

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE: UA
SWZ 2/2015:

7 May 2015

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 24/7, 25/2, 24/5, and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and continued pre-trial detention of, as well as charges of sedition and terrorism brought against, **Mr. Mario Masuku**, the president of the People's United Democratic Movement (PUDEMO), and **Mr. Maxell Dlamini**, Secretary General of the party's youth wing, the Swaziland Youth Congress (SWAYOCO), for statements they made critical of the government and judiciary of Swaziland.

According to the information received:

Since 1973, political parties have been banned in Swaziland. In 2008, PUDEMO and SWAYOCO were declared terrorist groups despite the lack of evidence that these groups had committed or attempted to commit any acts of terrorism.

On 1 May 2014, Mr. Masuku, President of the People's United Democratic Movement, and Mr. Dlamini, Secretary General of the Swaziland Youth Congress, participated in a May Day celebration in Manzini, where Mr. Masuku criticized Swaziland's system of governance (a political system which prohibits

the participation of political parties in elections, and permits King Mswati III to appoint unilaterally just under 30 percent of the members of the two houses of parliament), the absolute monarchy, and the lack of an independent judiciary, among other concerns. At the rally, Mr. Masuku reportedly addressed questions regarding his desire for a multi-party democracy, and both men sang songs and chanted slogans. They were arrested as they left the rally and charged under the Suppression of Terrorism Act (Terrorism Act) and the Sedition and Subversive Activities Act (Sedition Act). The two men are reportedly being held in Zakhele Center, and may face up to fifteen years of forced labour in prison.

Mr. Masuku and Mr. Dlamini were denied bail soon after their arrest. The judge who heard their initial application for bail, Justice Mpendulo Simelane, found that Mr. Masuku and Mr. Dlamini posed a flight risk and refused to grant bail. In October 2014, they made another application for bail based on new circumstances that had arisen since the initial refusal. Mr. Masuku is diabetic and his health had deteriorated significantly while in pre-trial detention; and Mr. Dlamini, a student, was prevented from continuing his studies because of his continued pre-trial detention.

The second bail application was scheduled to be heard on 24 October 2014, but was delayed by the prosecution, and rescheduled for 28 October 2014. In contravention of established practice, the 28 October bail application hearing was transferred from the sitting judge, Justice Mumcy Dlamini, to another judge, Justice Bheki Maphalala, apparently because the sitting judge, Justice Mumcy Dlamini, had granted bail to seven PUDEMO members facing similar charges earlier that year after finding their arrest and detention unlawful.

The second judge, Justice Maphalala, informed Mr. Masuku and Mr. Dlamini that he had been instructed not to hear the case, and instead to postpone it until yet another judge, Justice Mpendulo Simelane, who had heard their original bail application, would be available. Lawyers representing Mr. Masuku and Mr. Dlamini reportedly saw a hand-written note in the case file confirming the statement. Justice Simelane eventually rejected the bail application at hearings on 7 and 13 November 2014. Mr. Masuku and Mr. Dlamini have appealed the refusal of the bail application. The appeal was scheduled to be heard on 5 May 2015, but has reportedly been postponed indefinitely. Mr. Masuku and Mr. Dlamini have been held in pre-trial detention for over a year.

In addition, in December 2014, Mr. Masuku and Mr. Dlamini filed a complaint challenging the constitutionality of the two laws under which they have been charged. This complaint will be heard by the High Court on 8 September 2015. The Terrorism Act and the Sedition Act have been already subject to challenges to their constitutional validity. If the men are denied bail on appeal, they could remain in pre-trial detention until the challenge to the constitutionality of the laws

has been finalized because their trial cannot begin until the legality of the legislation has been decided.

The conditions in the Zakhele Center, the prison where Mr. Masuku and Mr. Dlamini are held, are reportedly deplorable. Further, Mr. Masuku's and Mr. Dlamini's families have been unable to visit them because the prison site is far from their homes. Persons who have visited them have been forced to wait up to two hours before seeing them. Moreover, Mr. Masuku's and Mr. Dlamini's lawyers are only permitted to meet with their clients for thirty minutes at a time.

Finally, it is reported that one week prior to the arrest of Mr. Masuku and Mr. Dlamini, seven PUDEMO members were arrested after having protested outside of the court where a human rights lawyer and magazine editor were facing charges for contempt of court. The seven PUDEMO members are facing similar charges under the Terrorism Act and Sedition Act to those brought against Mr. Masuku and Mr. Dlamini, but were granted bail.

We express serious concern at the arrest and continued pre-trial detention of, and the charges brought against, Mr. Masuku and Mr. Dlamini, as they appear to be directly related to their peaceful exercise of their right to freedom of opinion, expression and assembly, and for their association with political parties arbitrarily banned by the Government. These rights appear curtailed in an environment where laws are applied disproportionately against perceived political opponents, activists, and human rights defenders. We are further concerned that the charges brought against them under the Terrorism Act and Sedition Act do not appear to comply with relevant international and regional human rights principles and standards. Concern is also expressed at the alleged interference in judicial proceedings concerning the review of the legality of their pre-trial detention. Further concern is expressed regarding the physical and psychological integrity of Mr. Masuku and Mr. Dlamini while in detention.

Moreover, we express concern at the apparent targeting of political activists under the Terrorism and Sedition Acts. We regret that the arrest and detention of Mr. Masuku and Mr. Dlamini occurred in a context of reported recurrent practice of charging political activists with terrorism and sedition.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to these issues brought forth by the situation described above.

We would like to draw the attention of your Excellency's Government to the rights to freedom of opinion and expression, peaceful assembly, and association, as enshrined, inter alia, in articles 19, 21, and 22 of the International Covenant on Civil and Political Rights (ICCPR) acceded to by the Kingdom of Swaziland on 26 March 2004.

The above allegations also appear to be in contravention of the right not to be deprived arbitrarily of liberty, and to a fair and public hearing before a competent, independent and impartial tribunal established by law, as set forth in article 9 and 10 of the Universal Declaration of Human Rights (UDHR) and article 9 and 14 of the ICCPR. We would also like to recall that, according to the Basic Principles on the Independence of the Judiciary, judges must decide matters before them impartially, without any restrictions, improper influences, pressures, threats or interferences.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Masuku and Mr. Dlamini in compliance with international instruments.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide detailed information on the legal grounds for the arrest and detention of Mr. Masuku and Mr. Dlamini, as well as charges brought against them under the Suppression of Terrorism Act and the Sedition and Subversive Activities Act; in particular, explain how these charges are in compliance with the rights to freedom of opinion, expression, association and assembly, as enshrined, inter alia, in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights.
3. Please provide detailed information on the judicial proceedings to review the legality of the detention of Mr. Masuku and Mr. Dlamini and explain how they are compatible with the right to liberty and security of the person as enshrined, inter alia, in article 9 of the International Covenant on Civil and Political Rights.
4. Please provide detailed information on the status of the constitutional challenge to the Terrorism Act and the Sedition Act lodged by Mr. Masuku and Mr. Dlamini.
5. Please explain how your Excellency's Government's efforts to prevent terrorism were balanced against Mr. Masuku's and Mr. Dlamini's fundamental rights to freedom of expression, peaceful assembly, and

association in accordance with international and regional human rights standards.

6. Please explain what measures have been taken to ensure that political activists and members of political parties in Swaziland can carry out their peaceful and legitimate activities and express and associate freely without fear of harassment or criminalization.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations. Furthermore, we urge your Excellency's Government to take all necessary measures to guarantee the right of all individuals, including political activists, not to be deprived of their liberty for the legitimate exercise of their right to freedom of opinion, expression, peaceful assembly, and association.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Seong-Phil Hong
Chair-Rapporteur of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers