

AMNESTY INTERNATIONAL PUBLIC STATEMENT

18 August 2011
Index: AFR 55/004/2011

Swaziland: Blatant unfairness of removal proceedings against leading High Court judge threatens judicial independence

Amnesty International is dismayed to learn that the hearing on charges made against a senior judge in the Swaziland High Court, Justice Thomas Sibusiso Masuku, was conducted with blatant disregard for due process of law and international standards of fairness. Amnesty International is greatly concerned that this development may be symptomatic of a growing crisis in the rule of law in Swaziland which will negatively affect the protection of human rights.

International standards related to safeguarding the independence of the judiciary and to fairness of proceedings, including removal proceedings against judges, underscore that all removal proceedings shall be fair and determined in accordance with established standards of independence, impartiality and justice.

However, the fairness and integrity of the hearing on 11 August 2011, conducted as part of proceedings for Justice Masuku's possible removal from judicial office, was undermined by:

- Its lack of independence and impartiality - the presiding judicial officer, Chief Justice Michael Ramodibedi in his capacity as Chair of the Judicial Services Commission (JSC), refused the defence request for his recusal from the hearing. This was despite the defence argument that as the main complainant against the accused, he could not or would not be perceived to be acting impartially and independently in this matter.
- Its closed nature - the presiding judicial officer denied the defence request for the hearing to be conducted in public. Members of Justice Masuku's family, observers including judges and lawyers from the Southern African region, several local judges, the coordinator of his legal defence and members of the International Commission of Jurists, among others, were denied entry to the hearing. Members of the security forces maintained an intimidating presence in and around the High Court building in Mbabane, the venue for the hearing.
- Its failure to include full presentation of both oral and written evidence relevant to the charges or cross-examination of prosecution witnesses by the defence. Indeed, a defence request to cross-examine a key prosecution witness on his affidavit evidence was explicitly denied by the presiding officer.
- The failure of the presiding officer to give reasons for any of his decisions during the hearing or to set a date for delivering the decision by the JSC. Justice Masuku remains suspended from his duties pending the outcome of the proceedings against him.

Amnesty International had already raised its concerns about this case prior to the hearing. In a letter to Swaziland's head of state, King Mswati III, on 2 August, the organization stated that the removal proceedings initiated against Justice Masuku appeared to be fundamentally flawed. In addition they were based on allegations so vaguely stated as to create a suspicion that they had been lodged in bad faith. The human rights organization appealed to His Majesty to exercise his authority in this matter to protect the rule of law and the independence of the judiciary.

Amnesty International drew attention in its letter to:

- The improper dual role of Chief Justice Michael Ramodibedi as the main complainant against Justice Masuku and as Chairperson of the body, the Judicial Services Commission, which was to hear and decide on the merits of the complaints, a situation contrary to the principles of natural justice and fairness.
- The allegations which were the basis for the removal proceedings were not sufficiently particularised in law or in fact to suggest that *prima facie* grounds existed to justify the proceedings. As such the proceedings inherently breached the United Nations Basic Principles on the Independence of the Judiciary, as well as provisions in the country's own Constitution.
- That the proceedings may be a repetition of events during a previous 'rule of law' crisis in 2002-2004 when Justice Masuku was subjected to sustained harassment, public humiliation and unlawful removal from his position on the High Court bench.¹

Amnesty International is disappointed that its recommendations, along with those made by other concerned organizations, were ignored. In its letter Amnesty International called for all possible steps to be taken to ensure that the body hearing the matter is transparently independent and impartial; that the hearing is conducted in public; and allows for a full presentation and examination of the evidence relating to the charges.

The actual conduct of the hearing denied Justice Masuku his right to a fair hearing. It also breached the country's international obligations under human rights treaties to which Swaziland is party, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. Amnesty International has reported in the past that Justice Masuku's rulings have contributed to the protection of human rights in Swaziland.² His more recent rulings including dissenting opinions have shown a similar approach. This most recent form of harassment against him sets an ominous precedent for other members of the judiciary who may wish to take similar stands in carrying out their judicial duties. The conduct of the removal proceedings will also undermine public confidence in the administration of justice.

ENDS

¹ Amnesty International, *Swaziland: Human rights at risk in a climate of political and legal uncertainty* (AFR 55/004/2004), pages 29-35)
<http://www.amnesty.org/en/library/info/AFR55/004/2004/en>

² See footnote 1 above.