



The Law Society

## From the President

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Dear Mr Prime Minister

### **Swaziland – Conviction and Imprisonment of Mr Thulani Rudolf Maseko and Mr Bheki Makhubu**

The Law Society is the professional body representing more than 145,000 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 wrote to you on 15 April 2014 to express concern over the arrest and indictment in March 2014 of Mr Thulani Rudolf Maseko, a prominent human rights lawyer, and Mr Bheki Makhubu, Editor of *The Nation* magazine. The charges followed the publication in *The Nation* of allegedly contemptuous articles criticising Chief Justice Michael Ramodibedi, High Court Judge Mpendulo Simelane and the judicial system of Swaziland. We set out in detail in that letter our concerns surrounding the reported circumstances of the arrest and indictment of Mr Maseko and Mr Makhubu and we enclose a copy for ease of reference.

The Law Society remains concerned for Mr Maseko and Mr Makhubu who were convicted of contempt of court on 17 July 2014 and, subsequently, on 25 July 2014, sentenced to a period of two years imprisonment. The sentences of both men were backdated to the date of their arrests on 17 March 2014, from which date they have both been imprisoned.

We are particularly concerned over reports regarding the conduct of the trial and the severity of the sentences imposed on Mr Maseko and Mr Makhubu.

With regard to the conduct of the trial, our concerns include the following:

- Firstly, it has been reported that there may have been a conflict of interest arising from the involvement of High Court Judge Simelane as presiding judge over the trial as he was named in one of the articles in connection to which the charges arose. We understand that on 14 April 2014, Mr Justice Simelane refused an application made by the defendants that he should be recused from the trial (*Thulani Maseko and Another v Justice Mpendulo Simelane and 2 Others* (537/14) [2014] SZHC 101 (19 May 2014));
- Secondly, Mr Justice Simelane refused an application made by the defendants that he should disclose the reasons for his decision to reject the application that he should recuse thus denying them a right of appeal;

- Thirdly, Mr Justice Simelane displayed open hostility at times to the accused and their supporters in court;
- Fourthly, The Judge announced in open court that the conduct of the trial should be conducted “*sui generis*” meaning outside the normal law and procedures in response to objections to the proceedings from the defence lawyers;
- Fifthly, it is reported that during the trial, Mr Justice Simelane himself gave evidence in connection with the allegedly contemptuous articles written by Mr Maseko and Mr Makhubu regarding the case of *The King v Bhantsana Vincent Gwebu (Case No. 52/2014)* when he, in delivering judgment, introduced evidence relating to the incident described in the article. By doing so he was acting, in effect, as witness and judge in his own cause.
- Sixthly, it has been reported that the Mr Justice Simelane held a meeting in his Chambers with the Swazi Minister of Justice shortly prior to handing down judgment in the case.

With regard to the sentences handed down to Mr Maseko and Mr Makhubu, we understand that conviction for “contempt of court” ordinarily carries a 30-day sentence or a fine of £1750.00 (2,200 Euros). The terms of two years’ imprisonment imposed (without the option of paying a fine) are clearly disproportionately harsh and not commensurate with the usual sentence imposed on a conviction for contempt of court in Swaziland. We note from paragraph 16 of the judgment of Mr Justice Simelane handed down on 25 July 2014 that the sentences were intended “*to serve as a deterrent to others, in particular like-minded journalists in [Swaziland]*”. (*Rex v The Nation Magazine and 3 Others (120/14) [2014] SZHC 170 (25 July 2014)*).

In light of all the above, we are concerned that the true motivation behind the conviction and sentencing of Mr Maseko and Mr Makhubu is to stifle their freedom of expression, and that the practical consequence of the sentences is to prevent Mr Maseko, Mr Makhubu and/or “*others, in particular like-minded journalists*” from publishing opinions critical of the judiciary and the State and/or to prevent them from undertaking work in Swaziland in defence of international human rights standards.

We understand that concerns regarding the alleged violation of Mr Maseko and Mr Makhubu’s right to freedom of expression have also been expressed by numerous prominent NGOs and by the African Commission on Human and Peoples’ Rights in *Resolution 286: Resolution on Freedom of Expression in the Kingdom of Swaziland* adopted on 29 July 2014.

We note that Swaziland is bound to uphold various provisions of international human rights law which bear particular relevance to the matters referred to above and to the most pertinent of which we make specific reference below.

### **1. African Charter on Human and Peoples’ Rights 1981**

We recall that Swaziland became a party to the **African Charter on Human and Peoples’ Rights** on 09/10/1995 and that it is accordingly bound by Article 9 (as supplemented by the **Declaration of Principles of Freedom of Expression in Africa**).

Article 9(2) provides that

*“Every individual shall have the right to express and disseminate his opinions within the law.”*

Furthermore, **Principles I and II of the Supplementary Principles** state as follows:

*I(1).Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.*

*I(2).Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.*

*II(1).No one shall be subject to arbitrary interference with his or her freedom of expression.*

*II(2).Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.*

## **2. The International Covenant on Civil and Political Rights 1966**

In connection specifically with our concerns about the conduct of the trial as set out above and the alleged conflict of interest referred to above, we would also draw your attention to Article 14(1) of the **International Covenant on Civil and Political Rights** to which Swaziland acceded on 26 March 2004 which states (inter alia):

*14(1) All persons shall be equal before the courts and tribunals. In 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...*

## **3. The Universal Declaration of Human Rights 1948**

With regard to the sentence imposed by the Court, we also draw your attention to the following Articles of the **Universal Declaration of Human Rights (1948)** (which is universally applicable) which state that:

*3. Everyone has the right to life, liberty and security of person.*

*7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

*9. No one shall be subjected to arbitrary arrest, detention or exile.*

## **4. UN Basic Principles on the Role of Lawyers**

With particular reference to Mr Maseko's role as a human rights lawyer together with the apparent effect of his sentence in preventing him from undertaking his professional function in this capacity, we refer to Articles 16 and 23 of the universally applicable **UN Basic Principles on the Role of Lawyers (1990)**:

*16. Governments shall ensure that lawyers... are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.*

*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 of justice 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.*

On behalf of the Law Society, taking into account all of the above and considering the length of time already served by both Mr Maseko and Mr Makhubu in custody, I respectfully urge you to take immediate steps to release both men immediately and unconditionally.

I would also urge that Mr Maseko and all other human rights defenders in Swaziland together with Mr Makhubu are guaranteed the protections to which they are entitled to carry out their legitimate work and to exercise their right to freedom of expression without any harassment, restriction, threat or intimidation and without fear of any reprisal. Such action would be compliant with and respect the Constitution of the Kingdom of Swaziland adopted in 2005, notably Article 24 which protects freedom of expression and opinion, including freedom of press and other media, defined as "freedom to hold opinions without interference; freedom to receive ideas and information without interference; freedom to communicate ideas and information without interference; and freedom from interference with the correspondence of that person".

Yours sincerely



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