

■ **JUSTICE** for **ALL**

The **Struggle** for **Worker Rights**

IN SWAZILAND

A REPORT BY THE SOLIDARITY CENTER



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Note: This report discusses some situations and events in a general context. This reflects our foremost concern, which has been to exercise sensitivity and discretion toward organizations and workers in Swaziland. Some interviews for this report were conducted by field researchers in 2004-05. Throughout the report, any quotations that are not otherwise cited were from these interviews.

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FOREWORD

By **John J. Sweeney**
President, AFL-CIO

Swaziland today is besieged by three crises that threaten its very survival—the rapid disintegration of the rule of law, the impending collapse of its primary economic engine of growth—multinational investment in the garment and textile sector—and an increasingly deadly assault on its population by HIV and AIDS. As the last country in Africa today to be ruled by an absolute monarch, Swaziland faces these crises without the full participation and voice of its greatest asset—its workers.

In Justice for All: The Struggle for Worker Rights in Swaziland, Professor Sherrie Russell-Brown of the University of Florida and a team of researchers from Yale Law School's International Human Rights Clinic examine how the country's labor law and practice, viewed through the lens of the core International Labor Organization (ILO) standards, impact these crises and the workers affected by them. The report, the sixth in a Solidarity Center series of country reports on worker rights, shows how the lack of democracy in Swaziland leaves workers vulnerable to losing what few rights they have won, thus hindering progress in securing freedom of association.

Swaziland's workers are trapped in the turmoil of the global economy. Now in its sixth year of existence, the U.S. African Growth and Opportunity Act (AGOA) provides a preferential trade arrangement for sub-Saharan African countries to access the large U.S. market, while creating a friendlier climate for U.S. investment in these countries. AGOA initially succeeded in generating some economic gains and job growth in Swaziland, but has now been compromised by the phase-out of the Multi-Fiber Arrangement (MFA), an international trade agreement that once provided incentives for multinational investors. As Swaziland's competitive advantage has eroded, almost half of the garment and textile companies operating there have closed their factories and moved production to lower cost countries such as China and India.

Swazi workers must also cope with the specter of HIV and AIDS, which affects every aspect of life. Suffering under one of the highest infection rates in the world, Swaziland fights an increasingly losing battle with this pandemic, which has put tremendous pressure on the economy, workers' rights, and even workers' most basic ability to take care of their families.

Swazi workers face other serious barriers to their rights as well. Women workers, who have a low status in Swazi society, make up a large percentage of the workforce, yet Swaziland is far behind other countries in Southern Africa in terms of addressing discrimination against women, workplace sexual harassment and vio-

Lasting change... cannot be secured until... the Swazi government engages in full democratic reform that allows Swaziland's people to govern themselves and to exercise their rights to make economic, political and social decisions that affect their lives.

lence, rape, and political rights for women. In addition, traditional structures and culture, combined with the absolute rule of the king, create circumstances that lead to forced labor and child labor. Although Swazi workers respect their cultural traditions, the failure of the government to address forced labor and child labor is a violation of its international obligations.

Lasting change for such tremendous challenges cannot be secured until, as the report notes, the Swazi government engages in full democratic reform that allows Swaziland's people to govern themselves and to exercise their rights to make economic, political and social decisions that affect their lives. The international community and its multinational corporations, which had a hand in creating these conditions, must now exercise the responsibilities of global citizenship by supporting the call of Swazi workers for their fundamental rights.



CHAPTER 1

4

CHAPTER 1

Tradition, Globalization, and the **Struggle to Survive:** Swaziland's **Worker Rights** History¹

The Political Economy of Swaziland

The Kingdom of Swaziland is the last absolute monarchy in Africa. While its system of government is known as a modified traditional monarchy with a bicameral parliament (consisting of the House of Assembly and the Senate), a government of civil servants, and a court system, this apparent separation of powers is largely illusory. Real power rests with King Mswati III, his Council of Ministers, and traditional advisers, including the Queen Mother.²



A new constitution, signed by King Mswati in 2005, went into force on February 8, 2006. Although its bill of rights includes freedom of expression, assembly, and association, it is silent on the right to form a political party or the right to strike and continues to vest all final authority in the king.

Swaziland, with a population of approximately 1.1 million people, is bordered by Mozambique to the north-east and by South Africa to the southeast, south, west, and north. Swaziland's economy is based largely on agriculture and agro-industry. Sugar, citrus, and wood pulp are the major agricultural industries, and soft drink concentrate, wood pulp, sugar, textiles, and apparel are the country's principal exports. Swaziland's major mineral products are asbestos and coal.

Swaziland remains one of the world's poorest nations, and the significant inequalities in its citizens' income signal extensive poverty. Ten percent of the country holds 60 percent of the nation's income,³ but two-thirds of the population lives on less than one dollar per day. Poverty is especially widespread in rural areas, where roughly 80 percent of the population lives. A recent multi-year drought, combined with the impact of HIV and AIDS, has left over one-fourth of the Swazi population dependent on the U.N.'s World Food Program for survival.⁴ As a result, while seven out of 10 Swazis derive their livelihood from agriculture, the industry's contribution to the national economy has dropped from 10.6 percent in 1999 to 8.6 percent in 2005.⁵

The Swaziland economy receives 83 percent of its imports from and sends 74 percent of its exports to South Africa. The gross domestic product (GDP) annual growth was estimated at 1.8 percent in 2005. The gross national income (GNI) per capita, formerly the gross national product (GNP), stands at U.S. \$1,240. Swaziland's economy relies on export-oriented industries, which provide 65 percent of GDP.⁶

In June 2006, the International Labor Organization (ILO) began to conduct a survey of all private businesses in Swaziland. The ILO's initial estimates suggest that Swaziland has only 20,000 formal sector jobs, down from 65,000 jobs in 2002.⁷ Unions in Swaziland estimate that the number is closer to 30,000; still half of the jobs that existed four years ago. Employment in the informal economy, which employs approximately 98,000 workers, is much higher.⁸ The 2005 unemployment rate was estimated at 40 percent.⁹ According to the ILO, the "sharp drop in employment could be explained by ongoing retrenchments throughout the economy, and the closing of labor-intensive factories in the garment industry in particular."¹⁰

In 2006, observers widely criticized King Mswati for his extravagant spending practices, which stand in sharp contrast to the extreme conditions in which the Swazi people live. As one commentator noted, "King Mswati has a penchant for throwing away money. He spent £600,000 (over U.S. \$1 million) on his 37th birthday party in April [2005].¹¹ [In 2004] he blew £8.3 million (approximately U.S. \$14.5 million) on building eight new palaces and refurbishing three others."¹² The king is known to spend lavishly on his wives. In February 2005, "King Mswati III spent £450,000 (approximately U.S. \$780,000) on 10 new BMWs for his 11 wives and three teenage fiancées." This expenditure is equivalent to "almost half the £1

The HIV and AIDS pandemic—and the funerals and orphaned children it generates—has silently transformed daily life in Swaziland.

million (over U.S. \$1.7 million) of British aid that Swaziland received last year. The cost of the BMWs is equal to 1.5 percent of Swaziland's health budget of £30 million (over U.S. \$52 million)."¹³ The king also received international condemnation for purchasing a luxury car worth U.S. \$500,000 in December 2004. "Aid workers confirmed that Swaziland had already become harder to sell regarding fundraising due to all the scandals surrounding the royal family's excessive spending."¹⁴

Living and Working with HIV and AIDS

In the early 1990s, the HIV and AIDS pandemic began to invade the lives of Swaziland's workers. The disease—and the funerals and orphaned children it generates—has silently transformed daily life in Swaziland. On March 31, 2004, the UN Special Envoy on AIDS declared that 38.6 percent of Swaziland's population—and over one-third of the adult population—was infected with HIV, at that time the highest prevalence rate in the world.¹⁵ Some 2005 estimates showed an increased prevalence rate of 42.6 percent.¹⁶ A 2006 UNAIDS report estimates the national adult HIV prevalence rate at 33.4 percent, and the overall rate at up to 45.3 percent.¹⁷ About 10 percent of Swazi households are "sibling families," some with heads of the household as young as eight.¹⁸ As the Special Envoy recently stated, "HIV and AIDS has reached into the viscera of Swaziland and is tearing it apart."¹⁹

Workers everywhere understand the stresses of a life without job security; for many Swazis, HIV and AIDS

In recent post-apartheid years, the South African government has been reluctant to publicly criticize King Mswati and the Swazi government for human rights abuses and the lack of democratic reform, although it allows various Swazi opposition leaders and groups to live in exile in South Africa. The South African labor movement, however, led by the Congress of South African Trade Unions (COSATU), has launched a campaign to support worker rights in Swaziland and is an outspoken critic of the Mswati regime. COSATU often supports the activities and campaigns of the Swazi labor movement.²⁴ For example, in February 2006, COSATU delegates to its Central Executive Committee joined a picket of several hundred pro-democracy activists at the Swaziland Consulate in Johannesburg “in protest at the attacks on human rights in Swaziland, and the lack of trade union freedom” in the country. COSATU vowed to continue its protests, including blockades of the border crossings into Swaziland, until “the Swaziland regime concedes to the rightful demands of the Swazi people.”²⁵

From that day onward, the king has been able to act wholly at his own discretion, consulting whomsoever he wishes, not bound by law.

From Colonization to the King's Rule: Swaziland's Worker Rights History

Independence and the Role of the Trade Union Movement

Swaziland was a British protectorate from the 1880s until its independence in 1968. Unorganized workers' resistance occurred as early as 1907. The colonial expropriation of agricultural land and the introduction of the "hut tax" in 1915 forced many Swazis to become wage laborers on colonial farms and in mines in South Africa.²⁶ Industrial actions took place in the 1930s, but it was not until the early 1960s that organized worker activities first took place. The first Swazi trade union was registered in 1962.

Indeed, as Swazis struggled in the 1960s to gain their independence, the labor movement played a critical role, working in close cooperation with the Swaziland political party, the Ngwane National Liberatory Congress (NNLC), to organize massive strikes and pressure the colonial regime.²⁷ When King Sobhuza II—King Mswati III's father—began to take a lead in the independence movement, most Swazis united behind him and his political creation, the royalist political party, the Imbokodvo (Grindstone) National Movement (INM), which came to dominate the independence movement.²⁸ When Britain acceded to elections in 1964, the INM won a majority.²⁹ And in the subsequent 1967 elections, the INM won all the seats.³⁰ After the INM's electoral victories, Swaziland gained its independence on September 6, 1968.³¹

Unions Suppressed Under "State of Emergency

At independence and until April 1973, Swaziland functioned as a constitutional monarchy with a parliamentary multi-party system. While many independence activists and parties stood behind the king's movement

initially, after independence the NNLC remained a separate party, in large part because of its continued desire to advocate for the protection of worker rights.³² Therefore, when the king's INM party took power in 1968, the NNLC's labor-oriented movement became the sole opposition party.³³

King Sobhuza spent the years between 1968 and 1972 outmaneuvering a relatively small group of modernists who wanted to reduce the role of the king to that of a figurehead. The 1968 Independence Constitution recognized the right of Swazis to freely engage in political activity and protected the existence and operation of political parties.³⁴ However, in the elections of 1972, the INM's parliamentary majority was breached when three of its seats were lost to the opposition, the NNLC. This meant that the INM (and by implication the king) could not amend the constitution and pass new legislation unopposed. As the NNLC made political gains, Swazi mineworkers began a strike, following the lead of 100,000 workers engaged in a series of strikes in neighboring South Africa. In a long and drawn-out court battle, the INM and King Sobhuza sought to overturn the election result and to quell the growing challenges to their ruling hierarchy.

These attempts proved unsuccessful. It is widely accepted that this defeat and the fear of losing power ultimately led the late king to decree a state of emergency and to suspend the 1968 Independence Constitution in April 1973. The king proclaimed that the constitution had:

- Failed to provide the machinery for good government and for the maintenance of peace and order.
- Been the cause of growing unrest, insecurity, and dissatisfaction with the state of affairs in Swaziland, and an impediment to free and progressive development in all spheres of life.

- Permitted the introduction into Swaziland of highly undesirable political practices alien to, and incompatible with, the Swazi way of life. These practices were seen by the king as designed to disrupt and destroy Swazis' peaceful, constructive and essentially democratic methods of political activity, thereby engendering hostility, bitterness, and unrest.

The Swaziland monarch then assumed all executive powers previously granted by the constitution to the prime minister and the cabinet. From that day onward, the king has been able to act wholly at his own discretion, consulting whomsoever he wishes, not bound by law. The decree banned political parties, removed the bill of rights from the constitution, authorized 60 days of detention without trial, authorized the army to implement the decree, and required workers to obtain permission from the police before meeting together.³⁵

Labor Reemerges

The king's 1973 State of Emergency Decree impeded labor union activities and effectively destroyed much of the country's labor movement, although the teachers' and bankers' unions were able to continue their struggle underground. After Swaziland became a member of the ILO in 1975, the government attempted to bring an undercover police officer to the ILO's annual tripartite meeting posing as the workers' representative. The bankers' union was able to expose the government plan to suppress workers' voices, and the police officer was replaced by one of the union's members. This episode helped spark the reemergence of the independent voice of Swazi workers.³⁶

With the help of the ILO, the Swazi government began a review of its own labor laws, which led to the enactment of the 1980 Employment Act and the Industrial

Relations Act, reestablishing in law the right of unions to exist and operate in Swaziland. After the passage of these two laws, most of the major unions in Swaziland formed, and the labor movement reappeared as an active player in Swazi society.

The death of King Sobhuza in 1982 led to a power struggle among the ruling elite.³⁷ While traditionalists gained power within the royal family, members of other sectors of society increasingly saw the need for political reform.³⁸ By the end of the 1980s, the labor movement and student activists had coalesced to form a coherent movement in opposition to the reign of the new leader, King Mswati.³⁹ Labor leaders and organizers remained targets for harassment and arrest, however. In 1994, the International Confederation of Free Trade Unions (ICFTU) filed a complaint with the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR)⁴⁰ alleging that Swazi authorities intimidated and harassed members and leaders of the Swaziland Federation of Trade Unions (SFTU). The complaint stated that during a work stay-away in 1994, the "police used violence and tear-gas on several occasions to suppress [the SFTU] and the authorities used the High Court to obtain restraining orders against strikers, thereby bypassing the Industrial Court system."⁴¹

Following this crackdown, Swaziland's parliament passed the 1996 Industrial Relations Act (1996 IRA), which again stripped workers of their right to organize. The CEACR found that the 1996 IRA contained "a number of provisions contravening some of the most basic principles of freedom of association," including provisions that virtually outlawed strikes and others permitting the Labor Commissioner to disallow unions where other "sufficiently representative" organizations were in place.⁴² Trade union federations, the Federation



of Swaziland Employers (FSE), and government officials subsequently worked together to formulate a new Industrial Relations Act (IRA) in 2000.⁴³ The king and his council infuriated unions by interfering again at the last minute to limit worker rights under the newly negotiated act.⁴⁴ The king's advisors inserted clauses criminalizing some union activity, virtually outlawing strikes, and holding union officials liable for company losses during strikes.⁴⁵

The harsh law prompted the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) to file a petition against Swaziland under the U.S. Generalized System of Preferences (GSP).⁴⁶ Under pressure from international bodies, and with the United States threatening to suspend trade privileges, the king accepted amendments to bring the 2000 IRA into compliance with international standards.⁴⁷ The workers' struggle did not end with the adoption of the amended act, however; the government continues to impede freedom of association and has failed to protect the right to organize.

AGOA's Influence on Worker Rights

Swaziland's place in the global market is also in flux. Through the U.S. African Growth and Opportunity Act (AGOA), the United States provides a unilateral preferential trade arrangement for sub-Saharan African countries to access the large U.S. market, while creating a friendlier climate for U.S. investment in these countries.⁴⁸ AGOA has expanded Swaziland's ability to export goods (especially apparel) to the U.S. with zero import duty under the United States' GSP.

The U.S. government estimates that Swaziland's 2005 exports under AGOA and its GSP provisions were valued at \$176.1 million, constituting 89 percent of Swaziland's total exports to the U.S.⁴⁹ AGOA has also contributed to the creation of a number of jobs (more than 28,000 jobs as of 2003, according to the U.S. Trade Representative [USTR]), primarily in the garment manufacturing industry.⁵⁰ Swaziland's Ministry of Enterprise and Employment reports that a quarter of the population is either directly or indirectly dependent on factories that export under AGOA.⁵¹ On July 13, 2004, U.S. President Bush signed into law the AGOA Acceleration Act of 2004 (AGOA III). AGOA III extends the termination date of the AGOA from 2008 to 2015.

AGOA III also extends the Special Apparel Provision from September 2004 until September 2007. This provision permits apparel makers in lesser-developed AGOA countries to source textiles globally without losing their AGOA benefits. Although Swaziland's economy is diversified, the Swazi government has placed significant emphasis on foreign direct investment in the apparel industry as a development strategy. Consequently, many believe that countries such as Swaziland may be placed at an even greater disadvantage if the Special Apparel Provision is not extended beyond 2007.

AGOA potentially provides some leverage for improving worker protections. Its trade benefits are linked to requirements that governments make continual progress in their protection of worker rights, human rights, the rule of law, and market-based economies.

In 2000, the ILO reported on the negative impact the newly amended IRA would have on freedom of association and unions. Trade unions in the United States pressured the U.S. government to threaten to deny Swaziland AGOA eligibility unless it amended the 2000 IRA,⁵² and the Swazi government subsequently withdrew the act and passed an amended version to comply with AGOA requirements. However, as the Swaziland government continued to violate worker rights and stifle dissent in practice, the AFL-CIO submitted the second of two formal requests in 2002 to remove Swaziland from the United States' GSP list. The U.S. government accepted the case for review in September 2005, but in 2006 issued its decision to maintain Swaziland's GSP privileges.

The two Swazi trade union federations took opposing views on Swaziland's AGOA status. The SFTU supported initiatives, such as the AFL-CIO's, to remove Swaziland from the AGOA eligible countries list due to its worker rights violations and lack of the rule of law. However, the Swaziland Federation of Labor's (SFL) position was that such actions would result in job losses, making Swazi workers pay the cost for the government's violations. This difference in approach stems, in part, from the fact that the SFL has the vast majority of representation in the garment sector, through its affiliate, the Swaziland Manufacturing and Allied Workers Union (SMAWU). In addition, the SFTU has an extended history of being proactive on the broader democratic reform issues in Swaziland.

Subsequently, with support from the Solidarity Center and the International Textile, Garment and Leather Workers Federation (ITGLWF), the textile and garment unions used tripartite discussions on the issue of AGOA status as a platform to call for the resolution of workplace recognition problems. As a result, the Swaziland Textile Exporters Association (STEA) and the two unions organizing in the sector [SMAWU and the SFTU affiliate, the Swaziland Processing and Refining Allied Workers Union (SPRAWU)] came to an agreement on procedures governing requests for union recognition, dispute resolution, and the creation of a separate wage council for textiles and garments. They also agreed to create an industry Joint Negotiating Council as permitted by Swazi law. The agreement illustrates the efforts that Swazi unions must make to gain even their limited rights within the absolute rule of the monarchy. The unions learned through this process that creative use of a trade-labor linkage, with a potential for trade sanctions, could sometimes provide leverage for improvement of labor rights without jeopardizing workers' jobs.

Until 2005, a global trade rule known as the Multi-Fiber Arrangement (MFA), negotiated with the World Trade Organization (WTO), also provided incentives for investment. The MFA was originally created as a special exception to the General Agreement on Tariffs and Trade (GATT) to permit textile and apparel importing countries to impose quotas on such products. By extending both quota-free and duty-free treatment to apparel imported from Africa, AGOA provided extra incentives to investors to build factories in Africa and to U.S. importers to purchase the garments made in those factories. This combination of incentives led a number of Asian-owned garment factories to move to Swaziland to take advantage of these trade preferences.

However, the MFA ended January 1, 2005, reducing many of these gains and eroding the competitive advantage of Swaziland, provided by AGOA, over other low-cost producing countries. As a result, many firms have already closed their factories in Swaziland and other African countries and moved production to other countries, including China and India.

The Swazi government reports that 18 of 31 garment and textile companies have shut down their operations in Swaziland since July 2004.⁵³ Among these were six major employers—Nantex, Welcome Textiles, Tai Tex Kasumi, Matsapha Knitwear, Nubiela, and Kangfa—which laid off over 10,000 workers. Bheki Dlamini, CEO of the Swaziland Investment Promotion Authority (SIPA), explained:

“The end of the International Multi-Fibre Agreement by the World Trade Organization [and its replacement by the Agreement on Textiles and Clothing (ATC)] opened the floodgates for Chinese exports of textiles and garments into the Western markets, particularly the United States, where Swaziland enjoyed quota and duty-free exports as a beneficiary of AGOA. As Chinese exports are cheaper for USA buyers, they are therefore preferred.”⁵⁴

In response to these closures, which the unions see as a direct result of the end of the MFA, unions have been negotiating with employers and utilizing legal avenues, where necessary, to get remuneration for laid-off workers. In some cases, workers were never paid for work conducted during the period leading up to the factory’s closure. Unions have also been negotiating retrenchment packages from employers.⁵⁵

Moreover, the Swazi government has reported that “suppliers, transport and other service providers, which had done good business during the apparel industry’s boom years, suffered enormous losses in 2005.” For example, in December 2005, a major road transport and freight clearing company closed, as it was “unable to replace lost clients in the garment trade with other customers in Swaziland’s struggling economy. For the same reason, a major global courier service . . . has considered shutting its facility at the Matsapha Industrial Estate, where apparel companies are concentrated outside the commercial hub Manzini. Restaurants and shops serving Matsapha area workers have closed or shed employees—even informal sector services like taxis and sidewalk fruit-vendors are suffering.” SIPA announced in December 2005 that while the companies that remained and streamlined their operations in the textile and apparel industry are recovering, “no new investors in the textile business have come to Swaziland to create employment.”⁵⁶



Unlike other civil society groups in Swaziland, the trade unions have had key advantages in pushing for democratic change. First and foremost, while they face formidable legal restrictions, they, unlike political parties, have a legal basis from which to operate. They also have international connections through their affiliation to the ICFTU and other international labor federations. These linkages are powered by an international legal framework, based on ILO conventions and the ILO complaint system, which provide unions with a potential method of bringing international attention to abuses committed by their government.

Trade union leaders in Swaziland are constantly under attack by the government. For example, the government has retaliated against union protests and advocacy for reform by denying passports to high-level SFTU leaders.

In 2001, the government charged leaders of the teachers, nurses, and public service associations with illegally engaging in political actions. The government has also tried to interfere in internal union elections by orchestrating campaigns to accuse union leaders of financial malpractice and corruption. In 2005, “[t]here were instances in which police conducted physical surveillance on members of labor unions and banned political groups. On September 17, police officers posing as journalists attended a Swaziland Federation of Trade Unions (SFTU) seminar.”⁵⁸

While the strength of the democracy coalition in Swaziland is growing, change is not inevitable. Although unions are modernizing players in Swaziland, they are subject to pressures from members who still hold traditional values. Many Swazis desire a more just society, but they also support their king in large numbers, especially in the rural areas.⁵⁹ Swazis value their traditional culture, and critics argue that the monarchy uses these values to retain power and hinder democratic reform. As globalization comes to Swaziland, unions are working to convince the Swazi people that they can effect economic and political change while also preserving their culture.

Endnotes

- ¹ Portions of the material in this Introduction are taken from the following sources: The World Bank “Country Brief” on Swaziland, available at www.worldbank.org/swaziland; The Swaziland Youth Congress, “The Political Economy of Swaziland,” www.sacp.org.za/ac/ac159i.pdf; and Chris Maroleng, “Swaziland: The King’s Constitution,” www.iss.co.za/AF/current/swazijun03.pdf.
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- ³⁴ Lomcebo Dlamini, “Constitutionalism—Separation of Powers,” in Report on Swaziland Coalition of Concerned Civic Organizations (SCCCO) Leadership Training, April 24, 2004, p. 17.
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Swaziland and International Worker Rights Instruments

Swaziland has ratified all the principal United Nations covenants on human rights and worker rights:

- International Covenant on Economic Social and Cultural Rights (ICESCR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

Swaziland has ratified the following regional instruments:

- African Charter on Human and Peoples' Rights ("Banjul Charter")
- African Charter on the Rights and Welfare of the Child
- Treaty of the Southern African Development Community (SADC) and several SADC Protocols¹
- The Southern African Customs Union (SACU) Agreement

Swaziland has ratified all eight of the ILO's fundamental conventions reflected in the 1998 Declaration on Fundamental Principles and Rights at Work:

- Convention No. 29 on Forced Labor
- Convention No. 87 on Freedom of Association and Protection of the Right to Organize
- Convention No. 98 on the Right to Organize and Collective Bargaining
- Convention No. 100 on Equal Remuneration
- Convention No. 105 on the Abolition of Forced Labor
- Convention No. 111 on Discrimination (Employment and Occupation)
- Convention No. 138 on the Minimum Age for Admission to Employment
- Convention No. 182 on the Worst Forms of Child Labor

¹ See www.sadc.int/english/documents/legal/protocols/status.php.

CHAPTER 2

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CHAPTER 2

Freedom of Association and the Right to Organize and Bargain Collectively

Freedom of Association

Swaziland ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize and Convention No. 98 on the Right to Organize and Collective Bargaining. However, the country's constitution, laws, and practice fall far short of compliance with ILO principles on freedom of association, as explained in the text that follows.

The New Constitution and the Political Climate: Giving From One Hand, Taking From the Other

The new constitution, which became effective February 8, 2006, took eight years to draft. Upon signing the document, King Mswati stated, "Every Swazi contributed to this constitution; I'm merely here to give it my blessing."¹ However, Swaziland's unions and other civil society organizations had attempted for years to pressure the government to incorporate the views of progressive and democratic voices into the constitution. While the government held occasional forums for citizen and civil society input, such initiatives were generally seen as more show than substance.

The unions actively sought to prevent the passage of the undemocratic document. In January 2005, the SFTU led a nationwide protest strike to halt the "illegitimate constitution." A senior trade union official noted that the "constitution-drafting procedure excluded dissenting and progressive voices" and that "it's taking us back to the Middle Ages. Traditional structures have prevailed over human rights."² The Secretary General of the Swaziland National

Association of Teachers (SNAT), Dominic Nxumalo, denounced the new constitution as "garbage," claiming that the "overall exercise [of drafting the constitution] was undemocratically formulated and the people whose submissions were considered to be a reflection of the entire nation were actually coerced into supporting [it]."³ During the same year, the SFTU and SFL asked the courts—unsuccessfully—to block parliamentary debate on the draft.

Trade unions and the Swaziland Coalition of Concerned Civic Organizations (SCCCO)—a coalition of business and labor interests, teachers, church groups, and others formed to promote respect for the rule of law and the establishment of a constitutional democracy—have



criticized the constitution and rejected the drafting process saying, “the new document is undemocratic and was stage-managed by the royal palace to maintain its political hold over the country.”⁴ Musa Hlope, Secretary General of the SCCCCO, stated:

“The constitution will not pass the test of a democratic constitution. The biggest lie is that those who wield power in Swaziland are going to be telling the world that Swazis have overwhelmingly adopted a new constitution. The fact that Swazis do not know or understand [the constitution] is in itself not a mistake, but a well-calculated ploy by those in power to keep the majority of the Swazi population in the dark as far as constitutionalism is concerned.”⁵

The SFTU, SNAT and other labor organizations have vowed to continue to challenge the new constitution in court.

The king’s brother, Justice and Constitutional Minister Prince David Dlamini, calls the new constitution “a torch that will light up the path to transform Swaziland to a better country.”⁶ However, it is basically a formal codification of the 1973 State of Emergency Decree, giving the king absolute power. The constitution vests ultimate judicial, executive, and legislative power in the monarch and grants him the authority to appoint legislators and judges, provisions that violate principles of

The constitution’s bill of rights negates [freedom of expression, peaceful assembly and association, and the right to a fair hearing] by giving the king the right to veto “anything he deems against the public interest.”

In April 2006, King Mswati stated that his country “is not ready for political parties.”

freedom of association. Courts are not permitted to hear cases that relate to the monarchy and traditional Swazi issues and practices. The constitution exempts the monarchy from paying taxes and continues to vest in the king all land that is not privately held title-deed land (about 60 percent), “in trust for the Swazi Nation.”

The constitution’s bill of rights includes freedom of expression, peaceful assembly and association, and the right to a fair hearing. However, it negates these rights by giving the king the right to veto “anything he deems against the public interest.” By not defining what is “against the public interest,” the constitution confers excessively broad discretionary powers on the king.⁷

Moreover, the king’s order that brought the new constitution into effect did not mention the suspension of the 1973 decree. The Swaziland Law Society has mounted a legal challenge to clarify whether or not the decree still has force; as of mid-2006 a ruling from the Mbabane High Court was still pending.⁸ The ambiguity over the status of the decree has created uncertainty about whether political parties may still be banned. Most commentators agree, however, that the ban remains in force. In fact, in April 2006, King Mswati stated that his country “is not ready for political parties.” The king went on to say, “Here we have a case in Swaziland where the majority of people have said they do not want multi parties, and we are supposed to take a minority view over and above the majority?”⁹

The constitution’s chapter on the Protection and Promotion of Fundamental Rights and Freedoms gives workers the right to “freely form, join or not to join a

trade union for the promotion and protection of the economic interests of that worker; and . . . collective bargaining and representation.” It also directs Parliament to enact laws to:

- (a) Provide for the right of persons to work under satisfactory, safe and healthy conditions.
- (b) Ensure equal payment for equal work without discrimination.
- (c) Ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay as well as remuneration for public holidays.
- (d) Protect employees from victimization and unfair dismissal or treatment.¹⁰

Although these provisions appear to give workers and unions a strong base of rights, they do not provide freedom of association for Swazi workers so long as the monarch has the absolute power to disregard the law. The king appoints most of the government, including the prime minister, members of Parliament, justices of the superior courts, and even commissioners on the Commission on Human Rights and Public Administration. The Human Rights Commission cannot investigate a “matter relating to the exercise of any royal prerogative by the Crown.”¹¹

Any laws passed by the parliament require the king’s approval to become law, and when parliament is not in session, the king can legislate by decree under his “emergency” powers.¹² On the advice of the prime minister, the king may declare a state of emergency for a

number of reasons, including whenever “there is action taken or immediately threatened by a person or body of persons of such a nature or on so extensive a scale as to be likely to endanger the public safety or to deprive the community or a significant part of that community of supplies or services essential to the life of the community.” (See p. 28 on essential services.)

The very foundation of law in Swaziland—the constitution—eliminates the opportunity for workers and others to enjoy freedom of association and other basic democratic rights. Without protecting democratic institutions and processes in law, particularly in the most fundamental national law, Swaziland cannot be in compliance with core labor principles.

The Judicial System

Freedom of association presupposes a functional, independent judiciary. The judicial system in Swaziland is complex. One part of the system is based on Western law, and the other is based on a system of national courts that follow unwritten traditional law and custom.¹³ The law establishes an independent judiciary, but the king can intervene in treason and sedition cases by appointing a special tribunal that can adopt rules and procedures different from those mandated for the High Court (however, this has not occurred since 1987). The western-style judiciary includes a Court of Appeals (composed of expatriate judges, usually South African), the High Court, and magistrate courts. Expatriate judges serve on one to two-year renewable contracts, while local judges can serve indefinitely with “good behavior.”¹⁴

Most Swazi citizens use the traditional courts, where residents are brought for minor offenses and violations of traditional law and custom. In these courts, defendants cannot use formal legal counsel but can speak for

The very foundation of law in Swaziland—the constitution—eliminates the opportunity for workers and others to enjoy freedom of association.

the reason for his resignation, as he was continually expected to work on one-year contracts. He noted, “We are denied the rights that we are supposed to uphold in our court.”²³

Decisions of the Industrial Court can be appealed to the Industrial Court of Appeal and, from there, to Swaziland’s general courts, the High Court and Court of Appeals.²⁴ The government has overruled or ignored the rulings of the Industrial Court on several occasions.²⁵ These practices flout principles of freedom of association, which require that workers have access to an *independent* court system, characterized by an *independent* judiciary.

The 2000 IRA also established a new legal entity, the Conciliation, Mediation, and Arbitration Commission (CMAC), to resolve labor disputes, verify union recognition counts, provide advice to employers and employees on how to prevent disputes, and promote stable labor relations generally. The CMAC began work in February 2001, six months after the promulgation of the 2000 IRA. It initially operated with government-approved staff, but it has been fully independent with its own full-time staff for five years now. It currently has five full-time commissioners and 16 part-time commissioners. From April 2003 until March 2004, a total of 1,417 disputes were transmitted to the CMAC—22 percent of which were screened out, declared abandoned, or withdrawn.²⁶

While union officials and members of civil society applaud the CMAC’s work over the past five years, some point out that employers can drag a dispute through the CMAC and force it to end up in the Industrial Court’s backlog, thwarting dispute resolution despite the CMAC’s efforts. The number of unresolved cases referred to arbitration rose to 13 percent in 2003–



2004 (an increase of 4.5 percent in one year). However, parties are still not keen on referring cases to arbitration. As a result, a large number of cases continue to get referred to the Industrial Court, further increasing the existing backlog, which currently stands at two years. And quite a number of disputes are dismissed, as applicants are not able to meet the cost of litigation.

Because so much labor-related dispute resolution relies on a court with only two sitting judges, the backlog has been a serious obstacle to workers’ ability to enforce their rights in a timely and financially viable manner. Employers can take advantage of the potential for cases to end up stalled in the Industrial Court’s docket and make low settlement offers. Workers faced with mounting bills and uncertain job prospects are vulnerable to settling for less than appropriate sums to avoid waiting years for a better deal. This problem is compounded by a provision in the 2000 IRA that caps the amount of back pay the court may award for most unfair dismissals at 12 months’ pay,²⁷ even though it may take two years for the dismissed employee to obtain a final court decision that his or her termination was unlawful.

Enforcement of court decisions is also weak. As one lawyer interviewed for this report stated, a “worker with a problem approaches the court for a remedy. Even if he gets a redress, his employer will say, ‘go to the toilet with that piece of paper. No one will enforce the court’s order.’”²⁸

In July 2005, the Industrial Relations Act No. 3 of 2005, which amends the IRA, was passed. The Act streamlines and shortens the dispute resolution process, increasing the CMAC’s responsibilities, conveying full jurisdiction to the CMAC to handle union recognition disputes, and granting default judgments on disputes where respondents refuse to appear before the CMAC. In addition to these changes, the Industrial Court will now be permitted to refer other disputes for arbitration under the CMAC. These changes will require increased capacity at the CMAC, including new staff and offices.

The amendments to the Industrial Relations Act have received mixed reviews. Vincent Ncongwane, General Secretary of the SFL, notes:

“Before the amendments to the IRA both parties had to agree to arbitration and employers would never agree as they knew that the matter would then go to the Industrial Court. The employers took advantage of the backlog at the court and some workers actually died before the matter was heard. Now the amended IRA makes arbitration compulsory. There already have been several cases that have been resolved as a result of this through out-of-court settlements.”²⁹

Jan Sithole, General Secretary of the SFTU, cautions that while the new process may be able to improve dispute resolution, a potential impediment remains with the complaint filing process, as employers are required

to sign the complaint form. However, he also expresses hope in some apparent new political space:

“The code of practice, considered ‘soft law’ that forms part of the IRA amendments, has simplified some of the more ambiguous sections of the law. For example, protesting socioeconomic issues was difficult in the past as this was considered a political practice. However, the code of practice explains that these issues can be subject to protest as long as there is no call to overthrow the government, thereby potentially opening up space for unions to protest.”³⁰

The President of the Industrial Court, Justice Nduma, notes that although he was initially skeptical of the some amendments to the IRA, he can now see some signs of progress:

“Maybe it is working. The President of the Court can refer matters back to arbitration, and there have already been a few matters that have gone back. As long as CMAC can ensure even handling of the cases before it, then this should translate into a reduction in the Industrial Court’s backlog. However, the amendments have opened the outcome of arbitration to appeal, whereas before this could only be reviewed. If there is a steady flow of appeals to the Court of Appeals from arbitration, the purpose of having high resolution of disputes at CMAC will be defeated. Due consideration must also be given to the high caseload of the High Court. The lengthy time for an appeal to be heard and judgments passed may mean that it would have been better if the matter went to the Industrial Court in the first instance.”³¹

Freedom of association does not exist where the civil liberties of a country's population—including trade unions—are not legally protected and enforced. In Swaziland, the law fails to protect the basic civil liberties of Swazi citizens and workers, and the government limits these rights in practice as well. Freedom of movement is compromised for non-ethnic Swazis and political dissenters, who experience delays or difficulties in applying for passports, citizenship or travel documents.³² The government also limits freedom of speech and freedom of the press; it discourages critical news coverage of the royal family; and journalists practice self-censorship in areas related to royalty and national security policy.³³

Recent political events in Swaziland have had a chilling effect on public debate about the government and on attendance at public protests. In December 2005 and January 2006, the Swazi government arrested more than 15 members of the People's United Democratic Movement (PUDEMO), a banned political party, on charges of sedition and treason.³⁴ "People have always discussed political matters in lowered voices—now people are being silent, they are scared. It seems that some of the [suspects] may be guilty only of being anti-government, and if that is what it takes to get arrested,

[illegible]

The U.S. State Department's 2005 *Country Reports on Human Rights Practices* notes:

“The law does not provide for freedom of assembly, and the Government restricted this right in practice. A decree prohibits meetings of a political nature, processions, or demonstrations in a public place without the consent of the police commissioner. Authorities routinely withheld permission to hold most such meetings.”³⁶

The government fails to enforce other basic rights. Arbitrary arrest and detention are prohibited by law, but occur in practice.³⁷ Security forces reportedly use torture during interrogation and use excessive force in carrying out their duties, and police beat criminal suspects. Moreover, the Swazi police use “public safety” as an excuse for disrupting and sometimes forcibly dispersing peaceful demonstrations, strikes, or meetings of union workers and pro-democracy groups. SFTU trade union leaders are subject to surveillance and death threats.³⁸

The ILO CEACR has asked the government to report on how it applies Section 40 of the 2000 IRA, which makes federations, unions and individuals involved in protests subject to civil liability for criminal, malicious or negligent acts. The CEACR has also expressed concern over a proposed Internal Security Bill, which would “confer broad powers on the public authorities to restrict public gatherings and boycotts under penalty of imprisonment.” The committee notes that these provisions could impair freedom of association and has requested that the government submit the text of the bill if it is adopted. In October 2005, the Internal

Security Act was resubmitted to the Swazi Parliament for passage. A senior trade union official commented, “The Internal Security Act of 2002, which government is reviving, has nothing to do with fighting terrorism—it is directed at infringing on rights and freedoms.”³⁹

Legal Violations of Freedom of Association

The ILO’s CEACR has identified critical shortcomings in the 2000 IRA related to both ILO Conventions 87 and 98:⁴⁰

- Excessive length in the procedures required before conducting a strike.
- The lack of a specific provision, accompanied by sufficiently effective and dissuasive sanctions, for the protection of workers’ organizations against acts of interference by employers or employers’ organizations.
- A statutory system of works councils that only entitles employers to establish the councils (Section 52 of the 2000 IRA). The lack of provisions that specify the process for appointing representatives of works councils, and the authority of works councils to negotiate terms and conditions of employees who are not union members, conditions that could give rise to employer interference or undermine the role of representative trade unions, and which fail to promote collective bargaining with workers’ organizations.
- The provision (Section 42 of the 2000 IRA) calling for mandatory recognition where a union’s membership is over 50 percent of the employees of the unit concerned, but allowing for recognition only at the discretion of the employer where union membership is less than 50 percent. The CEACR affirmed that if no union covers more than 50 percent of the workers, collective bargaining rights should be granted to the unions in the unit, at least on behalf of their own members.
- The exclusion of prison staff from the right to form or join a union.

The ICFTU echoed many of these concerns in its 2006 Annual Survey of Violations of Trade Union Rights. The ICFTU noted in particular that a minimum time of 74 days between the announcement of a strike and the date it takes place makes it virtually impossible to hold a legal strike. In addition, the ICFTU protested that procedures for voting on a strike are too long and complicated, and that trade unions face civil liability for damage caused during a strike.⁴¹

The ILO’s CEACR has asked the Swazi government to amend the law to address these problems. This included a request to ensure that a preliminary draft amendment of Section 52 (which has been prepared within the framework of a technical advisory mission) sufficiently protects against employer interference in the creation and functioning of works councils, as well as interference against collective bargaining with non-unionized workers where there is a sufficiently representative trade union.

Union Recognition

ILO standards on freedom of association allow governments to require that unions register, but the process may not impose too many requirements, or be too cumbersome or time-consuming. Unfortunately, although the 2000 IRA provides recognition rights for unions in Swaziland, it also establishes a burdensome and lengthy process. According to the 2000 IRA, unions who want to be active in Swaziland must first register with the Labor Commissioner’s office, which has the sole discretion to allow or prevent union formation. Once a union has formed and registered, it can then seek recognition within individual workplaces. If fewer than 50 percent of the workers in a company join the union, recognition is at the discretion of the employer. If 50 percent of the employees join and pay dues to the union, the employer can grant recognition, advise the union that the company wants a verification

According to the FSE, recognition of unions in the workplace has improved over the past 10 years.⁴⁴ However, some sectors have lagged behind, and the problem has been especially prevalent in the textile and

apparel industry. Nevertheless, a textile/apparel sector business-labor agreement adopted in August 2003 sets out procedures for union recognition. As a result, union recognition has increased in the industry, but problems remain. Recognition is the first step in enforcing union rights, as it allows the union to represent workers in grievances, discipline and discharge issues, and issues of slowdowns, retrenchments, and layoffs. The next step is negotiating a collective bargaining agreement (CBA). Now, employers and unions in the textile and apparel industry have formed a Joint Negotiating Council to develop an industry-wide CBA. As of mid-2006, the CBA was still under negotiation.

As one textile worker related, “During a strike, they photograph the workers. After the strike, they raise the target number of pieces each worker must complete sewing per day. There are always target numbers, and when they want to fire a worker, the targets go up.” Her co-worker described the process: “They fire one of us for not making the target. When she says, ‘Why only me? The others around me did not make it either,’ they just say, ‘don’t look at the others.’”⁴⁵

The 2000 IRA also prohibits strikes by workers performing “essential services,” a category that is broadly defined by the law to include police and security forces, correctional services, fire fighting, health,

water, electricity, sanitary, telephone, and many civil service positions.⁴⁷ However, the ILO only permits restrictions on the right to strike for “civil servants engaged in the administration of the state” and essential services, defined as “those services whose interruption would endanger worker or public safety or health.”⁴⁸ Consequently, the Swazi definition of “essential services” is too broad to comply with fundamental ILO principles.

The Minister of Enterprise and Employment can also prohibit a strike if he or she deems the strike to “threaten or affect national interests.” Thus the government has two broad bases under Swazi law for denying workers the right to strike. Moreover, workers may strike over social and economic issues, but not political matters.

Like seeking union recognition, engaging in a lawful strike requires patience and determination in Swaziland. Under the 2000 IRA, workers must first report the dispute to the Labor Commissioner for an initial review.⁴⁹ The Commissioner then refers the matter to the CMAC for conciliation.⁵⁰ If, after the 21-day mandatory conciliation period, the dispute remains unresolved, the CMAC must certify the matter as an unresolved dispute.⁵¹ Another 21-day “cooling off” period for mediation follows.⁵² After that, the union may notify the employer of its intention to strike.⁵³ The Commissioner of Labor then must conduct a secret-ballot election within seven days to determine whether the majority of employees favor the action and, within two days, notify the parties of the result.⁵⁴ The workers must then re-inform the employer of their intention to strike.⁵⁵ Only then, after over 70 days of required procedures, may the workers exercise their right to strike.

The CEACR has singled out Swaziland’s strike procedure for criticism:

“Article 3. In its previous comments, the Committee had noted the lengthy procedure required before strike action could be taken legally, and had recalled that provisions which require workers’ organizations to observe certain procedural rules before launching a strike are admissible, provided they do not make the exercise of the right to strike impossible or very difficult in practice. The Committee notes that the Government did not address this issue in its report. The Committee once again requests the Government to amend its legislation in order to decrease the length of the compulsory dispute settlement procedure provided for in sections 85 and 86, read with sections 70 to 82, of the Industrial Relations Act (IRA), 2000, and asks to be kept informed of progress in that regard.”⁵⁶



SFTU Secretary General Jan Sithole, in his statement at the 2005 ILO Conference, reiterated that despite repeated comments by CEACR, the government had not shortened the period for a lawful strike, remarking, “It takes over 74 working days for a dispute to mature to a strike over and above the internal dispute mechanisms. We should remember that justice delayed is justice denied.”⁵⁷

Workers interviewed for this report said that, in their experience, the required procedures make it very onerous to conduct a legal strike and that, in practice, exercising the right to strike in Swaziland is extremely difficult. One union official described how the IRA’s lengthy procedures and red tape frustrate both recognition and the right to strike:

“We called a recognition strike at Palfridge Ltd. First, we had to go to CMAC, and then we conducted a verification. It proved we had far more than 50 percent membership. After CMAC, the employer wanted to see that the union had banked the union-joining fee. It was madness. We wanted to take the strike route, to hit hard. But after we got the unresolved dispute certificate, we had to wait for 21 days before we could notify the employer of our intention to strike. It was reported to the Labor Commissioner, who investigated for ten days, and then it was transmitted to CMAC. Twenty-one days ended up being thirty days. After the twenty-one days, we notified the employer of a strike to pursue recognition. The employer said that it was a dispute of right and now it’s still pending at the court. It’s been there for five months already. It was our intention to strike, but now it’s hard.”⁵⁸

Although technical requirements create obstacles for legal strikes, many unions are capable of meeting the requirements, and legal strikes occur frequently. It is union policy to follow procedures and the unions usually comply, especially where union membership is experienced and disciplined. However, workers’ frustrations can at times spill over into spontaneous strike actions, often at worksites where workers are not represented by unions. When this occurs, participating workers risk dismissal for illegal strikes. After they turn to unions for help, union leaders and organizers face an uphill battle from the consequences of the unlawful strike.

Not every union has the opportunity to see its case negotiated before the CMAC. In many cases the union loses court cases aimed at securing reinstatement for striking workers. A senior SMAWU official said: “We must still try to negotiate for workers that have been dismissed because of an illegal strike. Their actions say that there is an immediate problem that they have no other way to deal with, and points to a more entrenched problem with the dispute system as the process is too long for workers, effectively reducing worker power.”⁵⁹

An SFTU senior official also stated: “Workers sometimes don’t come to the union with an issue, choosing rather to strike illegally, because they know the union will advise them to follow procedure and this is too long for them. So we often get a call saying, ‘Come quickly, your members are protesting,’ and we have to try and sort out a huge problem after the damage is done, that need not have been so big if workers were confident that the system would let them be heard.”⁶⁰

The ability of workers in some sectors to exercise their right to strike is, however, drastically limited by the 2000 IRA’s broad “essential services” and “public interest”



provisions.⁶¹ As one union official explains, “After the 2000 IRA, civil servants have the right to strike. But while it is given as a right, it is also taken away on the other side because the Minister of Employment has the power to bar you in court if he deems it against the interest of the public. All strikes can potentially qualify under this provision, but government workers are especially vulnerable.”⁶² Although the provision applies to all strikes, it is more likely to be used against government employees. A judge can refuse the Minister’s application, but the general lack of judicial independence in Swaziland makes union leaders fear that the government will be able to misuse this provision.

These overly broad strike limitations, based on “essential services” and the “interest of the public,” are clear violations of worker rights. The ILO Digest has pointed out that it is not “appropriate for all state-owned undertakings to be treated on the same basis in respect of limitations of the right to strike, without

distinguishing in the relevant legislation between those which are genuinely essential and those which are not.”⁶³ In Swaziland, all public sector workers may be designated as “essential,” making the law too broad to meet ILO standards.

Some types of hospital workers fall under the ILO’s strict definition of essential services.⁶⁴ In Swaziland, the 2000 IRA classifies the work of Swaziland’s nurses as an essential service; consequently, nurses are not allowed to strike. The Swaziland Nurses Association is the only union in the formal health sector. It represents approximately 2,000 of the 4,500 nurses in Swaziland.

A government that prohibits strikes for workers in essential services is expected to provide an effective, impartial alternate system for dispute resolution. The lack of such a system in Swaziland has severely hampered the nurses’ five-year struggle to obtain back pay that the government has withheld illegally since 2001. One union leader described their dilemma:

“It may appear as a good idea, but classifying us as ‘essential services’ is a big danger because it’s used against our efforts. We go through grievances to the last level, and if we are not given our rights, we cannot strike. Yet we are not given what we want because of the ‘essential services’ clause. It doesn’t give any of us a clear way forward with our disputes.”⁶⁵

Despite these limitations, in February 2004 a nurses’ strike shut down much of Swaziland’s medical system for five days. The strike and the ensuing vilification of the nurses are symbolic of the failure of the Swaziland government to adequately address workers’ needs. Masitsela Mhlanga of the Swaziland Nurses Association explains:

“Nurses in Swaziland have been forced to work many hours of overtime to accommodate the needs of patients. We have no choice but to continue working, but we were owed a lot of back pay. We had exhausted all avenues for negotiation and had reached a complete deadlock. We had a conciliation ruled in our favor, but nothing changed. From 2001 until 2004, the orders were registered with the Industrial Court, but they were not enforced for six months, and we went back to conciliation. We finally felt enough is enough. In February, we went on strike to force the Government to pay. The Government told the nation that the strike was illegal; that we are not supposed to strike at all. After the five-day strike, the Government agreed to pay us. But a few days later, we went on strike again for two days, because they only paid some of us. Even three months later, the Government has not finished paying us.”⁶⁶



During the strike, the government petitioned the Industrial Court to have the strike declared illegal. The government was unable to obtain the declaration in the Industrial Court for a reason that typifies the failures of the Swazi executive branch. Only one judge was sitting at the time, and the government had not renewed his contract; he refused to rule on the matter.⁶⁷ The nurses did not receive much support for their strike action. The local press, most of which is controlled by the government, disparaged the nurses as being concerned only with money. The Swazi Observer reported, “[T]hree patients reportedly died while nurses watched television.”⁶⁸ Such a situation only exacerbates the nursing crisis in Swaziland as trained nurses are leaving the country for better salaries and working conditions abroad.⁶⁹

The nurses’ situation exemplifies many of the obstacles faced by Swazi workers. The government is unwilling to effectively engage the relevant workers’ association; it controls the media; it has mismanaged and weakened the courts; and it has failed to provide an effective system for dispute resolution. The government has undermined the rights of workers both by indifference and active hostility.

Government restrictions on strikes, however, may now be easing. IRA amendments passed in September 2005 appear to reduce the waiting period required before being able to conduct a legal strike. The new amendments also call for reporting labor disputes directly to CMAC instead of to the Labor Commissioner, thus reducing the strike period by 10 days.⁷⁰ CMAC then has approximately 4 days to appoint a commissioner, who has 21 days from the date of appointment to resolve the dispute through conciliation.⁷¹ In addition, the amendments remove the 21-day “cooling off” period originally required. So now, under the new Section 81(5), once CMAC has certified the dispute as unresolved, a legal strike may be conducted.⁷²

Some observers are optimistic that these amendments will considerably shorten the waiting period before conducting a legal strike or lockout. In fact, some union representatives suggest that in cases where parties see no point in further dialogue from the outset, a strike or lockout may be pursued in a period as short as 25 days. As of July 2006, no concrete statistics were available concerning the implementation of the amendments. Consequently, the government's emerging enforcement record will demonstrate whether the law has improved respect for the right of Swaziland's workers to strike.

Labor Inspection

Under the Employment Act of 1980, the government is tasked with performing periodic inspections of workplaces and ensuring that all employers are in compliance with all laws. However, Swaziland's labor inspection system fails to enforce worker rights. As the U.S. State Department's 2005 *Country Reports on Human Rights Practices* noted, "the Labor Commissioner's office conducted few safety inspections because of staffing deficiencies and an alleged desire not to 'scare off foreign investors.' Workers had no legal statutory rights to remove themselves from dangerous work places without jeopardizing their continued employment; nor did any collective bargaining agreements address the matter."⁷³

Many workers interviewed for this report said that they had seen the inspector visit their workplace, but all reported that nothing changed or improved after he left. One union official said:

"We still have a lot of employers paying below the minimum wage. In some of the rural areas, the owners pay below minimum wage, so we have an issue of compliance. Government went through and did inspections, but there was not

much enforcement follow-up when they found a violation. They find malpractice, but they don't use their instruments to fix the problem."⁷⁴

The U.S. State Department's 2005 *Country Reports on Human Rights Practices* confirms the unions' view:

"The labor commissioner conducted inspections in the formal sector; however, these inspections generally did not result in enforcement of the law. There were allegations that women who tried to take maternity leave were dismissed, that employers paid employees at casual or probationary wage scales regardless of their position or length of service, and that some supervisors physically abused employees."⁷⁵

Right to Organize and Bargain Collectively: Anti-Union Discrimination and Retaliation

Anti-union discrimination in Swaziland is common and the enforcement of existing union protections is weak.⁷⁶ Harassment and dismissals for union activity are common. Swazi law does not protect union leaders or members against blacklisting. The State Department's 2005 country report on Swaziland states:

"The law prohibits anti-union discrimination; however, such discrimination continued to occur. In the case of unfair dismissal, the court can order reinstatement and compensation for the employee as well as fine the employer. Union leaders made credible charges that management in various industries dismissed workers for union activity. Other concerns identified were undefined hours of work and pay days, frequent assaults on workers by supervisors, surveillance by hired security officers of trade union activity

both at the workplace and outside, and the use of workers' councils stacked with employer-picked representatives to prevent genuine worker representation. The allegations of union discrimination were most common in the garment sector. On April 27 [2005], the Times of Swaziland reported that the Oxford Leasing Company in Manzini fired two employees for joining the Swaziland Manufacturing and Allied Workers Union. The government did not intervene, and the union took the matter to the industrial court, where the case was pending at year's end."⁷⁷

Anti-union discrimination is not a subtle practice in Swaziland; it is painfully obvious to workers, especially garment workers, whose unions report a high incidence of unfair dismissals.⁷⁸ The government has largely been complacent in the face of widespread and credible allegations of worker rights violations in this sector.⁷⁹ For example, at Unique Garments, an apparel factory in Swaziland, an explicit warning to union activists reads:

Announcement—Troublesome Workers



Please be informed that anyone who is troublesome to the company or anyone who tries to incite the employees to perform unlawful acts (go slow or illegal strike) will have her/his name and ID card submitted to the Garment Association for Manufacturing Companies.

This person may have problem to be employed by any of these garment companies.

Many workers in the garment and textile industry report daily incidents of physical abuse and name-calling by management. In Matsapha Knitwear, an apparel factory in Swaziland, a female worker said that her line manager frequently grabbed her and shouted about how she must reach her targets. "They shout and hold onto your clothes like they want to fight with you," she said.⁸⁰ Another worker in the same factory reported that her manager frequently called the workers names and insulted them. In Unique Garments several workers also spoke of physical aggression. "They shove us around all day, pinch us hard, and shout at us. My manager will stand next to me and shove me in the shoulder or chest to make me work faster. Sometimes, she pulls on our earlobes while she shouts in our ears."⁸¹

To better protect the rights of these workers, SMAWU tried to organize the workers in both Unique Garments and Matsapha Knitwear. A SMAWU leader described the recognition process with Unique Garments:

"We applied to the Labor Commissioner for recognition in May 2003, when we had over 50 percent membership. The employer was supposed to respond in 30 days, but we didn't hear from him. We eventually concluded the agreement on how to go through the verification process on August 12th 2003, and we brought the agreement to the membership . . . We had convened a meeting with Swaziland Textile Exporters Association, the unions, Solidarity Center, and ITGLWF. There, we came up with a second agreement on November 3, 2003. At this meeting, the employer's association came up with a program of action for a verification schedule. On March 11, 2004, we went through another round of agreements, which we concluded on March

tee members to tell all the workers to clock out. He kept shouting at all of us to clock out and go home. He never did come to talk to us, like we were asking.

Everyone just went home, and the eight committee members stayed. The boss stood there insulting us, yelling at us in Chinese, and saying we had organized an illegal strike. A few people went to work the next day, but the rest of us were told to just collect our checks at the gate. We were not paid for Thursday afternoon or Friday.

On Monday, we all came to work like normal. Committee members were given a sheet to read out loud to the workers. I think it was from the Industrial Court. It said that we had been on an illegal strike and that the employer could do anything he wanted to control an illegal strike. We came to the union office, and the General Secretary phoned the boss and spoke with him. About a week later, we were given another sheet. It said that four of the committee members would have a disciplinary hearing.

During that time, the working conditions in the factory got worse. We were shouted at more. They would pull on our ears and shove us around. Before these problems, we had five-minute breaks to use the toilet, and they changed it to three minutes during this time. At the hearing, they would not let anyone from the union be present. We were told that we had forced the workers into an illegal strike. They accused us of wanting the workers to join the union. We tried to get some workers to come and be witnesses for us, but they

wouldn't allow that. The lawyer for the boss was the judge at the hearing, too.

While the hearing was going on, the workers tried to stop working, but the boss came down and switched off the electricity again and shouted at them a lot and so when he turned it on, they resumed working. At the hearing, we were finally told to go and come back the following day. They told us we would have to write an appeal. But we didn't really know how. After that, only one of the four was allowed back to work. Three of us were dismissed.

Then one of the Swazi factory personnel came down to the factory floor and just start choosing people at random and telling them to go. He would just point and say, 'Out,' like to a dog. He got the company security, and they called the police, even though we were being peaceful and didn't really understand what was going on. All in all, they fired 57 of us that day. We all came to the union office, and one of the union officers spoke to the boss. He explained that we couldn't be fired without notice. We were given a date to come to CMAC and eventually CMAC agreed with us. We asked the boss to go to arbitration, and he refused. So we ended up in the Court.

Right now, the union is still trying to get recognition, but many of the union members were fired that day. The verification is at 48 percent so the union wants to go to Court, but we are just waiting now. Only some of us who were fired have found new jobs.”⁸⁵

employees, including health care, vacation, sick or maternity leave, pensions, severance pay, or other benefits. Temporary or informal workers are often not covered in any way under labor legislation, meaning that they have no access to the legal or regulatory system to seek redress for unfair practices. Moreover, informal workers can be easily intimidated; workers on two or three-month contracts who seek to form or join a union do not expect to see their contracts renewed. Employers also use them to break existing unions by calling them to work during strikes, or by using them as a threat to intimidate permanent workers from joining a union.

The government is a particularly egregious offender; hundreds of government workers, many of whom have been employees for over a decade, are still considered temporary workers under the law and therefore have no job security, benefits, or ability to unionize. One union official stated:

“The Government is not a good role model for the problem of casualization. When you go to the employer and say employ these people, he doesn’t employ them. Some people have worked for three to five years on four-week contracts.”⁸⁹

Seasonal workers face particular hardship. A worker from SPRAWU explained the treatment of seasonal workers in the Swazi Canning Factory:

“There is unfair treatment of the seasonal workers. If you are active with the union during your seasonal employment, you won’t ever get hired for a permanent position. Now, the union has implemented a strategy—to have people wait until they are permanent to become active in the unions. Seasonal employees are especially

“*It’s winter, and there is a lot of water in the factory. It is cold, and you are exposed to diseases. Permanent workers get protective clothing, but the seasonal employees do not.*”

worried about wages and pay, and conditions are dangerous and harmful. They don’t want you to put on warm clothes, only the uniform. It’s winter, and there is a lot of water in the factory. It is cold, and you are exposed to diseases. Permanent workers get protective clothing, but the seasonal employees do not.”⁹⁰

By treating seasonal workers harshly and by forcing a temporary or “informal” status on those who try to become active in the unions, employers intimidate workers from forming and/or joining unions. Many workers interviewed for this report stated that casualization harms Swaziland’s labor movement in general. “The casuals are a threat to permanent jobs. When there is a strike, they can just use casuals. The moment you declare a strike notice, they bring in the casuals. It’s a workforce that’s not legally protected.”⁹¹ Without a change in this practice, unions will be unable to actively protect worker rights, violations will go undocumented and unaddressed, and one of civil society’s strongest democratic forces will be substantially weakened.

Finally, poor enforcement of regulations governing the national retirement program also allows for violations of worker rights. The Swaziland National Provident Fund (Provident Fund) was founded in 1974 to provide benefits to workers who were either entering retirement or incapacitated while working.

The Provident Fund is now stipulated in the Employment Act, and employers are legally required to match the amount deducted from the employee's wages each month. By law, the maximum monthly amount is 60 emalangeni, (approximately U.S. \$10), 50 percent from the employee and 50 percent from the employer.⁹² Retirees have no government-funded social security in Swaziland, so the Provident Fund is the sole source of income for retired workers and their families.

Without union recognition in the workplace, employers can more easily abuse the Provident Fund. One worker

reported problems when she tried to collect money from the Fund after her sister died in August 2003. Her sister had worked at Matsapha Knitwear for five years. However, it has been impossible to retrieve the money because the Provident Fund officer said that funds from Matsapha Knitwear were not in the account. It appears that the company had deducted the monthly amount from the wages, but never deposited the money into the Fund. Union organizers indicate that the problem is that the government does not effectively enforce provisions governing the Provident Fund.

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CHAPTER 3

Discrimination in the Workplace

Swaziland has ratified ILO Convention No. 111 on Discrimination (Employment and Occupation) and Convention No. 100 on Equal Remuneration. In spite of these ratifications, Swaziland has not ensured that workers are free from discrimination in the workplace. Women face discriminatory laws and practices. Gender discrimination includes constraints on the hours and locations of work for women, the advertising of certain positions for women or men only, and sexual harassment in the workplace. People living with HIV and AIDS have no legal protections whatsoever. Some workers face compulsory medical testing, and those who test positive for HIV fear not being hired or being dismissed because of their status. People with HIV and AIDS have so far received only minimal support from the unions.



A member of the Swaziland National Association of Civil Servants said, "Our society is yet to come out of thinking that women are minors."

Swaziland has adopted legislation that makes most workplace discrimination unlawful. The Employment Act of 1980 and its amendments provide the primary legal protection for Swazi workers who face discrimination. Workers and NGO representatives interviewed for this report indicate that some employers do not respect the Employment Act provisions and that enforcement of this act by the courts is not consistent. As of the end of 2005, no prosecutions had been reported under the discrimination provisions of the Employment Act.¹ This could be due to the actual prevalence of discrimination, or could reflect a popular perception that a claimant cannot receive justice on that issue through the court system.

Discrimination Against Women

The Employment Act stipulates that no employer may discriminate on the basis of race, color, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation, or social status.² However, despite the law's requirement for equal pay for equal work, average work rates for men by skill category usually exceed those of women.³ In addition, ironically, the Employment Act includes some provisions that arguably could be seen as discriminatory against women. For example, it stipulates that women cannot work between 10 p.m. and 6 a.m. without permission of the Labor Commissioner; and

Swazi NGOs have suggested that part of the challenge of addressing gender discrimination in the workplace is to address the treatment of women in Swazi society in general. Swaziland is deeply patriarchal. Women are treated as minors under traditional laws. Women are economically insecure and therefore vulnerable to discrimination in the workplace. One Swazi NGO suggested that the low cultural and legal status of women reinforces subordination and subverts women's ability to vindicate their rights both in daily life and through the court system.⁵ On the issue of women in Swazi society, the U.S. State Department's *Country Reports on Human Rights Practices—2005* stated:

One Swazi NGO suggested that the low cultural and legal status of women reinforces subordination and subverts women's ability to vindicate their rights both in daily life and through the court system.



“Women occupy a subordinate role in society. In both civil and traditional marriages, wives are legally treated as minors, although those who married under civil law may be accorded the legal status of adults if stipulated in a signed prenuptial agreement. A woman generally must have her husband’s permission to borrow money, open a bank account, obtain a passport, leave the country, gain access to land, and, in some cases, obtain a job. . . .

The dualistic nature of the legal system complicated the issue of women's rights. Since unwritten law and custom govern traditional marriage, women's rights often were unclear and changed according to where and by whom they were interpreted. Couples often married in both civil and traditional ceremonies, creating

problems in determining which set of rules applied to the marriage and to subsequent questions of child custody and inheritance in the event of divorce or death.

In 2002, King Mswati allegedly instructed his agents to take three young women into royal custody while he considered whether to marry them. During 2002 and 2003, the King took 2 of the 3 women to be his 10th and 11th wives. The mother of one of the women sued the monarchy alleging that her daughter was kidnapped by royal emissaries, but she later postponed the suit indefinitely. The third woman was reportedly living with the Queen Mother, but had not been taken as a wife. In August, the King selected a 16-year-old girl as his most recent fiancée.

In traditional marriages, a man may take more than one wife. A man who marries a woman under civil law legally may not have more than one wife, although in practice this restriction sometimes was ignored. Traditional marriages consider children to belong to the father and to his family if the couple divorce. Children born out of wedlock are viewed as belonging to the mother. Under the law, a woman does not pass citizenship automatically to her children. Inheritances are passed through male children only.”⁶

Amnesty International has reported, “In Swaziland, women and girls suffer high levels of domestic and sexual violence, and experience pervasive economic, social, and legal discrimination.”⁷ Urban women residents can charge their spouses with assault under both Swazi legal systems, and often do so when family intervention does

In Swaziland, women and girls suffer high levels of domestic and sexual violence, and experience pervasive economic, social, and legal discrimination.

not stop the abuse. However, according to a 2005 ICFTU report, rural women often have no recourse if family pressure does not succeed because traditional courts may be “unsympathetic to ‘unruly’ or ‘disobedient’ women” and are less likely to convict men for spousal abuse.⁸ The lack of rights to make even basic personal choices is seen in one incident during 2004, when a chief reportedly threatened a woman with eviction for refusing to wear mourning clothes for her deceased husband.⁹

The new Swazi constitution, however, contains provisions to address women’s equality. For example, “women will be able to own property, take out bank loans, sign contracts and assume the rights of adulthood for the first time.”¹⁰ It remains to be seen whether women will be afforded the opportunity to exercise these rights in practice.

The Employment Act grants three months of maternity leave to women who have been employed in a workplace for a year or more. The 1997 amendment to the Employment Act requires employers to give pregnant women full pay for two of the permitted twelve weeks. Workers suggested that in most companies, employers follow this provision. However, some workers expressed apprehension about taking the time away from their jobs. Financial hardship and the lack of any state-sponsored safety net make it difficult for women to take full advantage of the entire maternity leave. Some reports indicate that employers have forced women to return to work after only one of the three months

allowable maternity leave.¹¹ And several female workers said that they returned to work after only the two-week “full-pay” period had ended, because they could not survive without an income. In some cases, women have faced negative consequences for taking time off for childbirth. At one factory, a woman reported that when she returned to work after having her son, she was demoted to a lower-income bracket.¹² The U.S. State Department reports allegations in 2005 “that women who tried to take maternity leave were dismissed.”¹³ In July three newly recruited female soldiers were dismissed after medical tests revealed they were pregnant. Several NGOs provided support for victims of abuse and discrimination.¹⁴



Sexual Harassment

According to the U.S. State Department’s *Country Reports on Human Rights Practices—2005*, “[Swaziland] law provides some protection from sexual harassment, but its provisions were vague and largely ineffective. For example, according to a July 13 [2005] article in the *Times of Swaziland*, several female fire department officers complained to their union that senior officers called them into their offices and touched them inappropriately; one of the women was transferred to another station.”¹⁵ Women interviewed for this report acknowledged that sexual harassment goes on in the workplace, but were reticent about giving personal examples. A member of the Swaziland National Association of Civil Servants (SNAC) said, “Yes, sexual harassment happens. Our society is yet to come out of thinking that women are minors.”

Women’s apparent reluctance to report situations of sexual harassment in the workplace, as well as the apparent lack of support for such reports, exacerbates the problem. While the CMAC and the Industrial Court are deluged with workers’ cases, there has not been a single allegation of sexual harassment in either forum.¹⁶ “Our culture restricts women from talking about it,” said the CMAC Executive Director, Siphephiso Dlamini. “And the unions are as male dominated as industry. This creates a restrictive culture in which women do not report what happens to them.”¹⁷ In one recent unfair dismissal case before the CMAC, it was revealed only after the conciliation process was completed that the case involved sexual harassment. The woman worker did not mention it in her complaint, and did not even recognize it as a worker rights violation that may have contributed to her firing.¹⁸ A member of Women and Law in Southern Africa (WLSA) pointed out that the unions themselves have failed to address the issue of sexual harassment. “The unions are trying,”

said Doo Aphane, the former national director for the Swaziland chapter of WLSA, “but they are a reflection of our society, and they need to clean their houses, too.”¹⁹

The majority of garment workers are women. Forced overtime places these women in a vulnerable situation. According to the U.S. State Department's *Country Reports on Human Rights Practices—2005*, rape is also common and regarded by many men as a minor offense.²⁰ Most employers do not provide transportation for workers from the factories in the industrial sectors to workers' homes, which can be quite far away. Public transportation is limited, and workers must use their wages to pay for transport home. Moreover, the available transport makes only periodic stops along the main roads and many working women have to walk long distances to reach their homes. Workers are often beaten, raped, and/or robbed when returning home late at night. The problem is worsened on payday as workers are paid their wages in cash. Some factories have now agreed to let workers leave early on payday in an attempt to address the problem. The police have not made any attempts to deal with the issue.

Female workers in the apparel industry reported that some employers conduct daily body searches to look for stolen goods. Female factory workers from Matsapha Knitwear reported that the male security guards fondle some workers as they are exiting the factories at night.²¹ Women at Unique Garments reported that the daily search is not only too invasive but also makes them vulnerable to street crime. “We are searched every day leaving the factory,” one female machinist reported. “. . . [s]he wants to see under our skirts, inside our shirts, inside our panties. And sometimes, they make us late with all the delays in the searching. It’s dangerous to go home late. Women have been raped walking home from the transportation.”²²

Discrimination Against Workers Who Are HIV-Positive

Swaziland has no law protecting the right of people living with HIV and AIDS to be free from discrimination, despite having one of the highest prevalence rates of HIV and AIDS in the world. Despite the government's stated commitment to combat HIV and AIDS, Swaziland has not promulgated any HIV- or AIDS-related laws.²³ The government's 1998 HIV and AIDS policy document states, "[E]xisting laws will be reviewed to ensure that they adequately address the public health and human rights issues raised by HIV and AIDS. Where necessary, appropriate laws will be passed." That eight-year-old promise has gone completely unfulfilled.

In 2005, the National Emergency Response Council on HIV and AIDS (NERCHA) was established by the Swazi government to coordinate a response to the pandemic. However, as critics have noted in the past, “the government’s response has been inadequate, uncoordinated and slow; in many cases its initiatives have been painfully removed from reality and have worsened matters.”²⁴ Recently, the Swazi government has been criticized for providing erratic or inadequate supplies of antiretrovirals (ARVs) to Swazis living with

“Discrimination here is not direct. They will find other reasons to dismiss you, such as not meeting the production targets or showing up late for work. The problem in Swaziland is that there is no police force, no protection, for people with HIV and AIDS.”

HIV or AIDS. NERCHA, charged with distribution of ARVs, claims that distribution has been affected by a Global Fund decision to suspend funding of the Swazi government's HIV and AIDS treatment program in mid-2005. ARV users blame the suspension on the government's failure to use a computerized system to track HIV patients, and to meet other Global Fund requirements.²⁵ In fact, Derek Von Wissel, the head of NERCHA, admitted, "funding was cut recently because the country lacked proper drug and patient management systems."²⁶

The international community questioned the Swaziland government's commitment to addressing the HIV and AIDS crisis when the government canceled events marking World AIDS Day on December 1, 2005. The Swazi government claimed that the events "clashed with a traditional ceremony scheduled for the same day."²⁷ King Mswati has also been criticized "for setting a bad example" by having 13 wives.²⁸ Critics of the royal family said that "the king's many wives and young fiancées, some of whom were 16, set a poor example for behavior change" in a country with one of the highest HIV and AIDS prevalence rates in the world.²⁹

Members of civil society have just started to address the need for a policy response to the HIV epidemic. In 2001, the FSE and the Chamber of Commerce established the Swaziland Business Coalition Against AIDS (SBCA). This group seeks to be "the central organization to coordinate and implement effective action against HIV and AIDS at the world of work in Swaziland."³⁰ The SBCA also educates employers concerning how to help workers who are HIV-positive to take steps to lessen the effects of the disease, such as eating nutritious food and seeking medical care. In a recent report focused on the impact of HIV on the agriculture sector, the FSE stated, "[T]here has been very little research on the

actual sectoral and industrial impact of HIV. . . . Much applied work needs to be done to fill in the gap in understanding and to identify the scale and scope for policy response."³¹ In 2005, the SBCA launched an eight-month HIV and AIDS workplace program to "address the fear and 'negative attitudes' faced by many HIV-positive Swazis in the workplace."³²

A report drafted by the WLSA points out that because the Employment Act dates back to the 1980s, it completely fails to address the consequences of HIV and AIDS in the workplace, and the potential for discrimination based on a worker's HIV status. And neither the 1985 nor the 1997 amendments to the act have confronted HIV and AIDS. The WLSA report states that problems in the workplace have included "pre-employment testing, where allegedly people have been tested and, where found positive, have been discriminated against in being offered employment."³³ Once workers have been employed, WLSA noted, there are "problems with demotion, non-promotion, and dismissal, reduction/denial of benefits after a person is found HIV-positive."³⁴

While workers interviewed for this report were hesitant to talk about their personal HIV- and AIDS-related problems, some reported that they were subjected to compulsory testing. One interviewee recalled:

"My client was working at a sugar company in the sugar belt. They said he had to go for a medical test, and doctors drew his blood. Many months later, he found out that they had tested him for AIDS without his consent. Luckily, he was negative... The costs of the test had been deducted from his wages, and he didn't even know what they tested him for or the results."³⁵

None of the workers interviewed said they knew people who had been dismissed or discriminated against because of their HIV and AIDS status. Siphephiso Dlamini, the CMAC Executive Director, noted that no clear cases of discrimination based on HIV status have ever been reported to CMAC. In his opinion, workers are still reluctant to report such cases because of the stigma associated with HIV and AIDS, and he noted that a “need to sensitize the nation on this issue is becoming more apparent.”³⁶ Hannie Dlamini, one of the few people in Swaziland who is public about his HIV-positive status, commented on the lack of public recognition of the pandemic:

“They will all tell you there is no problem, but there is a big problem. People have been chased out of work when their status is known. One teacher thought that it would be best to disclose her status. After two days, the principal of the school said that she was suspended and he didn’t renew her contract.

Discrimination here is not direct. They will find other reasons to dismiss you, such as not meeting the production targets or showing up late for work. The problem in Swaziland is that there is no police force, no protection, for people with HIV and AIDS.”³⁷

In February 2005, in a move considered a breakthrough in the conservative kingdom of Swaziland,³⁸ Vincent Ncongwane, Secretary General of the SFL, and Jan Sithole, Secretary General of the SFTU, became the highest-ranking public or government officials in Swaziland to take—and publicly acknowledge taking—an HIV test. The trade union leaders took the test publicly to raise awareness about the widespread stigma and discrimination against HIV-positive Swazis. Sithole also encouraged traditional leaders to be publicly tested as “traditional society resisted dealing openly with HIV and AIDS.”³⁹ The public testing of the two trade union leaders is a positive sign that unions, in the absence of government action, are taking the lead to address the issue.

Endnotes

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- ¹⁶ These numbers are current through 2005.
- ¹⁷ Interview with Siphephiso Dlamini, CMAC Executive Director, June 1, 2004.
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CHAPTER 4

Child Labor and Forced Labor

In 2002, Swaziland ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment and Convention No. 182 on the Worst Forms of Child Labor. Swaziland also ratified the UN Convention on the Rights of the Child in 1995, and signed the African Charter on the Rights and Welfare of the Child in 1995, but has not yet ratified it. Swaziland has ratified ILO Convention No. 29 on Forced Labor and Convention No. 105 on the Abolition of Forced Labor.

Child Labor

The Employment Act of 1980 prohibits the employment of children below the age of 15 in industrial settings. The law makes exceptions for workplaces employing only family members, and for educational settings.¹ Swazi law has no minimum age for employment in non-industrial sectors, but bars children from working at night or during school hours and limits children's overall work hours to 6 per day and 33 per week.² The Employment Act also generally prohibits "young persons," (defined as those 15 to 18 years old), from working at night or from working in dangerous, unhealthy, or morally injurious undertakings.³

Violations of child labor laws are not widespread in the formal sector; factory owners usually hire workers who are 18 and older. However, the use of child labor has been reported in the commercial agricultural sector on cotton and sugar cane plantations in eastern Swaziland. Child labor is also employed in the informal economy, especially in rural subsistence agriculture, herding,

UNICEF estimated that in 2000, 11.3 percent of Swazi children ages 5 to 14 were working.

household domestic work, gardening, hawking, and transportation. Although it is difficult to find reliable statistics on the number of children working in Swaziland, UNICEF estimated that in 2000, some 11.3 percent of Swazi children ages 5 to 14 were working.⁴

Swazi children are vulnerable to joining the workforce early because Swazi law does not guarantee a primary school education for children. Swazi law provides for seven years of compulsory primary education,⁵ but that education is not free.⁶ Children must pay a fee for tuition, books, and supplemental costs such as building upkeep.⁷ Some children leave school to work because their families cannot afford the school fees. Although Swaziland has reportedly increased school enrollment by more than 20 percent in the past decade,⁸ poverty and the lack of free primary education tend to push children into the workforce.

The HIV and AIDS pandemic also exacerbates the problem of child labor by driving families into more extreme poverty as parents become unable to work. And where caregivers have been lost to AIDS and no extended family is available to provide care and support, children often become the sole providers for themselves and their younger siblings. Without a social network to care for them, AIDS orphans often have to drop out of school to find work.

Working children themselves express most clearly the problem of child labor. A 12-year-old domestic worker in Manzini describes her day: “I wake up at 6:00 am and prepare lunchboxes for the children, prepare their clothes that they wear for school, bathe and feed them before walking them to the gate and waiting with them for the school bus. After they are gone I go and do the housework.” She explains that she “save[s] the money [from her work] to be able to go to school one day” like the children she looks after.⁹

A 14-year-old girl who works in a sugar cane field explains, “I am working alone, eight hours a day, daily. There is quite a time pressure on me to reach my daily target.... I get headaches from work. That could be because it is very hot and I am exposed to the sun for many hours.”¹⁰

Poverty, the lack of free primary education, and HIV and AIDS combine in Swaziland to make child labor a serious concern. With the number of AIDS orphans rapidly increasing, the problem of child labor in Swaziland is likely to become even more pervasive over the next several years.

Forced Labor

Swaziland law and the new constitution prohibit forced or bonded labor, including by children, and the government generally enforces most aspects of this prohibition effectively, with a couple of notable exceptions. Forced overtime is widespread in factories, especially in the garment industry. Further, the government supports a program of traditional tribute labor—involving the performance of tasks for chiefs without receiving compensation—that includes penalties for non-participation.



Where caregivers have been lost to AIDS and no extended family is available to provide care and support, children often become the sole providers for themselves and their younger siblings.

Abusive overtime demands under threat of dismissal are widespread and systematic in Swaziland. Workers interviewed for this report said that they are often forced to work extra hours at the end of their designated workday. This extra work is not always compensated, and even when it is, the work is not voluntary. It is performed under the fear of punishment or dismissal. As one worker in the poultry industry explained: “We are told work is continuing, just told to do overtime. If we do not do the overtime, we have to go to a hearing and sign a caution note. If we get three warnings, we are dismissed. . . . Workers are afraid so they just do the overtime.”¹¹

Several workers at a textile company stated they are forced to stay and work after normal hours. One said, “We are forced to do overtime. If we do not do overtime, they yell at us. They threaten that if we do not do overtime, they will fire us.”¹² Another from the same factory stated, “Sometimes they threaten to fire you if you don’t do the overtime. We get some extra money, but we have no choice.”¹³ At another workplace, the shop steward reported, “Workers complain to me that the management takes their time cards and clocks them out. Then they are working for free, and they have no choice.”¹⁴

And, although Swaziland has ratified the ILO conventions that prohibit forced labor, domestic law arguably legalizes a form of forced labor. The 1998 Swaziland Administrative Order reinforces the Swazi tradition of tribute labor.¹⁵ Section 34 of the Order allows chiefs to fine their subjects for failing to carry out the manual labor.¹⁶ The CEACR has noted that the Administrative Order “provides for orders requiring compulsory cultivation, anti-soil erosion works and the making, maintenance and protection of roads, enforceable with severe penalties for non-compliance.”¹⁷ The CEACR observed that provisions of this kind are in “serious

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breach” of ILO Convention No. 29 on Forced Labor, because the compulsory labor they allow is not limited to cases of emergency or minor communal services, and is not compensated.¹⁸

In a case that triggered the current rule of law crisis, the Court of Appeals rejected the 1998 Administrative Order that legalizes forced tribute labor, determining that the king has no power to issue such decrees. However, the government has refused to abide by this ruling. In fact, the new constitution, while prohibiting forced labor, provides an exception for “any labour (e) reasonably required as part of reasonable and normal parental, cultural, communal or other civic obligations, unless it is repugnant to the general principles of humanity,”¹⁹ seemingly exempting tribute labor from the prohibition.

Swazis have long given tribute labor to their king and chiefs. Interviews conducted for this report suggest that many Swazis still perform these tasks voluntarily and with pride. However, the law authorizes penalties for non-performance of this labor, which means some people perform the tasks also out of fear of punishment. Workers stated that the penalties for those who either refuse or are unable to work include monetary fines, the loss of animals, or even eviction from communal land.

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CHAPTER 5

The **Future** of **Worker Rights** in Swaziland

Today, Swaziland is facing a crisis in the rule of law. The unstable and undemocratic political environment creates intimidating obstacles for workers already struggling under extreme poverty and the additional economic challenges brought by the HIV and AIDS pandemic. The ability of unions and workers in Swaziland to assert and protect their fundamental rights is extremely limited by Swaziland's anti-democratic provisions in labor laws, backlogs in Swazi labor courts and commissions, poor enforcement mechanisms, and a political environment in which challenges to the government are virtually impossible.

Although confronted by overwhelming difficulties, Swaziland nevertheless has an opportunity to fulfill its commitment to the international obligations it has taken on as a member of the global community, and the ethical obligations it has to serve its own people. This commitment includes establishing a political climate where the rule of law prevails and civil liberties flourish. Within this framework, Swaziland can carry out another significant part of its international and domestic responsibilities by bringing its laws and practices into compliance with international labor standards.

Swaziland's national laws have many provisions that are in line with ILO conventions. However, the government continues to obstruct worker rights through the enactment of burdensome labor laws and regulations, and the use of tactics such as intimidation and excessive procedural delays. The country's political and judicial turmoil, coupled with the king's desire to maintain sole power, continue to

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Fortunately, Swaziland has the ability to turn this situation around through a series of specific legal reforms and a demonstrated commitment to improving enforcement.



Government officials asserted in recent months that the government is giving priority to restoring the rule of law. They also indicated that the government plans to increase the capacity of the Industrial Court in order to diminish the backlog, allow for the adjudication of more cases, and address the serious situation in the garment and textile sectors. Further, a field researcher was told that the incidents of harassment of trade unionists, such as the prior denial of trade unionists to attend ILO conferences, would not happen again.¹

By taking these and additional steps to bring its law and practice into full compliance with ILO core labor standards, Swaziland can also assume a high-profile position as a leader among African countries committed to worker rights. The international community also has a significant role to play in supporting Swaziland's efforts to build a more democratic society marked by the rule of law and respect for human and worker rights. Although other global trading partners have been able to influence Swaziland's government to a limited extent, union and democracy advocates in Swaziland often express disappointment that their plight does not receive sustained attention from international bodies and other nations.

Accordingly, recommendations follow, not only for Swaziland's government, but also for the global community of which it is a part. Through the application of consistent policy and assistance initiatives, the donor community in particular (including the U.S.) can help provide the support necessary to help Swaziland deal effectively with many of its problems and develop a more stable political and economic climate. The international labor movement can also encourage the adoption of changes needed to bring Swaziland into compliance. Finally, employers and multinational corporations can act

as responsible corporate citizens and promote harmonious labor relations and the rule of law in Swaziland.

In the end, Swaziland's workers will continue to have the most critical role to play in winning respect for their rights. Some opportunities for all to work in partnership toward full compliance are outlined below.

The Role of Swaziland's Government

The Swazi government can consider implementing the following measures to improve respect for core labor standards in law and practice:

Freedom of Association and the Right to Organize and Bargain Collectively

- Repeal the 1973 State of Emergency Decree, stop implementation of the signed constitution, and draft a new constitution that protects human and worker rights, establishes an independent executive, legislature, and judiciary, and allows for the existence of political parties and dissenting political opinions.
- Bring the legal definition of essential services into harmony with ILO standards. This includes removing the blanket classification of all civil servants from the category of essential services, and allowing civil servants not engaged in the administration of the state their right to strike. Prison staff should be extended the right to freedom of association and the right to bargain collectively. For services that fall under the ILO's strict definition of essential services, the government can institute an efficient, fair and independent alternative dispute resolution mechanism for grievances.
- Amend the provisions of the 2000 Industrial Relations Act that make the union recognition process tedious and drawn out. Where no union

covers more than 50 percent of the workers, collective bargaining rights should be granted to the unions in the unit, at least on behalf of their own members.

- Track and evaluate the implementation and enforcement of the IRA amendments designed to shorten and simplify the dispute resolution process. If they do not result in significantly decreasing the length of the strike application procedure, the law and regulatory process should be amended to remedy the situation and ensure that Swaziland's workers can fully exercise their right to strike.
 - Repeal the liability clause in section 40(13) of the 2000 IRA.
 - Repeal the 2000 IRA provision section 16(6) that caps the maximum back pay compensation for unfair dismissals.
 - Set limits on the percentage of workers in a workplace who are allowed to work on a temporary basis. Employers, including the government, should not be allowed to employ high numbers of temporary workers. Workers who work in a single workplace for more than a short time period should perforce become permanent workers. Dismissing workers as they reach this time frame should be illegal under Swazi law. In this way the government can help ensure that workers receive the benefits they need while removing incentives for employers to prevent the formation of new unions or break existing ones.
 - Allocate more resources to the Industrial Court for both personnel and improved technology to streamline the process for resolving labor disputes. The government can fund the Industrial Court Registrar's office to create an electronic database of case files.
- This would allow the Court Registrar to manage paperwork more effectively and would streamline the coordination of the many judges and arbitrators working on the resolution of disputes. The opinions of the Industrial Court should be published and made readily available to the public.
- Move rapidly to place more judges on the Industrial Court to promote timely case resolution and to prevent employers from abusing the Court's backlog. Training resources can also be allocated for judges for their roles in an independent judicial system. Judges can be hired on a permanent basis and not on a temporary or contract basis.
 - Take immediate steps to adequately fund and staff the CMAC. A case management system that would efficiently allocate cases to the commissioners and allow workers with grievances ready and easy access to the proper forms would decrease systemic delays. The government can also provide a budget for the CMAC to extend outreach to both employers and unions, emphasizing its ability to improve the relationship between employers and employees.
 - Promote successful implementation of reforms by adequately funding judicial and enforcement systems. This means increasing the number of labor inspectors, and increasing training resources for police and inspectors related to violations of freedom of association, the right to organize and bargain collectively, and the elimination of discrimination, child labor, and forced labor.
 - Amend existing laws and regulations that govern penalties for non-compliance, ensuring that financial and/or penal sanctions are sufficient to serve as deterrents to offending employers.

- In addition to increasing civic education, the Swaziland government can add worker rights and international labor standards to the curriculum of the public education system, thereby sensitizing Swaziland's future citizens to their rights.

Elimination of Discrimination

- To ensure that women have equal access to all employment opportunities, the government can repeal all sections of the Employment Act that specifically prevent women from performing certain kinds of work.
- The dualistic nature of Swaziland's legal system complicates the issue of women's rights. Since unwritten law and custom govern traditional marriage, women's rights often are unclear and change according to where and by whom they are interpreted. Couples often marry in both civil and traditional ceremonies, creating problems in determining which set of rules apply to the marriage and to subsequent questions of child custody and inheritance in the event of divorce or death.

Accordingly, to help end discrimination against women workers, the government can address and clarify the rights of women and their status under law, including the adoption of laws to classify women's standing as adults. While some of these issues have been addressed in the new constitution, the government needs to take steps to ensure that the new measures are implemented and enforced to the benefit of women in Swaziland.

- The government can amend the Employment Act to include protections for people living and working with HIV and AIDS. Workers who are HIV-positive should be legally protected from intimidation, stigmatization, and dismissal, and should be provided with medical care and leave.

The government can amend the Employment Act to include penalties for employers who wrongly dismiss or discriminate in other ways against workers living with HIV and AIDS, or who conduct involuntary testing. The government can also work with donor countries to obtain resources for medications that help prevent the transmission of AIDS from mother to child. It can also set policies that encourage pharmaceutical companies to provide affordable drugs to the infected population, and put more resources toward ensuring that mechanisms are in place for adequate treatment and care. The government can work with donors to provide assistance in this endeavor.

- The government can amend the Employment Act to include provisions prohibiting sexual harassment of any kind in the workplace. These provisions can require employers to train managers, supervisors, and workers about sexual harassment and how to address it.
- The government can put policies and laws in place to protect women from physical violence and rape in the workplace, in communities and at home.

Elimination of Child Labor

- The government, working with interested members of civil society, can conduct a national survey on child labor to understand the extent, nature, and causes of child labor within the country and to determine to what extent the HIV and AIDS pandemic is forcing children into the workplace. The government can then follow up by fully funding a plan to remedy the situation.
- As the potential for children to enter the formal sector increases, the government can train labor inspectors to identify the presence of child labor.

- The government can take affirmative steps to enact legislation and allocate funds to provide free and compulsory education to all the children of Swaziland through the age of 15.
- The government can take affirmative steps to establish a system of social security so that children who have lost their caregiver will not be forced to drop out of school and enter the workforce.

Elimination of Forced Labor

- The government can take the necessary steps to amend the Employment Act to ensure that all workers can freely choose whether or not to work overtime. The law should protect those who choose not to work additional hours. Employers should take action to ensure that workers understand that declining to work extra hours will not affect the status of future employment. When workers put in extra hours, that overtime should be compensated at time-and-a-half in accordance with international standards. Employers who violate this standard should be subject to penalties that serve as deterrents, such as adequate fines and/or imprisonment.
- The government can abide by the order of the Court of Appeals abolishing the 1998 Administrative Order making tribute labor compulsory. Swazi citizens should be free to choose whether to participate in working for the king and the chiefs, without fear of retribution or penalties.

Finally, the Swaziland government can consider adopting diverse development strategies, in consultation with trade unions and civil society organizations, in order to avoid complete reliance upon foreign direct investment and an export-oriented economy, a strategy that leaves the country completely vulnerable to the fluctuations of activity in the global economy.

The Role of Swazi Workers

Swaziland's workers will play a crucial role in promoting the growth of freedom of association, the right to organize and bargain collectively, and the elimination of discrimination, child labor, and forced labor. They are poised to take advantage of the opportunities to improve their conditions even in this time of crisis when their very survival is threatened. As Swazi workers decide upon the specific strategies and tactics by which they will defend and expand their rights, they have the support of worker and human rights movements throughout the world. Some union strategies may include the following:

- Continue to pressure the government to embrace fully, in law and practice, its existing international commitments to ILO core labor standards.
- Continue to recruit new members to build union strength, to become self-sufficient, and to better represent their membership.
- Continue to develop internal union capacity for leadership development, transparent administration, strategic planning, internal democracy, and advocacy.
- Work with other civil society organizations to raise public awareness and educate workers about their rights.
- Work with civil society organizations to promote the inclusion of worker rights in civic education curriculum for Swazi schools.
- Strongly advocate, in cooperation with like-minded civil society organizations, diverse development strategies in order to avoid complete reliance upon foreign direct investment and an export-oriented economy, a

strategy which leaves Swaziland completely vulnerable to the fluctuations of activity in the global economy.

- Encourage media representatives to inform the public about the unions' advocacy agenda and to build public support and increased respect for core labor standards.
- Increase the ability of union leaders to advocate effectively for the needs of women workers by reaching out to them in numerous ways. For example, unions can have gender coordinators who specialize in the issues women confront in the workplace, and facilitate the establishment of women's committees and networks that interact with members and work with leaders and legal specialists on women members' issues that need to be addressed in policy, outreach, and/or advocacy. Unions can also make a special effort to educate women members on their rights, and to encourage policymakers and employers to respect women as citizens and workers of equal status to their male counterparts. Further, unions can encourage women members to become union leaders and participate fully in union life.
- Work with NGOs focused on women's rights to build public awareness of their rights as workers and how those rights are compromised in the workplace, and work with such NGOs on advocacy campaigns around women workers' rights. As women workers are the majority of workers in the garment sector, one of the sectors where worker rights are most systematically violated, special attention can be given to building women's leadership to address problems in this sector. In addition, unions can work to educate all union members, regardless of gender, about women workers' rights, including their right to equal pay for work of equal value, their right to work in a climate free of sexual harassment, and other gender-related issues.



- To build their strength, to halt the trend of informalization of workers, and to support workers who truly are seasonal or part-time workers, the unions can:
 - Assess the extent to which this practice is occurring in Swaziland.
 - Advocate amending labor laws to outlaw the employer practice of categorizing full-time workers as casual or informal workers to avoid paying benefits, prevent the formation of unions, or to break existing ones.
 - Publicize this practice and its impact on workers in the media wherever possible.
 - Call for bringing informal and part-time workers into the regulatory framework, thereby protecting

these workers and eliminating the motivation for employers to abuse them.

- Cooperate with organizations that represent informal workers and help them defend their rights, or where such organizations do not exist, recruit these workers into the union and represent their interests.
- To increase their ability to advocate effectively for the needs of workers living with HIV and AIDS, the unions can cooperate with NGOs that work with people with HIV and AIDS to provide counseling services to workers who are HIV-positive, and to begin to build a coalition of support for advocacy for their rights. Unions can also encourage workers to be tested, and work to ensure that workplace policies address issues of harassment, stigma, and discrimination based on HIV status.
- Work with the legal community and the CMAC to educate commissioners about effective methods and strategies for dispute resolution.
- Continue to explore serious steps toward restructuring to face the challenges of globalization.
- Finally, Swazi unions, working together with employers and other civil society organizations, can continue to pressure the government for democratic reform to expand worker, human, economic, political, and social rights in Swaziland.

The Role of the United States and the International Community

U.S. Role

The AGOA trade agreement calls on participating governments to make continual progress in their protection of worker rights. The U.S. government can promote freedom of association, the right to organize and bargain collectively, and the elimination of discrimination, child labor, and forced labor by ensuring that in exchange for receiving trade benefits under AGOA, the Swaziland government is adhering to AGOA's requirements for continual improvement in ensuring worker rights protections.

Although the overall and long-term benefits of AGOA are debatable, now that the act has generated new industry and jobs, Swazi unions assert that the implemented trade benefits should remain in force. Specifically, the unions recommend that the U.S. government consider extending the rules of origin exemption, without which, they argue, the majority of multinational companies located in Swaziland will have a significant motivation to leave the country, an action which would be devastating to Swazi workers and their families. Other observers argue that without the rule of origin exception, multinational companies will have more incentive to invest in textile production; however, Swazi unions believe that this incentive is not greater than the appeal of cheaper production in other countries.

The U.S. government can also support Swaziland's efforts to improve compliance by calling for fully enforceable core labor standards in the SACU FTA and future bilateral trade pacts with other countries. This recommendation is based on the recognition that the U.S. cannot support growth and stability in one country by negotiating weaker agreements with another.

In addition, the U.S. government can work with existing international organizations that promote worker rights, such as the ILO, to engage Swaziland in sustained dialogue on the implementation of needed changes.

Perhaps the U.S. can most effectively promote improved respect for worker rights in Swaziland through the leadership of example. This means that the U.S. should make every effort to identify its own laws and practices that are not in compliance with core labor principles and take quick and effective corrective action. If the U.S. harmonizes its policy with practice, and begins to more consistently pursue economic development through democratic development, American policymakers can better demonstrate that the U.S. is serious about human rights to the Swazi government, other national governments, and the U.S.-based multinational companies that employ workers around the world.

IFI Role

International financial institutions (IFIs) also play a leading role in development. Their lending policies have a critical impact on social safety nets and democratic development, and have often been criticized by the human and worker rights communities for sacrificing measures that protect worker rights to short-term expediency. However, they can also live up to their full international commitments, and support the commitment of their member states, by ensuring that their policies in Swaziland do not prejudice the government's ability to fully respect and enforce worker rights in Swaziland, or to respond to the urgent crises it faces. As IFIs develop lending plans, they should engage in good-faith consultations with trade unions as full social partners, and address the concerns they raise before setting country policy.

In February 2006 the World Bank's executive directors adopted new social and environmental performance standards for the Bank's private sector lending arm, the International Finance Corporation (IFC). Now, IFC clients will be required to respect ILO core labor standards, along with health and safety standards, protection for contract workers, and a policy for managing reductions in employment. The new standards went into effect May 1, 2006.²

The IFC decision followed extensive consultation with the ICFTU over a period of two years. ICFTU General Secretary Guy Ryder hailed the decision, saying: "Thousands of workers in IFC-financed projects stand to benefit from this decision, which we believe should be a precedent for international lending in both the private and public sectors."³ The ICFTU has offered to work with the IFC to implement the new standards.

Role of the International Community of Nations

Countries can also work within their bilateral relationship with Swaziland to ensure that their political and/or economic engagement supports the development of improved compliance with core labor standards. At the very least, the policies of other ILO member states should in no way interfere with or put obstacles before the Swaziland government in meeting this goal. This means, in particular, that economic development should not be the exclusive focus of the global community, nor should it be promoted at the expense of the development of civil society, democratic processes, and democratic institutions.

The donor community can be helpful in many areas by consulting with trade unions as social partners to help direct their assistance resources toward areas of acute need, such as:

- strengthening Swaziland's enforcement system, including the labor inspection system,
- building union and NGO capacity for outreach, advocacy, and recruitment,
- providing training for police and judges,
- developing assistance programs that facilitate keeping children in school,
- assisting with the incorporation of civic education (including worker rights) into school curricula,
- developing programs that combat discrimination against working women or workers with HIV and AIDS,
- anti-trafficking programs,
- women's leadership programs, and
- rule-of-law programs.

Most importantly, the U.S. and the international community must continue to call for the development of democratic institutions and processes. Until King Mswati releases ultimate authority to the people of Swaziland, full political, economic, labor, and social rights for Swazi workers and citizens will be unattainable.

Role of Employers, Multinational Corporations, Buyers, and Retailers

Both Swazi employers and multinational companies have a vested interest in improving political and economic stability in Swaziland. Ignoring the desperate situation of workers in Swaziland will not build local markets or contribute to stabilizing a region ravaged by HIV and AIDS.

Swazi employers, both to maintain their own viability and to continue to attract foreign investment, need to do their part to revitalize the economy and contribute to the development of a political climate with rules of fair play. This



includes allowing workers a voice in conditions that affect their daily lives, thereby giving them a stake in the system and the health of the enterprises in which they work.

As a first step, employers can ensure that they are respecting existing laws that protect worker rights. They can pay workers the wages they are due, provide safe and healthy working conditions, and recognize de facto full-time workers as such, with all the commensurate benefits. They can negotiate and enforce collective contracts in good faith with union representatives, refuse to harass or discriminate against union members or leaders, and accept the formation of independent unions in their enterprises. They can recognize the full rights of working women and refuse to discriminate against them. They can also cease discrimination against workers who are HIV-positive or have AIDS.

In addition, Swaziland-based employers can continue to embrace their role as community leaders by working together with local government officials, trade unions, civil society groups, and donor groups to develop a strategy for dealing with the multiple problems generated by the HIV and AIDS epidemic. Finally, Swazi employers, working together with unions, can continue to support democratic reform of the government and increased respect for worker rights. In so doing they will support the growth of a climate that is more likely to provide a stable base for their business and prospects for expansion in the long term.

Multinational employers also have a tremendous opportunity—and responsibility—to respect freedom of association and increased respect for worker rights in Swaziland. Their presence in any country carries with it considerable influence and impact. Their choices about whether or not to respect worker rights, or to squarely face the regional problem of HIV and AIDS, will have a visible impact on the political stability of Swaziland and the continent on which it resides, as well as on whether the country faces economic disintegration or vibrant renewal.

Therefore, in their own factories, other enterprises, and among subcontractors, companies should permit their employees to exercise all of their existing rights, with or without the presence of a legally recognized union. Companies should allow their employees to exercise these and other worker rights without interference: the right to hold workers' meetings, elect representatives, and to negotiate and democratically ratify collective bargaining agreements covering wages, hours, and working conditions as provided for under labor law, and as stipulated in many codes of conduct. Companies should also provide space at the worksite where workers—regardless of gender or national origin—can meet and discuss their conditions, and meet with their

representatives, with no interference or observation by management, and no fear of retaliation.

Further, multinational buyers and retailers, especially U.S.-based companies with codes of conduct that include freedom of association provisions, have a special obligation to ensure that these provisions are implemented and respected in their enterprises and among their subcontractors. In so doing, they would also be playing a positive role in promoting respect for democratic practices in the countries in which they operate. Employers can also use their influence with the government, through their own organizations, to support improved respect for freedom of association and other core labor standards in law and practice in Swaziland, and to respect their counterpart organizations, the unions, as full social partners before the government. In particular, multinational buyers could require their suppliers to respect worker rights, and increase wages.

However, as a result of the MFA phase-out, buyers and retailers are currently forcing their suppliers to produce for even less cost, prompting multinational employers to shift their production to factories in other parts of the world. Buyers and retailers who are now dictating the terms of production under the global economy should take responsibility for the layoffs, unemployment, and harsh conditions that their policies inflict on local economies. In particular, multinational buyers and retailers should not be setting the lowest of ethical standards at the policy level. Rather, foreign employers, buyers, and retailers in Swaziland can recognize their role in the community and as global corporate citizens by considering the impact on Swazi workers of factory closures, working with unions to analyze how to make continued operations feasible, and, where they must close down, providing fair severance packages and assistance, retraining, and employment services to laid off workers.

Role of the International Trade Union Movement

The international labor movement has a significant role to play in supporting Swazi workers' efforts to secure freedom of association and promote improved compliance with core labor standards in Swaziland. As unions work toward building global solidarity, they can assist Swaziland's workers in numerous ways:

- Build strategic alliances with unions in Swaziland, through the ICFTU/AFRO, the Organization of African Trade Union Unity (OATUU), the Southern African Trade Union Coordinating Council (SAT-UCC), the global union federations, and national confederations in other countries, placing international support behind Swazi unions' efforts to win their members' rights.
- Provide educational and technical resources for needs identified by Swazi unions for additional expertise or assistance, e.g., increasing public awareness of worker rights and the union's role and building capacity to advocate for legal reform and improved enforcement, and to increase membership. Programs should focus on building permanent capacity and sustainability, including the ability to function with union dues without donor or foreign assistance.
- Promote an environment that encourages the two federations in Swaziland to continue cooperating and support any initiative that will lead the federations toward unification.
- Support efforts to promote civic education in schools, with worker rights as a component of the curriculum.
- Assist Swaziland's unions in extending outreach to rights-based organizations and advocates to build a greater awareness of worker rights as human rights, with the goal of building coalitions to strengthen support for reform.
- Encourage multinational buyers and retailers sourcing in Swaziland to live up to their codes of conduct, and where company codes do not meet core labor standards, to exceed them. Also, the international labor community can advocate for the buyers and retailers to maintain their sourcing commitments not only in Swaziland, but also in Africa as a whole.

Finally, because of the special trade relationships between the U.S. and Swaziland, the trade union movements from both countries could reinforce each other's efforts to improve respect for worker rights by maintaining close ties and collaborating to press their governments for action on achieving shared goals of respect and effective enforcement of the ILO's fundamental principles and rights at work. Trade union movements in other donor countries that have a special trade relationship with Swaziland could take similar action.

Role of the Human Rights and NGO Community

In countries where worker rights are not highly respected, a coalition of unions, human rights organizations, academics, legal experts, and international NGOs is often needed to bring about desired change. Hence, the Swazi human rights community can help promote increased respect for human and worker rights—including the rights of women, children, and victims of HIV and AIDS—by taking the following steps:

- Build relationships with national and local unions, learning more about worker rights and their connection to human rights.
- Work with unions and the academic community to develop civic education programs for use in Swaziland's schools. These programs would include components on human rights and worker rights as human rights.
- Participate in coalitions of organizations and individuals that support human and worker rights and cooperate in advocacy campaigns for legal reform.
- Help unions publicize worker rights violations, and be part of a coalition that holds local and national governments accountable for enforcing worker rights.
- Work with larger coalitions that seek solutions to problems of economic development within a larger context of respect for human and worker rights.
- Work with women's groups within trade unions to share information, training resources, and support to increase respect for women's rights in the workplace.
- Work with unions, children's organizations, health organizations, academics, business leaders, and government officials to identify the scope and source of child labor in Swaziland and to take remedial action. Support unions' efforts to secure legal reform and improved enforcement of education and child labor laws to keep children in school. Support efforts to establish a social security system to allow the increasing number of children who have become "heads of households" to complete their primary and secondary education.



- Support multi-partner efforts to end discrimination against HIV and AIDS victims and ensure that they can maintain their role as breadwinners as they fight the disease.

Looking Toward Tomorrow

Swaziland today is a full global economic partner, with all the privileges and responsibility that status conveys. The country faces extremely difficult challenges, both economic and political, even without acknowledging that it is immersed in a global health crisis. Swaziland has a unique opportunity to embrace a future as a

country that sets the standard for regional and global citizenship in resolving these crises; to establish a democratic society with the rule of law, to respect its workers' rights, and to build global partnership and consensus around a health crisis that otherwise threatens to eliminate the one essential element for any country's continued existence: its own people.

The crises faced by Swaziland go beyond the bounds of national borders, and require partnership beyond those borders as well. Swazi government, donor countries and other African countries, multinational employers and buyers, international worker and human rights organizations, Swazi unions, employers, civil society organizations, and academia must cooperate to develop practical solutions to the problems posed by the prevalence of HIV and AIDS in Swaziland and on the continent of Africa. The identification and implementation of these solutions will require resources, resolve, and speed, and should have a level of priority exceeding that of any post-MFA exodus from the country. Swaziland's workers, its children, and its future do not have time to wait for an additional decade of global hand wringing.

Swaziland has a unique opportunity to embrace a future as a country that sets the standard for regional and global citizenship.

The Swazi government must make real democratic reforms to ensure that the people of Swaziland are governed, and not ruled, as citizens with full and equal rights, with the ability to make economic, political and social decisions that affect their lives. The crisis of democracy in Swaziland must be addressed in the near term.

The formation of committed partnerships to respond to the call of Swaziland's workers is as essential to the well-being of the global community as it is to Swaziland itself. Respect for human and worker rights is the first step on the path toward peace, democracy, and a thriving economy for people around the world. The commitments of Swaziland's government to its people, and the aspirations of the international community to global citizenship, are being tested in Swaziland. For Swaziland's workers, for all of us, their call must be answered.

Endnotes

- 1 International Confederation of Free Trade Unions/African Regional Organization. A Survey of Human and Trade Union Rights in Swaziland, August 2005, p. 17.
- 2 ICFTU, "Action by World Bank's IFC on Workers' Rights a Major Step Forward," ICFTU Communique, February 22, 2006, pp. 1-2, and Peter Bakvis, "New IFC Labour Standard Adopted by World Bank Directors," Global Unions Forum on IFIs, February 21, 2006.
- 3 ICFTU, "Action by World Bank's IFC on Workers' Rights a Major Step Forward," ICFTU Communique, February 22, 2006, p. 1. See IFC description of labor standards at: www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS2/FILE/PS2_LaborWorkingConditions.pdf

GLOSSARY

1996 IRA	Industrial Relations Act of 1996	GDP	Gross Domestic Product
2000 IRA	Industrial Relations Act of 2000	GNI	Gross National Income
AFL-CIO	American Federation of Labor-Congress of Industrial Organizations	GNP	Gross National Product
AGOA	African Growth and Opportunity Act	GSP	Generalized System of Preferences
AGOA III	AGOA Acceleration Act of 2004	ICCPR	International Covenant on Civil and Political Rights
ANC	African National Congress	ICESCR	International Covenant on Economic, Social, and Cultural Rights
ARVs	Antiretrovirals	ICFTU	International Confederation of Free Trade Unions
ATC	Agreement on Textiles and Clothing	IFC	International Finance Corporation
Banjul Charter	African Charter on Human and Peoples' Rights	IFIs	International financial institutions (a general term describing various international institutions, such as the World Bank and the International Monetary Fund, that provide loans to developing countries).
CBA	Collective bargaining agreement	ILO	International Labor Organization
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations	INM	Imbokodvo (Grindstone) National Movement
CEDAW	U.N. Convention on the Elimination of All Forms of Discrimination Against Women	ITGLWF	International Textile, Garment & Leather Workers' Federation
CERD	International Convention on the Elimination of all Forms of Racial Discrimination	MFA	Multi-Fiber Arrangement
CMAC	Conciliation, Mediation, and Arbitration Commission	NERCHA	National Emergency Response Council on HIV and AIDS
COSATU	Congress of South African Trade Unions	NNLC	Ngwane National Liberatory Congress
CRC	U.N. Convention on the Rights of the Child	OATUU	Organization of African Trade Union Unity
FSE	Federation of Swaziland Employers		
GATT	General Agreement on Tariffs and Trade		



Provident Fund	Swaziland National Provident Fund	STEA	Swaziland Textile Exporters Association
PUDEMO	People’s United Democratic Movement	UNAIDS	Joint United Nations Program on HIV/AIDS
RSSC	Royal Swaziland Sugar Corporation	UNCAT	U.N. Convention against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment
SACU	Southern African Customs Union	WLSA	Women and Law in Southern Africa
SADC	Southern African Development Community	WRC	Worker Rights Consortium
SATUCC	Southern African Trade Union Coordinating Council		
SBCA	Swaziland Business Coalition Against AIDS		
SCAWU	Swaziland Commercial Workers Union		
SCCCO	Swaziland Coalition of Concerned Civic Organizations		
SFL	Swaziland Federation of Labor		
SFTU	Swaziland Federation of Trade Unions		
SIPA	Swaziland Investment Promotion Authority		
SMAWU	Swaziland Manufacturing and Allied Workers Union		
SNA	Swaziland Nurses Association		
SNAC	Swaziland National Association of Civil Servants		
SNAT	Swaziland National Association of Teachers		
Solidarity Center	American Center for International Labor Solidarity		
SPRAWU	Swaziland Processing and Refining Allied Workers Union		

AREA MAP



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