



Inter-Parliamentary Union
For democracy. For everyone.

Eswatini

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)



Members of the Royal Eswatini Police Service (REPS) monitor affiliates of the Trade Union Congress of Swaziland (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 expression and opinion
- ✓ 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 Mduduzi Bacede Mabuza and Mthandeni Dube were arrested in the evening of 25 July 2021 and have been held in detention ever since, first at Mbabane police station and then at the Matsapha Correctional Centre. A third parliamentarian, Mr. Mduduzi Simelane, fled the country before an arrest warrant could be implemented. Mr. Mabuza and Mr. Dube face charges under the Suppression of Terrorism Act, two murder charges and a charge for contravening COVID-19 regulations. A proper examination of the bail applications from the two parliamentarians in detention was reportedly

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 2022

Recent IPU mission(s): - - -

Recent Committee hearing: Hearing with the delegation of Eswatini to the 145th IPU Assembly in Kigali (October 2022)

Recent follow-up:

- Communications from the authorities: Letters from the Speaker of the House of Assembly (March and October 2022)
- Communication from the complainant: September 2022
- Communication to the authorities: Letter to the Speaker of the House of Assembly (September 2022)
- Communication to the complainant: October 2022

repeatedly delayed and was finally processed and denied. The lawyers have filed another bail appeal, which is reportedly going to be heard on 8 November 2022. The trial itself is ongoing and, with the prosecution having presented its evidence, the counsel for defence is now presenting its defence. The next court dates have been set for 8 to 10 November and 12 to 16 December 2022.

With regard to Mr. Simelane, who is currently in the United Kingdom, it first appeared that he had not been officially charged for any offence, as his case had not yet been officially referred to court. News reports, however, have recently surfaced indicating that the Eswatini authorities have approached their British counterparts to seek Mr. Simelane's return to Eswatini. On the basis of Article 97(1)(c) of the Constitution, Mr. Simelane's seat in parliament was declared vacant due to his prolonged absence without permission or justification and a by-election for his replacement was held. His wife was elected and was sworn in as a member of the House of Assembly on 4 August 2022.

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, were lamenting the Government's reported failure to deliver basic services to its citizens, demanded responses to socioeconomic challenges, and invoked 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. The aforesaid three parliamentarians joined the #justiceforThabani movement, which supported the call for constitutional and political reforms. 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. In his address, the Acting Prime Minister said 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 against 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 were perpetrated during the unrest. Further, the assessment indicates that lethal force was used indiscriminately on protesters and members of the public who were not even part of the protests. The protestors themselves appear to have been violent in that some areas were rendered inaccessible by road blockages and the burning of tyres. There was widespread damage, the burning of properties and businesses and looting of shops. The majority of people arrested were detained for unreasonably prolonged periods without trial. Even though they were eventually afforded their right to bail, the courts often imposed excessive bails and steep fines.

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 Speaker of the House of Assembly has stated that the parliamentary immunity of the three parliamentarians with regard to speeches in connection with debates and proceedings in parliament had always been respected. The Speaker also stated that the prison conditions of Mr. Mabuza and Mr. Dube were the same as those of other trial inmates and that they were granted all the general benefits extended to inmates awaiting trial. He added that, as the matter was before the court, due to the separation of powers he could not comment on the specific charges.

In the early hours of 22 September 2022, the two detained parliamentarians were allegedly assaulted by prison guards who entered their cells and started beating them up for no reason. According to the Speaker, an inquiry into the matter has been opened in terms of the Correctional Services Act, No. 13 of 2017, read in conjunction with the Prison Regulations of 1965. The Speaker stated that "we are eager for the resultant recommendations and further action which the inquiry may further recommend. The legal processes have not been finalized and we hope that the above allegations shall be adequately addressed".

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Speaker of the House of Assembly for the information provided in his letter of 4 October 2022 and during the hearing with the Committee on the Human Rights of Parliamentarians at the 145th IPU Assembly; and *appreciates* his spirit of cooperation and the fact that he would welcome a Committee delegation to Eswatini, as confirmed in his discussions with the IPU Secretary General in Kigali;
2. *Sincerely believes* that such a mission, which would include meetings with all the relevant authorities, a visit to the detained members of parliament and a meeting with 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 understand the context in which they have to be seen;
3. *Considers* that these concerns and questions refer in particular to the following: (i) the allegation that Mr. Mabuza and Mr. Dube have not committed any crimes and are being detained and prosecuted in response to their public appeal to strengthen democracy; (ii) their alleged recent beating-up in detention by prison wardens; and (iii) the continued dismissal of their bail applications;
4. *Requests* the Secretary General to make the necessary arrangements with the parliamentary authorities of Eswatini with a view to the dispatch of the mission in the coming months; and *reaffirms* its earlier decision to also send a trial observer to the ongoing criminal proceedings, which the Speaker kindly agreed to during his discussion with the Secretary General in Kigali;
5. *Thanks* the Speaker for his willingness, as expressed to the Secretary General, to facilitate the IPU's possible engagement in efforts to resolve issues stemming from the political crisis in the country;
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 this case and to report back to it in due course.