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MEDIA RELEASE

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CENTRE CALLS ON SWAZILAND TO OBSERVE FAIR TRIAL RIGHTS OF PROMINENT SWAZI HUMAN RIGHTS LAWYER — MR THULANI RUDOLF MASEKO

The Centre for Human Rights has learned with alarm of the arrest and continued detention of a prominent Swazi human rights lawyer and graduate of the Centre's Master's programme in Human Rights and Democratisation in Africa — Mr Thulani Rudolf Maseko — by the Royal Swaziland Police Service on Tuesday 17 March 2014. He was arrested together with Mr Bheki Makhubu, editor of the *New Nation* magazine.

According to news reports, Mr Maseko is to be charged with “scandalizing the judiciary and contempt of court”. Mr Maseko's arrest arises out of his exercise of freedom of expression through newspaper articles that he has authored, including articles critical of the continued retention of Mr Michael Ramodibedi, the man who ordered Mr Maseko's arrest, as Chief Justice of Swaziland. It should be noted that the Chief Justice at present faces impeachment proceedings in Lesotho.

This is not the first time Mr Maseko has been arrested and detained for exercising his right to freedom of expression. In 2009 he was arrested, detained and charged with subversive activities. However, his trial was never brought to finality. Our fear is that his arrest and detention is aimed more at intimidating him and others than at instituting an actual prosecution that may be said to achieve any form of justice.

The Centre for Human Rights is concerned about the denial of access to a lawyer for the two detainees, the closed nature of the proceedings when they were brought before the very same Chief Justice, in chambers; and the refusal to grant bail and the resulting continued detention of Mr Maseko and Mr Makhubu, for what arguable is a relatively minor offence, even if proven by the State.

In addition to the obligations under its own Constitution (of 2005), which provides for the rights of persons deprived of their personal liberty (in article 16), Swaziland is a state party to and must abide by the African Charter on Human and Peoples' Rights (African Charter), which guarantees the right to a fair trial. The African Commission on Human and Peoples' Rights, the African Union monitoring body over the Charter, has indicated that the right to be released on bail, the right to counsel and to a public trial are all guaranteed as part of the relevant Charter provision. These rights are also clearly provided for under the Constitution of the Kingdom of Swaziland. Article

16(2) of the Swazi Constitution provides: 'A person who is arrested or detained shall be informed as soon as reasonably practicable, in a language which that person understands, of the reasons for the arrest or detention and of the right of that person to a legal representative chosen by that person.'

Article 16(3)(b) provides: 'A person who is arrested or detained upon reasonable suspicion of that person having committed, or being about to commit, a criminal offence, shall, unless sooner released, be brought without undue delay before a court.'

Article 16(4) stipulates as follows: 'Where a person arrested or detained pursuant to the provisions of subsection (3), is not brought before a court within forty-eight hours of the arrest or detention, the burden of proving that the provisions of subsection (3) have been complied with shall rest upon any person alleging that compliance.'

Article 16(7) provides: 'If a person is arrested or detained as mentioned in subsection (3) (b) then, without prejudice to any further proceedings that may be brought against that person, that person shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that that person appears at a later date for trial or for proceedings preliminary to trial.'

Mr Maseko is a graduate of the Centre for Human Rights, University of Pretoria, where he obtained a Master's degree in Human Rights and Democratisation in Africa in 2005. Since completing his studies, Mr Maseko has been a committed advocate for human rights and democratisation in Swaziland. In 2011 he received the Vera Chirwa Award from the Centre, in recognition of his unwavering support for human rights and democratisation efforts in Swaziland.

Mr Maseko belongs to a new generation of African human rights lawyers, (who are organised into) the Alumni of the Master's in Human Rights and Democratisation in Africa. These 401 women and men are active across the spectrum of human rights professionals in Africa, from grassroots, through civil society (including cabinet) parliament, academia, civil society to the African Union and the United Nations. They represent the Centre for Human Rights' own values of moving Africa towards a culture of respect for human rights and fundamental freedoms.

The Centre for Human Rights calls on the government of Swaziland to abide by its own Constitution and its international human rights obligations under the African Charter, and

- **ensure immediate and unhindered access of the two men to legal counsel;**
- **allow the two detainees to argue for their release on bail without delay, which should be considered on reasonable and judicial grounds;**
- **ensure that any further proceedings in this matter take place in public, and**
- **refrain from instituting prosecutions merely with the purpose of intimidating persons critical of the government, or to stifle free expression.**

The Centre, through members of its staff, is endeavouring to use its good offices to engage relevant government officials towards a resolution of these issues.

On the occasion of Human Rights Day, the Centre calls on the government of South Africa, through the appropriate channels, to raise its concerns with the government of Swaziland about this denial of human rights.

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