

19 September 2022

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The Honourable Minister of Justice
Hon Ms Pholile Dlamini Shakantu
And the Principal Secretary
Ms Lindiwe Mbingo

Sent via email:

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Dear Honourable Minister Dlamini,

**Re: Request for the implementation of ACHPR Decision
following a complaint lodged by former High Court
Judge, Justice Thomas Masuku**

We refer to the [decision](#) of the African Commission on Human and Peoples Rights (ACHPR), taken virtually at the 33rd Extra-Ordinary Session between the 12-19 July 2021 and subsequently published on the 6th April 2022, regarding the complaint submitted on 11 April 2013 and registered as Communication 444/13 in *Justice Thomas S Masuku v The Kingdom of Swaziland*. In this case, Justice Masuku complained that his rights had been violated in connection with what was allegedly an unlawful removal from his judicial office. This followed his removal from office on 27 September 2011 by King Mswati III acting on advice from the Judicial Service Commission. The African Commission found that Eswatini had violated Articles, 1, 7 and 26 of the African Charter on Human and Peoples Rights. Article 1 deals with the obligations of AU member states to recognize and give effect to the rights, duties and freedoms enshrined in the Charter. Article 7 protects the Right to a Fair Trial, and Article 26 establishes obligations to respect the Independence of the Judiciary of the African Charter. These latter articles are clarified and supplemented by the African Commission's [Principles and Guidelines on the](#)

[Rights to a Fair Trial](#) and the [UN Basic Principles on the Independence of the Judiciary](#).

In terms of Article 7, the Commission concluded that Justice Masuku's right to a fair trial was violated because he had a right to appear before an "impartial, independent, and competent tribunal". This right had been compromised by the Chief Justice's participation and the Judicial Service Commission's unlawful denial of Justice Masuku's request for a public hearing. In terms of Article 26, the Commission concluded that the treatment of Justice Masuku constituted a threat to the judiciary's independence more broadly. In particular, the Commission found that the initiation of disciplinary proceedings against judges based on the language used by them in a judicial decision amounted to an interference with judicial independence. Having concluded that the impugned conduct amounted to a contravention of Eswatini's international law obligations, the Commission recommended that the authorities provide compensation to Justice Masuku and ensure that the JSC review the charges against him. More broadly, the Commission recommended that Eswatini review the legal framework applicable to the JSC to ensure that judges have access to judicial review of JSC decisions and to permit judicial officers facing disciplinary proceedings to object to the participation of a member of the Commission on the ground of bias.

We note that the Kingdom of Eswatini has yet to issue any official response to the Communication's decision. As a State Party to the Charter, the Kingdom of Eswatini must, in good faith, take serious account of the decision. We, therefore, inquire as to what steps have been taken and what further steps may be planned to ensure that the Kingdom of Eswatini complies with the Commission's findings in this case.

We look forward to your response.

Yours faithfully,



Kaajal Ramjathan-Keogh
Director of Africa Programme