

“No Situation is Permanent”

Repression, intimidation, harassment
and killing of lawyers in Eswatini

Executive Summary
January 2025

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® “No Situation is Permanent” – Repression, Intimidation, Harassment and Killing of Lawyers in Eswatini (Executive Summary)

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International Commission of Jurists
Rue des Buis 3
P.O. Box 1740
1211 Geneva 1
Switzerland

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“NO SITUATION IS PERMANENT”¹ – REPRESSION, INTIMIDATION, HARASSMENT AND KILLING OF LAWYERS IN ESWATINI

This report addresses the independence of judges and lawyers in Eswatini with a particular focus on the perceptions and experiences of lawyers representing clients in cases relating to issues of public interest and human rights. It continues from the International Commission of Jurists (ICJ) long term advocacy for the protection of the rule of law, judicial independence and human rights in Eswatini (formerly Swaziland),² dating back to the 1980s.³

Following a surge of events signalling the deterioration of an already precarious human rights and rule of law situation in Eswatini, the ICJ received a number of requests from Eswatini lawyers to undertake an investigation and make recommendations on the independence of lawyers and judges in Eswatini in 2023. Three critical and emblematic events contributed significantly to this deterioration: 1) the June 2021 unrest in Eswatini and the government’s responses thereto;⁴ 2) the extrajudicial killing of leading human rights lawyer Thulani Maseko on 21 January 2023; and 3) the conviction and sentencing of two members of Parliament, Bacede Mabuza and Mthandeni Dube,⁵ to lengthy sentences for remarks made by them in the context of the June 2021 protests.

Governance and rule of law in Eswatini

Eswatini obtained its independence from the United Kingdom in 1968. Its initial independence Constitution included provision for a clear separation of powers between judicial, executive and legislative authorities. It also allowed for a multiparty system.

The 1968 Constitution was abrogated by a proclamation of the former King, Sobhuza II in 1973, by which the King was declared the supreme authority in the Kingdom of Swaziland and given all legislative, executive and judicial power. The proclamation also dissolved Parliament and banned all political parties. In the words of the King through the Proclamation: “I have assumed supreme power in the Kingdom of Swaziland and that all Legislative, Executive and Judicial power is vested in myself.”⁶

Although a new Constitution containing a Bill of Rights was adopted in 2005 as supreme law,⁷ Eswatini remains one of the world’s last remaining absolute monarchies. Some doubt remains about the continued applicability of the Proclamation, which has never been explicitly repealed. Some aspects of the Proclamation, for example in respect of the exclusion of political parties from the electoral process, are entrenched in the post 2005 constitutional dispensation. More generally, constitutional rights have typically not been made effective through necessary implementing legislation and are often not respected in practice.

Under the 2005 Constitution, the King remains the “hereditary Head of State”.⁸ Executive authority vests in the King, which he may exercise directly or through the Cabinet or a Minister.⁹ Supreme legislative authority vests in the King too.¹⁰

The Constitution provides that the judiciary “shall be independent and subject only to this Constitution and shall not be subject to the control or direction of any person or authority.”¹¹ Despite this provision, ICJ has documented that deficiencies in the guarantees and exercise of judicial independence have been commonplace throughout Eswatini’s constitutional dispensation. In evaluating the State of judicial independence in 2014, for example, the ICJ concluded:

“In Swaziland, despite constitutional guarantees and safeguards, the judiciary is not independent. The executive does not consistently respect the principle of judicial independence. Further, among other things, the King controls judicial appointments and there have been concerns about the independence of procedures related to judicial accountability, as well as about judges upholding the integrity of their office.”¹²

Primary research informing this report

Responding to lawyers’ requests, in late 2023 and early 2024, the ICJ conducted interviews of approximately 30 individuals, 25 of whom are legal professionals working in Eswatini. Some interviews were conducted in person and others were conducted online. They were then transcribed for the purpose of their use in this report. Interviews were undertaken under the strict agreement of anonymity, which was considered necessary due to security considerations and quotes are used in this report with express permission of those interviewed. The lawyers interviewed were, in the main, selected because of their participation in cases considered to be sensitive or controversial in Eswatini, including those in which they: 1) represented individuals charged with minor crimes relating to protests; 2) represented individuals who are members of opposition political movements who advocate for democracy and/or human rights (human rights defenders); 3) represented individuals in legal conflicts of any kind with members of the royal family or companies and individuals related to it.

This report, which at the core is based on the experiences and perceptions of the lawyers interviewed, does not include a new comprehensive analysis on independence of the judges and lawyers, the administration of justice and other human rights questions that were the subject of previous ICJ reports. Instead, it identifies the generally applicable international standards on the independence of lawyers and judges, as well as providing a summary of more detailed reports.

In previous reports, the ICJ has also documented challenges to the independence of the legal profession,¹³ underscoring that the unavailability of legal services and serious challenges to the independence of the legal profession and recording reports of intimidation, harassment and interference with the work of lawyers in Eswatini.¹⁴ The available information suggests that over the decade since ICJ’s evaluation was undertaken, these fundamental challenges to the independence of judges and lawyers persist and have substantially worsened.¹⁵

Main Findings

While the responses and perspectives of the lawyers interviewed by the ICJ varied, the ICJ’s research concludes that the following key issues are widely held among lawyers in Eswatini who are particularly vulnerable based on the nature of their legal work and kinds of cases they litigate, including human rights cases:

Lawyers fear being extrajudicially killed. Attempts on the lives of lawyers, in addition to Thulani Maseko (23 January 2023), include Maxwell Nkambule (7 December 2022) who was shot at and pursued on a highway. Another lawyer reports being shot at from a green car, occupied by what they suspect are police officials in October 2021. The same lawyer also reports to separate incidents in late 2022 where attempts were made to “swipe” cars either driven by them or their children off the road. Several other lawyers believed that unmarked cars surveilling them were, in part, doing so in search of opportunities to physically harm them. Lawyers also commonly alleged the circulation of a “hit list” in the lead up to Thulani Maseko’s killing, which in their understanding, included the names of individuals, including lawyers, who were targeted for assassination.

Lawyers are followed, harassed, threatened and intimidated. Lawyers described a general pattern of harassment, threats and intimidation which they face. A common experience was being surveilled by individuals dressed in plain civilian clothes driving white cars with South African license plates. Such individuals variously parked outside their homes and offices and followed them around. Sightings of such vehicles have been common enough to have been reported on in local media. Lawyers also reported being observed from drones and having their movements and calls monitored, their telephones confiscated and their homes and offices broken into and searched. Some lawyers also received threatening phone calls.

Women lawyers are threatened with sexual violence. Women lawyers indicated that some of the behaviour of those following or otherwise harassing them contained direct threats of sexual violence against them. One woman reported a man calling her, for example, and suggesting that she would “stop with this craziness” if she had a “man to lay [her] good” and that he “know[s] I don’t have a husband, and [he] would come one of the days” to give her a “good experience”.

Lawyers are associated with the actions of their clients in the course of carrying out their legitimate professional functions. Lawyers commonly reported that they are targeted based on the nature of the cases they take up and clients they represent. Almost unanimously the lawyers indicated that they are presumed to align themselves with the views and alleged actions of their clients. For example, a person representing an individual accused of public violence or “terrorism” is typically assumed to be in support of public violence and terrorism. As a result, lawyers commonly experience hostility both from State officials and in courts when attempting to represent their clients.

Lawyers face adverse economic consequences for taking on cases or clients perceived as “political”. Lawyers acting in human rights or public interest cases, or lawyers simply representing clients in any matter pertaining to a disagreement with the King, the Royal Family, or the government indicate that they may also face adverse economic consequences in response to their performing their professional function. They may lose both government and corporate clients or opportunities to get such clients. These lawyers may also face pressure from their own firms to desist from taking up such cases. Some lawyers also reported harassment from tax authorities asking for unnecessary information, attempts to access their bank accounts, and to harass them over accounts that had long been paid.

Lawyers perceive shortcomings in the execution of the mandate of the Law Society. While acknowledging certain positive measures taken by the Law Society, lawyers repeatedly raised concerns about the relative passivity of the Law Society in the wake of significant challenges faced by lawyers in performing their work in the country, particularly in the aftermath of the June 2021 unrest, increasing security concerns and the killing of Thulani Maseko. A commonly expressed view was that the Law Society itself was not adequately independent of the government. Overall, lawyers raise serious concerns about the effectiveness of the Law Society in executing its mandate in the face of severe pressure on the independence of lawyers in Eswatini.¹⁶ Of particular concern, in this regard, is the almost unanimous indication of lawyers interviewed of the divisions with the Law Society hampering its responses to State repression of lawyers who do politically disfavoured work.

Lawyers indicate that legal professionals operate in an environment that inhibits their ability to act independently. Given the challenges expressed by the lawyers interviewed, most interviewees were categorical that lawyers engaged in work perceived to be contentious, including work relating to human rights, can simply not operate independently in Eswatini. Some lawyers described real independence as a “pipedream” because lawyers are intimidated and must “think twice” before taking on controversial cases. This left some lawyers feeling morally or ethically compromised. Some lawyers had reportedly been “banned” by judges from appearing in matters before courts because of their involvement in controversial cases relating to the June 2021 unrest. In a separate incident, the Chief Justice appears to have usurped the function of the Law Society by issuing a letter banning an individual lawyer from appearing in any court in the country, ostensibly because the lawyer had failed to purge a contempt of court order.

Lawyers allege that the judiciary is not independent. Public confidence and trust in the judiciary in Eswatini is low. Lawyers similarly raised significant concerns in respect of the independence of the judiciary, referencing in particular the inadequacy of the Judicial Service Commission Act and the independence of the Judicial Service Commission. The Commission does not operate transparently, and lawyers hold the view that those appointed are often unqualified or under-qualified. Lawyers also point to the outsized influence of the King on the appointment of both members of the Judicial Service Commission and the judiciary. They also call attention to frequent and unwarranted appointment of temporary and acting judges on a continuously renewed basis. Lawyers complained that the case allocation processes, controlled by the Chief Justice, were not transparent and resulted in judges perceived to be “independent”, “liberal” or “pro-democratic”, seldom being allocated human rights and public interest cases. Lawyers said they often struggle to represent clients effectively in an environment where they go to court knowing who is going to win, based on the identity of the parties or the nature of the case. Lawyers also expressed frustration with the difficulties faced in accessing even basic court papers and processes, such as those relevant to lodging cases, papers or appeals at courts.

Lawyers consider that the Chief Justice abuses his power. Chief Justice Bheki Maphalala’s tenure as head of the Eswatini judiciary has been marked with continuous scandal amidst ongoing allegations of abuse of power and corruption.

Allegations include those highlighted by the Law Society of Eswatini in an as yet unresolved complaint submitted by it against the Chief Justice, seeking his removal, in December 2022. For example, the Chief Justice is alleged to have abused the appointment of acting and temporary judges to exert control of such judges who are then only accountable to him on account of their lack of security of tenure. He is also alleged to have improperly interfered with the administration of justice in a number of specific cases, including by: appointing a panel of judges to adjudicate a matter to which he was a party; and separately failing to recuse himself from a matter despite commenting on it publicly prior to the application being heard. Other issues raised by the Law Society with the Chief Justice include a (now withdrawn) sexual harassment complaint against him and the abuse of his powers to usurp the Law Society's authority in the banning of a lawyer from appearing before any court.

Lawyers experience significant obstacles and pressures in relation to cases emanating from the June 2021 unrest. Threats and harassments were significantly ramped up and intensified during and after the June 2021 protests. The number of legal cases that have been deemed controversial for a lawyer to be engaged in have expanded dramatically, as has the pressure brought to bear to not be involved in such matters. Some lawyers say they were "banned" in certain courts or in front of certain judges. Many lawyers noted that such cases included a proliferation of spurious criminal charges against their clients relating to the June 2021 unrest.¹⁷ Lawyers also complain about the inappropriate court processes followed in such cases, with large numbers of cases being dealt with together and no realistic possibility of defending charges in such cases. Many lawyers allege that it was their understanding that the Chief Justice had issued a "directive" for bail to be denied in certain cases relating to the June unrest and that bail was commonly denied with fines meted out. Even where bail was not explicitly denied, lawyers report that sometimes bail was just set so high, for minor offences, that it would be in an accused's best interests to pay a fine and admit guilt.

Lawyers are adversely impacted by the killing of Thulani Maseko. Lawyers almost unanimously suspect that his persistent legal representation of individuals challenging the government and the monarchy likely at least partly motivated his killing, engendering a chilling effect on the overall independence of lawyers in Eswatini and their ability to practice without fear of threat or reprisal. In addition to an increase in their fear that they are vulnerable to assassination or other harm for involvement in controversial cases, lawyers also expressed the magnitude of the gap left in Thulani's absence given: his willingness to take on any case without fear; his knowledge and leadership in areas relating to human rights; his credibility and profile domestically, regionally and internationally; and the increased difficulty discouraging new and younger lawyers to take on controversial cases. These difficulties created or exacerbated by Thulani's killing have been further worsened by the lack of meaningful progress on the behalf of the responsible authorities in conducting independent, impartial, prompt, thorough, effective, credible and transparent investigations into his killing.

The shrinking of civic space more broadly. Lawyers also commented on the shrinking of civic space for human rights defenders in Eswatini more generally. They repeatedly referenced a draft Non-Profit Organizations Bill, 2024 developed by the Ministry of Home Affairs. The Bill, which purports to aim to regulate non-governmental organizations and prevent and prohibit financing of terrorism,

creates new and additional offenses carrying hefty prison sentences for individuals and is, therefore, likely to have a chilling effect on Non-Profit Organization operations in the country to the detriment of the exercise of the rights to freedoms of association, expression and assembly. While the Bill does appear to focus significantly on terrorism financing, it is unclear what legitimate function it plays given Eswatini's existing robust legislative framework to combat money laundering and terrorism financing, which includes specific provisions for the non-profit sector. In the context of the June 2021 unrest and the conditions described throughout the report, the Bill signals an intent to clamp down on civil society actors and civic space, including the lawyers interviewed for this report and their clients.

The report also sets out the applicable international and domestic human rights law and standards relevant to the independence of the legal profession and some of the human rights concerns raised. Much of the conduct alleged in the report would violate many of these standards.

Recommendations

To safeguard the rule of law and the separation of powers, and in compliance with international law and standards, the ICJ provides the following recommendations to the responsible Eswatini authorities:

Responsible executive authorities, including the Prime Minister and the Minister of Justice

1. Pursue avenues of constructive dialogue, inclusive of all stakeholders, towards constitutional reform to ensure the creation of a democratic society based on human rights and the rule of law in Eswatini.
2. Implement recommendations made by the African Commission on Human and People's Rights in respect of the independence of judges and lawyers in communications decisions pertaining to Eswatini.¹⁸
3. Implement recommendations of the United Nations independent human rights experts, including the Human Rights Committee,¹⁹ the UN Special Rapporteur on the independence of judges and lawyers²⁰ and other Special Procedures of the UN Human Rights Council,²¹ and the High Commissioner for Human Rights.²²
4. Implement the recommendations that the government has already accepted from States at the UN Human Rights Council in terms of the Universal Periodic Report process in respect of the independence of judges and lawyers. Accept other recommendations that it has yet to support.²³
5. Immediately desist from interference of any kind with the functions and powers of judges and judicial officers and the functions of lawyers to ensure the independent operation of the judiciary and legal profession consistently with international law and standards.
6. Immediately desist from any acts of persecution, intimidation and harassment of lawyers. This should include measures to:
 - a. end completely unlawful surveillance of lawyers in connection with their carrying out their professional functions;
 - b. provide protection to lawyers who report intimidation, harassment and reprisal;

- c. actively and publicly condemn any assertions of connection or association between the views and actions of lawyers and their clients and promote a public understanding of the critical role of lawyers in advancing the rule of law and human rights.
- 7. Immediately declare a moratorium on the application of the Sedition and Subversive Activities Act, the Suppression of Terrorism Act and the Public Order Act to target human rights defenders, lawyers, and those conducting protests for democratic and constitutional reform.
- 8. Reevaluate and review the charging, sentencing and conviction of individuals in terms of public order laws relating to the June 2021 unrest, with a view to:
 - a. assessing their conforming with domestic and international human rights law; and
 - b. redressing any improper charges or unfair trials, including, where warranted, by quashing convictions.
- 9. Take steps to quash the convictions of Mduduzi Bacede Mabuza and Mthandeni Dube.
- 10. Establish a fully independent mechanism consisting of a mix of independent Eswatini lawyers and independent international legal experts, including from the African region, with a view to expediting effective, thorough and impartial investigations of:
 - a. the deaths and injuries of protests in connection with June 2021 unrest;
 - b. the extrajudicial killing of Thulani Maseko;
 - c. the harassment, intimidation and targeting of lawyers and human rights defenders, for alleged conduct relating to legitimate exercise of freedom of expression and political participation, including that involving criticism of the government and government policy and conduct, calling for constitutional reform and advocating for democracy and human rights.
- 11. So as to facilitate efforts by lawyers to advance human rights and the rule of law, coordinate with the Legislature to take the necessary steps, in keeping with appropriate procedures in terms of domestic law, to ensure that Eswatini ratifies or accedes to, and implements into national law, international human rights and criminal law treaties to which Swaziland is not yet a party. Such treaties include:
 - a. the International Covenant for the Protection of all Persons from Enforced Disappearances;
 - b. the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR);
 - c. the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty;
 - d. the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
 - e. the Optional Protocol to the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment;
 - f. the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
 - g. The Optional Protocol to the Convention on the Rights of the Child on a communication procedure;
 - h. the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and

- i. the Rome Statute of the International Criminal Court.
12. Comply with its reporting obligations to all treaty bodies, including by submitting any overdue reports to treaty body mechanisms expeditiously.
13. Take all appropriate measures, taking care to respect the separation of powers, to ensure that the appointment of temporary, casual or short-term judges ceases. Such appointments, which are not desirable even in situations of crisis, where they occur, must not only be justified by an absolute need for enhanced judicial capacity, but should also only be made where judges so appointed are afforded the same institutional and individual guarantees of judicial independence afforded to permanent judges.²⁴
14. Ensure the expeditious resolution, through the appropriate constitutional channels and processes,²⁵ of the complaint initiated by Law Society against the Chief Justice in December 2022.

Legislative authorities

1. Undertake a comprehensive legislative review process, particularly in respect of the Judicial Services Commission Act, the Legal Practitioner's Act and other legislation pertaining to the judiciary and the legal profession, to ensure that the State's legislative framework concerning the administration of justice is in compliance with the Constitution and international law and standards. This should include clear provisions relating to:
 - a. The removal of any control or undue influence by the Crown in respect of the composition of the Judicial Services Commission and the judiciary;
 - b. Clear, transparent and appropriate processes with detailed and objective criteria for the appointment, promotion, transfer, suspension and promotion of judicial officers;
 - c. Legislation relating to the appointment of acting or temporary judges should be enacted, setting out the following:
 - i. A threshold by which to determine in which situations an "emergency" or "crisis" involves such a severe shortage of judges that it risks institutional collapse in the fair administration of justice in the absence of temporary appointments.
 - ii. That temporary appointments must be subject to clear, transparent and appropriate processes with detailed and objective criteria for the appointment of acting or temporary judges.
 - iii. That temporary judges so appointed are afforded the same institutional and individual guarantees of judicial independence afforded to permanent judges.
 - d. Measures to ensure the full and effective participation of the legal profession, civil society and the public in the appointment process of judicial officers.

2. Review and repeal or amend the Sedition and Subversive Activities Act, the Suppression of Terrorism Act and the Public Order Act to ensure compliance with the Constitution and international law and standards.

Judicial authorities

1. Conduct a thorough review of the “Judicial Code of Ethics for the Judiciary of Swaziland” and, following a consultative process with members of the legal profession, revise the Code to ensure its consistency and compliance with the Constitution and international law and standards.
2. Publish online and in other accessible platforms any judicial directives that have been or are issued pertaining to the operation of the judiciary.
3. Set up an independent review committee staffed with former and current judges, with a demonstrated record of independence and high competence, from jurisdictions outside of Eswatini to review all standing judicial directives to ensure their consistency with the Constitution and international law and standards.
4. Withdraw all banning orders – whether formal or informal – against individual lawyers from attending to matters in specific courts or in front of specific judicial officers.
5. Develop, publish and transparently implement a process for case allocation which is impartial, fair and consistent with the Constitution and international law and standards. Remove direct control by the Chief Justice or any other single judicial officer to influence the allocation and management of cases.
6. Cease the appointment of temporary, casual or short-term judges, unless – and in compliance with regional and universal international and national law and standards – there is an absolute need due to potential conflicts of interest or the need to clear case backlogs.
7. Hold regular consultations between the Judiciary and the Law Society and all sectors of the Bar with a view to ensuring a fairer and more effective administration of justice and ensuring an appropriate professional relationship between the Judiciary and the legal profession.

Law Society

1. Review the effectiveness of efforts made by the Law Society to secure the independence of lawyers, taking into account, in particular:
 - a. the personal security of lawyers undertaking cases that perceived to be controversial including human rights cases;
 - b. attempts to harass, intimidate, threaten and conduct surveillance on lawyers undertaking cases that perceived to be controversial including human rights cases; and
 - c. the practice by some judicial officers of banning lawyers from appearing in particular courts and/or in front of particular judicial officers.
2. Review the effectiveness of efforts made by the Law Society to secure the independence of judges and to protect them and their judicial functions, taking into account, in particular:
 - a. The effectiveness of the Law Society’s role within the Judicial Service Commission;

- b. The slow progress in the assessment of the Law Society's complaint against the Chief Justice filed in December 2022; and
 - c. Its responses to attempts by executive authorities, members of the judiciary and any other individuals or entities placing pressure on inappropriately influencing individual judges in specific cases.
3. Take all necessary and appropriate measures to ensure the institutional independence of the Law Society, insulating the Law Society, the Council of the Law Society and members of the Law Society from inappropriate influence and pressure by executive and other authorities.
 4. Take appropriate measures within its powers to advocate for:
 - a. An expeditious, effective and independent investigation into the killing of Thulani Maseko;
 - b. An expeditious, effective and independent investigation into the State's response to the June 2021 unrest, including the harassment, intimidation and threatening of lawyers whose clients are charged with public order offenses relating to the unrest.

States providing economic, develop and other assistance and cooperation with Eswatini

1. Donor countries should call on Eswatini to enact reforms such as those recommended in this report and take steps to ensure that its economic assistance does not facilitate threats or harms to the rule of law and human rights, including:
 - a. undermining of the independent legal profession;
 - b. impeding the independence of judiciary; and
 - c. repressing the exercise of the rights of freedom of expression, association, assembly and public participation of human rights defenders.
2. The European Union should take measures to promote and advance the implementation of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part (the Samoa agreement)²⁶ including the African Regional protocol, in particular:
 - a. title one concerning human rights, democracy, and governance in people-centred and rights-based societies; and
 - b. title 5 in the African regional agreement on human rights, democracy and governance.

¹ *The Delve*, 'An Uprising in Eswatini' [Interview with Thulani Maseko], 1 December 2021, audio podcast available at: <https://podcasters.spotify.com/pod/show/thedelve/episodes/An-Uprising-in-Eswatini-e1b2knj>. The title of this report draws on a direct quote by Thulani Maseko:

"What keeps us going is the knowledge that no situation is permanent. We have seen many countries in the midst of trouble overcoming their problems and moving into a better future. And that gives us hope. But fundamentally it gives us hope that the people of this country themselves at their individual levels in their communities have taken up the struggle. You know for a long time we have been the voice of the voiceless: now the voiceless are the voice themselves."

² This name change was made unilaterally by the King, without following any consultation process with the public, and was therefore almost immediately subject to a legal challenge: *Mail & Guardian*, 'Swaziland's name change challenged in court,' 28 August 2018, available at: <https://mg.co.za/article/2018-08-28-swazilands-name-change-challenged-in-court/>.

³ As example, see: ICJ, Centre for the Independence of Judges and Lawyers Bulletin Nos.19 and 20, April-October 1987, available at: <https://icj2.wpenginepowered.com/wp-content/uploads/2013/10/CIJL-Bulletin-1920-1987-eng.pdf>.

⁴ On 29 October 2021, the Eswatini Commission on Human Rights and Public Administration/Integrity issued a report titled "Preliminary Assessment Report on Civil Unrest in the Kingdom of Eswatini – June 2021". The report records and verifies at least 46 deaths arising from the June 2021 unrest, including two children, seven women, seven young people, two elderly people and 30 men. It also confirmed the arrest and detention of at least 337 people and gunshot injuries were sustained by at least 245 people. This is certainly a significant undercount.

⁵ *The King v Mabuza and Another* (213 of 2021) [2023] SZHC 502 (1 June 2023), available at: <https://eswatinilii.org/akn/sz/judgment/szhc/2023/502/eng@2023-06-01>; *The King vs Mduuzi Bacede Mabuza and Another* (213/2021) [2021] SZHC 40 (15 July, 2024), available at: <https://eswatinilii.org/akn/sz/judgment/szhc/2024/40/eng@2024-07-15/source>.

⁶ The full proclamation is available here: <https://www.icj.org/wp-content/uploads/2014/06/sz1973proclamation.pdf>.

⁷ The Constitution of the Kingdom of Swaziland Act 2005, section 2(1).

⁸ Ibid section 4(1).

⁹ Ibid, section 64.

¹⁰ Ibid, section 106(a).

¹¹ Ibid, section 141 (1). The ICJ shares the concern of a number of Swazi jurists concerning in respect of the legitimacy and overall propriety of the 2005 Constitution and the process by which it was drafted.

¹² ICJ, 'Swaziland: Country Profile Prepared by the ICJ Centre for the Independence of Judges and Lawyers,' 2014, available at: <https://www.icj.org/wp-content/uploads/2014/06/CIJL-Country-Profile-Swaziland-June-2014.pdf>, p 1.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ See, as examples, ICJ, 'Achieving Justice for Gross Human Rights Violations in Swaziland: Key Challenges, May 2018,' 2018, available at: <https://www.icj.org/wp-content/uploads/2018/05/Swaziland-GRABaselineStudy-Publications-Reports-Thematic-reports-2018-ENG.pdf>; and SADC LA, 'Report on the Independence of the Judiciary in Eswatini, Zambia and Zimbabwe,' 2021, available at: https://www.derebus.org.za/wp-content/uploads/2021/06/SADC_LA_Judicial_Report_On_Eswatini_Zimbabwe_and_Zambia_2021.pdf.

¹⁶ On 14 January the Law Society sent a letter to the ICJ responding to the relevant findings in this report. The letter sets out some broad claims, including that lawyers "carry out their functions free from intimidation, harassment, reprisals and other human rights violations" and "operate independently" and that the Law Society itself is independent and "operates free from inappropriate influence or pressure". Having noted this, the Law Society indicates having engaged with various authorities about the killing of Thulani Maseko, and having engaged with Maxwell Nkambule regarding the attempt on his life. Furthermore, the Law Society indicates that it has received two complaints from lawyers regarding the threatening, surveilling and harassment of lawyers. One complaint, it indicates it "could not verify upon engagement with the complainant", the other it indicates was taken up with the police and involved the issuing of a police report which is not provided. In respect of the judiciary, the Law Society indicates that it is having "ongoing engagements with various stakeholders" about its complaint against the Chief Justice and has "received assurances that the complaint will be processed". It also notes it has "engaged with the

relevant stakeholders on improving the administration of justice including the functioning of the JSC”.

¹⁷ Though these charges varied they were often for protesting unlawfully and traffic offences. The more serious cases which State prosecutors pursued more vigorously were those in which individuals were charged in terms of the Public Order Act, the Suppression of Terrorism Act, and the Sedition and Subversion Act.

¹⁸ *Lawyers for Human rights v. Swaziland*, African Commission on Human and Peoples’ Rights (ACHPR, Comm. No. 251/2002 (2005), available at: <http://www.icj.org/wp-content/uploads/2014/06/lawyers-for-human-rights-v-swaziland.pdf>; *Justice Thomas S. Masuku v. The Kingdom of Swaziland*, ACHPR, Comm. No. 444/13 2021, ACHPR 518 (2021) available at: <https://africanlii.org/akn/aa-au/judgment/achpr/2021/518/eng@2021-07-19>; ACHPR, Resolution on the Situation of Human Rights in the Kingdom of Eswatini – ACHPR/Res.554 (LXXV) 2023, 11 June 2023, available at: <https://achpr.au.int/en/adopted-resolutions/554-resolution-situation-human-rights-kingdom-eswatini>; Press Statement on the brutal murder of prominent Swati human rights activist, Adv. Thulani Maseko, 23 January 2023, available at: <https://achpr.au.int/en/news/press-releases/2023-01-23/press-statement-brutal-murder-prominent-swati-human-rights-activist>; Press Statement at the Conclusion of the Promotion Mission of the African Commission on Human and Peoples’ Rights to the Kingdom of Swaziland, 14 March 2016, available at: <https://achpr.au.int/index.php/fr/node/1900>; Press statement on human rights situation in the Kingdom of eSwatini, 17 June 2021, available at: <https://achpr.au.int/en/news/press-releases/2021-07-17/press-statement-human-rights-situation-kingdom-eswatini>.

¹⁹ UN Human Rights Committee, List of issues in the absence of the initial report of Swaziland, CCPR/C/SWZ/Q/I, 13 April 2017, available: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR/C/SWZ/Q/1&Lang=en; Human Rights Committee discusses the implementation of Civil and Political Rights in Swaziland, 10 July 2017, available at: <https://www.ohchr.org/en/press-releases/2017/07/human-rights-committee-discusses-implementation-civil-and-political-rights>.

²⁰ ‘UN human rights expert concerned over deteriorating rule of law in Swaziland,’ 4 December 2002, available at : <https://news.un.org/en/story/2002/12/53262>; ‘UN rights expert expresses concern over threats to the independence of lawyers in Swaziland,’ 27 June 2003, available at: <https://www.ohchr.org/en/press-releases/2009/10/un-rights-expert-expresses-concern-over-threats-independence-lawyers>.

²¹ OHCHR, ‘Eswatini: UN experts commemorate human rights defender Thulani Maseko, deplore lack of accountability for his killing,’ 22 January 2024, available at: <https://www.ohchr.org/en/press-releases/2024/01/eswatini-un-experts-commemorate-human-rights-defender-thulani-maseko-deplore#:~:text=Margaret%20Satterthwaite%2C%20Special%20Rapporteur%20on,peaceful%20assembly%20and%20of%20association>.

²² OHCHR, ‘Türk condemns killing of Eswatini human rights lawyer, urges accountability,’ 23 January 2023, available at: <https://www.ohchr.org/en/press-releases/2023/01/turk-condemns-killing-eswatini-human-rights-lawyer-urges-accountability>.

²³ UN Human Rights Council, Decision adopted by the Human Rights Council on 23 March 2022, (49/109 – Outcome of the universal periodic review: Eswatini), UN Doc. A/HRC/DEC/49/109, 29 March 2022, available at: <https://documents.un.org/doc/undoc/gen/q22/296/14/pdf/q2229614.pdf>. Report of the Working Group on the Universal Periodic Review: Eswatini, UN Doc. A/HRC/49/14, 7 January 2022, available at: <https://documents.un.org/doc/undoc/gen/q22/002/92/pdf/q2200292.pdf>; Report of the Working Group on the Universal Periodic Review: Eswatini (Addendum), UN Doc. A/HRC/49/14/Add.1, 3 March 2022, available at: <https://documents.un.org/doc/undoc/gen/q22/275/41/pdf/q2227541.pdf>.

²⁴ ICJ, ‘Legal Commentary to the ICJ Geneva Declaration: Upholding the rule of Law and the Role of Judges and Lawyers in Times of Crisis,’ Human Rights and Rule of Law Series, No.3, 2011, available at: <https://www.icj.org/wp-content/uploads/2011/05/ICJ-genevadeclaration-publication-2011.pdf>, principle 6.

²⁵ The Constitution of the Kingdom of Swaziland Act 2005, section 158.

²⁶ EU, ‘Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part,’ Document 22023A02862, 28 December 2023, available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=OJ:L_202302862.

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International
Commission
of Jurists

P.O. Box 1740
Rue des Bains 3
CH 1211 Geneva 1
Switzerland

t +41 22 979 38 00
f +41 22 979 38 01
www.icj.org