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SWAZILAND: Amnesty International condemns repression of fundamental freedoms

Amnesty International is deeply concerned about the continued persecution of peaceful political opponents and critics by the Swaziland authorities. In the most recent incident, human rights lawyer Thulani Maseko was sent to three weeks solitary confinement as a disciplinary punishment for an alleged breach of prison rules at Big Bend prison where he is serving a two-year sentence for contempt of court. Long-term political activist, Mario Masuku, who is in remand custody along with youth leader Maxwell Dlamini, continues to be denied access to adequate and independent medical care, which he needs urgently. Masuku and 13 other political activists continue to face prosecution under repressive laws which are in breach of provisions which protect the rights of freedom of expression, association and peaceful assembly under international and regional human rights treaties to which Swaziland is a party.

Thulani Maseko was sent to three weeks of solitary confinement on 19 March 2015, apparently in response to a letter published under his name on 17 March expressing thanks to the international community for its support. He had no access to legal counsel during the course of the disciplinary proceedings. It was not until 20 March that his lawyer was granted a brief meeting with him simply for the purpose of receiving direct confirmation that he was being held in solitary confinement. These restrictions on access to legal counsel fail to meet international human rights standards under which the authorities should ensure that imprisoned persons can communicate and consult with their legal adviser *“without delay, interception or censorship and in full confidentiality.”*¹ It is also a

¹ The UN Basic Principles on the Role of Lawyers, Principle 8. Principle 18 of the UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment permits restrictions only in “exceptional circumstances”, which must be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order”. The European Committee for the

violation of Article 16 of Swaziland's Constitution.²

Amnesty International is calling on the authorities to immediately withdraw the punishment of solitary confinement imposed on Thulani Maseko. Already serving a prison sentence for peacefully exercising his right to freedom of expression in the national magazine *The Nation*, he has now been punished a second time for the peaceful expression of his views. Solitary confinement is a serious restriction of a prisoner's rights which involves inherent risks to the prisoner affected, and if prolonged, amounts to a violation of the prohibition against torture and other ill-treatment.³ The United Nations Special Rapporteur on torture has stated that solitary confinement becomes prolonged after 15 consecutive days.⁴

Amnesty International reiterates its call for the immediate and unconditional release of Thulani Maseko, and *Nation* editor Bheki Makhubu, who it considers to be prisoners of conscience and who were convicted and sentenced to two years imprisonment in July 2014 for contempt of court after a grossly unfair trial merely for exercising peacefully their right to freedom of expression.⁵

In addition to using contempt of court charges against its critics, the Swaziland authorities are actively using the 2008 Suppression of Terrorism Act (STA) and the 1938 Sedition and Subversive Activities Act (SSA Act) to intimidate activists, further entrench political exclusion and to restrict the exercise of the rights to freedom of expression, association and peaceful assembly. Fourteen people are currently charged under these laws

Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which carries out visits to places of detention in all states within the Council of Europe, emphasised the role of legal access as a fundamental safeguard against ill-treatment (CPT/Inf/E (2002) 1-Rev.2015, page 15).

² The Constitution of the Kingdom of Swaziland Act, 2005.

³ Report of the Special Rapporteur on Torture, UN Doc. A/66/268 (2011), See also CPT, above, p. 30; para.76; McCallum v South Africa, Human Rights Committee, UN Doc. CCPR/C/100/D/1818/2008 (2010), para. 6.5.

⁴ Report of the Special Rapporteur, above, para. 26.

⁵ *Amnesty International condemns the convictions of editor and human rights lawyer today for exercising freedom of expression*, 18 July 2014. Index: AFR 55/002/2014. <https://www.amnesty.org/en/documents/afr55/002/2014/en>/<https://www.amnesty.org/en/documents/afr55/002/2014/en/>. Amnesty International Press Release, *Swaziland: Deplorable sentences against journalist and lawyer stifle free speech*, 25 July 2014. <https://www.amnesty.org/en/articles/news/2014/07/swaziland-deplorable-sentences-against-journalist-and-lawyer-stifle-free-speech>

in five separate trials. Ten are charged under both laws, including Mario Masuku, Maxwell Dlamini, and Mlungisi Makhanya, the Secretary General of the opposition organization, PUDEMO,⁶ along with six other co-accused. The authorities also initiated trial proceedings under the SSA Act against Thulani Maseko in September 2014, on sedition charge first raised against him in 2009. All of the accused are out on bail, apart from Thulani Maseko, Mario Masuku and Maxwell Dlamini. The alleged offences include shouting slogans at a Workers' Day rally, utterances made at funerals, possession of PUDEMO leaflets, wearing PUDEMO t-shirts while attending the trial of Thulani Maseko and Bheki Makhubu, or calling for a boycott of the elections held in 2013. The start of these trials have been postponed, pending the outcome of a constitutional challenge to the laws which will be heard in the High Court in September 2015.

Among other provisions of the SSA Act which violate Swaziland's human rights obligations, Section 3 places the onus on the accused to prove that their alleged acts, utterances or documents published were not done with "seditious intention". Section 8 also obliges courts to conduct proceedings in camera relating to an offence under the Act if so requested by the prosecution.

Amnesty International in association with the International Bar Association condemned the provisions of the STA as incompatible with Swaziland's human rights obligations on a wide range of grounds.⁷ These include:

- The failure to restrict the definition of 'terrorist act' to the threatened or actual use of violence against civilians;
- The failure of the definition to meet the requirements of legality, that is, accessibility, precision, applicability to counter-terrorism alone, non-discrimination and non-retroactivity.
- Offences which are defined with such over-breadth and imprecision that they place excessive restrictions on a wide range of human rights, including the right to hold opinions

⁶ People's United Democratic Movement, which was first banned under the King's Decree of 1973, and more recently declared a proscribed organization under the STA.

⁷ Amnesty International and the International Bar Association, *Suppression of Terrorism Act undermines Human Rights in Swaziland*, Index: AFR 55/001/2009 <https://www.amnesty.org/en/documents/afr55/001/2009/en>

- without interference and the right to freedom of expression;
- The reversal of the onus of proof with respect to allegations of membership of a terrorist group;
 - Lack of access to effective legal remedies, the absence of procedural safeguards and limitations placed on the role of the courts; and
 - A provision allowing for up to seven days incommunicado detention without charge or trial, with attendant risks of torture and other ill-treatment.

Amnesty International reiterates its call to the Swaziland government to repeal or immediately amend the STA, as well as the SSA Act, to withdraw criminal charges currently made under these laws, release all prisoners held solely for exercising their human rights peacefully and to stop abusing the criminal justice system to violate the rights of freedom of expression and association.

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