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**BEFORE THE UNITED STATES
TRADE REPRESENTATIVE**

**PETITION TO REMOVE SWAZILAND
FROM THE LIST OF BENEFICIARY DEVELOPING COUNTRIES
UNDER THE GENERALIZED SYSTEM OF PREFERENCES ("GSP")**

**SUBMITTED BY:
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS (AFL-CIO)
DECEMBER 2, 2002**

Information Required Under 15 CFR part 2007

1. Petitioner: AFL-CIO
2. Country: Swaziland
3. Section of Law Warranting Review: 19U.S.C. §2462(b)(2)(g) and 19 U.S.C. §2462 (c)(7)
4. Reason for Filing: The Government of Swaziland has not been and is not taking steps to afford internationally-recognized worker rights.

Introduction

The AFL-CIO petitions for the withdrawal of Swaziland's status as a beneficiary developing country pursuant to 19 U.S.C. § 2462(d) on the grounds that the government of Swaziland has not been and is not taking steps to afford internationally-recognized worker rights as defined at 19 U.S.C. § 2467(4). The actions of the government of Swaziland described herein demonstrate that Swaziland is not eligible to receive GSP benefits.

Overview

Despite the fact that Swaziland has ratified core International Labor Organization (ILO) Conventions, the trade union movement remains a target of repression and faces continuing interference by the authorities. The judicial system, hindered by heavy-handed impact of authorities, has been unable to consistently rule impartially. On the one hand, a series of royal decrees usurp judicial mandates. On the other hand, Justices' attempts to function are threatened by open intimidation and orders to resign. In this repressive atmosphere the Swaziland Federation of Trade Unions (SFTU) constantly struggles to fulfill its democratically elected mandate to represent working people independently and fairly.

Union Leaders on Trial: The New Beginning for a New Millennium?

In January 2001, six trade union leaders – Jan Sithole, general secretary, SFTU; Elliot Mkhathshwa, vice president, SFTU; Phineas Magagula, president, Swaziland National Association of Teachers (SNAT); Musa Dlamini, General Secretary, SNAT; Quinton Dlamini, general secretary, Swaziland National Association of Civil Servants (SNACS); and Bongani Nhlanhla Gama – were charged with contempt of court. Together with civic organizations they had organized a peaceful demonstration and a march to the Prime Minister's office to present a petition the previous November. The authorities banned the demonstration and prosecuted the participants. The unionists' trial began in March. Each of the accused had their passports and travel documents withdrawn, and they were banned from addressing gatherings. While their passports were returned by mid-year, their case was postponed three times and continued through September 2002 until they were declared innocent. During the hearing that acquitted the trade union leaders, the magistrate criticized police witnesses for giving "contradictory evidence" during the trial. Despite their acquittal and the magistrate's critique, the Government launched an appeal against the acquittals.

In connection with the same incident, the following public servants were told that they faced the government's internal disciplinary charges, which might result in their dismissal: Masithela Mhlanga, president, Swaziland Nurses Association (SNA); Zweli Nxumelo, vice president, SNA; Julia Ziyane, former general secretary, SNA; Phenius Magagula, president, SNAT; Musa Dlamini general secretary, SNAT; Mishek Masuku, former President, SNAT; Elliot Mkhathshwa, vice-president, SFTU; Quinton Dlamini, general secretary, SNACS; and Siphwiwe Hlophe, national organizer, SNACS. The SFTU alleges that the Government selectively picked on the leadership of all the public sector unions and charged them for "compromising their political impartiality" for having participated in the peaceful protest action and attended a meeting of workers which was held in South Africa.

May Day 2002: Authority Interference

In response to media reports regarding SFTU preparations shortly before May Day celebrations, Police Commissioner Edgar Hillary issued a statement indicating that police would not hesitate to allow the full weight of the law to take its course once May Day celebrations were turned into a political rally. "On that basis and in terms of section 3 (10) (a) (11) of the Public Order Act of 1963, the proposed political rally or any other form of demonstration will not be allowed to take place." He further announced that the rally or other form of demonstration would be a violation of the country's laws, including its labor laws.

When the SFTU sought a venue for its customary May Day celebration, every potential location near Mbabane was found to be "unavailable." After an exhaustive search, a stadium tens of kilometers outside town was secured. SFTU leaders were called by the Chief of Police days in advance and asked to disclose the theme of the May Day activity agenda. The leadership shared the activity's theme: "Privatization and Social Exclusion: Are they Partners in Poverty Alleviation?" SFTU leadership was warned not to say anything against the King, Prime Minister or any other politician during the May Day addresses. They were reminded that the 1973 Decree "was still in place and would be enforced." This began a marathon of negotiations with the police.

On the evening before the May Day celebration launch, the SFTU Deputy Secretary General Africa Makongo was called by police and was told that:

1. The program looked like a political rally;
2. It appeared as if the SFTU had put some "undesirable elements" on the agenda (speakers for the day included Fraternal Delegates from South Africa and Mozambique as well as members of a banned political party); and
3. The SFTU must change the agenda or the rally would be forcibly prevented from going forward.

Makongo communicated the difficulties through the SFTU structures, immediately convening an SFTU Executive Forum. He and the Executive Forum began negotiating with the police, as workers would be readying to come to the stadium for an 8:00 AM start of the

celebration. Although negotiations continued throughout the night leading up to May Day, roadblocks were set up on the main road to the venue and approximately 400 police officers armed in full riot gear showed up at the stadium in which SFTU members planned to join in the May Day celebration.

During the last few hours of the negotiations, the Police Chief asked that the speakers skirt the issue of privatization during their talks. He warned Makongo that if the Elders learned about the meeting, workers could be sacked. Finally, he threatened to arrest the speakers.

Aware of the on-going negotiations, the May Day celebrants convened at 1:00 PM, although SFTU members traveling by bus to the venue who were blocked by police roadblocks had to walk the final five kilometers to the venue. Other busloads of workers on the way to the venue were turned back entirely and five workers were beaten by police. Inquiries to the Police Chief and Station Commander by SFTU went unanswered. The Station Commander "would not entertain" cases relating to the beatings.

The Swaziland Federation of Labor (SFL), which broke from the SFTU in 1993, held its May Day celebration at a venue five kilometers from Mbabane with no police at the event.

The right to organize union meetings is an essential aspect of freedom of association. Workers should enjoy the right of peaceful demonstration to defend their occupational interests, and public authorities should refrain from any interference which restricts this right or impedes its exercise, unless public order is disturbed or its maintenance seriously and imminently endangered. The ILO Committee on Freedom of Association determined that authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of law and order should be in proportion to the danger to law and order that the authorities are attempting to control. The government of Swaziland clearly violated these principles and severely restricted the right of workers to associate freely by threatening organizers of the May Day celebration, attempting to restrict the issues discussed at the rally, blocking workers from attending the rally, and beating workers on their way to the rally.

A Succession of Increasingly Repressive Decrees

Even though the Government of Swaziland enacted a new Industrial Relations Act in 2000 and revised Decree No. 2 in response to public outcry, significant legal restrictions still impede workers rights to freedom of association and collective bargaining.

A recent royal decree (Decree No. 3 of 2001) not only prohibited people from impersonating or ridiculing the King, but gave him the power to ban any publication that does not conform to "Swazi morality and ideals." The decree was put into practice rapidly: *The Guardian* weekly newspaper and the monthly magazine *The Nation* have been banned. Although the High Court stayed the ban, the ruling was undercut by authorities and the publications ceased production. Police forcibly dispersed a community prayer service alleged to be a political activity. Decree No. 3 of 2001 also removes magistrates' discretionary power over

bail. These elements further undercut the rule of law in Swaziland, calling into question the Government's respect for internationally accepted principles of good governance.

The Internal Security Bill, gazetted in May 2002, but not sent for official deliberation, renders freedom of association and the exercise of civil rights nearly impossible. The Internal Security Bill reinforces a royal ban on opposition political activity. The Bill's drafter, Attorney General Dlamini, calls it is "an anti-terrorism measure."

If enacted, the Internal Security Bill would repeal the Public Order Act of 1963 and would, among other things:

- Allow members of the public who suffer property damage during a march or demonstration, regardless of who is responsible, to sue the organizers of the march;
- Permit any officer of the rank of inspector or above to search a person or enter a premise suspected of having committed an offense without a warrant;
- Require all public gatherings to be advertised or otherwise publicized, unless notice has been given under the terms of section 3;
- Permit any officer of the rank of inspector or above to stop or prevent any public gathering or any other meeting of persons, whether or not notice had been given for the meeting under section 3, if the police officer has reasonable grounds to believe that public order is likely to be endangered if the gathering, meeting or procession continues;
- Permit any officer with the rank of sergeant and above to have unlimited rights to disperse meetings, even those that had always been considered legal;
- Allow officers to use or cause to be used such force as may be necessary to stop or disperse a public gathering or meeting; and
- Provide for fines of up to two thousand five hundred Emalangeni (E2,500) and/or imprisonment for up to a year for any person who fails comply with an order to break up a public gathering or in any manner advertises or publicizes a public gathering in contravention of the law.

The State of Emergency, introduced in 1973, remains in force. Political parties are banned and constitutional freedoms remain suspended. Swazis are actively discouraged from participating in even circumscribed political discourse. Freedom of speech is being collapsed. Harsh anti-trade union measures have taken root and voices calling attention to the situation are regularly silenced.

In practice, trade unions, particularly the most representative national center the SFTU, continue to face fierce attacks by the authorities. Should the Internal Security Bill be introduced to Parliament or enacted by Decree in full or in part, it will even further chill the activities of the democratic trade union movement in Swaziland. SFTU General Secretary Jan Sithole, members of his Executive, and Affiliate officers will be the prime targets of a government which acts less like a social partner and more like a social adversary.

Thus far, the Swaziland Government has demonstrated an overwhelming lack of political will to substantively improve its law and practice to interact with reciprocity vis a vis organized

workers. This lack of political will is exhibited by the Government's continued introduction of decrees invoking states of emergency laws which undermine fundamental worker rights and civil liberties.

Government Fails to Protect Workers from Rights Abuses

The lack of government protection for workers' rights has been a source of great frustration for unions and their members. The Government failed to address clear cases of rights violations. Some employers boast to workers that they would bribe any labor inspector who visited their factory. At the time of this writing, cases before Swaziland's industrial court face a waiting period of between two and five years. In addition, the Department of Labor complained that the Government's central prosecuting office did not take labor violations seriously and would often not release the necessary resources for such prosecutions. The Government's slow enactment of the Occupational Health and Safety Bill is further evidence of this lack of concern for workers' rights. At the same time, the Department of Labor admits that in an attempt to make investors happy it does not pursue labor law violations to its fullest ability. Companies have the right to lay workers off for periods of two weeks if their employment is not desired, and have exploited this flexibility as retaliation against workers exercising their rights. The Department of Labor has taken "many companies" to court but generally "doesn't rush to court."

The continued impunity for labor rights violations is the result of the government's refusal to address the inefficiency and ineffectiveness of its labor law enforcement regime.

- Cases sent to the judicial system take a long time for prosecutors to be assigned, appear to be given a low priority, and tend to end in worker frustration and financial inability to wait out the process.
- The Industrial Court has a huge backlog of cases. A year's wait for the first hearing of a case is not unusual.
- Employers work on the edges of the law or flaunt it with impunity. In a number of companies, workers' organizations are alleged to be recognized in accordance with labor law, but workers who have fulfilled the legal requirements are put off, intimidated, told half truths or terminated when they attempt to assert their representational rights under the law.
- The Department of Labor asserts it has to make Swaziland "as attractive to investors as possible." As such, they say, they cannot "push investors too hard," but instead are "very gentle and persuasive." They would prefer to write to the federation of employers requesting compliance rather than take a company to court.

Executive Interference with the Judiciary

Over the last two years, government officials have frequently attempted to reverse or

circumvent court rulings. In a number of cases, the police have blatantly flouted the orders of the court without any consequences for them. Amnesty International has condemned this blatant threat against the integrity and independence of the judiciary.

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In one notable case, Lindiwe Dlamini appealed to the courts for help when she was denied access to her daughter. Her daughter has been held effectively incommunicado since she was secretly removed from her mother's custody for the purpose of making her the tenth wife of the King. The chief of staff of the army, the police and correctional services, and the Attorney General met privately with the three judges hearing the case to convey a message from the Royal Palace that the judges must stop hearing the case or resign. However, the judges continued to hear the case as scheduled on October 31. In open court the Chief Justice stated that they intended to continue presiding over the case despite the threat that had been issued against them on the previous day. He postponed the case until 5 November. Then, in November, the Attorney General officially informed the judges in writing that if they continued hearing the case they must resign immediately after issuing their judgment. If they failed to do so arrangements would be made for their removal from office.

This case must be allowed to continue without pressure or interference of any kind from the Executive. "By their actions the King and his agents have violated the internationally recognized human rights of women and girls, including their right not to be arbitrarily detained and the right not to be subjected to forced marriage," Amnesty International said.

Head Teachers Denied Freedom of Association

The Kingdom of Swaziland is continuing its policy of intimidating and harassing trade unionists. In November 2000, the government banned all meetings of two affiliates of the Swaziland Federation of Trade Unions (SFTU) – the Swaziland Association of Teachers (SNAT) and the Swaziland Nurses Association (SNA) – after a mass meeting. In late May 2001, Swaziland's industrial court ordered the government and police to stop interfering with trade union activities. Ignoring the court, the authorities have since informed head teachers that they cannot become members of the Swaziland National Union of Teachers.

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Conclusion

The information presented above clearly demonstrates that the Kingdom of Swaziland refuses to take steps to afford internationally recognized worker rights, specifically the freedom of association and the right to organize and bargain collectively, to workers. This refusal persists despite on-going appeals from the Swaziland Federation of Trade Unions, the International Labor Organization and the international trade union movement. This petition is being filed to urge those in positions of authority in the Kingdom of Swaziland to respect all human rights, particularly the fundamental rights of workers, who comprise its engine of growth and are the key to its sustainable development. The Kingdom of Swaziland should be removed from the list of beneficiary countries under the Generalized System of Preferences. Ineligibility for the GSP would disqualify Swaziland for benefits under the Africa Growth and Opportunity Act.

