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swaziland

**WORKER RIGHTS
AND THE
GENERALIZED SYSTEM OF
PREFERENCES**

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SWAZILAND

**The AFL-CIO Petition to the
Office of the United States Trade
Representative**

February 28, 1997

SWAZILAND

In the persistent and continuous use of government decrees, public orders, and other unconstitutional legal instruments, along with the arbitrary arrest, detention, and harassment of trade union leaders by the police and government security forces, and by refusing to bargain in good faith over legitimate trade union issues, the Government of the Kingdom of Swaziland is in violation of the internationally-recognized worker rights. The AFL-CIO calls for the Kingdom of Swaziland to be removed from the list of eligible beneficiaries of the Generalized System of Preferences.

Background

In responding to deteriorating labor relations and membership concerns, the Swaziland Federation of Trade Unions (SFTU) in October 1993 submitted to the Government of Swaziland a list of issues to be discussed. This list, subsequently known as the "27 demands", included proposals for legislation regarding the reinstatement of unfairly dismissed workers; the establishment of a national minimum wage; the establishment of a national social security scheme; maternity leave pay; a May-Day holiday; the setting up of an economic forum; an end to brutality by the city council against street vendors; an end to victimization of journalists; no privatization of the water supply services; as well as demands for a more democratic and representative society.

Failing to receive a satisfactory response from the government, the SFTU held a mass stay-away in support of its 27 demands on February 21-22, 1994. Subsequently, the demands became the subject of discussions and negotiations between the SFTU and the government. The government, together with the other parties, appointed a task force to analyze the demands. However, no concrete proposals emerged.

Freedom of Association and Collective Bargaining

FOIA

Strikes broke out in many sectors during the following months. The police responded by using violence and tear gas to suppress the striking workers. Finally, the authorities turned to the High Court to obtain restraining orders against strikers, thereby bypassing the Industrial Court system.

Violence

On July 22, 1994 a striking worker was shot and seriously wounded by the police. On the same day, while on his way to visit the wounded striker, Jan Sithole, the SFTU General Secretary, was stopped by the police and interrogated by senior police officials. The interrogators tried, unsuccessfully, to link the SFTU with political parties which are banned under a government decree.

Following this interrogation, Jan Sithole was forced into a vehicle with three armed senior police officials, and driven to an isolated rural location. Surrounded by a total of seven armed police officials, he was interrogated again, threatened and finally released after being detained for five hours.

Subsequently, Jan Sithole was the subject of police surveillance and he received threats to his life through anonymous telephone calls. Three heavily armed men visited his house in his absence, his telephone line was cut, and rumors were circulated that he was the target of a government planned "accident" that would eliminate him. With the intention of deporting him, the security police launched an extensive inquiry into his citizenship. During this time, plain clothes police monitored SFTU meetings and seminars, and bribes were offered to SFTU staff members to obtain the organizations records and documents.

On March 13-14, 1995, the SFTU called a second national stay-away in support of the 27 demands, and to express disappointment of the government's failure to adequately address these issues. A number of workers were arrested for striking.

In response to the stay-away, a parliamentary committee was established and a seven-day time line was set for reaching an agreement on some of the issues. However, despite the willingness of the SFTU and the Federation of Swaziland Employers to negotiate, no progress was made and it became clear to both parties that the government was seeking confrontation.

On March 24, 1995, the SFTU was served with an injunction to stop them from holding membership meetings the following weekend. Following a High Court decision that overruled the injunction, the SFTU held the two meetings with trade union officials and members respectively.

At the end of March 1995, the government introduced into the National Assembly an Industrial Relations Bill.¹ (Attachment A) This, along with amendments to the Employment Act, were introduced without prior discussion in the tripartite Labour Advisory Board. Subsequently, the Bill was condemned by both the unions and employers federation (Attachment B) for its serious violations of freedom of association. Among the provisions of the Industrial Relations Act that violate ILO Convention Nos. 87 and 98 are the following:

- The Act imposes penal sanctions for certain legitimate industrial relations practices. An official of a trade union federation who calls a strike can be punished by a fine of 5,000 Emalengeni or a maximum of five years imprisonment, or both, and a subsequent five-year ban on holding trade union office;
- Equally severe penalties apply to organizations or office holders calling, organizing, or giving financial support to strikes in essential services. The Act gives a broad definition of essential services, and gives the Minister of Labour unilateral powers to amend it.
- The Act gives the Commissioner of Labour the power to suspend an organization or federation. This power is not subject to the approval of the judicial authorities;

¹The Industrial Relations Act was eventually passed in the National Assembly on December 7, 1995, and signed by the King of Swaziland on January 19, 1996.

- The Commissioner has wide powers to interfere with union constitutions;
- The Act bans trade union officers from holding more than one trade union office and from holding office in a political party;
- The Act allows for severe penalties to be imposed on a union or federation that, during the preceding twelve-month period, has, in the opinion of a court, devoted more time and funds to campaigning on public policy issues than to occupational issues;
- The Attorney General can unilaterally apply for a declaratory order to stop a strike and the Minister of Labour can unilaterally apply for an order to interdict a strike on the basis of national interest, which is not defined;
- The Act prohibits federations from organizing rallies or mass-meetings.

In the absence of any movement to resolve the issues leading up to the March 1995 mass stay-away, the SFTU saw the provisions of the Industrial Relations Act as a clear attempt to either neutralize or eliminate its leaders.

In early June, 1995, on the eve of his departure to the ILO conference, Jan Sithole was ordered to surrender his passport on grounds that his citizenship was not valid. (Attachment C)

On July 9, 1995, after negotiations with the government on its 27 demands had again failed, the SFTU announced a national mass stay-away for July 17. Jan Sithole continued to receive death threats from an anonymous caller and the SFTU reported rumors that he would disappear before July 17.

On July 14, 1995, the Prime Minister issued Legal Order No. 100 (Attachment D) designating the mass stay-away called by the SFTU as a boycott and making anyone furthering a boycott liable to six months imprisonment. The government mobilized the police, army and prison officers, and threatened to use force against those participating in the stay-away. There were also threats, intimidation, and dismissals in work places.

A last minute agreement in tripartite negotiations led to a two-week postponement of the stay-away. A tripartite committee was established to examine the 1995 Industrial Relations Act. On July 21, the government revoked Legal Order No. 100. (See ICFTU Mission Report - Attachment E)

In the late evening of August 29, 1995, Jan Sithole was kidnaped by four hooded men who carried automatic rifles. He was robbed of his personal effects and SFTU documents in his possession, locked in the trunk of his car and driven to the outskirts of Manzini, where the vehicle was abandoned in the middle of the road on a blind corner. He was freed by a passer-by early the next morning. The SFTU suspects that government agents were behind the kidnaping and the attempt to kill Jan Sithole. The police were known to be in possession of the documents

stolen by Jan Sithole's abductors.

On November 15, 1995, six trade unionists and two members of pro-democracy groups were arrested. Among the trade unionists arrested were the following officials of SFTU-affiliated unions: Themba Shongwe, Vice President of the Media Workers Union; Barbara Dlamini, General Secretary, Hotel and Catering Workers' Union; and John Masombuka, President of the Street Vendors Union. They were released the following day after interrogation. It is believed the arrests were linked to a pro-democracy civic meeting held on November 11-12, 1995.

During the same month, Jabulani Nxumalo, the SFTU Assistant General Secretary, was dismissed from his job at the Royal Insurance Corporation under the pretext of a work place reorganization. Nxumalo was the only employee to be affected by the reorganization.

Toward the end of 1995, the government began an investigation of the citizenship of Richard Nxumalo, the SFTU President. The police and members of the intelligence forces visited his home in the rural areas and on at least two occasions interviewed several people, including his relatives, about his family history. They also investigated his employment records.

The SFTU announced a mass stay-away for January 22, 1996. On January 10, the Prime Minister issued Legal Notice No. 11 (Attachment F) which designated the stay-away a boycott placing it under the 1963 Public Order Act which prohibits bail and proscribes harsh penalties for violations.

On January 22, 1996, Jan Sithole, Richard Nxumalo, and Jabulani Nxumalo were arrested while holding a meeting with the Swaziland Federation of Employers. They were told that they were being charged under sections 40 and 75 of the Industrial Relations Act of 1995. While being held incommunicado under harsh conditions, imprisoned in several different locations across the country, and being effectively denied legal representation, the three trade union leaders were eventually charged under the Public Order Act of 1963 in connection with Legal Notice No. 11 of 1966.

When challenged in court on January 25, 1996, the government's case was withdrawn. In his summary, the judge sharply criticized the state's handling of the case, saying that false and misleading information had been given to lawyers about where the SFTU leaders were being held, the charges under which they were held, and the whereabouts of their court hearing. The judge was subsequently demoted from Acting Chief Justice to an ordinary judge.

The SFTU suspended the stay-away on January 29, 1996. During the stay-away, the police used teargas and weapons against workers, and a 16 year old girl was killed by a stray bullet fired by the police. Around the same time, heavily armed police officers were discovered trying to infiltrate an SFTU meeting.

Although the government appointed five cabinet ministers to negotiate with the SFTU,

they never appeared at scheduled meetings. The government banned an SFTU mass meeting on February 4, 1996.

On February 7, 1996, Jabulani Nxumalo was arrested and charged with forging a high school certificate in 1984. He was eventually released on bail.

Subsequently, charges were filed under the Industrial Relations Act against the three SFTU leaders, two other senior union officers and the SFTU itself in connection with the January stay-away.

A new round of industrial unrest began in January 1997 when the SFTU threatened to call a national stay-away if the government did not respond to repeated attempts to negotiate the 27 demands. Again the government appointed a committee to negotiate with the SFTU, but failed to appear at any of the scheduled meetings. Between January 31 and February 1, just a few days before the threatened mass stay-away, Jan Sithole, Richard Nxumalo, Themba Msibi, and Jabulani Nxumalo were placed under arrest. It is our understanding that they were released on February 26. On February 1, 1997, seven policemen and fifteen heavily armed soldiers raided the SFTU offices without a search warrant. On February 3, 1997, the police surrounded the SFTU offices in Manzini and blocked the entrance.

It has been reported that on January 31, 1997, the government again issued an order designating the stay-away a boycott, placing it under 1963 Public Order Act subject to criminal penalties. The next day the government filed an application for interdiction with the Industrial Court under the Industrial Relations Act. The interdiction prohibits all SFTU affiliates and members from organizing, instigating and participating in the stay-away.

In the early evening on February 2, 1997, following a meeting of the SFTU General Council, 150 armed police and soldiers ordered the 23 SFTU Council members to report to the police station. The Council members were locked up, beaten and interrogated one by one.

Conclusion

The Kingdom of Swaziland is the only country in Southern Africa that has not taken steps to introduce political and civic liberties and multiparty elections. The constitution was abrogated by decree in 1973, and the country continues to be ruled by King Mswati III and his inner circle of advisors. Based on the 1973 decree, the King has the authority to issue proclamations that carry the force of law. The U.S. Department of State 1996 Country Reports on Human Rights Practices cites the government for severely restricting freedom of speech and assembly and continued prohibitions on political activity. The Report also mentions numerous violations of civil and human rights, including the violation of trade union rights in connection with the 1996 mass stay-away and the Industrial Relations Act.

A complaint against the government of Swaziland was filed with the International Labor Organization by the International Confederation of Free Trade Unions in May of 1996. In

addition, the ILO Committee of Experts noted "discrepancies between the Industrial Relations Act and ILO Convention 87 on the Freedom of Association and ILO Convention 98 on the Right to Organize and Bargain Collectively, both of which Swaziland ratified in 1978." (Attachment G & H)

While trying to safeguard its imposed right of absolute authority, the Government of Swaziland has persistently and continuously used the power of the state, the police and national security forces to suppress and weaken the trade union movement in the exercise of its rights to function normally without government interference, to organize, and to bargain collectively. Leaders and executives of the Swaziland Federation of Trade Unions have been arrested, beaten, detained, threatened, had their passports withdrawn, their property searched illegally, and in other ways harassed and intimidated to the point where it has become nearly impossible for them to carry out their sworn duties in representing their members. The police and security forces have also infiltrated union meetings, seized documents, and tapped the telephones of the SFTU and detained 23 members of the SFTU Governing Board. Peaceful protesters have been beaten, shot, and innocent bystanders killed during national stay-aways. The government has arbitrarily invoked the powers of the 1963 Public Order Act to block trade union actions and to arrest trade unionists on charges leading to extreme punishment for exercising their rights to take concerted actions. These government actions have created a climate of fear and intimidation that makes conducting normal trade union activities nearly impossible.

Finally, following agreements to negotiate in good faith, the Government of Swaziland by-passed normal consultative procedures with the Labour Advisory Board, and enacted legislation that sharply and arbitrarily restricts the rights of trade unions to organize, negotiate and to otherwise function independently of government control. The Industrial Relations Act has been condemned by both the SFTU and the Swaziland Federation of Employers, and has been judged by the ILO Committee of Experts to be in violation of ILO conventions governing the freedom of association and the right to organize and bargain collectively. Despite numerous promises and gestures indicating a willingness to bargain, the Government of Swaziland and its representatives have failed to meet with the SFTU to discuss trade union issues that are within the purview of government officials. In the absence of a dialogue and good faith bargaining, no progress has been made in resolving legitimate trade union grievances that were brought to the government's attention more than three years ago.

In view of this flagrant violation of worker rights, the AFL-CIO calls for the Kingdom of Swaziland to be removed from the list of eligible beneficiaries for the Generalized System of Preferences.

