basis.”