

In the early '90s, as a young reporter at *The Times of Swaziland*, I heard about a news sheet that was being published and distributed through the fax machine. While I could not get my head around this innovation, among the more senior journalists in Swaziland at the time the buzzword was that it was a brilliant idea, the latest trend in publishing technology. There was much excitement about it.

I suspect, though, that the excitement was because, for Swazi journalists who were poorly paid and working under very tough, hostile conditions in an extremely small media environment, it was an idea which, properly cultivated and adopted in my home country, could offer them an alternative means of employment.

These were the true working conditions of journalists one American writer said were worthy of a monk.

Personally, the whole thing just flew over my head, I must admit. But then, I can be forgiven for that. I was still wet behind the ears, in my early 20s, still trying to get to write a proper lead story for the newspaper I worked for and desperate to settle into the career I had chosen and, hopefully, could make a name for myself.

I don't remember at the time anyone speaking of Carlos Cardoso *per se*, the man who came up with an idea I now consider the precursor to what we call digital media and in whose honour this memorial lecture is held today.

Let us pause here for a moment. Think about this; in the early '90s the fax machine was the latest technology in communications. Where before the advent of the fax machine one had to write a letter, post it or hand deliver it, we suddenly had this new contraption that could do instant messaging by putting an A4 piece of paper into a small machine and have it copied to whoever it was sent to, provided they had a similar machine.

Cardoso saw a business opportunity here and, from what I have read, made good money from this venture. I have no doubt in my mind that were he alive today, he would be at the forefront of promoting digital media and the latest trends in disseminating news via the internet and the various platforms available such as Twitter and Facebook.

It is significant to me that Cardoso made money from Metical, named after the Mozambican currency because today, while digital media has been declared the way to go, many companies that have gone this route have yet to make a decent profit from it and survive.

I never met Cardoso. When he died in 2000 I did hear about his killing and, like anyone else in the media, was quite concerned because, even though I couldn't say Swaziland had come anywhere near such levels of violence against journalists, one came to fully comprehend the extent of the dangers in being a journalist in Africa.

Carlos Cardoso went to prison, fought for freedom of expression in his country and paid the ultimate price for what I consider the most basic human right next to life, liberty and dignity.

I have no doubt in my mind that had he been alive today he would have been among the many journalists around world who championed my course when I too went to prison in March last year.

Not long after my release from prison, at the end of August this year, another journalist was killed in Mozambique. News reports say Paulo Machava, a veteran investigative reporter and publisher of the online *Diario de Noticias*, was killed in a drive-by shooting as he jogged in the capital Maputo.

Such reports worry me because Mozambique is right next door, just like South Africa, to my home country of Swaziland. It is very difficult for me to pretend such reports are far removed from me.

Just like with South Africans, Swazis share a lot with Mozambicans; not just in trade, but in kith and kin too. A neighbour's habit is very easy to adopt at home.

As we were preparing to come here, three Zimbabwean journalists, *Sunday Mail* editor Mabasa Sasa, investigations editor Brian Chitemba and reporter Tinashe Farawo, were arrested and charged for publishing a story implicating a top police officer and other officials in cyanide poisoning of more than 60 elephants for tusks.

This is a cause for great concern to all of us who are in the business of news gathering. Quite clearly what we have here is an arrogant group of people who believe they can do as they like with the wildlife in Zimbabwe, and Zimbabweans have no right to know about it.

But, this is not a problem unique to Zimbabwe. You will find it all over Africa, including my home country, Swaziland. I just never understand how a person appointed to public office comes to believe that his or her job is a personal inheritance.

On Sunday, as we made our way here, an Egyptian journalist, Hossam Bahgat was arrested by military intelligence in that country for "publishing false news that harms national interests and disseminating information that disturbs public peace" in what is clearly yet another attack on freedom of expression.

A fellow Egyptian, responding to the arrest on Twitter, posted to say nobody should be surprised at the arrest because, when he campaigned for office, President el-Sisi had made it clear that he did not support free speech.

The writer pointed out that Egyptians went ahead and voted him to office despite this declaration, suggesting that they got what they deserved. What got to me was that the writer of this Tweet was an Egyptian living in America pontificating without the burden of fellow country men faced with the difficulties of making hard choices in an unstable environment.

More significantly for me, though, is that even if the people of Egypt voted for a man opposed to freedom of expression, that doesn't make what happened to Bahgat right and justifiable. It is still wrong.

Indeed, Swaziland has remained a dictatorship since 1973, when King Sobhuza II abolished the independence Constitution of 1968 and ruled as an absolute monarch by decree. In such a political arrangement, journalists have always worked under difficult conditions.

That is why I earlier on said that the advent of the fax machine, and the resultant news sheet, was seen as a possible way out for some journalists in my country.

The pay and working conditions have always been poor in Swaziland for journalists. In the print industry, the principals are the family owned *Times of Swaziland*, and *The Swazi Observer*, which is owned by Tibiyo Taka Ngwane, a royal trust which set up the newspaper in 1981 as a gift to King Sobhuza II on his Diamond Jubilee.

The only television and radio stations are run by government and, therefore, their journalists are public servants protected by the General Orders that regulate employment in the civil service.

But, despite this, there are many great journalists Swaziland has produced that one has learnt from.

In 1988, a very good friend, my senior in the trade, Mashumi Thwala, who was news editor when I joined *The Times of Swaziland* that year, was detained under the 60-Day detention law together with a reporter, Hanson Ngwenya, for a story they published detailing gun-running at Swaziland's border with Mozambique.

In all the years I have been a journalist in Swaziland, there has always been tension between the media, particularly print, and the authorities. They would like to see a timid media, one that plays a lapdog role and gives them good publicity rather than one that asks the hard questions. It's the same in many African countries.

They have bullied us, threatened us and, well, recently had me arrested and sent to jail to drive the point home.

Swaziland adopted a new Constitution in July 2005. When King Mswati III declared the Constitution the supreme law, he promised to uphold and protect it.

In the ten years the Constitution has been in operation, it has become clear to everyone that the authorities are struggling to uphold its values. Their biggest challenge is dealing with Chapter III, the Bill of Rights.

But the problem does not end there. The political groups; civil society organisations, banned political parties and trade unions advocating for democracy have also rejected the Constitution of 2005. They say it does not bring about the democracy they would like to see in modern-day Swaziland.

I disagree with this notion and have said as much many times. I will soon tell you why.

This confusion over the Constitution has worked well for King Mswati's government which acknowledges the existence of the Constitution but is most happy to ignore it in areas where it matters most, such as human rights.

The media, which I believe has a duty to make sense of all this confusion, has been deafeningly silent on whether the Constitution, as it stands, is actually good for the country.

Another group, academics in the Department of Law at the University of Swaziland hear no evil and speak no evil about the Constitution. Their role has only been to churn out graduates every year without paying any attention to the world around them.

When I started out as a journalist in 1988 I had just left high school. The intention, really, was to keep myself busy while I looked for a place at the local university to study law.

Much against my father's wishes, who had been a journalist himself at independence and when I was born, I so thoroughly enjoyed newspaper work that I decided to make a career out of it and rose to be editor of the Sunday edition of the *Times of Swaziland* at the age of 24.

As I grew as a commentator on Swaziland's socio-political issues I realised that I ran the risk of becoming irrelevant to readers if I did not improve my own educational standing. It was during the early 2000s, after I had left the *Times*, that I decided to enrol at the University of South Africa for an LLB degree and fulfill my initial dream.

Let me state here and now that I have not finished my degree. Therefore, I am not a lawyer by any stretch of the imagination. The reason for the delay in graduating has to do with my approach when I enrolled, an approach I deeply regret and am working on fixing.

As I have stated earlier, I enrolled because I wanted to improve myself intellectually and remain relevant as a writer. I, therefore, have taken my time going through the degree.

During my studies, I found that I enjoyed Constitutional Law and discovered that everything that happens in a society which claims to have the Rule of Law turns on the Constitution. It was this realisation that turned my attention to the judiciary in Swaziland; to see if they were adhering the Royal Command that the Constitution of 2005 was the supreme law of the land.

It was the beginning of my troubles. Like in many other societies around the world, the legal profession is considered a cloistered virtue in Swaziland.

None outside the profession are allowed to look into it, its dealings, its operations and how decisions are taken. Lawyers don't take too kindly to being questioned. They consider themselves a tribe, an elite group open only to their own.

I decided to break this unwritten rule because I wanted to see what the courts in Swaziland were doing to give us our constitutional rights.

Despite the strong differences of opinion in Swaziland over whether we have a good Constitution, from my own studying of the law, I can say with full confidence that we have a very good Constitution in Swaziland; one that sits very well with the best in the world.

The problem is with interpreting it and giving effect to it. There is neither the political, social nor judicial will to make it work for the ordinary Swazi. I set out to champion the course for its implementation, particularly the Bill of Rights, in my writings.

During another court hearing, in 2012, where I faced another contempt of court charge on two counts and was subsequently found guilty, but managed to escape jail, Advocate Gilbert Marcus, senior counsel from South Africa who was representing me, told the judge that our Constitution was not only great, but it went further than most by clarifying certain provisions in the Bill of Rights which in other jurisdictions were left implicit.

These two charges emanated from articles I had written about the conduct of the judiciary in relation to the Constitution and the conduct of then Chief Justice, Michael Ramodibedi as head of the judiciary in Swaziland.

Justice Bheki Maphalala found me guilty anyway and sentenced me to two years in prison with an option of a fine I was to pay in three days or go to jail. I appealed the decision within the three days, hence my escape of jail. The appeal, which was heard in May last year, acquitted me on one count and found me guilty on the other but reduced my sentence to three months.

Of course, this meant nothing in real terms because I was already in jail facing another contempt charge for which I served time.

I'm sure many of you will want to know how, exactly, I got to be sent to jail.

Here's what happened. One Saturday morning in January 2014, a government vehicle inspector, Bhantshana Gwebu, stopped a government vehicle in which a High Court judge, Esther Ota, was being chauffeured while she did her rounds ahead of schools opening for the new year.

Gwebu enquired from the driver of the vehicle if he had the necessary documentation for the vehicle to be on the road on a weekend. A stand-off that ensued resulted in Gwebu being arrested on the orders of the Chief Justice on charges of contempt of court and he was sent to jail.

When Gwebu appeared before Ramodibedi in Chambers on his way to jail, he told the Chief Justice, through an interpreter, that he had a lawyer and would like to be represented in the proceedings.

Ramodibedi is reported to have asked Gwebu, through the interpreter, if the lawyer had been there on the Saturday when he tried to impound the government car.

The Chief Justice refused Gwebu legal representation and remanded him in custody.

I then took up the matter in the magazine to point out that the Chief Justice had no power to refuse a man accused of a crime legal representation. I did not comment on whether it was right for Gwebu to seek to impound the car.

Thulani Maseko, a respected human rights lawyer and columnist in the magazine, followed up with his own take on the matter, also questioning the decision of the Chief Justice to deny someone legal representation in a court matter.

It was then that the Chief Justice issued warrants for our arrest. What will surprise many of you is that between Gwebu's arrest at the end of January 2014 and ours in March the same year, the man who had been interpreting in the Chambers of the Chief Justice was appointed a High Court judge and was given our case as his first matter.

Judge Mpendulo Simelane, who is now suspended on charges of corruption and defeating the end of justice and also faces impeachment, sent Thulani and I to jail with a two-year sentence.

So, here was a witness to what we had commented on now sitting in judgment over the very same matter. He did so without any irony or shame in a trial of high drama that took three months to complete.

We were released on June 30 this year when our appeal came before the Supreme Court. The circumstances around our release were nothing short of stunning.

There we were before three judges of the Supreme Court, were represented by senior counsel from South Africa, ready to plead our case when the very prosecution that had argued vigorously that we had committed a crime and should be sent to jail, simply pleaded no contest even before we had stated our case.

The advocate from the office of the Director of Public Prosecutions told the court that what had happened to us was a serious miscarriage of justice that could not be sustained in law. He conceded that our trial and incarceration had been a travesty of justice.

But I am not fooled by the antics of the prosecution. I do not believe they suddenly had a prick of the conscience and decided to back down. I am aware that pressure from the international community was piling up on the government of Swaziland over our continued incarceration. I am aware that journalists from Cape to Cairo were writing about the matter, asking why we had been sent to jail.

Let me say here that Thulani, my co-accused, is the only lawyer I know in Swaziland willing to use his legal knowledge to fight for the Rule of Law in Swaziland without any fear.

What many of you might find interesting is that he and I don't always agree on our interpretation of the Constitution itself and our reading of Swaziland politics.

But I never stop him from writing what he thinks, even if I don't agree with him, because I believe that we must let our views be tested in the market of ideas and not be curtailed by our own private prejudices.

He is a good man, passionate about using his knowledge and skill to make Swaziland better. Right now he is pursuing his doctoral studies. I asked him if he would go into lecturing in law at the University of Swaziland and he said he had other plans. I want to convince him, though, to consider that option because I don't think we are getting good quality legal minds from our university.

I have everyone who participated in raising our matter to thank for their efforts. Your efforts did more than just get us out of jail. It also made the government of Swaziland remember that we now live in a global village, that our country is not an island.

As I have mentioned, there are problems in Zimbabwe and Egypt. These are not the places in Africa where journalists are under threat. Journalists who are victimized in their countries need all of us to stand up for them. We must make noise about their strife.

We must make noise not only to draw attention to the problems in their countries where freedom of expression is concerned: not only to try and put pressure on their governments to release them, but because, and I speak here from personal experience, such noise lifts their spirits during these hard times and keeps them sane in those terrible conditions in prison.

In the four months I have been out of prison, I have not seen much change in the way the media reports in Swaziland. There is still fear among my colleagues. But, neither have I seen the aggression of government towards reporting that steps on the toes of politicians.

At this point I want to make special mention of a friend and colleague, Mbongeni Mbingo, who is here today. Mbingo, as he is commonly known, is the Managing Editor of *The Observer* newspaper I told you about earlier.

For a man working for a state controlled newspaper, he took the risk of condemning my arrest in numerous and faced not just arrest himself, but dismissal too from his job for taking a stand against state action.

Instead, the privately owned *Times*, which would have been expected to take an independent line, actually backed the Chief Justice in his nefarious deeds. Their slant clearly showed that they were using my misfortune to curry favor with the authorities of Swaziland.

Today, at *The Nation*, where I work, we continue to write without censoring ourselves. The precaution we take, one that every media house subjects itself to, is to check our facts and double check them. Once that is done, we publish.

Am I afraid to write what I believe to be right? No, I am not. In fact, I now hold the view and believe very strongly that truth is the real liberator against tyranny. Everything that happened in my country after we were sent to jail proved that we were right in pointing out the abuse of power and corruption by the Chief Justice.

Some people now even say we may have saved the country from worse trouble that was to come.

Cardoso is said to have told a Frelimo meeting that the leaders were not the only Frelimo in the room. I too say to those in power in Swaziland they are not the only Swazis in the land that belongs to all of us.

I will continue to speak truth to power.

I thank you.