



FEBRUARY 21, 2023

## COMMUNIQUE ON ATTACKS ON HUMAN RIGHTS DEFENDERS IN THE SADC REGION

Southern Africa is witnessing an alarming increase in the judicial and physical harassment of Human Rights Defenders (HRDs). More disturbingly, these attacks have escalated to the assassination of HRDs, with the most recent case being that of the late human rights lawyer and activist from Eswatini, Thulani Rudolf Maseko who was shot and killed in his home in front of his wife and children in January 2023 [1]. HRDs including journalists, trade unionists, lawyers, political activists and opposition political actors, are being subjected to judicial harassment in the form of arbitrary arrests, prolonged pre-trial detentions in maximum security prisons, and lengthy trials; smear campaigns and verbal harassment on and offline; death threats and physical attacks including abductions, beatings and extra-judicial killings, all in retaliation for exercising their fundamental rights to free expression, peaceful assembly and association; and holding their governments accountable on issues such as corruption, free and fair elections, and human rights violations. In addition, several countries in the region have and continue to enact restrictive pieces of legislation meant to shrink the operating environment for HRDs.

[1] <https://southerndefenders.africa/2023/01/23/southerndefenders-strongly-condemns-the-heinous-assassination-of-renowned-human-rights-lawyer-thulani-maseko-calls-for-a-swift-and-thorough-investigation-and-urges-sadc-to-urgently-act-on-the-escalat/>

The Southern African Development Community Treaty (Treaty) recognises the importance of involving the people of the region in the process of development, particularly by guaranteeing democratic rights, observation of human rights and the rule of law. HRDs play an inalienable contribution to peace, security, and sustainable development. As the entire sub-region grapples with multiple, complex and interconnected crisis such as global inflation, power shortages; climate change, violent- extremism, political instability, and the continued impact of the Covid-19 pandemic, the increased levels of criminalisation and retaliatory attacks on HRDs working on these very issues is highly counterproductive and contrary to the core SADC treaty principles that bind member States.

### KEY HUMAN RIGHTS CONCERNS

In the last several years, the SADC region has recorded a collective decline in the respect for fundamental freedoms, rule of law and constitutionalism. Southern African Human Rights Defenders Network (Southern Defenders) and the Zimbabwe Human Rights NGO Forum (NGO Forum) are especially concerned with countries such as Eswatini, Zimbabwe, Mozambique, South Africa, Angola and Malawi, which in the last year have exhibited higher levels of regression in the protection of HRDs.

#### Eswatini

Calls for democratic reforms and or the end of a monarchy in Eswatini, that started in May of 2021, have been met with severe repression, including restrictions to peaceful protests, internet shutdowns, arbitrary arrests, detentions, physical violence, abductions and suspected assassinations of pro-democracy activists. To date more than 80 people have been killed, 200 plus injured and thousands arrested.[2] A few days prior to the killing of Thulani Rudolf Maseko, a fierce critic of the Eswatini government, King Mswati III publicly announced that those pushing for reforms *“should not shed tears and complain about mercenaries killing them.”* Mere days after the gruesome murder of Maseko, another prodemocracy activist, and Central Committee member of the opposition communist party of Eswatini, Mhlonishwa Mtsetfwa, was shot at close range from behind by the police while delivering a petition against the brutal killing of Thulani Maseko[3].

[2] <https://southerndefenders.africa/2023/01/23/southerndefenders-strongly-condemns-the-heinous-assassination-of-renowned-human-rights-lawyer-thulani-maseko-calls-for-a-swift-and-thorough-investigation-and-urges-sadc-to-urgently-act-on-the-escalat/>

[3] <https://www.polity.org.za/article/mswatis-police-shoot-two-protesters-during-justice-for-thulani-maseko-march-in-manzini-2023-01-30>

Numerous pro-democracy activists have had to flee Eswatini in fear of being killed. Currently, opposition Members of the Eswatini parliament, Mduduzi Bacede Mabuza and Mthandeni Dube who were arrested in July 2021, remain detained, facing charges under the Suppression of Terrorism Act. Their arbitrary detention and prosecution has been condemned by regional human rights organisations as a misuse of the criminal justice system to target leaders of the pro-democracy protests.

In recent days, there have been renewed regional and international calls to SADC to urgently exercise its mandate and intervene in Eswatini to prevent a further deterioration of the political and human rights situation.

### **Zimbabwe**

In 2022 alone, the Zimbabwe Human Rights NGO Forum recorded 2683 cases of violations against human rights defenders, this includes assaults, abductions, verbal threats, arbitrary arrests, detentions and prosecutions. The State has particularly weaponised its criminal justice system to target HRDs by subjecting them to prolonged pre-trial detention without access to bail, and malicious and lengthy prosecutions. This includes the case of Zimbabwean opposition Member of Parliament Job Sikhala who was arrested in June 2022 after attending the funeral of opposition political activist, Moreblessing Ali[4], who was found mutilated and murdered, after going missing for three weeks. At the time of his arrest, Sikhala who is also a lawyer, was acting on behalf of Ali's family. For over seven months Sikhala has been detained at Chikurubi maximum security prison. Organisations such as Amnesty International have condemned the continued pre-trial detention of Sikhala as arbitrary. In one other blatant case of abuse of the law, prize winning Zimbabwean novelist Tsitsi Dangarembga[5], was convicted of inciting public violence and sentenced to a six-month suspended sentence and fine for merely holding up a placard inscribed "*We want better. Reform our institutions*".

[4] <https://www.amnesty.org/en/latest/news/2022/06/zimbabwe-authorities-must-do-more-to-stop-culture-of-abductions/>

[5] <https://www.theguardian.com/global-development/2022/sep/29/zimbabwean-author-tsitsi-dangarembga-found-guilty-of-inciting-violence>

The cases against HRDs are expected to increase as Zimbabwe heads towards the 2023 harmonised elections as this has been the trend in the past election cycles. President Emmerson Mnangagwa has openly threaten government critics, independent civil society organisations including legal and medical organisations providing services to victims of human rights violations, as well as members of opposition parties . While addressing his supporters in March 2022, President Mnangagwa threatened to “shorten the lives” of Mthwakazi Republic Party members,[6] among other threats to opposition members. Earlier, in February 2022, Vice President Constantino Chiwenga made some shocking utterances to the effect, “I have heard others here saying down with triple C, let me assure you that there is nothing that it can achieve, you see how we crush lice with a stone. You put it on a flat stone and then flatten it to the extent that even flies will not make a meal out of it. That is what we are going to do to the [opposition party Citizen Coalition for Change] CCC.” Such threats and hate speech are not to be taken lightly and are characteristic of the restrictive civic space in Zimbabwe that is increasingly intolerant of opposing voices.

Most recently, human rights lawyer, Kudzai Kadzere[7], was violently assaulted by police officers while attending to his clients who happened to be members of the opposition. Kadzere’s assault is one of many documented cases of lawyers, particularly those representing pro-democracy, anti-corruption activists and opposition members, who have been physically and verbally harassed, arrested as well as arbitrarily arrested, albeit briefly. Senior government officials have also publicly chastened the Law Society of Zimbabwe following the institution’s public involvement in rule of law and constitutional matters.

Despite many calls from within the region and the international community, urging the government of Zimbabwe to refrain from passing the Private Voluntary Organizations (PVO) Amendment Bill, the Senate in the Parliament of Zimbabwe recently passed the Bill. It now awaits President Mnangagwa’s signature. There are legitimate concerns amongst human rights defenders that the broad and far-reaching nature of the Act will be abused and used to clamp down on the work of civic and political rights organizations.

[6] <https://cite.org.zw/mnangagwas-rants-on-mrp-a-further-cause-for-concern/>

[7] <https://southerndefenders.africa/2023/01/17/southerndefenders-condemn-the-barbaric-attack-on-human-rights-lawyer-mr-kudzai-kadzere-and-calls-on-the-authorities-in-zimbabwe-to-protect-all-its-citizens/>



## Mozambique

Mozambique has a traceable history of attacks on human rights defenders, including journalists and media houses, political activists, lawyers and members of human rights organisations, particularly those working on anti- corruption and election related issues. These attacks have included abductions, physical beatings by security forces and unknown assailants, death threats, and extrajudicial killings. One such case is the intimidation of Professor Adriano Nuvunga, a leading human rights defender who works on a range of issues including anti-corruption, good governance and public office and security sector accountability as well as social justice. On two separate occasions Professor Nuvunga had two AK 47 bullets[8] with his name engraved on them thrown into his yard, as a grave warning for him to be silent. Two years ago, in a similar act of intimidation, he received an anonymous call that a bomb had been planted in his home.

Attacks on HRDs in Mozambique have been worsened by the ongoing violence in the northern Cabo Delgado Province. The government of Mozambique continues to restrict the flow of information in relation to the ongoing crisis. In October 2022, Arlindo Chissale, a journalist working in the mining town of Balama, situated in Cabo Delgado, was arrested by police in a manner akin to an abduction.[9] Chissale was held incommunicado and without access to lawyers and food and was only provisionally released after an international outcry. He was initially accused of terrorism, before being released six days later pending an investigation of a lesser offence, that of working as a professional without a licence or accreditation. Chissale's forced disappearance follows many other documented cases in which Mozambique security forces have harassed, threatened and arbitrarily detained HRDs and journalists working in the conflict-ridden region. Almost three years after the abduction of Ibraimo Mbaruco[10] by suspected security forces, his whereabouts remain unknown, and no one has been held accountable for his disappearance.

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[8] <https://www.dailymaverick.co.za/article/2022-08-16-death-threat-ak-47-bullets-thrown-at-home-of-leading-mozambican-activist/>

[9] <https://cpj.org/2022/11/mozambican-journalist-arlindo-chissale-faces-lesser-charge-after-terrorism-accusation/>

[10] <https://cpj.org/data/people/ibraimo-abu-mbaruco/>

In addition to the above attacks on HRDs, which have undermined Mozambican citizens and CSOs from exercising their fundamental freedoms, in September 2022, the council of Ministers approved a draft Bill, regulating the creation, organization and operation of non-profit organizations. If assented into law, this Bill will give the government arbitrary discretion to register and regulate Civil Society Organizations, potentially imposing excessive civil liability on the officers and members of these organizations. This law will further make the operations of CSOs in Mozambique an onerous process. Also pending is an amendment to the anti-terror law which potentially restricts the exercise of freedom of expression.

### South Africa

Since its independence, South Africa has generally been one of the continent's leading democracies, with a vibrant media, and political space. In 2015, it adopted the United Nations Resolution on the Protection of HRDs. In recent years, human rights organisations have documented a decline in South Africa's democracy and human rights record, with freedom of the press and the right to peaceful protest being under threat. HRDs, particularly those focusing on cooperate accountability and the impact of extractive industries on local populations and the environment have faced increased threats, intimidation, and harassment, sometimes resulting in death. In 2022, in the space of five months, Ayanda Ngila, Nokuthula Mabaso and Lindokuhle Mnguni, leaders of the Abahlali Basemjondolo Movement (ABM)[11], which advocates for the rights of members of the eKhenana commune, which survives on self-reliance and communal living, were assassinated. These violent acts have not been thoroughly investigated, and no one has been held accountable.

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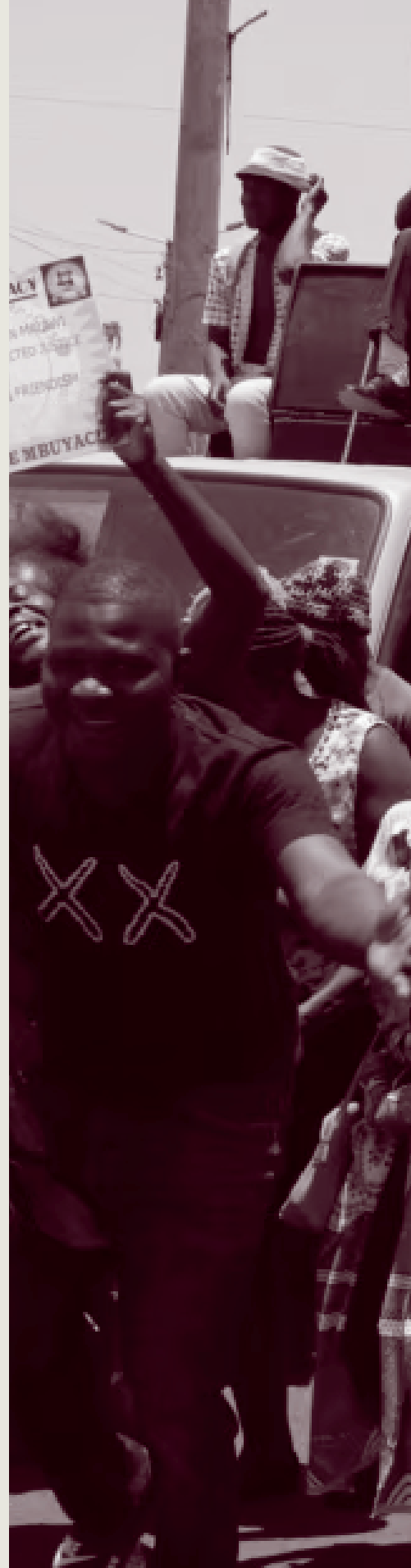
[11] <https://abahlali.org>



In addition, Strategic litigation against public participation (SLAAP) suits have become a common method in South Africa, used to silence activists, journalists, whistle-blowers and everyday people. In 2022, Southern Defenders appeared as amicus in a landmark Constitutional Court case<sup>[12]</sup> where a mining company sought to reverse a lower court's decision, dismissing company's defamation suit against six HRDs who had publicly criticised the company's activities and harmful impact on the environment. It is hoped that the decision of the progressive decision of the Constitutional Court will afford HRDs in South Africa greater protection for their legitimate activities.

### Malawi

In Malawi, there is increasing concern over the manner in which the government of President Chakwera has and continues to respond to accountability efforts. Last year, dozens of protestors were arrested after citizens took to the streets to protest rampant corruption and the soaring cost of living.<sup>[13]</sup> In one incident, Sylvester Namiwa, an activist, was abducted<sup>[14]</sup> hours before a planned anti-government protest. No one has been held accountable for this incident. In the same year, President Chakwera also signed into law a Non-Governmental Organisations (NGO) Amendment Act, which human rights organisations criticised as being punitive and failing to facilitate the existence of NGOs.



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[12] <https://www.lhr.org.za/lhr-news/press-statement-southern-defenders-to-make-submissions-to-the-south-african-constitutional-court-as-amicus-curiae-in-landmark-case-dealing-with-protection-against-slap-suits-and-the-right-to-freedom/>

[13] <https://www.voanews.com/a/malawi-police-arrest-protest-organizers-30-others-over-violence-/6810573.html>

[14] <https://www.voanews.com/a/abducted-malawi-rights-campaigner-found-safe/6679277.html>

Most recently, concern has been raised over a series of actions taken by State representatives against the Corruption Bureau (ACB) Director General, Ms. Martha Chizuma, which point to a deliberate retaliation against her for leading anti-corruption efforts, including against high level government officials.[15] The ACB Director was initially illegally and un-procedurally arrested. In the most recent development, the Secretary to the President and Cabinet (SPC) purported to issue an interdict restricting her from continuing her public office duties. The decision was subsequently quashed[16] by the Malawi High Court. Several national human rights organisations, including the Law Society of Malawi have raised serious concerns with regards to the treatment of Chizuma, and the disregard for the rule of the law exhibited in the case, as well as how this case undermines the governments obligations towards fighting corruption.

### Angola

In the lead up to and following the 2022 general and presidential elections, there was a marked increase in the government's crackdown on civil and political rights.[17] Young people were particularly targeted in response to expressions of dissent, and demanding accountability. Southern Defenders documented[18] several cases of arbitrary arrest, detention and conviction of peaceful protesters who were arrested for marching against the detention of political prisoners and calling for free and fair elections. In many of the cases, the arresting authorities failed to respect due process rights including the right to a lawyer, the right to be informed of the reason for the arrest and the charges against them as well as the right to be brought before a court within 48 hours. Press freedom organisations also documented the arrest and harassment of multiple journalists, particularly those covering the anti-government protests. Other journalists faced criminal defamation and insult charges instituted by members of the ruling People's Movement for the Liberation of Angola (MPLA), and former government officials, for reporting on cases of alleged corruption.[19]

[15] <https://www.news24.com/news24/africa/news/malawi-president-spares-anti-corruption-unit-boss-as-leaked-audio-points-to-graft-tussle-20220126>

[16] <https://www.capitalradiomalawi.com/2023/02/09/high-court-quashes-governments-application-to-vacate-stay-on-chizuma-interdiction/>

[17] <https://freedomhouse.org/article/angola-government-must-uphold-human-rights-during-election-period>

[18] <https://southerndefenders.africa/category/angola/>

[19] <https://cpj.org/2022/06/angolan-journalists-continue-to-face-criminal-insult-and-defamation-proceedings/>

## CONCLUDING OBSERVATIONS

Defenders play an essential role in promoting and protecting the rights recognized under international human rights treaties, helping to ensure that States respect economic, social, cultural, civil and political rights.[20] Southern Defenders and the NGO Forum are unfortunately, witnessing an increase in criminal prosecutions, physical attacks and the enactment of restrictive legislation as tools to silence HRDs, and pressure them into discontinuing their legitimate activities. These acts have been accompanied by the undermining of the independence of the judiciary and other public institutions meant to ensure democratic principles and the rule of law. In cases of violations of the right to life, to be free from arbitrary detention and cruel and inhumane treatment, there has been little to no accountability, breeding a culture of impunity and lawlessness.

Throughout the region, corruption is rampant and has hugely contributed to the acute failure of the delivery of basic public services, and yet HRDs working on anti-corruption efforts are targeted. Scarce State resources are wasted in malicious prosecutions of HRDs. Counter-terrorism and anti-money laundering provisions are not only used as a guise to go after legitimate CSOs that are critical of the government, but to stifle information on abuses of State and non-State actors in the war against terror. Such actions only fuel sentiments of injustice within impacted communities, undermining counter-terrorism efforts. HRDs peacefully advocating for democratic reforms, are imprisoned and killed. As President Geingob recently and most aptly stated in relation to the ongoing crisis in Eswatini, “when dialogue fails, people go to war”.[21] During election periods, attacks against HRDs and restrictions on civic space are heightened in blatant disregard of State’s obligations to ensure a conducive environment for public participation.

[20] United Nations Special Rapporteur on the Situation of Human Rights Defenders, The Defenders, available at <https://www.protecting-defenders.org/>

[21] <https://www.sadc.int/latest-news/statement-his-excellency-dr-hage-g-geingob-president-republic-namibia-and-chairperson-0>





One of the key objectives of the SADC member States as outlined in the Treaty under Article 5, is to consolidate, defend and maintain democracy, peace, security and stability. Member States undertake to adopt adequate measures to promote and achieve these objectives and refrain from taking measures likely to jeopardise the sustenance of its principles. The ongoing attacks on HRDs and deliberate steps to restrict the operating environment for HRDs is in violation of the SADC Treaty.

### **KEY DEMANDS**

In light of the growing and sustained attacks on human rights defenders and a shrinking civic space in SADC member states, we call upon SADC to:

1. Call on all SADC members states, especially the governments of Eswatini, Zimbabwe, Mozambique, Malawi, Angola and South Africa, to respect, protect and fulfil their human rights obligations, under the SADC Treaty, and other regional and international standards including the African Charter for Human and People's Rights and the International Covenant on Civil and Political Rights.
2. Specifically call on all member states to ensure that domestic legislation and policy reflects State obligations contained in the UN Declaration on Human Rights Defenders, particularly Article 1, which provides specific protections towards HRDs to conduct human rights work individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at national and international levels.
3. Specifically call on member States to refrain from the criminalisation and harassment of HRDs. The government of Eswatini and Zimbabwe must immediately end the prolonged pretrial incarceration of human rights defenders such as Job Sikhala, Mduduzi Bacede Mabuza and Mthandeni Dube.



4. Specifically call on members States such as Zimbabwe and Mozambique to refrain from passing laws that unduly restrict the operation of non-governmental organisations. These states must not misuse their counter-terrorism obligations to target independent and critical civil society organisations.

5. Call on Zimbabwe, Mozambique, Eswatini, Malawi and South Africa, to guarantee and ensure that independent and thorough investigations are carried out in cases of the abduction, torture and extrajudicial killings of human rights defenders in their countries. Perpetrators, including police services and armed forces must be publicly held accountable for these heinous acts against HRDs and their communities. The victims and their families must be adequately compensated.

6. Call on member states to refrain from militarising their police in the absence of war. Eswatini must immediately desist from engaging Private Military Companies and revoke any existing contracts.

7. Call on Eswatini and Zimbabwe governments in advance of their national elections in 2023 to ensure that they are conducted freely and fairly.

8. Condemn the harsh response by all member states against citizens that are peacefully protesting for political reforms.

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