



#FreeSwaziland Campaign - in recognition of the one year anniversary of Mario Masuku and Maxwell Dlamini's arrest on 1 May 2014

1 May 2015 will mark one year in detention for Swazi political activists Mario Masuku and Maxwell Dlamini. The Southern Africa Litigation Centre is initiating a Twitter campaign to draw attention to Masuku and Dlamini's cases and the rule of law crisis in Swaziland that has caused cases such as Masuku and Dlamini's.

Background

Mario Masuku, the President of the People's United Democratic Movement (PUDEMO), and Maxwell Dlamini, the Secretary General of the Swaziland Youth Congress, were arrested on 1 May 2014 after participating at a May Day celebration in Manzini, Swaziland. The pair have been charged with sedition, subversion, and terrorism for making statements and singing songs calling for multi-party democracy in Swaziland, the end to the *Tinkhundla* political system, and increased respect for the independence of the judiciary and the rule of law. Although the message of their statements was to call for political change there was nothing violent about the delivery of their speeches, and neither advocated any form of violence or unrest. As spokespeople for their political movements, they support the official PUDEMO position of political change through popular participation to achieve a constitutional multi-party democracy.

PUDEMO's Constitution declares that "PUDEMO is, therefore, a democratic, non racial, non sexist political movement, committed to the creation, protection and promotion of a constitutional multi-party democracy, a transparent and accountable government, an environment conducive for growth and development." The Constitution also sets out the objectives of the party: "The restoration and maintenance of constitutional parliamentary multiparty democratic governance through maximum popular participation and respect of majority will."

The Legislation Under Which Masuku and Dlamini Have Been Charged

Masuku and Dlamini are facing charges under the Sedition and Subversive Activities Act and the Suppression of Terrorism Act. These laws have been widely criticised for unjustifiably limiting the rights to freedom of expression and association – rights which are protected in the Swazi Constitution – by criminalising various forms of peaceful expression in opposition to the government. The offences in the legislation, which carry maximum penalty of 20 years, are also broadly and vaguely defined which allows law enforcement officials wide discretion in applying the laws.

While there may be a need for terrorism laws in Swaziland, the concern is that the legislation is open to abuse. This is exemplified by Masuku and Dlamini's case, and even if they are eventually acquitted of the charges, they will still have been subjected to a lengthy period of pre-trial detention.

Masuku and Dlamini have filed a challenge to the constitutionality of these laws, and this application has been joined to three other separate cases which are also challenging the same laws. These matters, due to be heard in March 2015, were postponed to September 2015.

Masuku and Dlamini's Detention

Masuku and Dlamini applied for bail soon after their arrest, which was refused, and a second application in November 2014 was also refused. Judge Mpendulo Simelane (who has since been arrested on charges of defeating the ends of justice in another matter) ruled that Masuku and Dlamini were a flight risk and that their alleged offences indicated that they would be a threat to public order if released. Masuku and Dlamini have appealed this decision, and have argued that because they were willing to surrender their travel documents, have no financial means to forfeit bail and have strong emotional and family connections to Swaziland they are not a flight risk. They also argue that as they have never made any statements calling for any form of violence they cannot be a threat to public order.

The appeal was due to be heard by the Supreme Court on 5 May 2015, but has been postponed indefinitely due to the arrest of the Chief Justice. This is contrary to the Constitution which allows the Supreme Court to proceed in the absence of the Chief Justice, and these delays infringe the right to bail.

Bail is crucial as Masuku and Dlamini's criminal trial will only commence after the constitutional challenges are finalised. With the constitutional challenges being postponed until September 2015, it is possible that, given the likelihood of an appeal in the constitutional matter, the criminal trial will only commence sometime

next year. This would mean a lengthy period in pre-trial detention for Masuku and Dlamini.

General Failings of the Swazi Legal System

Masuku and Dlamini's case highlights many weaknesses in the Swazi legal system. The most significant of these are the lack of independence in the judiciary and violations of the rights to freedom of expression and association.

Independence of the Judiciary

Concerns about the lack of independence of the Swazi judiciary have come to a head in the past weeks. Last month, Members of Parliament voiced their concern about the trend of politically controversial cases being allocated by the Chief Justice to judges who he knew would rule in the government's favour. More recently, two judges were arrested for defeating the ends of justice for making rulings that indicated their lack of impartiality in the cases. An arrest warrant has also been issued for the Chief Justice.

Freedom of Expression and Association

Despite the Swazi Constitution protecting the rights to freedom of expression and association, the enjoyment of these rights is severely curtailed by various laws and the disproportionate application of these laws against political opponents. At present, thirteen activists are facing charges for conduct ranging from writing magazine articles, participating in protests, singing songs, and possessing pamphlets. Political parties are prohibited in the country, a number of organisations have been declared as terrorist organisations (and mere support for these organisations constitutes a crime), and the trade union movement has been effectively destroyed through governmental refusal to register the federations. It is therefore almost impossible for Swazis to voice their dissatisfaction with issues affecting them, and they are denied the opportunity to join groups of similarly minded people or to participate in protests. It has become a country where dissent is not merely frowned upon, but actively criminalised.

Tweets

Hashtag: #FreeSwaziland

If calling for multi-party democracy is terrorism, then I am a terrorist

If calling for an independent judiciary is terrorism, then I am a terrorist

Speaking my mind shouldn't be a crime

A year in detention without bail for simply speaking out is far too long

I may not agree with PUDEMO's political statements, but I do agree that they be given the right to state them

For more information, see the case pages on our website <http://bit.ly/1Gmc4in>, <http://bit.ly/1AczPpk> or contact one of our staff members:

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