

## Section 4. When Labour Laws Restrict Labour



## **Chapter 8. Abuse of the labour court to suppress Eswatini public sector workers struggles**

The government of eSwatini (formerly Swaziland) is viscerally repressive, a course that has aided its survival for decades as an undemocratic regime. State violence is the weapon of choice they employ to suppress workers and to prevent them from freely organising and mobilising for their human and trade union rights.

In carrying out a comprehensive programme to repress workers, the government requires more than just the armed forces but often ropes in other parts of the state. In the case of the eSwatini government, to complement their armed repression of workers, they rely on a tightly controlled media space as well as on a highly manipulated industrial court system. In the midst of an economic downturn that ensued from 2016 and that has worsened since the Covid-19 period, wherein austerity measures have been the most favoured response, public service workers have engaged in mass protests in order to protect their jobs, wages and generally their workplace rights from the government. Repression from the state has been the consistent response.

The tight control of the media produces an outcome whereby the media effectively functions to whitewash the actions of the government. The eSwatini electronic and print media spaces have historically been dominated either by state media outlets or private media, who only survived by applying high levels of self-censorship. For instance, the dominant privately owned newspaper group, the Times of eSwatini group, and a small private television station (Channel Yemaswati), have both long toed the line and are constantly conducting self-censorship to the point that often the difference in reporting between the so-called privately owned independent media and state media is negligible.

The Industrial Court in eSwatini (particularly in instances where the government is either a litigant or respondent) functions on the other hand to endorse or to give a legal cover to state repressive actions. The court of industrial disputes has increasingly becoming a useful tool at the hands of the repressive regime to legitimise its decisions and those of its armed forces, in the process abandoning its role of a just and fair arbiter of industrial disputes. To achieve this outcome the government had long orchestrated a

strategy to tame the judicial officers by engaging them on an acting basis (short, fixed term contracts). Such an arrangement goes a long way in ensuring that judicial officers are vulnerable and therefore easy to manipulate and control.

One of the most recent victims of the industrial court was the Swaziland Democratic Nurses Union (SWADNU) who, since 2020, have attempted to utilise the court to fight for better conditions at the workplace for nurses, including seeking a declaratory order that the government has been negligent for not adequately protecting health workers from the Covid-19 pandemic. They also sought a danger allowance for nurses and health workers in general with respect to the danger presented to nurses by the Covid-19 battle, and better equipment to enable nurses and health workers to better manage Covid-19 with patients (Eswatini Labour Insights 2021).

## **Court fails essential nurses**

All their efforts have yielded no fair hearing, let alone a decision from the court which is legislatively expected to give necessary priority to nurses' grievances. This is a right nurses should enjoy as a consequence of their being categorised as essential service who therefore cannot legally engage in strike action as a grievance-handling mechanism.

The Covid-19 challenges layered on top of challenges that can be traced back to around the 2016 financial year, the first year in which the eSwatini economy went into a technical recession and when austerity measures were implemented, causing the Public Service Unions (PSUs)<sup>1</sup> to intensify mass protests. The recession, as pointed out by the IMF (2019), was caused by the fact that from 2016 the country experienced drastically reduced income from the Southern African Customs Union (SACU)<sup>2</sup>, in the process causing increased public debt, drastic reduction in international reserves and a sluggish GDP growth. The Covid-19 pandemic and its negative economic effects from 2020 blew the already brewing crisis of a neoliberal, austerity focused and repressive government into the open.

1 National Public Service and Allied Workers Union (NAPSAWU), Swaziland Democratic Nurses Union (SWADNU), the Swaziland National Association of Teachers (SNAT) and Swaziland National Association of Government Accounts Personnel (SNAGAP).

2 SACU is a customs union created by Botswana, eSwatini, Lesotho, Namibia and South Africa in 1910. It facilitates the Common External Tariff, free movement of manufactured goods between SACU counties and distribution of customs and excise revenue collected by the union.

Austerity worsened in 2020 because the government took Covid-19 support loans from both the IMF (US\$130 million) and the World Bank (US\$45.2 million). These institutions attached the Fiscal Adjustment Roadmap (FAR) as a condition for accessing their loan facilities. Through the FAR the government (amongst others) pledged to consolidate or save 6.5% expenditure from the wage bill over the next three financial years.

These austerity measures have incensed and agitated PSUs and strengthened their resolve to fight harder for their benefits at work but also have elicited the worst violent response from the eSwatini state, with sufficient cover from the industrial court. Despite the hardships, PSUs have stood firm in demanding that the government ought to conduct a review of their salaries. The review of salaries in 2020 had been part of a collective bargaining agreement signed between the PSUs and the government in the 2016/17 financial year wherein parties had agreed to conduct the next salary review exercise in 2020.

The government has so far flatly refused to honour the agreement citing tough economic conditions (Rikjernberg, 2021).

## Scores injured, global solidarity

To apply pressure on the government, the PSUs convened a protest on 20 October 2021 in Mbabane, the capital city of eSwatini. All legal steps, including acquiring permission from the city council, had been followed by the PSUs. However, on the eve of the protest, the Commissioner General of Police banned the protest, citing 'state security'.

On the day of the protest, police and other security agencies violently dispersed workers who had insisted on exercising their rights by coming out to protest despite the ban by the Police Commissioner General. They injured scores of workers and left at least one person dead on the day. International media showed images of the armed forces shooting occupants inside a bus they had stopped which was on its way to the protest in Mbabane.

In the short period after this protest, the eSwatini government has escalated their intimidation of PSUs by threatening to revoke their recognition agreements. In correspondence directed at PSUs (individually) in November 2021 (Tsabedze 2021), the government used the ongoing political unrest to accuse the trade union leaders of immersing themselves in national politics and not in any way pursuing workers interests. In a meeting convened on 3 December 2021 between the trade union NAPSAWU and the government, the government verbally communicated that they sought to revoke the

union's recognition agreement as a punishment for NAPSAWU fighting for its member's rights during this period where the state is desperate to maintain silence because the country is also in the throes of a civil unrest.

In the midst of all the repression, eSwatini workers enjoy strong solidarity from global trade union organisations. Organisations such as the Congress of South African Trade Unions (COSATU) and the South African Federation of Trade Unions (SAFTU) have both held campaigns in solidarity with eSwatini workers. Further, the Southern African Trade Union Coordinating Council (SATUCC), together with the International Trade Union Confederation (Africa Regional Office) have hosted online solidarity meetings and made strong statements in solidarity with eSwatini workers. More recently the ITUC (Brussels) launched a campaign to pressure the Commonwealth to suspend eSwatini for its violation of the Commonwealth charter.

Global union federations such as Education International (EI), Industri-All Global Union, the International Transport Federation (ITF) and the Public Services International, to name but a few, have also kept their solidarity machinery focused on eSwatini and have kept the spirit of eSwatini workers up.

As the year 2022 takes off, and as daggers are already drawn between the government and public sector workers on the issue of the salary review, there are expected battles in the courts and on the streets and, with the state having propensity to repress workers, solidarity shall be an important pressure point for workers to lean on.

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