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Public Statement

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Swaziland: Persistent failure to call police to account

Amnesty International today renewed its call on the government of Swaziland to take immediate and visible steps to prevent the torture and unlawful killing of crime suspects and political opponents by the police.

In a letter to the Head of State, King Mswati III, Amnesty International expressed its concern that the government's failure to act against torture is persisting, contrary to the obligations of Swaziland under international and regional human rights treaties it has ratified and contrary to the new Constitution's Bill of Rights. The alleged torture of some of the detainees currently facing trial for treason is one more manifestation of the consequences of the government's long-standing failure to make the police accountable for their actions.

In failing to take measures to prevent torture or ill-treatment, to promptly and impartially investigate reports of torture or ill-treatment, or to bring suspected perpetrators to justice, the government is repeatedly ignoring the new Constitution's Bill of Rights, the findings of independent experts and coroners, the criticisms of police conduct made by judicial officials at trials, and court judgments upholding the claims for redress lodged by victims of human rights violations. It is also ignoring appeals made by civil society organizations for police conduct to be consistent with international human rights standards.

The government has also not followed through on assurances given to Amnesty International by the Prime Minister, the Hon. Absalom T Dlamini, during a meeting in February 2005 in London when he acknowledged that incidents of police brutality were occurring. He stated that the government would act on the recommendations -- then just released -- from the Coroner, who had investigated the death in custody of Mandlenkhosi Ngubeni. The Coroner found evidence that Mandlenkhosi Ngubeni and others with him had been subjected to torture involving suffocation methods. To Amnesty International's knowledge, no further investigations or prosecutions of suspected perpetrators have been carried out; on the contrary, the government has denied any liability for Mr Ngubeni's death in the civil case brought by the family.

In its letter, Amnesty International acknowledged to the King that his government has an obligation to protect public safety and investigate crime, including the series of petrol bombings of government infrastructure in late 2005. It made a similar acknowledgement in a letter to the Prime Minister on 16 December 2005. However Amnesty International emphasised that the fact that those incidents had caused injuries and property damage did not give the government and police *carte blanche* to flout the prohibition against torture in the new Constitution and under human rights treaties. The prohibition against torture or ill-treatment under international human rights law is absolute. No exceptional circumstances whatsoever, including state of war or public emergency, can be invoked as a justification of torture or other ill-treatment.

Despite these obligations the government of Swaziland has failed to subject policing to a regime of rigorous oversight; systematic, prompt and impartial investigation of complaints; or the prosecution of police officers

suspected of torture, gross negligence and unlawful killings. As a consequence of these failings, the police have been encouraged to act with recklessness and a sense of impunity in the conduct of their criminal investigations. As such, the human rights of all Swazis are being left unprotected.

In the wave of arrests since December, which led to the detention and charging of 16 people with treason and attempted murder in connection with the bombings, the police have allegedly tortured some of the detainees, so severely as to cause injuries -- fatal injuries in one case. Some of the allegations against the police have been made in open court, causing at least one magistrate to order the police to refer the victim to hospital for examination and treatment. The torture used included suffocation methods ("tubing"), which had been condemned by the Coroner in her findings in the Mandlenkhosi Ngubeni case 12 months earlier. Yet there are no visible indications that the government has ordered an independent, impartial and publicly-accountable inquiry into these claims. Nor do they appear to have ordered a Coroner's inquiry into the death of a young woman detainee, Fikile Fakudze, shortly after her release from police custody.

Amnesty International expressed concern to the King that evidence elicited as a result of torture or ill-treatment may be used by the trial court that will hear the case against the 16 accused. International law requires that any evidence -- including confessions by the accused -- elicited as a result of torture or other cruel, inhuman or degrading treatment must not be used in any proceedings except those brought against the alleged perpetrators. Furthermore, as stated by the UN Special Rapporteur on torture, "where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment."

In Amnesty International's letters to the King and the Prime Minister, the organization commended the actions of a senior police officer who had helped uphold the internationally recognized rights of the family of a young man, Charles Mabuza, who was unlawfully killed by police in May 2005. Police at the time blamed the deceased's brother for his death. The official post-mortem examination was conducted hastily and under pressure from police, without any recognition of the family's right to information and to have its own representative present at the procedure. Several days later, the senior police officer acted to ensure that the family, through their legal representative, could arrange for the holding of a second post-mortem examination by an independent medical specialist. The result of that second examination showed that the police were responsible for the death of Charles Mabuza. To Amnesty International's knowledge, the government has yet to bring to justice those responsible for his death or ensure that the family receives fair and adequate compensation.

Finally, Amnesty International appealed to the King and his government to condemn unambiguously acts of torture or cruel, inhuman or degrading treatment or punishment, as well as unlawful killings by the police, and to ensure that they conduct their operations in a manner consistent with Swaziland's obligations to promote and protect human rights. In taking these steps the government will also be acting more effectively to protect public safety.