

The International Commission of Jurist's Tribute to Swazi Human Rights lawyer, Thulani Maseko, presented at an event commemorating the second anniversary of his assassination by Kaajal Ramjathan-Keogh, ICJ Africa Director, 23 January 2025

Two years have passed since the brutal and unlawful assassination of courageous and brave Swazi lawyer, Thulani Maseko. Thulani was a well-respected human rights lawyer who dedicated his life to advocating for human rights, the rule of law, and democracy in Eswatini. On the 21st January 2023, three days before International Day of the Endangered Lawyer, he was shot and killed in his home. While the circumstances of his death are still under investigation, numerous public reports and private discussions indicate that he was likely targeted in retaliation for his human rights work and political activism. In the immediate aftermath of the assassination, there were multiple calls for a prompt, impartial, independent investigation. Two years later we are yet to see any semblance of an investigation by the Swazi authorities and this situation appears unlikely to change.

Maseko gained international attention for his advocacy work and involvement in defending human rights and the rule of law in Eswatini, particularly in cases involving freedom of expression and political activism. He frequently acted in litigation against the Eswatini government and directly criticized the King and his government for its repression of human rights defenders. The ICJ has documented his harassment and persecution, including through the targeted criminal prosecution under the Sedition and Subversive Activities Act and the Suppression of Terrorism Act. In 2009 he made a public speech on Worker's Day related to the death of two freedom fighters, which the Swazi government claims to have been a botched terrorist attack. The charges that led to the above decisions were the second time Maseko had been arrested and charged with sedition and terrorism. He faced harassment and intimidation from the authorities due to his outspoken stance against government repression and human rights abuses. He was recognised for his courage and dedication to defending human rights despite facing significant risks and challenges.

I first met Thulani when he was sitting in the dock during his terrorism trial. He spent a year awaiting trial in prison to assert the importance of judicial independence. He was frequently threatened for his outspokenness against the repression caused by the State and the monarchy. He was the principal applicant and lawyer involved in setting aside some clauses of the infamous Suppression of Terrorism Act and Sedition and Subversive Activities Act in 2016 by the High Court. In July 2015 before the Swazi Supreme Court, Judge Jacobus Annandale stated that the day in court was probably one of the most remarkable in his career, and he aligned himself with the order of the court with "great joy and pride". The order he referred to was one upholding the appeal by Thulani Maseko and Bheki Makhubu against their conviction on contempt of court charges. He ordered their immediate release. Maseko and Makhubu had been charged with contempt of court in 2014 after they criticised then Chief Justice Michael Ramodibedi in two articles

published by The Nation magazine. The successful appeal meant that the pair were acquitted of all charges, and could go home to their families after spending fifteen months in jail. The proceedings were a remarkable turn of events. In the appeal hearing, the prosecutor began proceedings by indicating that he would not be opposing the appeal on the basis that the Director of Public Prosecutions believed that the conviction was “unsupportable”. He accepted that the prosecution had failed to make out a case in the High Court, and stated that the application for the High Court judge’s recusal on the grounds that he was personally connected to the case should have been granted. The Supreme Court hearing was an acknowledgment of the deficient legal reasoning adopted by the High Court, and a vindication for Maseko and Makhubu whose articles sought to expose precisely that type of conduct.

Maseko and Makhubu had taken the decision to speak out and criticise the judiciary in order to expose how former Chief Justice Ramodibedi’s conduct was deeply immoral and unlawful, and that he needed to be held to account. After their articles were published, the authorities acted swiftly and decisively to suppress Maseko and Makhubu: the pair was immediately charged with contempt of court, detained and denied bail; the Chief Justice appointed one of his most pliant judges, Mpendulo Simelane to hear the criminal trial despite that judge’s personal connections to the case; and Judge Simelane issued the guilty verdict so desperately sought by the Chief Justice, despite a lack of evidence and an incorrect application of the law. For over a year it seemed that the injustices in Maseko and Makhubu’s case would be overlooked, and that there would be no legal recourse available to them. However, the turning point came when the Chief Justice appointed Judge Simelane to preside over a case in which he was suing the Swaziland Revenue Service. When Judge Simelane, predictably, found in favour of the Chief Justice, it set off a series of events that culminated in the Anti-Corruption Commission issuing arrest warrants for Chief Justice Ramodibedi and Judge Simelane. Judge Simelane was arrested and released on bail, and Ramodibedi was fired as Chief Justice by the King.

While Maseko and Makhubu’s appeal was a welcome victory for them and their families, it is hard to ignore the realization that this can be seen only as the first step in securing the integrity of the judiciary. The Swazi legal system has much to learn from Maseko and Makhubu, who spoke truth to power when doing so came at great personal cost. Maseko successfully challenged the constitutional validity of these laws in the High Court. However, the High Court’s ruling was more recently overturned by Swaziland’s Supreme Court in a highly problematic judgment.

On 13 August 2024, the Eswatini Supreme Court handed down its long-awaited judgment in the case of [*Prime Minister of Eswatini and Another v Thulani Maseko and Six Others \[2024\] SZSC 88*](#). The case is a consolidation of four cases brought between 2008 and 2014, which all challenged provisions of the Sedition and Subversive Activities Act of 1938 and the Suppression of Terrorism Act of 2008. The Supreme Court upheld both laws,

albeit with a more restrictive reading of the offence of sedition to include an element of violence or disorder. The court reversed the 2016 High Court ruling that found provisions of the sedition and terrorism laws unconstitutional. The respondents had challenged the offence of sedition for being overly broad, criminalising the Act of “bringing into hatred, or contempt or to excite disaffection” against the monarchy or government. In doing so, they argued that the offence risked criminalising expressive conduct that would ordinarily constitute an essential element of democratic discourse.

The Court agreed that the activists had the right to challenge the constitutionality of the offences they were charged with before trial. Yet the Court ignored the blatant facts of the rights violations experienced by the activists due to being charged with offences under these laws. In each case, they were arrested after expressing their opinions in a speech, on a banner, singing a song or wearing a t-shirt. In none of these instances did the respondents’ speech result in violence or disorder. Whilst waiting for a decade for the outcome of this case, the activists were under stringent bail conditions, including prohibiting their free speech. The harsh effect of these offences on their rights to expression and associate themselves is indisputable.” The court failed to consider that two of the seven individuals facing these charges were already deceased – this was Maseko and Mario Masuku (the former leader of the main opposition party, PUDEMO).

As civil society and the international community we continue to press for an investigation into Maseko’s killing. The state has taken no steps to look into this, except to harass Mrs Maseko and to seize her phone “as part of their investigation”. What we have seen instead- is the sidelining and persecution of lawyers, raids on the law offices of some lawyers, attacks on the main opposition political party, PUDEMO, and the conviction and sentencing of two members of parliament for supporting calls for democracy.

ICJ’s 2025 report “No situation is Permanent,” while not dealing directly with the issue of judicial independence does refer to this indirectly and this is captured as part of the discussions with lawyers who are working within the Swazi justice system. Prior to Maseko’s killing, on December 7, 2022, there was an assassination attempt against Maxwell Nkambule, a lawyer representing Swazi pro-democracy protesters who stand accused of arson attacks and killing police officers. There are other lawyers in Eswatini, who have faced similar persecution from unknown persons- and these aggressors are widely believed to be either from the Swazi state or acting on the State’s behalf. In 2018, Maseko started judicial proceedings against the government for not consulting the public or engaging Parliament after King Mswati III unilaterally changed the name of the country from Swaziland to Eswatini.

Part of ICJ’s report contains details from a podcast interview, Thulani Maseko summarized the situation after June 2021 as follows, noting that this period of June 2021 was possibility best described as a “calm before the real storm” because “tension continues to grow as people are frustrated”:

“As we speak now, there are many Swazis who are languishing in jail following the June uprising. Many of them have appeared before the courts, they’ve been made to pay excessive amounts of bail, which they can’t afford obviously. So, they continue to languish in jail. Many of them have been charged in terms of what we call the public order laws of our country. Many of them have been charged with looting and vandalism and so they continue to stay in jail.

Maseko prominently criticized the government’s response to the June 2021 unrest, and provided legal representation to those targeted for their involvement in protests in June 2021. He was the chair of a multi-stakeholder forum consisting of a broad-based coalition of political parties and civil society groups formed in August 2021 to call for democratic reform in the country. In that position Maseko repeatedly called for the end the monarchy and for other constitutional reform. The view among all those interviewed was that both this role and his legal work had made him what one described as a “thorn in the side” of Swazi authorities.

In January 2023, writing in his monthly column for The Nation magazine, Maseko reiterated these calls for peaceful dialogue towards democratic reform, warning that “when diplomacy fails violence will take over”. He indicated that while “dialogue represents the people’s highest political act of self-determination”, “there are still no signs that the king is willing to give the dialogue a chance”. However, the King appeared to be “girding for war” and Eswatini was indeed “enduring a low-key civil war”. He believed that “the eye for an eye mentality seems to have grabbed the nation”, and that the “violence has reached alarming levels.” This was to be Maseko’s last column.

On 21 January 2023 he was shot and killed in his home in front of his wife and his two children. Maseko’s murder came hours after a speech given by the King in which he claimed that those opposing the government and the monarchy had started the violence, that “more trouble was coming for them” and that “people should not shed tears and complain about mercenaries killing them”. For those who knew him well, Maseko’s commitment to non-violence and dialogue as a means to resolve differences was well known and this was repeatedly emphasized in ICJ’s interviews with Swazi lawyers.

“Thulani was one person who never advocated for violence. I’ve sat for many, many days with Thulani and he would always say “do not associate me with that trash. I’m not a party to that”. What I saw Thulani doing was one man who said, ‘we must sit and talk’. He always said that we are going to sit and we are going to talk. And I was very close to him. We would have our disagreements but he’s never, ever, in all the years that I’ve known Thulani, has he ever advocated for violence.” Swazi Lawyer

Governmental authorities have denied the involvement of State agents in Maseko’s killing and endeavoured to ensure it was investigated, describing his death as a “loss for the nation”. The police issued a statement in September 2023 indicating investigations were

progressing. On 29 December 2023 a government spokesperson released a statement indicating that “the police have further prioritised investigations into all these killings”, referring to Maseko’s killing and “all other deaths which occurred as a consequence of the June 2021 civil unrest”. To date, we have seen little evidence of an investigation or the results of any investigation. The authorities have targeted Maseko’s widow publicly and have subsequently harassed and detained her, seizing her mobile phone. Tanele has been interrogated by police officers in the absence of her legal representatives. The lack of progress in the investigation into the tragic apparent targeted killing of such a prominent human rights defender and lawyer sends the message that the safety and protection of human rights defenders, civil society actors and lawyers is not guaranteed and not a priority for the State.

Maseko was a former staff member at the ICJ and he was a well-known and deeply respected lawyer, activist and friend to many of us. We acknowledge and commemorate his passing and the tragic circumstance of his passing today and as the ICJ pledge our ongoing support to the Swazi human rights community. I refer back to ICJ’s presentation on the report’s findings when I again recall Thulani’s words, “*No situation is permanent*”.