The failure of leadership in Swaziland; the people are treated with contempt

Statement of Defence

1. Introduction

May it please the Court, I am the fourth accused. I have chosen to make this statement from the dock with the full knowledge that it does not necessarily carry the same legal weight as evidence given in the normal course; that is, testimony given in examination-in-chief and under cross examination. Nevertheless, just as much as His Majesty King Sobhuza II gave careful consideration to the unlawful repeal of the 1968 Independence Constitution on April 12, 1973, I have equally thought long and hard about this. I have come to the conclusion that this has been such an extra-ordinary case. To any mind, it has earned itself of an extra-ordinary approach. This trial, although based on an alleged contempt of Court offence, seems to me to be politically engineered. I do recall that one of the chor[illegible] preferred against Justice Thomas Mabuler was that he had aligned himself [illegible] [illegible] [illegible] [illegible] change. No wonder CT said he will defend [illegible]

Your Lordship, through this statement, I seek to demonstrate at least five issues. First, I will show the failure of justice by and before this very Court. Second, I insist that the Chief Justice, Michael Ramodibedi is morally bankrupt. He has not only undermined the integrity and dignity of the judiciary in our country; he has also destroyed its independence and accountability, to such an extent that it has lost public trust, without which it cannot function. I say that we had to comment and write about Bantshana Gwebu's case because; as Martin Luther King Jr tells us from his *"Letter from Birmingham Jail"* that ***"We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly."*** Third, I will respectfully submit that the people of Swaziland are treated with disgusting disregard and utter contempt. Fourth, I will address a general failure of leadership at all levels in our society. Fifth and lastly, I will cry out for the need to find consensus around a way forward so that, as one people we can face the challenges facing us together, peacefully.

Sir, President Barack Obama, the inspirational leader of our time says ***"We worship an awesome God in the South…"*** Elsewhere he says ***"I am rooted in the Christian faith."*** I do want to say that we also worship an awesome and magnificent God in prison. There in Room D4 where His lordship has along remanded me, we worship a great God indeed! And a fellow prisoner read from the Holy Book that:

> ***Put on all the entire armour that God gives you, so that you will be able to stand up against the Devil's evil tricks. For we are not just fighting against human beings but against the wicked spiritual forces in the heavenly world, the rulers, authorities, and***

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cosmetic powers of this dark age. So put on God's armour now! Then when the evil day comes, you will be able to resist the enemy's attacks; and after fighting to the end, you will still hold your ground.

The court will note as it did on Thursday April 10, 2014 that I am an attorney of this court, having been admitted to practice as such on November 19, 1999. Like many present in Court today, I come from very humble beginnings: I come from the little valleys and mountains of Ka-Luhleko area. I happen to be a member of the Maseko Royal Household. As I speak my people have been denied their traditional and customary right of installing a Chief of their own choice as it happened with the people of Macetjeni and Kamkhweli, and other areas. Those who pretend to be defenders of Swazi Law and Custom are in fact, its greatest purveyors.

During the day of my admission as an attorney I took the oath of practice before the then Registrar of the High Court, Mrs. Thandi Maziya. I said:

I, THULANI RUDOLF MASEKO, do swear that I will truly and honestly demean myself in the practice of an ATTORNEY according to the best of my knowledge and ability. SO HELP ME GOD.

I believe it is such demeanor that has led to my unlawful arrest and detention. Let me say in advance that like millions around the world, I love and have been greatly influenced by Nelson Rolihlahla Mandela's idealism and pragmatism. In this regard, and as a lawyer himself, Mandela said in 1962, in his speech *"Black man in a white Court,"*

I regarded it as a duty which I owed, not just to my people, but also to my profession, to the practice of law, and to justice for all mankind, to cry out against this discrimination, which is essentially unjust and opposed to the whole basis of the attitude towards justice which is part of the tradition of legal training in this country. I believed that in taking up a stand against this injustice I was upholding the dignity of what should be an honourable profession.

I feel likewise. We lawyers are called upon to be ***"doers of the word, not its sayers only,"*** writes His Lordship Tom Bingham in his book, ***The Rule of Law***. Throughout my years as a legal practitioner in this Court I have never seen such anger, hostility and prejudice from a judicial officer. Such anger, hostility and prejudice was demonstrated to us by the Chief Justice in his Chambers on Tuesday March 18, 2014, who told us point blank that contempt of court is a very serious offence and that the

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procedure the Court adopts in dealing with it is *sui generis*. Not surprisingly, similar sentiments were expressed by this court on our first appearance on Tuesday March 25, 2014. We have now been made to understand that the *sui generis* nature of the crime of contempt of court means that the Court is at liberty to violate, breach and undermine every known rule of practice, including non-compliance with the Criminal Procedure and Evidence Act 67 of 1938, as well as the Constitution in order to arrive at the decision it seeks; ***a conviction at all costs.*** This cannot be correct. My sense of justice is reviled by a procedure labelled as *sui generis* but which is uncertain and further excludes due process, fairness, propriety and justice. This Court should not be complicit in the rape of Lady Justice.

Sir Francis Gerard Brennan QC, the tenth Chief Justice of Australia says these words which are apposite in this case:

> ***What lawyers do know, however, is what laws, practices and procedures provide safeguards which maintain public confidence in the Rule of Law. When the conventional safeguards of law and the legal process are dismantled or reduced so that the public sense that justice according to law is no longer assured to all people within the jurisdiction, public confidence in the Rule of Law is lost or diminished. That weakens the unity and fubric of society and exposes us to the danger from those who do not share a respect for the Rule of law.***

This distinguished jurist goes on to quote Lord Devlin who states that ***"the judge who does not appear impartial is as useless to the process as an umpire who allows the trial by battle to be fouled or an augerer who tempers with the entrails."*** He goes on to say that ***"No unsuccessful party should be left with any reasonable apprehension of bias affecting the decision."*** As accused persons in these proceedings, the feeling that this Court is bias has never left us. From the very first day we appeared before this Court, we entertained a reasonable apprehension that this Court has not brought an impartial and unprejudiced mind to the resolution of the matter. We have been ambushed from day one, right to the end.

All applications we made before His Lordship have been against us, but found favour with the State. I accordingly agree with the Right Honourable Lord Tom Bingham of the House of Lords, writing on *"The Rule of Law-The Sixth Sir David Williams Lecture, Cambridge, 16 November 2006* that ***"There are countries in the world where all judicial decisions find favour with the government, but they are not places where one would wish to live."*** It is also on the public record that, at no point in the history of judicial independence in Swaziland has the Government recorded one hundred per cent (100%)

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victory, except under the stewardship of Chief Justice Michael Ramodibedi!! The judiciary has never been so executive-minded than under the leadership of *Makhulu Baas.*

Sir, from the day of our arrest on Monday March 17 and Tuesday 18, 2014 respectively, it has deeply pained our hearts to see this honourable court violate and break every rule of practice in the justice game, as provided for in the Rules of Court and the rules applicable under the criminal justice system. This court has not only breached the normal rules of practice and procedure and the CP&E Act, which have governed the fair administration of the criminal justice for years; this court has blatantly violated and breached the Constitution of Swaziland, which is supposed to be the supreme law of the land. To put this issue beyond any shadow of doubt, section 14(2) of the Constitution provides that:

> ***The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, the Legislature and the Judiciary and other organs or agencies of Government and, where applicable to them, by all natural and legal persons in Swaziland, and shall be enforced by the courts as provided for in this Constitution.***

Instead of enforcing the Bill of Rights and the Constitution, I contend that this court has subverted same. We want to say that 'other organs or agencies' of government include the office of the Director of Public Prosecutions (DPP), the Attorney General (AG) and the police. We strongly hold the view that the conduct of the office of the DPP, the AG, the police and the entire State machinery amount to the suspension or abrogation of the Constitution as envisaged by section 2(3) (of the Constitution). For the purposes of clarity, this is what the section says:

> ***(3) Any person who-***
>
> ***a) by himself or in concert with others by any violent or other unlawful means suspends or overthrows or abrogates this Constitution or any part of it, or attempts to do any such act; or***
>
> ***b) aids and abets in any manner any person referred to in paragraph (a); commits the offence of treason.***

This Court, in collaboration and in an unprecedented conspiracy with the Chief Justice, the DPP, the police the Swaziland Government and the entire leadership of this country have concerted to suspend the supremacy of the Constitution and the Bill of Rights for egocentric reasons. They have committed

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the crime of treason. I dare say so although I am neither a fan nor supporter of the *tinkhundla* Constitution which itself is inconsistent with the Rule of Law; and is not a true reflection of the genuine aspirations of the people of Swaziland. It was forcefully imposed. It is a constitution — A constitution as we have pointed out elsewhere.

2. Events of Thursday April 10, 2014

Your Lordship, without belaboring this issue more than it has already been done, and with no intention to assail you personally, I simply want to deny that I ***insulted*** the court as it has been alleged. The reverse is true. Every practicing practitioner worth his salt, including the DPP and the AG will agree that judicial officers are expected by law, to treat litigants courteously even if they dislike them. In this regard the Bangalore Principles of Judicial Conduct (2002) provide in Value 3, which deals with the INTEGRITY of a judge that:

> ***3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.***
>
> ***3.2 The behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must be seen to be done.***

Our lawyers hammered this point so courtly but without success.

Justice Wright of the United States of America (USA) during his confirmation hearing said:

> ***"There may be a place for arrogance. I'm not sure what place that would be, but I am sure that it is not on the bench. The courts do not belong to us. We are holding a public trust. The courts belong to the people. They need to be made to feel welcome, that this place is a place for resolution of their disputes... Our job is to administer the law fairly and impartially. It is not our place to assume a sense of power which we do not possess, a sense of superiority which we simply do not have. We are administering a public service."***

I respectfully contend that this court has failed in this regard. My sense of dignity was attacked by the court. The court, in an unprecedented show of abuse of authority was parading us. I strenuously deny that what his Lordship wanted was to call upon us to explain our non-appearance the previous day. I say so because this issue had already been fully addressed by our legal representatives. Had the court wanted us to explain, this would have been the first thing to have been done. In any event, the Court never did seek such explanation from us, but quickly sent us back to jail. I submit with respect that, His Lordship's saying so was an afterthought so as to justify the Court's shameful conduct towards us. There is no truth in this. It only goes to show that we are dealing with an unjust court. Anybody who

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has a conscience as I do, and who was present in Court would bear us out on this. The Court and the prosecution are at liberty to disagree with me on this.

To close on this issue, let me say that the treatment we received from the court was a violation of section 18 of the Constitution which is taken from Article 5 the Universal Declaration of Human Rights (1948). Articles 5 provide that ***"No one shall be subjected to torture or cruel, inhumane or degrading treatment or punishment."*** We did not find human rights, human rights found us. Section 18 of the Constitution reads:

1) ***The dignity of every person is inviolable.***
2) ***A person shall not be subjected to torture or to inhuman or degrading treatment or punishment.***

Nobody can deny that throughout our appearance before this Court, we have been treated degradingly and inhumanely, including our legal representatives. Thursday April 10, 2014 was the proverbial icing on the cake. I felt that our dignity was under severe attack by a court, which by law, has the responsibility to protect us. I felt completely vulnerable and helpless, I felt oppressed. I rightly lost it, and felt I had to defend and protect whatever dignity remained of us. Indeed Martin Luther King Jr, tells us as he struggled against segregation and oppression in Montgomery, Alabama, that:

> ***... there comes a time when people get tired of being trampled over by the iron feet of oppression. There comes a time my friends, when people get tired of being plunged across the abyss of humiliation, where they experience the bleakness of nagging despair...***

He proceeds to counsel us "**to *work and fight until justice runs down like waters and righteousness like a mighty stream.***" That time came to me on that morning of April 10, 2014. I simple could not take it any longer. I felt then as I do now, that His Lordship, being driven by anger, hostility and prejudice was not behaving like a judge. I felt duty bound to remind His Lordship to behave accordingly. I do not regret; yes I do not regret because since that morning His Lordship has tried to manage and hide his prejudice, hostility and anger towards us. Let the Court be comforted by the fact that for my conduct, I am willing to pay the severest penalty, even if it means spending more days, or even years in jail. It is well with my soul. I accept the penalty with a clean and a clear conscience that I did no wrong, for we were treated unfairly by and inside the very fountain of justice and fairness. Throughout this ordeal, we have been treated contemptuously.

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3. I am not guilty of the offence of contempt of court, I offer the following explanation:

My Lord, during the Southern African Development Community Lawyers Association (SADCLA) Annual General Meeting held at the Royal Convention Centre in August 2012, my President, President of the Law Society of Swaziland, Titus Mlangeni said ***"the taste of the pudding is in the eating***." He was reacting to the statement made by the then Honourable Speaker of the House of Assembly Prince Guduza Dlamini, who presented a speech for and on behalf of His Majesty, King Mswati III. Let me make it clear Sir, that I refer to the statement made by the President because, the highest authority had assured the assembly of the SADC lawyers and the world, that Swaziland was committed to the Rule of Law and the independence of the judiciary. Swazi lawyers had been engaged in a boycott of the Courts, having raised serious issues about the failure of the proper and effective administration of justice in the land, and the shameful misconduct of the Chief Justice Michael Ramodibedi, whose moral authority and reputation remains questionable not only in Swaziland, but also in his native country, the Kingdom of Lesotho. He has unsurprisingly elected to resign as Judge President of the Court of Appeal, in a strategy to avoid the long arm of the law.

What was the response of Government and the leadership of this country to the boycott? Leaders of this country buried their heads in the sand, with the hope that the problems around the Chief Justice and the Rule of Law will go away. But no, the problems are still here with us today. The Prime Minister is on public record having said that government is proud of the Chief Justice, and that he is not going anywhere! My Lord, let me be clear, I may not be perfect but I am a loyal member of the Law Society of Swaziland, which by the way, is established by an Act of Parliament, the Legal Practitioner Act, and 15 / 1964 (the Act). Every lawyer, is obliged to abide by the Act, otherwise he or she is in contempt of the profession.

We only know of one lawyer in recent times who has flatly refused to subject himself to the requirements of the Act; the Minister of Justice and Constitutional Development, Sibusiso Shongwe. He unfairly and without lawful and reasonable justification attacked the Law Society of Swaziland, when invited to appear to redeem himself before the Law Society Disciplinary Tribunal for alleged misconduct as an attorney. The Minister told Parliament that the courts deserve utmost respect. We say no; no institution of State or public officer deserves such respect; rather they must earn it. It is disgusting, to say the least, that the Chief Justice who heads the judiciary and the line Minister responsible for Justice and Constitutional Development have consistently refused to subject themselves

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to the law and the Constitution. They obviously hold the law in contempt. They are the law unto themselves.

True to the lawyer's complaints against the Chief Justice and my contention that the Chief Justice is morally bankrupt, his counterparts in the Court of Appeal of Lesotho indicted him in his own case; ***The President of Court of Appeal v Prime Minister and Four Others C of A (Civ) Case No 62/2013***. This is what the Court said at paragraph 22:

> ***The fact that the adverse effect of the impugned decision will be confined to the appellant's reputation leads me to a further consideration. It is this. At the time of the appointment of the Tribunal most of the allegations of misconduct against the appellant were already in the public domain. I say this in the light of the following:***
>
> ***a) The unseemly incidents flowing from the protracted conflict between the appellant and the Chief Justice had been widely published.***
>
> ***b) Some of the allegations against the appellant had been the subject of formal complaints by Lesotho Law Society while others were raised in a formal publicized memorandum of complaint by the Law Society of Swaziland.***
>
> ***c) Some of the allegations against the appellant were mentioned in the report of the ICJ Committee.***
>
> ***d) There was a petition by a group of concerned citizens to the Prime Minister calling for the ouster of the appellant from judicial office, which also received coverage in local press.***
>
> ***e) Finally there was the litigation between the appellant and the Prime Minister, where virtually all the allegations of misconduct relied upon by the Prime Minister were ventilated in the papers before the high court.***

The Court of Appeal continued to emphatically state at paragraph 23 that:

> ***The upshot of all this, as I see it, is that the appellant's reputation was already tarnished before the request for the appointment of a Tribunal by the Prime Minister. On the face of it, it seems to me that the only way to salvage his reputation is for the appellant to successfully refute the allegations before the Tribunal ... The removal of the uncertainty surrounding the Appellant's reputation caused by the wide publication***

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is not in his interest only. It also affects the unconditional public respect for the integrity of the judiciary without which the courts cannot function. The interest of the administration of justice thus required the appointment of the Tribunal as a matter of urgency.

This statement coming from the Chief Justice's own peers, at his own backyard is surely an indictment on his moral authority, integrity and reputation as the head of judiciary in Swaziland. We have been vindicated, and we should be acquitted and discharged of the charges preferred against us.

What did *Makhulu Baas* do in an attempt to avoid and undermine the impeachment process? He resigned! This is nothing but an antic to claim moral high ground; a futile exercise. His attack on the integrity of the judgment does not help him. At some point he must submit to the law. Period. His cheap accusation of Justice Azhar Cachalia flies in the face of what he himself did to Mr. Justice Masuku. At least the Chief Justice did not have to appear before his accusers who would be witnesses, prosecutors and judges in their own cause. He appeared before a proper and fair court, which he denied Mr. Justice Masuku.

Is it not a shame that in his letter to King Letsie III, the Chief Justice alleges that his impeachment process in Lesotho is intended for personal agendas when he himself used the JSC to settle his personal dislike for Mr. Justice Masuku? It is indeed funny that *Makhulu Baas* claims he has done his best "thus far to defend the Constitution and the independence of the Judiciary in Lesotho against Executive interference" when in Swaziland he has absolutely undermined the Constitution and lowered the independence, integrity and dignity of the judiciary. We contend that it is contemptuous for the Chief Justice to complain that "...the Constitution has been flouted with impunity..." when he himself has flouted the Constitution of Swaziland. The Chief Justice cannot apply double standards. What is good for the goose should be good for the gander. *Makhulu Baas* has obviously and conveniently forgotten the Golden Rule: ***"Treat others as you want them to treat you."***

On this score, I want to submit that this emphatic finding by the Court of Appeal is in line with the Bangalore Principles of Judicial Conduct (Bangalore Principles). Paragraph 6 of the Preamble states that, ***"WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society."*** Paragraph 7 provides: ***"WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system."*** As if these were not enough, paragraph 8 speaks to the responsibility of the judiciary and reads:

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"WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country."

I have always viewed the conduct of judicial officers as servants of the people, to be open, to criticism and public scrutiny. In this view I am fortified by Value 4 of the Bangalore Principles which deals with the proprietary of judicial officers. Paragraph 4.2 reads:

> ***As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.***

Without fear of any contradiction, I say that, I do not believe that the conduct of the Chief Justice is consistent with these principles and values. Rather, I have a firm belief that he is a liability and burdensome to the institution of the judiciary and an embarrassment to his own peers. He has tarnished not only his own image, but that of the judiciary. If anyone is in doubt, one only needs to have read the Weekend Observer of April 20, 2014, where Her Ladyship Justice Qinisile Mabuza complains about the treatment she has received from the Chief Justice. She feels sidelined. If judges of the High Court of Swaziland are unhappy about the way they are treated by the head of the judiciary, why should we, the people shut up? It is absolutely not possible, if we have a conscience as I do.

4. The people are treated with contempt

The thrust of my defence is that I am not in contempt of court, but that the people of Swaziland are treated with contempt and disgusting disregard. The following factual allegations show such contempt against the people.

4.1 Contempt of the people's resolutions at Sibaya of August 2012

First, in support of this I make the following factual allegations. Your Lordship, the court will recall that, following the lawyers' unprecedented boycott of the courts for a continued period of at least four (4) months in 2011, as well as the *"waya waya"* teachers' strike and other forms of civil strife, His Majesty convened the People's Annual General Meeting at Ludzidzini in August 2012. I am sure the country will know that in terms of section 232(1) of the Constitution, ***"The people through Sibaya constitute the highest policy and advisory council (Libandla) of the nation."*** Subsection 3 states that: ***"Sibaya functions as the annual general meeting of the nation but may be convened at any time to present the views of the nation on pressing and controversial issues"***. Significantly, the King is the

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Chairman of the meeting; he is at the centre of all of it, in terms of subsection 2. This means that he bears the ultimate responsibility to ensure that the people's resolutions are executed and implemented.

What were these ***pressing*** and ***controversial issues***? Sir, there were obviously many such pressing and controversial issues on the agenda but I will limit myself to only three. ***Number one*** was the form of electoral system that Swaziland has to adopt and follow. To the surprise and shock of the leaders of this nation, stalwarts and proponents of the current discredited *Tinkhundla* system as enshrined in section 79 of the Constitution, the overwhelming majority of those who spoke submitted that in 2013 Swaziland should have had an electoral system based on multiparty politics. I borrow the phrase "overwhelming majority" from Prince Mangaliso Dlamini's Constitutional Review Commission (CRC) Report. The question that arises is whether this recommendation / resolution was implemented, or even worse, whether there are any plans to implement same? The answer, as far as we are concerned, is in the negative. It is our respectful submission that the failure or refusal to give effect and meaning to the people's resolution and aspirations to move towards a **People's Democracy,** as opposed to the much talked about vague **Monarchial Democracy,** is contemptuous to the people of this land.

My Lord, I respectfully state that, the people's call for elections on the basis of a multiparty constitutional dispensation is indeed consistent with section 1 of the Constitution of Swaziland which reads that:

> *Swaziland is a unitary, sovereign **democratic** Kingdom.*

Of course, section 1 must be seen in the light of other supporting provisions of the Constitution intended to consolidate democracy, as opposed to consolidating power and government by a clique, which claims the divine right to rule. Indeed, Article 21 of the Universal Declaration of Human Rights as read together with Article 25 of the International Covenant on Civil and Political Rights (ICCPR) provides that, **the will of the people shall be the basis of the authority of government**. In this regard Nelson Mandela in his book *The Struggle is My Life* tells us that:

> ***That the will of the people is the basis of the authority of government is a principle universally acknowledged as sacred throughout the civilized world, and constitutes the basic foundations of freedom and justice.***

Let me say it categorically clear that, Swaziland being a member of the community of civilized nations has undertaken certain obligations. These obligations arise from her membership with the United Nations (UN), and with the African Union (AU). Under the auspices of the AU, and it has been

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emphasized that Africa must find solutions to its own problems; and the African Commission on Human and People's Rights (the African Commission) an organ of the AU, has taken at least two policy decesions on Swaziland. In the first one, a decision of 2005 the African Commission found that the ban on political parties under the King's Proclamation to the Nation of April 12, 1973 violates Swaziland's obligations under the African Charter on Human and People's Rights (1986), which Swaziland voluntarily ratified in 1995. By logical extension, the ban on political parties in terms of section 79 of the Constitution is a violation of the rights of the people of Swaziland to freely associate.

In the second decision of April 2013, the African Commission resolved that Swaziland was to respect all fundamental rights and freedoms, including the existence of lawfully recognized political parties to ensure genuine, free and fair democratic elections, including freedom of speech and expression during the 2013 elections. To put this issue beyond any doubt, the New Partnership for Africa's Development (NEPAD) which Swaziland is a State Party to, puts it in clear terms at paragraph 79 that:

> ***Africa undertakes to respect the global standards of democracy, the core components of which include political parties and workes' unions, and fair, open and democratic elections periodically organised to enable people to choose their leaders freely.***

To this, one may add the SADC Principles and Guidelines on Democracy and Elections (2004) as well as the African Charter on Democracy, Elections and Good Governance (Charter on Democracy) (2007). Article 1 paragraph 11 of the Charter on Democracy enjoins State Parties on ***"Strengthening political pluralism and recognizing the role, rights and responsibilities of the legally constituted political parties, which should be given a status under national law."*** The import of this is that, political parties have been institutionalised as indispensable in African democracy. Swaziland is accordingly out of step with developments in Africa, and the rest of the just and democratic world. Contrary to these human rights provisions, political parties and the Trade Union Congress of Swaziland (TUCOSWA) remain banned in Swaziland. No country can be a democracy while political parties are banned and cannot contest political power. This is the very key function and purpose of political parties. Swaziland is no exception.

His Lordship may wonder of what relevance this is in this trial for alleged contempt of court. The relevance is simple; the people of Swaziland have a right to determine and shape their destiny - the right to self-determination. History tells us, and indeed proponents of the *tinkhundla* system are proud of the fact that His Majesty, King Sobhuza II was an active and card carrying member of the African National Congress (ANC), Mandela's political party, the governing party in the Republic of South

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Africa. Many of us are sure that His Majesty King Sobhuza II believed in the prophetic words of the Freedom Charter adopted by his ANC in 1955, which states in one of its emphatic concluding paragraphs that:

> ***The people of the protectorates-Basutoland, Bechuanaland and Swaziland-shall be free to decide for themselves their own future.***

While the people of Lesotho and Botswana do enjoy the right to determine their future by electing a government through multiparty democratic elections, this is not the case with Swaziland where a government is handed down from above. The elections are merely a sham, a window-dressing exercise.

It has already been said however, that ***"There are too many leaders who claim solidarity with Madiba's struggle for freedom, but do not tolerate dissent from their own people."*** Accordingly, I submit that, this trial is not about the allegations of contempt of court. I abide by what I said in the article for which I now stand accused. But if truth be told, this trial is about the prosecution and persecution of the aspirations of the people of this land to determine their own destiny, democratically and freely. As a people we not only call for elections on the basis of political pluralism. In effect, we are calling for and demanding the right to be treated equally and with dignity before the laws of this country. Indeed the UN calls upon Member States in Article 55(c) ***to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.***

This call is perfectly in line with the words of the Universal Declaration of Human Rights that: ***"All human beings are born free and equal in dignity and in rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood."*** Then I read from the Good News Bible that ***"God created human beings, making them to be like himself. He created them male and female."*** ***And I have been told that we are a Christian country?*** Yet like in Animal Farm, some people are more equal than others. We refuse to be treated as non-entities in our own land. This is the Exodus. We are crossing the Rubicon in our stride to freedom.

And a great African leader and icon of the world says, ***"I was not born with a hunger to be free I was born free – free in every way that I could know."*** I can only add that when freedom is taken away, it becomes the onerous duty of a man to reclaim it from the oppressor. For giving up freedom is tantamount to giving away man's right to dignity. One can have no dignity without his or her freedom.

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Without our freedom we are a people without a soul. For myself, I cannot, and I will not surrender my spirit of freedom and dignity so as to gain cheap favours with this repressive regime.

The denial of the people to form a democratic government through political parties is a denial of their dignity, and freedom to choose; a denial of equality. In this regard the Supreme Court was wrong in *Jan Sithole N.O and Others v. Swaziland Government and Others Civil Appeal No 50/2008* in holding that ***"like beauty, democracy is to be found in the eyes of the beholder."*** Democracy is now generally well defined in Africa; to suggest it lies in the eyes of the beholder finds no support in any law.

Sir, in this regard we are encouraged and motivated by Nelson Mandela for he tells us that;

> ***"...In its proper meaning equality before the law means the right to participate in the making of the laws by which one is governed by a constitution which guarantees democratic rights to all sections of the population, the right to approach the court for protection or relief in the case of the violation of rights granted in the constitution, and the right to take part in the administration of justice as judges, magistrates, Attorneys-General, law advisers and similar positions..."***

Nobody in his or her right mind can deny that these rights are not available to the vast majority of the people of our country. For as long as we are opposed to the *tinkhundla* system, we stand no chance of taking part. Prince Mangaliso minced no words at page 94 of the CRC Report that:

> ***"All those who are appointed by the Ngwenyama to senior positions in government must be people who know the Tinkhundla system and believe in and live according to that system."***

We are still treated as second class subjects whose rights are subject to the whims of Swazi Law and Custom, which we, the people, have no say in its enactment. If anyone is in doubt about the truthfulness of this contention, the judgment of the Supreme Court in *The Commissioner of Police and Another v. Mkhondvo Maseko Case No.3/2011 [2011] SZSC 15* is the authority for this proposition. This is the judgment for which Mr. Justice Thomas Sibusiso Masuku was unlawfully removed from office for defending, and NOT insulting the King. The Supreme Court boldly proclaimed per the Chief Justice Ramodibedi that:

> ***The Constitution is informed by strong traditional values.***

T.R.M.

Indeed, such a pronouncement, although absolutely wrong in law, is in line and informed by the Prince Mangaliso CRC Report which says at page 83:

> ***The nation recommends that rights and freedoms which we accept must not conflict with our customs and traditions as the Swazi Nation.***

The problem with such a statement is that Swazi Law and Custom is pronounced by one person, the King, after consulting only his very close advisors who are appointed only by himself. The Prime Mangaliso Report says at page 135:

> ***Pronouncements by the King become Swazi Law when they are made known to the nation, especially at Esibayeni or Royal Cattle Byre. The King is referred to as umlomo longacali manga ("the mouth that never lies"). That is before any pronouncement or/proclamation, the King will have consulted and will have been advised.***

We respectfully submit that such an arrangement is inconsistent with constitutionalism and the Rule of Law which embody democratic governance. For the King is not subject to judicial review, making him above the law. Francis Neate is right when he writes in "*The meaning and importance of the Rule of Law*" that:

> ***What is the Rule of Law? Some people, even quite intelligent people express confusion about this. It is really not difficult. The Rule of Law is the only system so far devised by mankind to provide impartial control over the exercise of state power. Rule of Law means that it is the law which ultimately rules, not a monarch, not a president or prime minister, clearly not a dictator, not even a benevolent dictator. Under the Rule of Law no one is above or beyond the law. The law is the ruler.***

Let it be said that in just, civilized, progressive and democratic societies, while the constitution respects African traditional practices and values, such values are subject to the full enjoyment and exercise of basic human rights and fundamental freedoms and civil liberties. Human rights are God-given; they are inherent, inalienable, indivisible and inviolable. This is clearly not the case in Swaziland. Sir, in so far as the people have called for a democratic process of forming a government under the Rule of Law, they have been treated contemptuously. We surely need leaders who better understand the Rule of Law.

Number two, the next point, I would like to deal with regarding the contempt of the people and the Sibaya process as allegedly the highest policy-making structure is that of the appointment of the Prime

T R.M.

Minister, Dr. Sibusiso Barnabas Dlamini. The Court may have taken judicial notice that the people asked His Majesty King Mswati III and the leadership of this country to give them their right to elect a Prime Minister. Indeed, this is consistent with the call for elections based on a multiparty constitutional order. Under such a system, we will know that the leader of the majority party in parliament becomes the Prime Minister of the country. This was the case under the Independence Constitution of 1968, which was unlawfully, repealed by King Sobhuza II on April 12, 1973. This is the case with many African countries, at least post 1990. Is it not contemptuous that while the people called for the removal from office of the Right Honourable Dr. Sibusiso B. Dlamini in the last term, he was instead re-appointed without their consent?

My Lord, I love President Barack Obama in his speech *'A New beginning'* when he *says*:

> ***"But I do have an unyielding belief that all people yearn for certain things: the ability to speak your mind and have a say in how you are governed; confidence in the rule of law and the equal administration justice; government that is transparent and does not steal from its people; the freedom to live as you please..."*** He states, ***"These are not just American ideas, they are human rights."***

Indeed, the great Chief Albert Lutuli in his speech '*Our vision is a democratic society'* said in 1958, that ***"...it is in the nature of man, to yearn and struggle for freedom. The germ of freedom is in every individual, in anyone who is a human being. In fact, the history of mankind is the history of man struggling and striving for freedom. Indeed, the very apex of human achievement is freedom and not slavery. Every human being struggles to reach that apex..."***

I respectfully argue that the failure and refusal by the highest authority of this land to remove the Prime Minister and instead, re-appointing him is highly contemptuous of the people's will and aspirations. In any case what is the criteria or basis for appointing a Prime Minister? Is it not Royal *Dlaminism* Supremacy and superiority? We contend that this is the kind of evil domination of a people by another, which moved and inspired men of conscience and goodwill, to rise up and challenge such social order. Tinkhundla is our Swaziland version of South Africa's Apartheid and segregation in the United States. It must be dismantled, it is inhumane. Indeed, Article 19 of the ACHPR provides that; ***"All people shall be equal, they shall enjoy the same respect and shall have the same rights. Notwithstanding shall justify the domination of a people by another."*** This domination has no justification. It is a denial of the freedom to choose, and to form a government of the people, by the people and for the people. It is a denial of dignity.

Number three the next issue that arose at the Sibaya meeting is that relating to the infamous Circular No.1 of 2010. As far as we do recall, the citizens of this land called for the non-implementation and setting aside of this government pay-out policy document. We listened and heard, speaker after speaker, condemn and attack this document as illegitimate in the face of massive poverty and unemployment. The natives of this land saw this, not as intended to eradicate and alleviate poverty, but meant to secure the comfort of self-serving politicians while we the poor, suffer terrible poverty and unemployment. What level of contempt of the masses of the people can we speak of? I insist that I am not guilty, but the leadership of Swaziland, jointly, collectively and severally should be in the dock for contempt of the people.

Significantly and ordinarily, where decisions and resolutions are taken at an AGM as is in the case with Sibaya; failure to execute and implement such decesions and resolutions invite and warrant a **vote of no confidence** on the leadership. More than just a **VOTE OF NO CONFIDENCE**, the non-implementation and refusal for to give effect to the People's resolution in the light of section 232 amounts to the suspension and or abrogation of the section. Consequently this is an act of treason.

4.2 Mr. Justice Masuku's *Kangaroo* trial by the Judicial Service Commission (JSC)

Second, the last issue I want to speak about is the unlawful removal of Mr. Justice Thomas Sibusiso Masuku as a judge of the High Court. Indeed, in the article for which I stand accused, I do say as I repeat here for emphasis, that the arrest and prosecution of Bantshana Gwebu was a ***kangaroo process*** in the same manner and fashion as that which we experienced during Mr. Justice Masuku's hearing before and by the JSC, chaired by the discredited and embattled Chief Justice.

All right-thinking members of the Swazi nation as well as members of the just, democratic, progressive and civilized world are in agreement that Mr. Justice Masuku's accusers were prosecutors, witnesses and judges in their own cause. It is a fundamental principle of our law that no man shall be judge in his own cause. The JSC conducted the hearing in a manner inconsistent with the UN Basic Principles on the Independence of the Judiciary. This is not only an old common law legal principle; it is also enshrined in section 21 of the Constitution. Mr. Justice Masuku's prosecution, persecution and ultimate removal as a Judge of the High Court was a mockery of the fair and equal administration of justice and the Rule of Law in Swaziland. It enabled the guilty and the corrupt to try an honest and a just man. Today we stand accused by the same people who facilitated and unlawfully and unconstitutionally removed Mr. Justice Masuku from office. How long will it take? Madiba said in 1962:

I have grave fears that this system of justice may enable the guilty to drag the innocent before the courts. It enables the unjust to prosecute and demand vengeance against the just.

This is true for Swaziland today. We are obviously dealing with the dishonesty of unjust and dishonorable men and women. Indeed, we need to remember that in 2002 the judges of the Court of Appeal of Swaziland (as it then was); confirmed Justice Masuku's judgment committing the Prime Minister Dr. Sibusiso Barnabas Dlamini; the then Commissioner of Police Edgar Hillary, and the then Attorney General Phesheya Dlamini, for thirty (30) days in prison for contempt of court. They blatantly refused to abide by the judgment of the court to allow the people of Macetjeni and Ka-Mkhweli to return to their land unconditionally. Chief Mtfuso II and his family is still languishing in exile in democratic South Africa. Unlike us, they never spent a single day in jail. These are the very people who have the audacity to send us to jail for contempt, when they themselves have no regard for the law unless it is favourable to them. Instead of being punished they were rewarded by being appointed to senior positions within the *tinkhundla* regime. So yes, this is place where the law has no place. And "oh, Cry the Beloved Swaziland."

Yes, the guilty sit in judgment against the innocent. Justice Thomas Masuku was judged by the unjust; they are unjust because the office of the Registrar of the High Court on the instruction of Chief Justice has refused to accept, receive and issue court process as by law required, on matters alleged to be touching upon the King, thus undermining the Rule of Law and fair administration of justice. They are unjust because the head of the judiciary has refused to subject himself to the law to answer allegations of serious misconduct against him by the Law Societies of Swaziland and Lesotho respectively. In our submission, it is contempt not only of judicial independence, but also judicial accountability that the judiciary today, is headed by an individual who has undermined the fair and proper administration of justice; a man whose reputation is tarnished.

The real truth, therefore, is that there is no equality before the law whatsoever as far as the small weak and vulnerable people are concerned, and statements to the contrary are definitely incorrect and misleading. What is worthy of note is that the greatest purveyors of the law in this this country are always rewarded. Sibusiso Shongwe was appointed Minister of Justice and Constitutional Development while Mpendulo Simelane, who attested an affidavit against Mr. Justice Masuku, was purportedly appointed Judge of the High Court. He sits in judgment in this case! Edgar Hillary was appointed to Senate while Phesheya Dlamini is in Foreign Service. Lorraine Hlophe is the Registrar of the Supreme

Court as well secretary of the JSC. The argument we make is that Mr. Justice Masuku was not removed as a judge of the High Court because he committed acts of misconduct; rather he was removed because he refused to rubber stamp decesions of the immoral *tinkhundla* regime, as some judges do.

We contend that Mr. Justice Masuku committed no wrong. He acted in defence of the King and the Constitution, and litigants before him without fear or favour as justice demands. He is a judge of impeccable integrity. For this he paid the price. We in Swaziland will live to regret Mr. Justice Masuku's dismissal for as long as we live. There are many other instances where people have been treated contemptuously, but those are issues for another day. We would have addressed as a fourth issue the SPTC/MTN saga, where the people have been denied reasonable and affordable services but for the rich and powerful. Not to mention the imminent possible loss of the benefits flowing from the American African Growth and Opportunity Act (AGOA), resulting in the loss of massive employment opportunities, thus escalating poverty. Sheer arrogance.

It is our respectful contention that the issue here is not and has never been contempt of court. Rather, the real issue is the failure of leadership in this country at all levels. The issue is the abuse of the courts to silence dissenting voices in order to suppress aspirations for democratic change, and those who supposedly write/or speak "badly" about the *tinkhundla* system. The facts as stated above bear us out on this. I dare say on this score, that the dawn of a new day is coming. The people are yearning for freedom, democracy and justice. The time has come, and the time is now. Indeed, nobody can stop an idea which its time has come.

Let me close this issue by referring to Chief Albert Lutuli after the apartheid government deposed him as Chief of his people for his membership of the ANC. In a statement, *"The road to freedom via the cross,"* Lutuli said:

> ***"In so far as gaining citizenship rights and opportunities for the unfettered development...who will deny that 30 years of my life have been spent knocking in vain, patiently, moderately and modesty at a closed and barred door? What have been the fruits of my moderation?"***

5. The failure of leadership in Swaziland

In the context of Swaziland, who will deny that the people in the form of political parties, and here one may mention the People's United Democratic Movement (PUDEMO) which in 2008 was arbitrarily listed as a terrorist organization under the oppressive Suppression of Terrorism Act No.3 of 2008 and

whose President and members have been arrested and charged under this draconian law; the Ngwane National Laboratory Congress (NNLC) a pre - independence organization which played a significant role in the attainment of independence, whose members were prevented from sitting as elected Members of Parliament after the 1972 general elections; as well as the newly formed Swazi Democratic Party (SWADEPA) whose leader is a lone voice in parliament, have all been peacefully calling for the recognition and lawful registration of political parties to advance, consolidate and give meaning to genuine democracy in Swaziland?

Who will deny that the organized labour movement through the then Swaziland Federation of Trade Unions (SFTU), Swaziland Federation of Labour (SFL) now the Trade Union Congress of Swaziland (TUCOSWA), have for a long period of time been calling for full democratization and full recognition of workers' and people's rights in the country? Sir, who will deny that the organized teachers union, the Swaziland National Association of Teachers (SNAT) and civil society including the Council of Swaziland Churches, the Students Movement and women's groups have long been calling for a peaceful transition to democracy to achieve social justice? I submit that nobody can deny that the organized legal profession and organized business through the Swaziland Coalition of Concerned Civic Organizations (SCCCO) have all been calling for good governance, respect for the Rule of Law, human rights and fiscal discipline. Nobody can deny that these people's organizations and individual members of the Swazi society through the Swaziland United Democratic Front (SUDF) have long been knocking in vain, patiently politely, modesty and moderately calling for a peaceful transition to full democracy. In recent times, the people have called for the release of the Sibaya report so that the decisions and resolutions can be implemented. But nobody cares to listen.

Sir, if the refusal to show respect for the people's aspirations to respect **People's Democracy** is not contempt of the highest degree against the people, then it absolutely points to failure of leadership. Yet we know as Barack Obama reminds that: ***"Suppressing ideas never succeeds in making them go way."***

Of course, they will never go away even if brutal force, arrests and other forms of suppression and repression are used to silence dissent. It is on record that in the quest for full democratic and citizenship rights we have petitioned; yes we have held peaceful meetings; we have called peaceful protest, all of which have been violently dispersed by the government using the armed and security forces. Even as this trial was going on, this court and the *tinkhundla* government prevented the people from coming in to observe the proceedings; a failure of open justice. His Lordship himself refused to use a bigger

courtroom even when asked by our counsel, despite that bigger court rooms were available. Instead the courtroom was packed with members of the security forces to intimidate those present, for expressing their displeasure with the injustice displayed by the court. This is dark injustice. It is such show of force that led Nelson Mandela to say: ***"Government violence can only do one thing, and that it breeds counter violence."***

Indeed the Universal Declaration of Human Rights warns in paragraph 3 of the preamble that:

> ***"... it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law..."***

We make no threat if we warn as Nelson Mandela did in his speech from the dock in 1964 that, ***"there comes a time in a life of a nation when there remain only two choices – submit or fight."*** We hope common sense and reason will prevail on the leadership of this country so that as a people, we are not compelled to make that hard choice; a choice of rebellion. We have not forgotten the bomb explosion under the bridge at Lozitha. I am yet to stand trial for my statements regarding that sad and painful incident in which two of our friends, Musa John Dlamini and Jack Govender died. Swaziland has lost its conscience. We have lost our humanity; our *buntfu* has long left us. Yes we cannot forget the death of Sipho Jele in prison.

6. Public Statement by the Judicial Service Commission issued on April 2, 2014

We have been found guilty. The JSC in its statement on April 2, 2014 stated that contempt of court in this jurisdiction was one of the most serious offences against the administration of justice. It said that contempt of court is not protected under section 24 (3) (b) (iii) of the Constitution. The JSC has canvassed the case for the prosecution. The question is can His Lordship find against his bosses, the JSC and the Chief Justice? All pointers since this case started show that His Lordship has already made up his mind, and the trial was a mere formality to validate a decision long taken.

Surprisingly the JSC has not only warned the general public, it went on to attack in particular the progressive democratic movement in Swaziland. It said freedom of speech ***"is not absolute as the progressive organizations and other like-minded persons seem to suggest."*** This seems to me to give credence to my view that this case has nothing to do with the alleged contempt of court; it is rather the battle of ideas. I do want to say however, that the JSC's interpretation of section 24 (3)(b)(iii) is strange. It is strange because it is skewed to suit its narrow reading. The JSC omits to make reference to

the paragraph that the limitation of freedom of expression is justified only ***"...except so far as that provision or, as the case may be, the thing done under the authority of that law is shown not to be reasonably justifiable in a democratic society."*** I submit that contempt of court in the circumstances of this case is not a justifiable limitation of the freedom of expression in a democratic society.

Indeed I take this from General Comment No. 34 of the Human Rights Committee of the UN (2011) where it interprets Article 19 of the ICCPR. The Human Committee says that, ***"Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions."*** The Human Rights Committee proceeds to say that ***"Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights."*** What is more is the finding by the Human Rights Committee that, ***"The freedom of opinion and expression form a basis for the full enjoyment of a wide range of other human rights. For instance, freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association and the exercise of the right to vote."***

The net effect of these is that, with the prohibition of freedom of expression through the nebulous crime of contempt of court, coupled with the ban on political parties to freely associate and assembly, Swaziland is not, and cannot claim to be a democratic and constitutional state. It lacks the credentials of a democracy and constitutional state, even if it boasts of a written constitution. Swaziland remains a dictatorship without any inhibitions.

Judge William Birtles writing on "The Independence of the Judiciary" is correct when he says:

> ***Judicial independence is a central component of any democracy and is crucial to the separation of powers, the Rule of Law, and human rights ... Constitutions of non-democratic countries also include provisions concerning human rights. These provisions, however, are a dead letter, because there is no independent judiciary to breathe life into them. Judicial independence has a dual goal: to guarantee procedural fairness in the individual judicial process and to guarantee protection of democracy and its values. Without judicial independence, there is no preservation of democracy and its values. The existence of judicial independence depends on the***

existence of legal arrangements that are actualized in practice and are themselves guaranteed by public confidence in the judiciary.

Whither Swaziland! If anybody is in contempt in this case, it is nobody other than the JSC-they have issued a public statement with the sole and singular purpose of influencing the decision of this case. We are simply waiting to see if His Lordship will hand down a verdict different from that which Makhulu Baas and the JSC, in collaboration with the government and the leadership of Swaziland seek.

7. What is the way forward for Swaziland?

Your Lordship, the last issue would obviously be, having pointed out some and not all the ills of our society, and the contemptuous character of the leadership towards the people's aspirations, what is the way forward for our country?

1. In the short term, in order to restore the integrity of the judiciary, the people of Swaziland have said it loud and clear that the Chief Justice Michael Ramodibedi be immediately suspended and removed from the office of Chief Justice of the Kingdom of Swaziland. His removal should obviously be after following due process in terms of section 158 (3) as read in light of section 21 of the Constitution. What he refused to afford Mr. Justice Thomas Masuku by law, should be afforded to him by law. In any event section 157 (1) of the tinkhundla Constitution stipulates that a "person who is not a citizen of Swaziland shall not be appointed as Justice of a superior court after seven years from the commencement of this Constitution." But the Judicial Service Commission shamefully tells us that Swazis are ill-qualified, ill-equipped and incompetent for the position of Chief Justice. This is an insult to the members of the legal profession and the Swazi Nation.
2. The people's organs of power, that is, political parties together with organized civil society as well as individual natives of this land, have stated without ambiguity that Swaziland must move forward towards a truly democratic state, with multiparty system as a basis for the formation of government. Sir, the modalities and details of how this is to be achieved must be, and will be negotiated by all interested parties, on agreed terms on the basis of full equality, at a National Convention.
3. This obviously calls for a review of the 2005 Constitution as long recommended by the Commonwealth Expert Team on election observation in 2003 and 2008, recently echoed by the

African Union through the AU Election Observation Team as well as the SADC Lawyers Association Election Observer Team last year. This will ensure that there is separation of powers and respect of the Rule of Law, an independent judiciary and full respect and enjoyment of all human rights and fundamental freedoms. We deny that the call for a constitutional monarchy is a call to overthrow the monarch in Swaziland. We are calling for a system of government where democratic governance, can and will co-exist with a monarchy whose powers are properly limited by law, under a democratic constitution – so that nobody is above the law, but the law is the ruler, so as to provide checks and balances.

4. When all is said and done, a democratic Constitution should lead to the holding of free, fair and genuine democratic elections, giving birth to a people's democratic government.

8. I have been honest

I have tried to speak the truth as honestly, as candidly and as best I could about what I see as challenges facing us at this defining moment. I hope I have been able to show how the people's rights and aspirations have been ignored. It is our view that the injustices we have referred to are sowing seeds of an extremely dangerous situation in the country as shown by the alleged threats to the lives of the Chief Justice and Judge Simelane. As a country we need to talk and act; act rightly, justly, and timely.

As it has been said that, ***"those who cling to power through corruption and deceit and sidelining of dissent know that you are on the wrong side of history... for the world has changed and we must change with it."***

For my part, as a young student activist together with others until now, we have tried to do our duty to the Swazi people. We will continue to do so even in the face of hardship; regardless of the fact that our motives are at present, being deliberately misunderstood. We do not have the slightest doubt in our minds that we are innocent. Posterity will in due time prove us so. Those who brought us before this court together with the leaders of this country are the criminals who should be in the dock.

Let me say that we hate the political arrogance of the *tinkhundla* system; we hate deeply the arrogance of the judicial system under this system and, particularly under *Makhulu Baas*. Above all, we hate with a deep passion the subjugation of the democracy and peace loving people of this country to the status of second class citizens and sub-humans. We do not know how long we will live under this system, but we will never accept it. Mahatma Ghandi said years ago in 1922 from the dock that, ***"Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free***

to give the fullest expression to his disaffection..." We have done so in Swaziland, and we will continue doing so until victory for democracy is won.

Martin Luther King Jr is right when he says, ***"the arch of moral universe although long, is bending toward justice."*** Let there be no doubt that like everybody else, I would like to be loved, even to be loved by the highest authority of this land, if that were to be possible, but as Helen Suzzman says ***"I am not prepared to make any concessions"*** on the higher values and noble principles of freedom, justice and democracy for all, which we hold so dear. We are the little people of this land. The people in this court have come from all corners of Swaziland; from the small dusty roads and valleys. They come from my area of birth, at Ka-Luhleko, from the poor townships of Bhunya and Mhlambanyatsi, forced into poverty by the unceremonious and somewhat politically motivated closure of the SAPPI (Usuthu) Company. We come from the cities and townships of Mbabane and Manzini, from all the four regions of this land. My Lord we all want the same thing, full citizenship rights, ***equal treatment and equal protection under and before the law***. All we are asking for is equal opportunity in the spirit of brotherhood and sisterhood. We have not lost faith in the overall goodwill of man, even in the face of evil. We are little people trying to do what is right; trying to do what is just.

9. Severest price and penalty

In conclusion, let me make it clear that I am not naïve. I have read between the lines and have realized that our fate has long been determined. I do not for one moment believe that in finding me guilty and imposing a penalty on me for the charge I face, the court should be moved by the belief that penalties deter men from a cause they believe is right. History shows that penalties do not deter men and women when their conscience is aroused. Given that our fate was long decided, I do not wish to waste either your time or mine. Accordingly, I invite His Lordship to impose upon me whatever severest price and penalty this Court deems fit. Somebody tells me that **"somehow unearned suffering is redemptive,"** and somewhere I read **"to be joyful in hope, patient in affliction, faithful in prayer."** The path to freedom goes through prison, but the triumph of justice over evil is inevitable. Nothing this Court can do will shake me from my commitment to simple truth and simple justice and the belief in the noble values of democracy, freedom and human dignity. No moral man can patiently adjust to injustice. I do this knowing fully well the consequences of my decision. As has been said, standing up to powerful interests and injustice carries a price.

Although the writing is on the wall, I give the Court the benefit of the doubt that it will apply its mind to my defense and the points I have raised. Nevertheless Nelson Mandela says:

To go to prison because of your convictions, and be prepared to suffer for what you believe in, is something worthwhile. It is an achievement for a man to do his duty on earth irrespective of the consequences.

The founding President of the Swaziland Youth Congress (SWAYOCO), the charismatic Bennedict Didiza Tsabedze told us some years ago that the struggle is not a bed of roses.

In closing, may God bless the people of Swaziland and the peoples of the just, democratic and progressive world.

Amandla!! Aluta Continua!!! Embili ngemzabalazo Embili!!! Phansi nge Tinkhundla Phansi!!

THULANI RUDOLF MASEKO

PRISONER 353; 438/2014

SIDWASHINI CORRECTIONAL INSTITUTION (PRISON)

MBABANE

SWAZILAND