



STATEMENT

22 July 2014

CENTRE FOR HUMAN RIGHTS CALLS ON SOUTH AFRICAN GOVERNMENT TO ENSURE UNIVERSITY OF PRETORIA GRADUATE IS RELEASED

The Centre for Human Rights, Faculty of Law, University of Pretoria, calls on the Government of South Africa to take suitable measures to exert pressure on the government of Swaziland to ensure that Thulani Maseko, a graduate of the University of Pretoria, be released from prison and not be sentenced to imprisonment.

Who is Thulani Maseko?

Thulani Maseko graduated with a Master's degree in Human Rights from the University of Pretoria in December 2005. After graduation, he returned to Swaziland to work as a lawyer and human rights activist. He is also a senior member of Lawyers for Human Rights, Swaziland. In 2011 Thulani received the *Vera Chirwa Award* from the Centre for Human Rights awarded to a graduate who has made a significant difference to the protection of human rights in his or her home country.

What has he been accused and convicted of?

Thulani has, together with Bheki Makhubu, been charged with and convicted of contempt of court.

In the February edition of Swaziland's only independent newspaper, *Nation*, of which Bheki Makhubu is the editor, [Thulani criticised the arrest of the country's chief vehicle inspector for executing his duties](#). Thulani's criticism was directed mainly at the country's Chief Justice, for issuing a warrant of arrest for the inspector on the basis that he (the inspector) had given a ticket to the driver of a government vehicle who was transporting a judge without the required authorisation.

The two men were arrested on 18 March this year, and have been in detention since then. Clearly, their prolonged detention – without the option of release on bail – violates the right to presumed innocence.



On 17 July 2014, Thulani and Bheki were convicted of the charges. Their conviction constitutes a violation both of the right to freedom of expression under the Constitution of Swaziland, and international human rights law.

Article 24 of the Swaziland Constitution 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”.

The Declaration of Principles of Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples’ Rights in 2002, provides that ‘no one shall be subject to arbitrary interference with his or her freedom of expression’ and that intimidation of and threats to those exercising their right to freedom of expression “undermines independent journalism, freedom of expression and the free flow of information to the public”.

Their sentencing has been postponed to an unspecified date.

Imprisonment not an appropriate sentence

Having been convicted, the focus now falls on the possible sentence. Reports indicate that the prosecution called for the harshest possible sentence, and a term of three years’ imprisonment seems possible.

The Centre is of the firm view that the imposition of any term of imprisonment for Thulani is most inappropriate. In fact, the court should take into account the term already served while awaiting trial. Clearly, the almost four months already served in prison is already an excessive period of time, and should constitute much more than any reasonable sentence. There are numerous mitigating factors that make further imprisonment most unsuitable. For one thing, the statement was made in exercise of a constitutional right; the aim clearly was to bring a matter of public interest to public attention, reinforcing the principle of the Rule of Law. Freedom of expression is one of the hallmarks of the Rule of Law. In [Righting Wrongs](#), Thulani stated that ‘in many of its judgment the Supreme Court [of Swaziland] has emphasized that Swaziland is a “democratic,” “constitutional democracy” and or a “constitutional state.”’ However, without the rule of law, there can be no democracy. The free expression of ideas, including criticism of arbitrary use of authority, is crucial in a functional democracy.

The underlying problem: Rule of the king, not rule of law

Thulani, writing in the [African Human Rights Law Journal](#), summarised the weakness of Swaziland’s 2005 Constitution as follows: ‘The difficulty with the Swaziland political-constitutional set up is that those in power claim to have divine authority to rule. As such, they do not need legitimacy given by the people’. This starting point flies in the face of the generally accepted principle that ‘no person or institution has a divine right to govern others’.

Put differently, Swaziland is governed, not by the principle of the Rule of Law, but by the rule of one person, the king. In his article in *The Swazi Nation Magazine*, Thulani relies on the following quotation: ‘Rule of Law is the only system so far designated by mankind to provide impartial control over the exercise of state power. Rule of Law means that it is the law which ultimately rules, not a monarch ... Under the Rule of Law no one is above the law’.

Under this principle, the judiciary is also to be governed by requirements of legality. It amounts to flagrant disregard for the Rule of Law if judges regard themselves as above the law, and use the law itself to insulate their actions from fair criticism or comment.

The decision also reveals the importance of an impartial judiciary. The Rule of Law cannot be upheld by a judiciary that sees itself as serving the interest of the Government, or the king.

In the article cited above, Thulani warned: 'Many are afraid to speak out in this country because the consequences of speaking out against the most powerful are dire! But who said the defense of the right to dignity comes without some sacrifice and without a price?'

He, and Bheki Makhubu, have already made immense sacrifices for their convictions. They should not be imprisoned any longer.

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