Independence of Judges and Lawyers in Eswatini

Maxwell Nkambule • UPR Pre-session • Eswatini UPR53

Central question

Not whether independence exists on paper — but whether it is protected in practice.

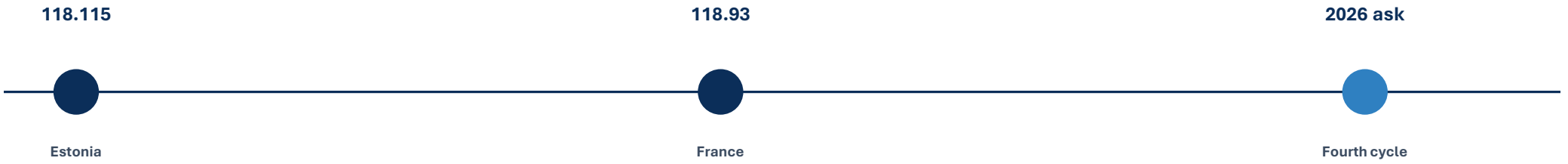
Independence as a fair-trial safeguard

Sources: ICJ; Amnesty International; Human Rights Watch; UPR Info / OHCHR

1. Previous UPR commitments: the baseline

Eswatini supported judicial reform and fair-trial recommendations in 2021.

2021 UPR commitments Eswatini supported



“Intensify the reform of the judicial system.”

“Combat arbitrary arrests and detentions and guarantee fair trials.”

Move from broad promises to concrete safeguards.

Use the previous cycle as an implementation test — not a fresh allegation.

Sources: UPR Info database, recommendations 118.115 and 118.93

2. How the situation has evolved since 2021

The issue has shifted from broad reform language to concrete threats against judges, lawyers and defendants.

2021	Supported: judicial reform + fair trials	UPR Info
2011 → ACHPR	Masuku removal exposes JSC safeguards gap	African Commission / ICJ
Dec 2022	Attempted attack on Maxwell Nkambule	HRW / ICJ
Jan 2023	Thulani Maseko killed; accountability absent	HRW / UN SPs / ICJ
2025–26	ICJ, Amnesty and UN SPs document continuing concerns	ICJ / Amnesty / OHCHR

Accepted recommendations have not been adequately implemented.

Sources: UPR Info; ICJ; African Commission materials; Human Rights Watch; OHCHR Special Procedures

3. Judicial independence case study: Justice Thomas Masuku

A regional decision provides an implementation benchmark for judicial reform.

What happened

Justice Masuku was removed from the High Court after disciplinary proceedings before the Judicial Service Commission. The proceedings arose in part from language used in a judicial decision.

What the African Commission found

Eswatini violated Article 7 and Article 26 of the African Charter, including the obligation to guarantee the independence of the courts.

Why this matters now

- Reform the legal framework governing the Judicial Service Commission
- Safeguards against bias in disciplinary processes
- Access to judicial review of JSC decisions
- A measurable UPR ask anchored in regional jurisprudence

Not simply an allegation — an authoritative regional finding.

Sources: African Commission Communication 444/13; ICJ analysis of Masuku decision

4. Independence of lawyers: from pressure to chilling effect

ICJ, HRW and UN Special Procedures point to an unsafe environment for lawyers in sensitive cases.

When lawyers fear a case, clients lose representation.

Core pattern documented after 2021

Surveillance and following

ICJ report

Threats and intimidation

ICJ + UN Special Procedures

Association with clients' politics

ICJ

Fear after killings and attacks

HRW + ICJ

The legal profession's independence is a fair-trial safeguard.

Sources: ICJ No Situation is Permanent; Human Rights Watch; OHCHR Special Procedures communications

5. Consequences: fair trials and access to justice

Amnesty's findings show how institutional weakness affects defendants.

Amnesty example: proceedings against Bacede Mabuza and Mthandeni Dube were described as involving serious due-process concerns; delays in appeal were linked to access-to-justice and court-integrity concerns.

Independence is not abstract: it determines whether people can challenge the State.

Sources: Amnesty International UPR submission and 2025 statements; HRW reports

6. UN Special Procedures: not a new concern

Formal communications during the implementation period reinforce the need for specific UPR recommendations.

Jan 2023 — Joint communication after Thulani Maseko’s killing

Apr 2025 — **SR on independence of judges & lawyers raises concerns on appointments, acting judges and lawyers’ safety**

Apr 2026 — UN experts raise continuing failure to bring perpetrators to justice

These concerns have repeatedly been brought to the Government’s attention.

Sources: OHCHR Special Procedures communications: SWZ 1/2023; SWZ 1/2025; SWZ 1/2026

Three recommendations for the fourth UPR cycle

Specific, measurable and anchored in existing findings.

1

Implement Masuku

Fully implement the African Commission decision, including reform of the JSC framework, safeguards against bias and access to judicial review.

2

Protect lawyers

Guarantee lawyers can work without intimidation, harassment, surveillance, threats, reprisals or improper interference.

3

Accountability for Thulani

Ensure a prompt, thorough, independent, impartial and transparent investigation into Thulani Maseko's killing.

"The independence of judges and lawyers determines whether every person in Eswatini can enter a courtroom and expect justice without fear or favour."

Sources: African Commission; ICJ; Amnesty International; Human Rights Watch; OHCHR Special Procedures