



Inter-Parliamentary Union

For democracy. For everyone.

## Eswatini

*Decision adopted unanimously by the IPU Governing Council at its 214th session (Geneva, 17 October 2024)*



Members of the Royal Eswatini Police Service (REPS) monitor affiliates of the Trade Union Congress of Eswatini (TUCOSWA) as they sing 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

### Case SWZ-COLL-01

**Eswatini:** Parliament affiliated to the IPU

**Victims:** Three independent members of parliament

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

**Submission of complaint:** January 2022

**Recent IPU decision:** March 2024

**Recent IPU missions:** 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 (August 2024)
- Communication from the complainant: November 2023
- Communication to the authorities: Letter to the Speaker of the House of Assembly (September 2024)
- Communication to the complainant: September 2024

conjunction with regulation 4(8) of 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 (constituencies), 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. The parliamentary authorities state that numerous acts of violence were reported during the delivery of petitions, which were orchestrated by the protesters in some of the constituencies. This led to the authorities banning the physical delivery of petitions to the constituencies but leaving the door open for the petitions to be sent by e-mail.

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. The parliamentary authorities deny that they have been targeted for exercising their freedom of expression.

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.

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 judgment. 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”.

On 15 July 2024, the judge in the case sentenced Mr. Mabuza and Mr. Dube to prison terms of 25 and 18 years, respectively. They have appealed the sentence, and the appeal is pending.

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 an internal inquiry that showed that there was never an assault on Mr. Mabuza and Mr. Dube.

The IPU has expressed several times the wish to send a delegation from the Committee on the Human Rights of Parliamentarians to Eswatini. However, this mission could not take place in the absence of cooperation from the Eswatini authorities. In his letter of 5 August 2024, the Speaker stated that the rationale for the mission had now been overtaken by events.

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 (March 2024), 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 Southern African Development Community (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 had 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 had been 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 Speaker of the House of Assembly for his letter, his observations and 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. *Is deeply concerned* that Mr. Mabuza and Mr. Dube have been sentenced to hefty prison terms as a result of a trial that the IPU, through its trial observer, has closely followed and reported on; *considers* that the Speaker’s latest letter does not dispel its concerns about the trial’s

shortcomings, as identified in the trial observer's reports; *fails to understand*, in light of the written judgment that the Committee has carefully reviewed, how the two men could have been convicted and sentenced on the serious charges they faced given that they were only publicly expressing their opinion on alleged incidents of corruption, the need to change the Constitution and the importance of Eswatini citizens being allowed to convey their views to their representatives in parliament; *considers* in this regard that the two parliamentarians felt frustration at the lack of willingness and freedom within parliament, largely due to the way it was set up, to make progress on these questions; *considers* also that, while acknowledging that some of the protests in the middle of 2021 turned violent, at no point did Mr. Mabuza or Mr. Dube advocate for the use of violence or were themselves involved in any violent acts; and *decides* to send a trial observer to follow and report on the appeal proceedings;

3. *Reaffirms its belief* that it is crucial that a delegation of the IPU Committee on the Human Rights of Parliamentarians can meet with Mr. Mabuza and Mr. Dube in detention; and *requests* the Secretary General to continue to engage with the parliamentary authorities of Eswatini to dispatch this mission as soon as possible;
4. *Reiterates* the IPU's readiness to provide support for ongoing efforts to implement the recommendations that arose from the national dialogue; and *wishes* to receive more information on these recommendations and their state of implementation, including in the area of political and democratic reforms;
5. *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, in particular the SADC, the African Union and the Parliament of South Africa;
6. *Requests* the Committee to continue examining the case and to report back to it in due course.