



Inter-Parliamentary Union

For democracy. For everyone.

Eswatini

Decision adopted unanimously by the IPU Governing Council at its 213th session (Geneva, 27 March 2024)



Members of the Royal Eswatini Police Service (REPS) monitor affiliates of the Trade Union Congress of Eswatini (TUCOSWA) as they shout out political slogans in central Manzini on 28 October 2021 during a pro-democracy protest. Michele Spatari - AFP

SWZ-02 – Mduduzi Bacede Mabuza
SWZ-03 – Mthandeni Dube
SWZ-04 – Mduduzi Gawuzela Simelane

Alleged human rights violations

- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings
- ✓ Excessive delays
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Failure to respect parliamentary immunity
- ✓ Other acts obstructing the exercise of the parliamentary mandate

A. Summary of the case

Parliamentarians Mr. Mduduzi Bacede Mabuza and Mr. Mthandeni Dube were arrested on 25 July 2021. A third parliamentarian, Mr. Mduduzi Simelane, fled the country before an arrest warrant, which still remains valid, could be implemented. Mr. Mabuza and Mr. Dube were charged with the contravention of section 5(1), read in conjunction with section (2)(2)(a)-(d) and (i) of the Suppression of Terrorism Act 2008 (as amended), two alternative counts under the Sedition and Subversive Activities Act of 1938, and two counts of murder. The Accused No. 1 is, in addition, charged with contravention of regulation 4(3)(b), read in conjunction with regulation 4(8) of

Case SWZ-COLL-01

Eswatini: Parliament affiliated to the IPU

Victims: Three independent members of parliament

Qualified complainant: Section I.1(b) of the Committee Procedure (Annex I)

Submission of complaint: January 2022

Recent IPU decision: February 2024

Recent IPU mission: Trial observation (February 2024; November 2022)

Recent Committee hearing: Hearing with the delegation of Eswatini at the 148th IPU Assembly in Geneva (March 2024)

Recent follow-up:

- Communication from the authorities: Letter from the Speaker of the House of Assembly (February 2024)
- Communication from the complainant: November 2023
- Communication to the authorities: Letter to the Speaker of the House of Assembly (February 2024)
- Communication to the complainant: March 2024

the Disaster Management Act, No. 1 of 2006. They each entered a plea of not guilty in respect of all charges. The accused made several bail applications, which were all rejected.

The legal action against the parliamentarians was taken in the following context: In May 2021, calls for political reform started circulating on various platforms across Eswatini, with the aforesaid three parliamentarians also advocating for these changes. To prove that these members of parliament had the mandate from their constituencies to make this call resulted in a series of petitions being delivered to parliament in support of the call for change. Protesters were calling for constitutional and political reforms, lamenting the Government's reported failure to deliver basic services to its citizens, demanding responses to socioeconomic challenges, and invoking alleged ill-treatment by police. Petitions were delivered to various *tinkhundla* centres, predominantly by young people, to their members of parliament as an endorsement of the call for constitutional and political reforms. These calls were heightened during protests against alleged "police brutality" following the death of a University of Eswatini law student, Mr. Thabani Nkomonye. On 24 June 2021, the then acting Prime Minister, Deputy Prime Minister, Mr. Themba N. Masuku, issued a ban on the delivery of these petitions, saying that this was "a conscious decision to maintain the rule of law and de-escalate tensions that had turned the exercise into violence and disorder". Protesters continued to deliver petitions in spite of the ban and were blocked by the police.

In its report released at the very end of June 2021 regarding the events that had occurred earlier that month, the Eswatini Commission on Human Rights and Public Administration (the Commission) – which is Eswatini's national human rights institution – found that human rights violations and abuses had been perpetrated during the unrest.

According to the complainant, the charges against Mr. Mabuza, Mr. Dube and, potentially, Mr. Simelane serve as reprisals and aim to silence them, given that they have been at the forefront of the aforesaid demands for democratic reforms in Eswatini, an absolute monarchy led by King Mswati III for over 30 years, where political parties are not legally recognized.

Mr. Rahim Khan, an attorney and former acting chief magistrate in Botswana, with over 40 years of legal experience, was appointed by the IPU to attend and follow the final trial proceedings against Mr. Mabuza and Mr. Dube, namely those which took place from 8 to 10 and 14 to 16 November and on 13 December 2022.

In his first report, the trial observer pointed out that, "[T]he two members of parliament have been denied bail essentially as they are considered flight risks, notwithstanding their official positions as members of parliament, have fixed assets in the country, have clean records, have not interfered with witnesses and are willing to offer a sum of money to secure their attendance. It appears extremely surprising that their bail has been consistently refused". In his general comments and assessment of the trial, the trial observer stated that, "the trial is being continuously postponed, mainly at the instance of the Crown", and that the judge "does not direct any detailed questions to the Crown ... and grants them far too much latitude to conduct the trial as they wish".

On 31 January 2023, the defence and the Crown Prosecutor made final submissions in the criminal proceedings against Mr. Mabuza and Mr. Dube, after which the judge in the case reserved judgement. On 1 June 2023, the judge found them guilty of all charges, except for the charge related to the COVID-19 regulations with respect to Mr. Mabuza, and reserved sentencing for a hearing in December 2023. This hearing was subsequently postponed, with new hearings that took place from 20 to 22 February and on 26 March 2024. The IPU trial observer attended all these hearings, which focused on the defence counsel presenting information in support of mitigating the parliamentarians' sentence. According to information provided by the authorities, at the hearing held on 26 March 2024, Mr. Dube and Mr. Mabuza were not ready to proceed and applied for a postponement to 30 April 2024. This application was granted by the court.

In his most recent report, the IPU trial observer, upon reviewing the verdict, stated that "if we examine the statements attributed to them (Mr. Mabuza and Mr. Dube) by the learned judge, a careful analysis in fact does not reflect criminal intent. Throughout the evidence as appears in the record, there is no exhortation on the Swazi public to rise up in insurrection, overthrow the Monarchy and establish a government of the people. In fact, the accused are very deferential towards the Monarchy, almost religiously so. The entire case rests on the response by the accused to the declaration by the government that it was banning the production of petitions and for the appointment of the Prime Minister by election. The incidents of civil unrest occurred on 24 June 2021. It is abundantly clear from

the gravamen of the charges, that the accused were no way near the scene of the crime. It is the effect of what they stated that reflects what the State says is the foundation of their criminal conduct: that they encouraged people in their public statements to disobey the lawful appointment of the Prime Minister and in the process encouraged civil disobedience. But, with respect, how can civil disobedience be equated with terrorism and sedition? There was no armed insurrection, no taking up of arms with revolutionary slogans against the State, no intentional destruction of the most visible manifestations of state power. How encouraging people to disobey the government on the issue of denying the filing of petitions automatically led to arrests for terrorism without showing a direct link between rhetoric and causation is difficult to appreciate”.

According to the complainant, on 22 September 2022, the two detained parliamentarians were assaulted by prison guards who entered their cells. It is alleged that on 29 September 2023, Mr. Mabuza was again beaten by a correctional services officer. At the hearing held with the Committee on the Human Rights of Parliamentarians during the 148th IPU Assembly, the Eswatini delegation provided an undated document containing information on the internal inquiry under the Correctional Services Act that provides a response to parliament regarding the alleged attack against Mr. Mabuza and Mr. Dube. The document states that there was a routine search, that Mr. Mabuza refused to be searched and that, while being ordered to adhere to the search, Mr. Mabuza then attacked the officer attending. Mr. Dube then joined in and attacked the officer from behind and then other officers used pepper spray to calm down the situation. There was never an assault on Mr. Mabuza and Mr. Dube.

In response to the IPU's wish to send a delegation from the Committee on the Human Rights of Parliamentarians to Eswatini, at a hearing held at the 145th IPU Assembly in October 2022 the then Speaker responded that he would welcome such a delegation. Subsequent attempts by the IPU to organize the mission have, however, not yet borne fruit with the Eswatini authorities. At the hearing held with the Committee on the Human Rights of Parliamentarians during the 148th IPU Assembly, the Eswatini delegation stated that the Committee was still welcome to come to Eswatini.

On the night of 21 January 2023, Eswatini human rights defender and lawyer Mr. Thulani Maseko – a lawyer previously representing both parliamentarians – was killed. United Nations and African Union experts immediately condemned the killing as “abhorrent” and demanded an impartial investigation. Mr. Maseko was a member of Lawyers for Human Rights Swaziland and chairperson of the Multi-Stakeholder Forum, a coalition of political opposition groups and civil society activists calling for constitutional reform in Eswatini. His murder remains unresolved to this day. At the hearing held with the Committee on the Human Rights of Parliamentarians during the 148th IPU Assembly, the Eswatini delegation stated that an investigation was ongoing but that further information was not available.

Since the protests broke out in Eswatini in 2021, the SADC and other international partners have strongly encouraged the Eswatini authorities to conduct a meaningful, substantive and inclusive national dialogue to discuss options for democratic and institutional reforms. At the hearing held with the Committee on the Human Rights of Parliamentarians during the 148th IPU Assembly, the Eswatini delegation stated that the national dialogue had since been concluded and had been very successful and that the relevant ministries were now tasked with adopting the corresponding implementation plans.

At the same hearing, the Eswatini delegation stated that the IPU trial observer had not been impartial, that their national justice system was intact and proper, and that the judge who ruled in the case was very experienced and had taken all relevant facts into account. The delegation said that Mr. Mabuza and Mr. Dube have the right to appeal the verdict and said that the charges against them concerned events that took place when Eswatini was very much in lockdown due to the COVID-19 pandemic regulations being in place and that in the course of the events in 2021 the lives of more than 30 people were lost. The delegation also said that if, Mr. Mabuza and Mr. Dube had been genuinely interested in pushing for the direct election of the Prime Minister, they should have chosen to achieve this outcome through their work in parliament, rather than by interacting with citizens outside of parliament and inciting them to violence.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Eswatini delegation to the 148th IPU Assembly for the extensive and valuable information provided at a hearing with the Committee on the Human Rights of Parliamentarians and its spirit of cooperation; *appreciates* the written communications that the parliamentary authorities have sent to the IPU throughout the treatment of this case; and *points out* that these communications have always been acknowledged and have always received a response;
2. *Takes note with great interest* of the latest report from the IPU trial observer; and *thanks* him for his thorough analysis and for his continued readiness to attend and report on the legal proceedings at hand;
3. *Is deeply concerned* that Mr. Mabuza and Mr. Dube were found guilty as a result of a trial that had shown serious shortcomings, as identified in the trial observer's reports; *is ever more convinced* that these reports, and the reasons given by the judge for the verdict she reached, give serious weight to the complainant's assertion that the criminal case came in response to the parliamentarians' public appeal to strengthen democracy, which falls squarely within the legitimate exercise of their right to freedom of expression; *strongly believes*, therefore, that both men should never have been detained and prosecuted in the first place; and *sincerely hopes* that the matter will still be resolved, in a way that is in line with applicable human rights standards, before the men are sentenced;
4. *Notes with great interest* that the planned national dialogue has taken place in Eswatini; *wishes* to receive more information on the concrete recommendations made in the course of the national dialogue and on specific actions planned to implement them, in particular in the area of political and democratic reforms; and *reiterates* the IPU's readiness to provide support for ongoing efforts in this regard;
5. *Reaffirms its belief* that, over and above ongoing and new efforts to strengthen democracy in Eswatini, a mission by the IPU Committee on the Human Rights of Parliamentarians, which would include meetings with all the relevant authorities, a meeting with the two members of parliament and their lawyers, along with meetings with relevant third parties, would offer a useful opportunity to discuss the issues that have emerged in the case at hand and to examine possible solutions; *is pleased to learn* that the Eswatini delegation informed the Committee on the Human Rights of Parliamentarians, at the hearing held during the 148th IPU Assembly, that such a mission would still be welcome; and *requests* the Secretary General to continue to engage with the current parliamentary authorities of Eswatini to dispatch the mission as soon as possible;
6. *Requests* the Secretary General to convey this decision to the Speaker of the House of Assembly, the complainant and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining the case and to report back to it in due course.