

# URGENT ACTION

## TWO MEN CONVICTED FOR CONTEMPT OF COURT

**On 17 July Bhekithemba Makhubu, editor of Swaziland's monthly news magazine *The Nation* and human rights lawyer Thulani Maseko were convicted on two charges of contempt of court in the High Court in Mbabane, Swaziland.**

**Bhekithemba Makhubu** and **Thulani Maseko** have already spent 119 days in custody after being arbitrarily arrested in March. The arrests were conducted under defective warrants issued by the Chief Justice Michael Ramodibedi. They were denied access to their lawyers and to the bail court and were remanded in custody after summary proceedings held behind closed doors. On this unlawful basis they were brought to trial on two charges of contempt of court. The charges arose from two articles published in *The Nation* magazine in February. *The Nation* magazine and Swaziland Independent Publishers were also convicted, adding to the repressive consequences of the ruling. Sentencing has been postponed.

The convictions on 17 July followed a grossly unfair trial. During the course of the trial the presiding judge, Mpendulo Simelane, had declared in open court the trial would be 'sui generis' (outside the normal law and procedures) in response to objections to the proceedings from the defence lawyers. At times the trial judge displayed open hostility to the accused and their supporters in court. Judge Simelane refused to accept an application for his recusal, despite the fact that the issues before the court involved him, as he was named in one of the published articles. Indeed, in delivering judgment he introduced evidence relating to the incident described in the article. He was acting, in effect, as witness and judge in his own case. The court proceedings were held with an intimidating police presence and with incidents of arrests of some supporters of the two accused men.

The conviction of Bhekithemba Makhubu will automatically trigger the implementation of a suspended sentence which was handed down by the Supreme Court on 30 May. The ruling was a result of his appeal against the High Court conviction and sentence on two similar charges.

Amnesty International considers Bhekithemba Makhubu and Thulani Maseko to be prisoners of conscience, arrested, detained and subjected to an unfair trial merely for exercising their right to freedom of expression.

### **Please write immediately in English or your own language:**

- Expressing concern at the conviction of Bhekithemba Makhubu and Thulani Maseko on contempt of court charges and their continued detention in custody;
- Calling for their immediate and unconditional release as Amnesty International considers them to be prisoners of conscience;
- Calling on the authorities to protect, respect and fulfil the right of freedom of expression and to cease all harassment, intimidation and unlawful legal proceedings against human rights defenders.

### **PLEASE SEND APPEALS BEFORE 29 AUGUST 2014 TO:**

Prime Minister  
Dr Barnabas Sibusiso Dlamini  
P.O. Box 395  
Mbabane, Swaziland  
Fax: +268 2404 3943  
**Salutation: Dear Prime Minister**

His Majesty King Mswati III  
Office of the King  
Lozitha Palace  
PO Box 1  
Kwaluseni  
Swaziland  
**Salutation: Your Majesty**

### **Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:**

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date. This is the first update of UA 86/14. Further information:  
<http://amnesty.org/en/library/info/AFR55/001/2014/en>

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### ADDITIONAL INFORMATION

Thulani Maseko and Bhekithemba Makhubu were arrested in March 2014 after *The Nation* published two articles by Thulani Maseko and Bheki Makhubu in February, in which they raised concerns about judicial independence and political accountability in Swaziland. They were charged with contempt of court and remanded in custody after highly irregular legal proceedings. On 18 March Amnesty International condemned those proceedings as a violation of international human rights standards and with no basis in Swaziland's domestic law.

Despite the courageous ruling of Judge Mumcy Dlamini on 6 April which led to the brief release of the two men from custody, they were re-arrested, remanded back in custody on 10 April and then subjected to unfair trial proceedings on contempt of court charges culminating in yesterday's judgment.

Bhekithemba Makhubu has already been facing an onerous legal process, following his conviction last year in Swaziland's High Court on two counts of criminal contempt of court in connection with the publication of two articles questioning the independence of the country's judiciary. Amnesty International had condemned the ruling which had been immediately followed by a shocking sentence of two year's imprisonment, if the editor failed to pay a fine equivalent to nearly US\$45,000 within three days. The sentence was averted when his lawyers managed to file appeal documents before that deadline.

His appeal was heard on 30 May. The Supreme Court overturned the conviction on one count and upheld the conviction on the second count but overturned the sentence (which was either pay the equivalent of US\$45,000 within three days or serve two years imprisonment.) The Supreme Court substituted another sentence on this upheld conviction: (i) a fine of the equivalent of nearly US\$3,000 against *The Nation* magazine, payable within three months; (ii) a sentence of three months' imprisonment against Bheki Makhubu, suspended on condition that he is not convicted of a similar offence. Given the conditionality of the suspended sentence, the conviction on 17 July is particularly concerning.

Thulani Maseko, an activist with Lawyers for Human Rights Swaziland, has also faced repressive charges under Swaziland's Sedition and Subversive Activities Act brought against him 2009. He has not been brought to trial on these charges to date.

The detention of and proceedings against Thulani Maseko and Bhekithemba Makhubu also violate international human rights standards.

Name: Thulani Maseko (m), Bhekithemba Makhubu (m)  
Gender m/f: m

and: Michael Ramodibedi (m), Mumcy Dlamini (f), Mpendulo Simelane (m)  
Gender m/f: both

Further information on UA: 86/14 Index: AFR 55/003/14 Issue Date: 18 July 2014

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