

**Mandate of the Special Rapporteur on the independence of judges and lawyers**

Ref.: AL SWZ 1/2025  
(Please use this reference in your reply)

7 April 2025

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 53/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received describing concerns about appointment procedures and structural designs that impact negatively on the independence in the judiciary, as well as the overall situation of the legal profession.

Special Procedures have addressed previous communications to Your Excellency's government, including on the subject of lawyers in Eswatini. I take the opportunity to recall the grave concerns expressed over the killing of prominent human rights lawyer Thulani Maseko, SWZ 1/2023, and take note with great regret that there are no clear updates on the investigation into his killing.

I would like to highlight also SWZ 1/2021, and SWZ 2/2022, which relate concerns about the June 2021 protests and their aftermath.

I thank you for the replies provided to the communications, however, concerns persist as outlined below.

According to the information received:

*Structure of the judiciary*

Eswatini remains one of the world's last remaining absolute monarchies. A new Constitution containing a Bill of Rights was adopted in 2005 as the supreme law. Under the 2005 Constitution (section 4(1)), the King remains the "hereditary Head of State". Executive authority vests in the King, which he may exercise directly or through the Cabinet or a Minister. Supreme legislative authority also vests in the King (section 106(a)).

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" (section 141). The information suggests, however, that the Executive does not consistently respect the principle of judicial independence. Further, the King controls judicial appointments.

Section 153 of the Constitution sets out processes for the appointment of "superior court justices", who are ultimately appointed by the King "on the advice of the Judicial Service Commission" (JSC). The section also sets out provisions that allow the King to create a separate process of appointment for

“acting judges”, on the advice of the Chief Justice, for short renewable periods of three months or unrenovable periods of one month. The only criterion listed in these appointments is for “a qualified person to act in that Court for that duration”. Provision is made for the continuation of a term of an acting appointment for a “period not exceeding three months” to allow such a judge to “enable that person to deliver judgement or to do any other thing in relation to proceedings that were commenced before that person previously to the expiry of the acting appointment”.

Section 158 sets the regime of removal of judges of superior courts restricting grounds of removal to “serious misbehavior or inability to perform the functions of office arising from infirmity of body or mind”. Removal is initiated by the King “acting on the advice of an ad hoc committee” in the case of the Chief Justice and “on the advice of the Chief Justice” in the case of other judges, by referring the consideration of such a removal to the Judicial Service Commission. The King may suspend judges for the duration of JSC inquiries which must be completed within three months, and the Commission is tasked with conducting an inquiry and make a recommendation to the King.

The Judicial Services Commission was established under section 159. Among other functions provided by section 160, the JSC advises the King on judicial appointments and the removal of Director of Public Prosecutions and other public officers. It further plays a role in disciplinary proceedings, including being empowered to exercise disciplinary control over the individuals on those posts and to remove them from office. The Judicial Service Commission Act 13 of 182 predates the 2005 Constitution by over two decades. It is therefore inconsistent with the Constitution in some critical respects. For example, section 3(1) of the JSC Act lists as members of the JSC: the Chief Justice; the Chairman of the Civil Service Board; three persons appointed by the King on such terms and conditions as he may determine and two of whom possess such legal qualifications and experience as the King may determine. The Act also provides the JSC with “severely circumscribed powers to appoint, discipline and remove judicial officers” given the primacy afforded to the King in both appointments of members of the JSC and judges. This creates the perception that the “JSC strongly favors Royalty, compromising its independence and, by logical extension, compromising the independence of the judiciary”.

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” (section 141).

Reports indicate that recruitment processes for judges are commonly conducted without advertising posts or interviewing candidates, and that interviews very seldom took place publicly. The process for appointment is not transparent leading to the appointment of unqualified judges. The information suggests significant concerns with the process by which acting judges are appointed, such as the prevalence of the appointment of acting judges, and the quality of judges appointed in this manner, as in some cases, individuals who have never practiced or not practiced for 10 years are appointed as registrars or magistrates. In addition, it notes significant concerns with the appointment of members of

the royal family as judges.

Section 139(5) of the Constitution provides that “the Chief Justice is the head of the Judiciary” and makes the Chief Justice “responsible for the administration and supervision of the Judiciary”. Section 142 of the Constitution empowers the Chief Justice, “subject to the provisions of this Constitution or any other law”, to enact “rules for regulating the practice and procedure of the superior and subordinate courts, including the specialized and local courts as well as powers of judicial officers”. Neither provision includes any reference to measures relating to either holding lawyers in contempt of court or barring them from practicing in courts.

A number of the common concerns raised about the current Chief Justice, Bheki Maphalala, were raised by the Law Society of Eswatini in a complaint initiated by the Law Society against the Chief Justice in December 2022 seeking his removal from office. The Law Society’s complaint included the following allegations: that the CJ used his power to appoint acting judges for the improper purpose of “establishing patronage in the legal fraternity” and “manipulate judicial decision-making” using a “non-existent backlog” as an “excuse” to do so; that the CJ established a commercial division in the High Court without following the Constitution; and that the CJ interfered with the administration of justice by improperly selecting panels of judges. The information further suggests that the Chief Justice makes determinations in respect to the allocation of cases to specific judicial offices, through an entirely non-transparent process.

### *The situation of the legal profession*

The information suggests that after the 2021 protests, State authorities largely focused their efforts on the criminal prosecution of those involved in protests in June 2021, coupled with the harassment and surveillance of lawyers.

Reports suggest that targeted attacks on lawyers occur regularly, including killings and attempted killings. One of the most emblematic cases is that of Thulani Maseko, a case in which reports suggest investigations have been slow. The information suggests that this killing engendered 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, the information suggests that lawyers perceive a serious gap left in Thulani’s absence.

Information suggests that lawyers are followed, harassed, threatened and intimidated. 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. The information indicates that

women lawyers are threatened with sexual violence.

The information describes a common situation in which lawyers are associated with the actions of their clients in the course of carrying out their legitimate professional functions. Lawyers are reportedly targeted based on the nature of the cases they take up and clients they represent. Reportedly, lawyers commonly experience hostility both from State officials and in courts when attempting to represent their clients.

The information further suggests that lawyers experience difficulties in accessing even basic court papers and processes, such as those relevant to lodging cases, papers or appeals at courts. Lawyers also experience various problems in effectively advising and representing their clients before courts. The information suggests that it is difficult for lawyers to give legal advice when they expect that the outcome of the case will not be determined by a proper understanding of the law and its application to the facts. Reports suggest difficulties include the refusal by registrars to accept the filing of legitimate court applications and the failure to produce or publicize judgments and orders of court, particularly when an individual was attempting to sue the royal family or those associated with it.

The information also suggests that lawyers taking on certain cases or certain clients face adverse economic consequences in response to their performing their professional function. For instance, they may lose both government and corporate clients or opportunities to represent such clients. These lawyers may also face pressure from their own firms to desist from taking up such cases. Some lawyers also receive 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.

In some instances, lawyers have reportedly been “banned” by judges from appearing in matters before them because of their involvement in controversial cases relating to the June 2021 unrest.

Reports suggest that inappropriate court processes have been followed in the cases related to the June 2021 unrest, with large numbers of cases being dealt with together and no realistic possibility of defending charges in such cases. Reportedly, 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, reports describe 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.

Reports indicate the prevalence of criminal charges in cases connected to the June 2021 unrest, which have allegedly been fabricated. As examples, they allege such charges were laid for innocuous and non-criminal activities, such as having too many groceries or household items in their homes. Reports also indicate many cases before the criminal courts were dealt with collectively in truncated proceedings. The information explains that, for example, a group of detainees charged with a criminal charge simply pled guilty as a group and their

cases were not considered individually. The types of criminal cases frequently brought includes charges for theft, protesting unlawfully and traffic offences. The more serious cases which State prosecutors pursued more vigorously were those in which individuals were charged under the Public Order Act, the Suppression of Terrorism Act and the Sedition and Subversion Acts. According to the information, two years on from June 2021, many of those charged with these offences had still not had hearings

This pattern of practices affects the right to a fair trial in the entire country.

### *Bar Association*

The Legal Practitioner's Act establishes the Law Society of the country, and includes the following functions in the Society's statutory mandate: maintenance of the "prestige, status and dignity of the legal profession"; regulation of the legal profession; protecting the "interests" of the legal profession; upholding the "integrity of legal practitioners"; and initiating and promoting "reforms and improvements in any branch of law, the administration of justice, [and] the practice of law".

The Act specifically empowers the Law Society to perform a disciplinary function in connection with misconduct or offenses by legal practitioners. The Act establishes a Disciplinary Tribunal including a member of the judiciary and two members of the Law Society to lead in the performance of this function. It further requires the enactment by the Chief Justice of Regulations detailing the procedures for this tribunal. These regulations have been enacted.

The applicable legal provision in respect of the removal or suspension of legal practitioners in Eswatini is section 27 of the Legal Practitioner's Act, which reads:

“(1) Upon any application by the Law Society, the Chief Justice, or in his absence, a Judge, may, for any reasonable cause shown order the suspension or removal of a legal practitioner from the roll and, in the case of disciplinary proceedings for professional misconduct, he may order suspension or removal or such other lesser penalty as is provided for in section 27ter.

(2) The provision of this Act relating to discipline shall be without prejudice to the inherent powers of a court or other tribunal to deal with any misconduct or an offence by a legal practitioner in the course of or in relation to proceedings before it.”

The Act establishes the Council of the Law Society, consisting of a range of persons elected “annually by the annual general meeting of the Society” (between four to eight persons) and a single individual appointed by the Minister of Justice. This Council is tasked with the “management and control” of the Law Society.

Reportedly, lawyers have perceived shortcomings in the execution of the mandate of the Law Society, in particular 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, in light of increasing security concerns and following the killing of Thulani Maseko.

The information suggests that the Law Society was not independent of the government, since members of the Law Society are placed in its leadership structure by the government specifically for the purpose of influencing its decisions. Divisions within the Law Society hamper its responses to State repression of lawyers who do politically disfavored work.

Without prejudging the accuracy of these allegations, I am very concerned at the allegations that describe a situation in which many judges are under temporary appointments, and that those selected for both temporary and permanent positions do not match the ideal profile required by a judge and are not appointed following a transparent process focused on assessing the merits of the candidates. I am concerned as well about the lack of security in tenure for temporary judges, as well as the alleged close ties of the judiciary to the Royal family.

The right to a fair trial provided for in article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights (ICCPR) highlights a competent, independent and impartial tribunal as one of the guarantees of due process. International standards on the independence of the judiciary make clear that the requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and to guarantees concerning their security of tenure.

I am also very concerned about the situation of harassment and insecurity faced by lawyers, especially after the brutal killing of Thulani Maseko, a prominent lawyer. I would like to highlight his great contribution to the legal profession in Eswatini and call on authorities to carry out a full and independent investigation into his assassination to find those responsible and bring them to justice. Mr. Maseko's family should be regularly informed of this progress.

I call on Eswatini to ensure the protection of the legal profession. The kind of interference with the legal profession described above may not only impede the work of lawyers; it may also harm the right of all people in Eswatini to be informed of legal and judicial affairs, and to enjoy the right to a fair trial. If confirmed, the interferences described above would amount to serious breaches of a number of international and regional standards. These standards provide that the legal profession and its free exercise are an essential element of the rule of law, the protection of human rights, and the functioning of an independent judicial system.

Further, the free exercise of the legal profession contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees. According to international standards, States must guarantee that those who practice law can do so free from intimidation, obstacles, harassment or interference. States must put in place all appropriate measures to ensure that lawyers are not subject to, or threatened

with, prosecution or any administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

I wish to recall that without the protection provided by an independent bar association, lawyers are extremely vulnerable to attack and to restrictions on their independence.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information as to the measures taken to investigate the killing of Mr. Maseko, whether these investigations were conducted in compliance with the Minnesota Protocol, and to bring the perpetrators, including the crime's intellectual authors, to account, including information as to how these measures are in compliance with the State's obligation to investigate under international human rights law.
3. Please provide detailed information as to the steps taken to support the family of Mr. Maseko in the aftermath of his killing.
4. Please indicate what measures have been taken to ensure that lawyers can operate in an enabling environment and carry out their legitimate activities without fear for their lives.
5. Please provide information on the measures taken to ensure the independence of the judiciary.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's

to clarify the issue/s in question.

Please accept, Excellency, the assurances of my highest consideration.

Margaret Satterthwaite  
Special Rapporteur on the independence of judges and lawyers

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw the attention of your Excellency's Government to the international norms and standards relevant to the above-detailed situation. In particular, we would like to recall the State's obligations under the International Covenant on Civil and Political Rights (ICCPR), acceded by Eswatini on 26 March 2004. I would like to draw the attention of your Excellency's Government to the Universal Declaration of Human Rights (UDHR). Much of the content of the UDHR, including its provisions concerning the right to a fair trial, has passed into binding customary law.

The right to a fair trial is protected in both instruments mentioned above. Article 10 of the Universal Declaration on Human Rights guarantees everyone the "right to a fair and public hearing by an independent and impartial tribunal", while article 14 of the ICCPR stipulates that: "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Access to counsel is an integral part of a fair trial. The Human Rights Committee<sup>1</sup> has stated that "the availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way". The Committee has further indicated that "lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter".

I would also like to draw your attention to article 14(1) of the ICCPR, which sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 of the ICCPR provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing. In addition, the Committee on Economic, Social and Cultural rights recognized the role of lawyers in providing legal assistance, in its general comment No. 7, E/1998/22 (1997), para. 15; and general comment No. 15, E/C.12/2002/11 (2003), para. 56. The Committee on Elimination of Discrimination against Women and the Committee on Elimination of Racial Discrimination also recognized the crucial role of lawyers in ensuring fair trial guarantees and providing equal access to the justice system (general recommendation No. 38, CEDAW/C/GC/38 (2020), para. 99; CERD general recommendation No. 34 (2011), para. 35).

I would also like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-7 September 1990). Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that

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<sup>1</sup> Human Rights Committee general comment No. 32, paragraphs 10 and 34.

lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

As it relates to the right to life, investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)<sup>2</sup>, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations (CCPR/C/GC/36).

The Minnesota Protocol affirms that “Persons whose rights have been violated have the right to a full and effective remedy. Family members of victims of unlawful death have the right to equal and effective access to justice; to adequate, effective and prompt reparation; to recognition of their status before the law; and to have access to relevant information concerning the violations and relevant accountability mechanisms. Full reparation includes restitution, compensation, rehabilitation, guarantees of non-repetition, and satisfaction. Satisfaction includes government verification of the facts and public disclosure of the truth, an accurate accounting for of the legal violations, sanctions against those responsible for the violations, and the search for the disappeared and for the bodies of those killed.”

“Investigative processes and outcomes must be transparent, including through openness to the scrutiny of the general public and of victims’ families. Transparency promotes the rule of law and public accountability, and (...) enables the victims (...) to take part in the investigation. States should adopt explicit policies regarding the transparency of investigations. States should, at a minimum, be transparent about the existence of an investigation, the procedures to be followed in an investigation, and an investigation’s findings, including their factual and legal basis.”

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<sup>2</sup> <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.