



The Law Society

From the President

Mr Barnabas Sibusiso Dlamini
Office of the Prime Minister
PO Box 395
Mbabane
Swaziland

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Dear Mr Prime Minister

Swaziland – Arrests of Mr Thulani Rudolf Maseko and Mr Bheki Makhubu

The Law Society is the professional body representing more than 166,000 solicitors in England and Wales. Its concerns include upholding the independence of the legal profession, the rule of law and human rights throughout the world.

The Law Society is concerned for Mr Thulani Rudolf Maseko, a human rights lawyer who was arrested on 17 March 2014 along with *The Nation* magazine Editor, Mr Bheki Makhubu, and indicted at noon on 18 March on contempt of court charges. The charges followed the publication in *The Nation* of allegedly contemptuous articles criticising Chief Justice Michael Ramodibedi and the judicial system.

We are especially concerned over reports, firstly, that while in police custody, Mr Maseko and Mr Makhubu were denied access to legal counsel. Secondly, we understand that both were indicted on 18 March following a private hearing in the Chief Justice Ramodibedi's chambers, in clear violation of Section 21 of the Constitution of the Kingdom of Swaziland which guarantees the right to a fair and public hearing. It is also reported that the accused's lawyers were not informed that the hearing would take place in the Chief Justice's chambers, and were only present by chance. Mr Maseko and Mr Makhubu have been remanded into custody until 1 April and are currently detained in the provisional detention centre of Sidwashini in Mbabane.

Furthermore, given that the charges against Messrs Maseko and Makhubu arise, we understand, from published comments criticising Chief Justice Michael Ramodibedi and the judicial system, in connection with the case of an government employee charged earlier this year with a similar offence, we are concerned that the effect and true motivation behind their arrest and indictment may be to prevent them from exercising their rights to hold and voice opinions against the judiciary or the state, and their work in the defence of human rights standards in Swaziland. Among other things, the two are charged with contempt of court in that they, acting jointly and in furtherance of a common purpose, did unlawfully and intentionally violate and undermine the dignity, repute and authority of the High Court in the Kingdom of Swaziland, did issuing and publishing malicious contemptuous statements about the case of King versus Bhantshana Vincent Gwebu High Court Case No. 25/2014, a criminal matter currently pending before the High Court of Swaziland. Mr Maseko is a human rights lawyer, a senior member of Lawyers for Human Rights Swaziland and the Southern Africa Human Rights Defenders Network as well as a columnist for *The Nation*, which is known to have made comments criticising the government and judicial system in the past.

The Constitution of the Kingdom of Swaziland guarantees citizens charged with a criminal offence the right to a fair, and public, hearing. Article 21 provides that:

- (1) *In the determination of civil rights and obligations or any criminal charge a person shall be given a fair and speedy public hearing within a reasonable time by an independent and impartial court or adjudicating authority established by law.*

Article 21(2) further states:

- (2) *A person who is charged with a criminal offence shall be:*
[...]
(d) *given adequate time and facilities for the preparation of the defence;*

- (e) *permitted to present a defence before the court either directly or through a legal representative chosen by that person;*
- (f) *afforded facilities to examine in person or by a legal representative the witnesses called by the prosecution*

[...]

Mr Maseko's indictment and Mr Makhubu's indictment was in clear contravention of their constitutional rights under Article 21(1), since it followed closed proceedings in the Chief Justice's chambers rather than a public hearing by an independent and impartial court.

It is also doubted that either were given adequate time and facilities for the preparation or presentation of a defence given that their arrest on 17 March was followed by a hearing the following day, they had reputedly been denied access to legal counsel while held in custody and their counsel had reputedly not been informed of the arrangements for the hearings.

Further, as a member of the United Nations General Assembly since 24 September 1968, Swaziland became party to the **UN Basic Principles on the Role of Lawyers** when they were adopted by the General Assembly in 1990, and is therefore bound to uphold its provisions. We draw your attention in particular to Articles 1, 5, 6, 7 and 8, which establish rights of access to and assistance from legal counsel where a person is charged with or detained in relation to a criminal offence:

1. *All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.*
5. *Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.*
6. *Any such persons who do not have a lawyer shall, in all cases where the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.*
7. *Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.*
8. *All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.*

In addition, Articles 9 and 14 of **the International Covenant on Civil and Political Rights (ICCPR)**, to which Swaziland acceded on 26 March 2004, states as follows:

- 9 (1) *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
- 14 (1) *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*

And, at Article 14(3), in relation to persons charged with a criminal offence:

(3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...] (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

In this context, we would draw your attention to Articles 3 and 9 of the **Universal Declaration of Human Rights (1948)**, which state as follows:

3. *Everyone has the right to life, liberty and security of person.*
9. *No one shall be subjected arbitrary arrest, detention or exile.*

Swaziland is therefore in breach not only of its own Constitution in failing to provide Messrs Maseko and Makhubu with a fair and public hearing but in breach of its obligations under the UN Basic Principles on the role of lawyers and the ICCPR both in its failure to provide the right to public hearing and in its failure to provide Messrs Maseko and Makhubu with access to legal counsel while they were detained in police custody.

In the absence of a fair trial, and given that Messrs Maseko and Makhubu have both been indicted in connection with comments made that were critical of the state and its judicial system, their continuing detention seems arbitrary and designed to stifle legitimate comment and discussion.

With relation to Mr Maseko, whose comments were written in his capacity as a legal professional and public commentator on legal and human rights issues, we would draw your attention in particular to Articles 16(a), 17 and 23 of the **UN Basic Principles on the Role of Lawyers**, which again Swaziland it is bound as a member of the United Nations to uphold, and which state as follows:

16. *Governments shall ensure that lawyers:*
 - (a) *are able to perform all of their professional functions without intimidation, harassment or improper interference;*
17. *Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities; and*
23. *Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession."*

In publishing his opinions Mr Maseko was, furthermore, exercising rights to freedom of opinion and expression guaranteed under Article 19 of the **Universal Declaration of Human Rights**, as was Mr Makhubu.

Article 19 states:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Article 19 of the International Covenant on Civil and Political Rights (ICCPR), too, provides:

- (1) *Everyone shall have the right to hold opinions without interference*
- (2) *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

We would also draw your attention in this context to Article 1 of the **United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998)**

1. *Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.*

Article 12(2), furthermore, imposes an obligation on the State in these circumstances to:
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 his or her rights.

On behalf of the Law Society, I therefore respectfully urge that you take immediate steps to release Messrs Maseko and Makhubu immediately and unconditionally. I would also urge that Mr Maseko and all human rights defenders in Swaziland are offered the protection to which they are entitled to carry out their legitimate work and voice their opinions without fear of reprisals and free of all restrictions, including judicial harassment.

Yours sincerely



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