

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Prime Minister Dr. Barnabas Sibusiso Dlamini
P.O. Box 395
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Fax: 011 268 2404 3943

His Majesty King Mswati III
Office of the King
Lozitha Palace
P.O. Box 1
Kwaluseni, Swaziland

Dear Prime Minister and Your Majesty:

**Re: In The Matter of Bhekithemba Makhubu and Thulani Maseko –
Attack on Freedom of Expression and Arbitrary Detention**

This letter of support is provided by Lawyers' Rights Watch Canada ("LRWC"). LRWC is a committee of lawyers that promotes human rights and the rule of law internationally through education, legal research and advocacy for lawyers and other human rights defenders in danger because of their advocacy. LRWC has special consultative status with the Economic and Social Council of the United Nations. More information about the work of LRWC is available at <http://www.lrwc.org>.

BACKGROUND

Mr. Thulani Maseko is a prominent human rights lawyer and member of Lawyers for Human Rights Swaziland and the Southern African Human Rights Defenders Network. Mr. Bhekithemba Makhubu is a well-respected columnist and Editor-in-Chief of *The Nation*, the sole independent newspaper of Swaziland.

On 25 July 2014, Justice Mpendulo Simenalne sentenced these human rights defenders to two years in prison, without bail and without the option of paying a monetary penalty, for writing articles which criticized the independence of the judiciary. Justice Simenalne also fined *The Nation* and independent publishers SZL 100,000.

These harsh sentences and reasons for judgement, which held that the Swaziland Constitution does not grant an absolute right for freedom of expression, sent a clear

Attack on Freedom of Expression and Arbitrary Detention of Bhekithemba Makhubu and Thulani Maseko

message to other journalists. This decision is unjust and serves only to punish human rights activities. This decision also calls into question the ability of the judiciary to be independent and to protect freedom of expression pursuant to the *Constitution*, the *United Nations Declaration on Human Rights* and the *Declaration of Principles of Freedom of Expression in Africa*.

INTERNATIONAL LAW OBLIGATIONS

Swaziland is a member of the United Nations (UN), the African Union (AU) and the Southern African Development Community (SADC). Swaziland ratified (26 March 2004) the UN *International Convention on Civil and Political Rights* and is bound by the provisions of the *United Nations Declaration on Human Rights Defenders*, the *Declaration of Principles of Freedom of Expression in Africa* and the *African Charter on Human and Peoples Rights (ACHPR)* and the *Constitution of the Kingdom of Swaziland*.

The *United Nations Declaration on Human Rights Defenders*, adopted by the General Assembly of the UN on 9 December 1998, specifically states:

In Article 1 that “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.”

In Article 9.3c that “everyone has the right, individually and in association with others, to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms”

In Article 12.2 that “the State shall 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 actions as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.”

The *Declaration of Principles of Freedom of Expression in Africa*, adopted by the African Commission on Human and People’s Rights on 23 October 2002, states:

In Article II that “no one shall be subject to arbitrary interference with his or her freedom of expression.”

In Article IX that “attacks such as... intimidation of and threats of media practitioners and other exercising their right to freedom of expression... undermines independent journalism, freedom of expression and the free flow of information to the public. States are under an obligation to take effective measure to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure victims have access to effective remedies.”

The *Constitution of the Kingdom of Swaziland*, adopted in 2005, states:

In Article 24 that “freedom to hold opinion 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”.

The freedom of expression is to be respected in accordance with fundamental human rights and freedoms in accordance with the *Universal Declaration of Human Rights* and other international human rights instruments ratified by Swaziland.

CONCLUSION

LRWC expresses deep concern at the conviction and sentencing of Bhekithemba Makhubu and Thulani Maseko on “contempt of court” charges that contravene Swaziland’s legal obligations to ensure that all people within its territory are able to exercise protected rights. We are also concerned at the denial of fair trials rights and the due process required by law.

LRWC requests the immediate and unconditional release of Bhekithemba Makhubu and Thulani Maseko as they both are prisoner of conscience and their detention is arbitrary as it only seeks to punish their lawful exercise of protected rights.

LRWC hereby requests the Swaziland Authorities to protect and respect the right of freedom of expression and to cease all harassment, intimidation and unlawful legal proceedings, including at the judicial level, as against Bhekithemba Makhubu and Thulani Maseko.

LRWC requests that the Swaziland Authorities conform to the applicable provisions of international and national law as set out in the *International Convention on Civil and Political Rights*, the *UN Declaration of Human Rights Defenders*, the *Declaration of Principles of Freedom of Expression in Africa* and the *Constitution of the Kingdom of Swaziland*.

Yours truly,



Amy E. Reier, Barrister and Solicitor, LRWC Member

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