

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

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August 18, 2014

Senator Mr. Sibusiso Shongwe
Minister of Justice
Kingdom of Swaziland
Fax: +268 404 5626

Dear Minister Shongwe:

I am writing on behalf of the Association of the Bar of the City of New York (the “Association”) to express our grave concern regarding the arrest and conviction of lawyer Thulani Maseko and editor Bheki Makhubu, and to urge that the Kingdom of Swaziland (“Swaziland”) immediately release them from detention and drop all charges against them.

The Association is an independent non-governmental organization with more than 24,000 members in more than 50 countries. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world, and its Committee on African Affairs, which closely monitors and responds to legal developments in Africa. In addition, The Cyrus R. Vance Center for International Justice advances global justice by engaging lawyers across borders to support civil society and an ethically active legal profession.

Mr. Makhubu, editor of the *Nation* magazine, and Mr. Maseko, a human rights lawyer, were convicted of contempt of court by the High Court of the Kingdom of Swaziland on July 17, 2014.¹ On July 25, the High Court sentenced each of them to two years in prison.² In delivering the sentence, Judge Mpendulo Simelane said that the courts have to use “the very ammunition of Contempt of Court in self-protection from journalists” and justified the two-year jail term as a deterrent to other journalists.³

The contempt charges against Mr. Makhubu and Mr. Maseko were initiated by Chief Justice Michael Ramodibedi and related to articles they had written that were published in the February edition of *The Nation*. In the articles Mr. Makhubu and Mr. Maseko criticized the bringing of contempt charges by Chief Judge Romodibedi against a government vehicle inspector who had ticketed a judge’s driver.⁴ Mr. Makhubu and Mr. Maseko were arrested on March 18 on the orders of Chief Justice Ramodibedi, who arraigned them in his chambers and did not afford them the opportunity for legal representation.⁵

¹ <http://mg.co.za/article/2014-07-17-swaziland-editor-bheki-makhubu-and-lawyer-convicted/>

² <http://mg.co.za/article/2014-07-26-prominent-swazi-activists-jailed-for-criticisms-of-judiciary>

³ <http://www.observer.org.sz/news/64350-judgment-on-sentence.html>

⁴ <http://mg.co.za/article/2014-04-10-swaziland-editor-lawyer-re-arrested>

⁵ <http://mg.co.za/article/2014-07-17-swaziland-editor-bheki-makhubu-and-lawyer-convicted/>

Swaziland is a member of the United Nations (UN) and the African Union. Swaziland acceded to the UN International Convention on Civil and Political Rights on March 26, 2004, and is bound by the African Charter on Human and Peoples' Rights as well as the Constitution of the Kingdom of Swaziland and other declarations and principles under international law.

The **Constitution of the Kingdom of Swaziland**, adopted in 2005,⁶ protects the right to free expression, "which includes the freedom of the press and other media, that is to say – (a) freedom to hold opinions without interference; (b) freedom to receive ideas and information without interference; (c) freedom to communicate ideas and information without interference; and (d) freedom from interference with the correspondence of that person."⁷

This right is also protected under the **African Charter on Human and Peoples' Rights**, in Article 9.2,⁸ and the **International Covenant on Civil and Political Rights** (1966).⁹ The International Covenant states, in Article 19.2, that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." The Covenant further states, in Article 19.3, that "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals." There is no mention in reports of these cases that any such restrictions should apply to a situation like the one in Swaziland described above. Finally, the International Covenant protects the rights to hold opinions without interference in Article 19.1, and basic due process rights, including, in Article 14, the right to communicate with counsel.

Other international instruments are also relevant here. The **Declaration of Principles of Freedom of Expression in Africa**, adopted by the African Commission on Human and People's Rights on October 23, 2002,¹⁰ states:

- In Article II that "No one shall be subject to arbitrary interference with his or her freedom of expression."
- In Article XI.1 that "Attacks such as... intimidation of and threats of media practitioners and others exercising their right to freedom of expression...undermines independent journalism, freedom of expression and the free flow of information to the public."
- In Article XI.2 that "States are under an obligation to take effective measure to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure victims have access to effective remedies."

⁶ Available at <http://bit.ly/1Ae3lg8>.

⁷ Constitution of the Kingdom of Swaziland, Article 24(2).

⁸ http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf

⁹ <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁰ <http://www.refworld.org/pdfid/4753d3a40.pdf>

We urge that Swaziland immediately take steps to release Mr. Maseko and Mr. Makhubu; to ensure that in the future they and all other journalists and human rights defenders in Swaziland may carry out their legitimate activities without hindrance; and to ensure in all circumstances respect for freedom of expression and other human rights and fundamental freedoms in accordance with international law, including the Universal Declaration of Human Rights and all human rights instruments ratified or acceded to by Swaziland.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Debra L. Raskin". The signature is fluid and cursive, with the first name "Debra" being the most prominent part.

Debra L. Raskin

cc:

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