

**PUBLIC COMMENT TO THE AFRICAN GROWTH AND OPPORTUNITY ACT
IMPLEMENTATION SUBCOMMITTEE OF THE OFFICE OF THE UNITED STATES TRADE
REPRESENTATIVE**

**CONCERNING THE FAILURE OF THE
GOVERNMENT OF ESWATINI
TO COMPLY WITH SECTION 104 OF THE AFRICAN GROWTH AND OPPORTUNITY ACT**

Submitted by:

**THE AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)**

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I: Introduction

In 2015, Eswatini was declared ineligible for trade benefits under the African Growth and Opportunity Act (AGOA) because the Government of Eswatini was not making continual progress towards establishing internationally recognized worker rights, as required under 19 USC § 3703(1)(F). In December 2017, the US Government reinstated benefits on the condition that the Government of Eswatini refrain from harassing independent trade unions and enforce labor laws. Unfortunately, since that time, the labor rights situation has deteriorated. The AFL-CIO urges the US Government to engage with the Government of Eswatini to ensure workers can exercise their fundamental rights free from violence, intimidation and interference. If the Government of Eswatini does not make clear progress, the country should be declared ineligible for AGOA benefits.

This document contains updated information obtained by the AFL-CIO, and should be read as a supplement to filings in 2013, 2014 and 2017. The AFL-CIO also submitted GSP petitions on the labor rights situation in Eswatini in 1999, 2002, and 2005.

The Government of Eswatini has not made continual progress towards establishing internationally recognized worker rights, including the right of association and the right to organize and bargain collectively, discussed in Section II, and the right to acceptable conditions of work with respect to minimum wages and occupational safety and health, discussed in Section III. The legal reforms enacted to secure reinstatement of AGOA benefits only partially address the barriers that prevent workers for exercising their rights. The Government of Eswatini continues to interfere with legitimate trade union activities and to target labor activists for repression and violence. This does not reflect continual progress towards establishing internationally recognized worker rights.

II: The Government of Eswatini Has Not Made Continual Progress Towards Protecting the Right of Association and the Right to Organize and Bargain Collectively

The Government of Eswatini agreed to recognize independent unions and union federations during the process to secure reinstatement of AGOA benefits, including the Trade Union Congress of Swaziland (TUCOSWA) and Amalgamated Trade Union of Swaziland (ATUSWA). However, independent union leaders and activists continue to report violence and intimidation by government officials, and impunity for employers that engage in anti-union retaliation. This does not constitute progress towards establishing the right to association and the right to organize and bargain collectively. As the International Labor Organization has observed, “a genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty.”¹

In September 2018, TUCOSWA planned protests in four cities. On September 18, police in Manzini fired rubber bullets, tear gas and water cannons at workers, and assaulted workers with sjamboks and batons. That evening, the Police Commissioner declared all the protests illegal, despite the union securing prior approval through the cumbersome process laid out in the Public Order Act. The following morning TUCOSWA officials were informed they were banned from

¹ Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the

any further demonstrations, and police violently disbanded the protests. Workers in Nhlanguano report being tear-gassed and shot with rubber bullets.

A March 2019 report from the ILO Committee on Freedom of Association (CFA) found the September crackdown was “the latest of a series of violent interferences by security forces in trade union activities, including an attack by the police of a peaceful gathering organized by ATUSWA outside a textile factory in Nhlanguano on 30 August 2018, the arrest of Mr Maxwell Myeni, Secretary of TUCOSWA and Lavumisa Local Shop Stewards Council member of the SNAT on 26 August 2018 and his detention for almost a month after being picked up and illegally charged under the Public Order Act, and earlier in August the shooting by the police at a peaceful meeting of members of the SNAT at the trade union centre.”² The ILO CFA concluded, “acts of intimidation and physical violence against trade unionists constitute a grave violation of the principles of freedom of association and the failure to protect against such acts amounts to a de facto impunity, which can only reinforce a climate of fear and uncertainty highly detrimental to the exercise of trade union rights.”³

In our 2017 petition we highlighted the violent assault against Samkelisiwe Gladys Matsebula, a worker at Montigny Investment, an export-oriented timber company. There has still been no justice in her case, and workers continue to report misconduct and abuse by company officials, with no response from the government. The Eswatini Economic Improvement Workers Union (SEIWU), a yellow union organized under the employer-aligned FESWATU federation, has an arrangement with Montigny that all workers are required to become SEIWU members, in violation of workers’ right to freely join unions of their own choosing.

When ATUSWA began organizing to form an independent union, the company sued ATUSWA for engaging in unlawful recruiting practices by holding meetings with prospective members, and won restraining orders preventing ATUSWA union from conducting organizing activities at or near company property. On May 31, 2019, company security and individuals associated with the yellow union assaulted ATUSWA officials and members. ATUSWA officials reported the attack to police, who did not respond.

Another case involving ATUSWA and one of its affiliate unions, the Eswatini Manufacturing and Allied Union (SMAWU), is illustrative of the Government’s continued interference with trade union activities. Rather than play a neutral role and allow workers to elect their own leaders in accordance with their union constitution, the Ministry of Labour and Social Security issued directives favoring one group over another, and has communicated to employers that its preferred group constitutes the “legitimate leadership” of the SMAWU. These actions have perpetuated a conflict between groups of workers, which led to a series of lengthy lawsuits and allowed employers to evade bargaining due to the lack of a clear worker representative.

Four years after SMAWU’s union leadership voted to join ATUSWA in 2014, the Industrial Court of Appeal overturned a lower court decision confirming the amalgamation of the SMAWU

² International Labor Organization, Effect given to the recommendations of the committee and the Governing Body - Report No 388, Case No 2949 (March 2019) *available at* https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3996562

³ *Id*

with other unions to form the ATUSWA on October 24, 2018. Eswatini's Commissioner of Labour issued a public letter that criticized ATUSWA and questioned whether SWAMU had actually amalgamated to ATUSWA. After ATUSWA elections in December 2018, the Commissioner sent communications to employers questioning the legitimacy of the union's leadership and the Ministry of Labour and Social Security issued directives that sought to dictate the administration of the union, including ignoring decisions approved by the membership. This is clear interference by the government in internal trade union affairs.

Legal appeals from the union to the Industrial Court to compel employers to recognize the union have failed to advance or provide remedy. The union appealed to the Minister of Labour and Social Security to intervene but the Minister failed to take action on the complaints. Employers refuse to recognize ATUSWA and ignore arbitration awards from the Conciliation, Mediation and Arbitration Commission in favor of ATUSWA, without consequence.

Leaders from the Swaziland National Association of Teachers (SNAT) have also been targets of retaliation and harassment. In addition to the August 2018 cases considered by the ILO CFA above, President Mbongwa Dlamini is indefinitely suspended from his job in what appears to be retaliation for union activities. Mr. Dlamini was elected in September 2018. In January 2019 he was written up for misconduct, in part for actions allegedly committed in July 2016, almost three years earlier, and in part for absences to attend union activities that he had cleared in advance with school management. On May 21, 2019, President Dlamini was indefinitely suspended and banned from the school premises. As of this writing, no disciplinary hearings have been scheduled, and the principal who approved his time off has also been suspended.

Police arrested SNAT Lubombo Deputy Chairperson Mcolisi Ngcamphalala and Branch Secretary Njabulo Dlamini in January 2019 for jaywalking when they were on their way to attend a general meeting of the union in the run-up to a strike action. The Magistrate Court has continuously postponed the case. Secretary Dlamini has since passed away. Deputy Chairperson Ngcamphalala has been in and out of court several times with no resolution.

The Government refused to allow the Secretary General of the Swaziland Nurses Association to represent members of the union during negotiations with the government. The Government terminated him before negotiations began, and then claimed that only current employees could negotiate on behalf of the union. The union appealed the decision in court, but the court affirmed the government's position. This is in violation of the right of the workers to elect their own representatives in full freedom and to organize their administration and activities.

Maureen Nkambule, Secretary General of the Swaziland Electricity Supply Maintenance and Allied Workers Union (SESMAWU), was sued in her individual capacity by the Eswatini Electricity Company after making statements to the media regarding working conditions at the company. The state-owned business is alleging breach of confidentiality and riotous behavior.

The Government of Eswatini has a history of suppressing worker activists, and these latest cases of violence, harassment and intimidation suggest that the Government is backsliding on its commitments to establish the internationally recognized right to association and right to organize and bargain collectively.

III. The Government of Eswatini Has Not Made Continual Progress Towards Establishing Acceptable Conditions of Work with Respect to Minimum Wages and Occupational Safety and Health

As discussed in previous filings, current laws on minimum wage and occupational safety and health do not fully establish the right to acceptable conditions of work, and the protections that do exist are not meaningfully enforced. This does not constitute continual progress towards establishing internationally recognized worker rights.

Eswatini's Occupational Safety and Health (OSH) Act stipulates that employees elect representatives to OSH Committees that record accidents and occupational hazards. Workers report the Government does not enforce this requirement, and instead allows employers to select workers to serve on the OSH Committees. As a result, accidents and hazards often go unreported.

Eswatini has a tripartite Wage Council to set minimum wages in the garment industry. In 2018, the Council agreed to an 8% increase in 2018 and a further 7% increase in 2019. However, workers report that the vast majority of factories have not implemented the 2019 wage increase. In fact, only six factories where ATUSWA negotiated an increase beyond the minimum wage have actually raised wages. The Government of Eswatini has not taken steps to enforce the increase.

The failure to enforce laws with respect to minimum wages and occupational safety and health is not consistent with making continual progress towards the establishment of the internationally recognized right to acceptable conditions of work.

IV: Conclusion

The Government of Eswatini is not making made continual progress towards establishing internationally recognized worker rights. Unless the country takes concrete, tangible steps to improve, Eswatini should be declared ineligible from benefits under AGOA. We urge the administration to engage with the Government of Eswatini to prevent further backsliding and to ensure workers can exercise their rights.