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Brussels, 18 March 2021

### **UPR Session 39**

### **Allegation on Eswatini**

Dear High Commissioner for Human Rights,

Please find a submission from Education International (EI) the global federation of education unions, enjoying ECOSOC status.

The contact person on this complaint is Mrs Dominique Marlet who can be reached at Education International should any further information be required.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Edwards'.

David Edwards  
General Secretary

## UPR Session 39 Eswatini

### Labour Rights Violations in Education Sector

This submission from Education International, the global federation of teacher unions, focuses on the violation of rights of workers in the education sector, including the harassment of union leaders, collapse of meaningful collective bargaining and intimidation of striking workers.

#### UPR recommendation on freedom of association (cycle 1 and 2)

*“Fully respect the rights of all citizens to freedom of assembly and association, including by allowing labour, political and civil groups to assemble peacefully, free from Government interference in accordance with international human rights standards”*

1. Although the country has ratified the eight International Labour Organisation (ILO) fundamental conventions, Eswatini continues to violate workers' rights. The bases used in this allegation to establish the violation of rights of workers in the education sector are the Collective Bargaining Agreement (CBA) in force between the teacher union Swaziland National Association of Teachers (SNAT) and the Government, the Employment Act of 2000 and the Industrial Relations Act (IRA) of 2000.

#### The Right to Freedom of Expression and Association

2. The re-enacted Public Order Act (2017), based on its colonial predecessor, the 1963 Public Order Act, continues to create unlimited restrictions on the right of citizens in the country to effectively and meaningfully express their opinion.
3. The President of SNAT, Mbongwa Dlamini, was victimized by the employer just after he was voted President. He was charged with misconduct allegedly for his involvement in activities before he assumed the position and despite that his supervisor at Mhubhe High School had authorised his absence from school to attend to union activities.
4. Trade unions in the country know that they cannot utilise the national radio, newspapers and the television broadcasting platforms for spreading their messages, either for meetings, balloting exercises or (even worse) for strikes. The media platform is used by the government to communicate its position and unions are obliged to find alternative means to convey their message across. During strikes, for instance, the only position that gets communicated through the radio is the government position; which usually involves defensive government statements and anti-union broadcasts.
5. Just recently, the teacher union editor, Mcolisi Motsa, who was a regular columnist with the national mainstream newspaper, Times of Eswatini, SUNDAY, was deprived of that opportunity. The reason behind it was that he had penned an article which allegedly accused the TSC Chairperson of being unfaithful to teachers and highly corrupt. The article was not disrespectful or offensive, but the editorial committee of the newspaper saw it fit to remove the only possible voice of the union (if not all unions in the country as a whole) in the mainstream media.
6. The government, through the Ministry of Education and Training issues announcements that threaten and instill fear into teachers who are intending to partake in the protest action, thus undermining the right of workers to strike.
7. The GoE has a history of violence against workers and human rights activists, and in particular the police have a history of “carrying out unprovoked attacks on peaceful marchers.”



## Victimisation, Intimidation and Police Brutality

8. The government has never come out to condemn the violence and police brutality. There are no efforts to ensure that the identified police culprits face the consequences of their actions.
9. In 2015, the then SNAT General Secretary, Muzi Mhlanga, was heavily beaten by an armed group of police at the union's offices, during a mass protest action.
10. In August 2018, ahead of the 2018 national elections, the public service trade unions embarked on a lawful mass protest action to pressure government to meet their demand of 7.8 percent Cost of Living Adjustment (CoLA). The government responded by deploying police all over the country's cities in which the protest was due to take place. Clashes between the police and workers were reported in the media, and workers were admitted in hospitals as an outcome of the clashes. For example, a horrendous fight ensued at the SNAT Centre in Manzini when a senior police officer pulled out a gun at protesting workers and started shooting live bullets at them. In response, one of the workers, a member of SNAT wrestled the gun away from the police official as he tussled him to the ground, risking getting shot, but in the process another teacher, Willy Dlamini, was shot in the arm. Ultimately, the worker was arrested and charged with assault of a police official, with no charges whatsoever against the police officer. The matter was reported to the ILO as indicative of the continued incidents of police brutality and the denial of the right to strike of public and other workers in the country.
11. In September 2018, coinciding with the New York United Nations General Assembly, members of the SNAT had gone to deliver a petition to the United States Ambassador to Swaziland, complaining about the *extravagant* spending of the King and the Royal Family. Heavily armed police officers, led by the then National Commissioner of police, fired teargas canisters and rubber bullets on the demonstrating teachers, as a result the gathering was abruptly stopped.
12. On the 19 September 2018, the then SNAT Deputy Secretary General who is also the current SNAT Secretary General, Sikelela Dlamini, was arrested and kept at a police facility for leading a protest march that was organised by the Trade Union Congress of Swaziland (TUCOSWA). No charges were laid against him and he was released in the evening. The planned protest march could not continue as a result.
13. On the 12 October 2018, the SNAT was commemorating the World Teachers Day. Normally this day begins with a public sensitization march, a few hundreds of meters from the venue in which the event will be held. The Commissioner of Police stopped the SNAT from marching from the CBD of the Nhlanguano town to the sports ground. When the National Commissioner of Police representative was asked to elaborate on the reasons, he just said all public gatherings and processions were not permissible during that time. The teachers' march was violently suppressed.
14. On the 11 December 2018 the police also arrested two members of the SNAT who were going to attend a teachers' meeting that was to be held at the SNAT offices. Ridiculous charges of jay-walking were levelled against them. These were Mcolisi Ngcamphalala and Njabulo Dlamini (deceased). The said meeting could no-longer continue.
15. On 25 September 2019, the SNAT, alongside other workers' unions that organise in the public sector had called a mass petition delivery exercise, demanding a Cost of Living Adjustment. What was hailed as the most successful public gathering of workers turned into a very bad experience after the state police shot peaceful demonstrators with rubber bullets, throwing teargas canisters and beating them up in the process. A total of thirteen teachers got injured, with some being admitted in hospital for treatment. This dampened the activism spirit amongst the teachers.



16. On 2 October 2019, there was another follow-up mass public sensitisation march, similar to the one that had been held on 25 September. This was held in Manzini. Again the police opened fire, injuring about 17 teachers, excluding those workers from other Government departments. The police also shot an ordinary citizen. His index finger had to be removed.
17. In December 2019, members of SNAT alongside other concerned Swazis converged at Mbabane, intending to deliver a petition at the Cabinet offices demanding multi-party democracy. This started with a public sensitisation march. The march could not proceed because it was violently suppressed by the police, threatening to arrest anyone who was to continue with the march.
18. On 20 December 2019, members of the police service engaged on a house search exercise of some Swazis who were part of earlier mentioned petition delivery. The current SNAT Secretary General, Sikelela Dlamini, was amongst those against whom the search warrants were issued. Fortunately, they did not find him in the house. Leaders of political parties also had their houses thoroughly searched and their electronic equipment confiscated from them. This case is still pending in Court.

### The Right to Strike

19. Section 86 of the IRA spells out the process of a lawful strike; which includes a balloting exercise, and requesting the assistance of mediation institutions like the Conciliation, Mediation and Arbitration Commission (CMAC) to oversee the balloting exercise. Section 89 (1) of the IRA, 2000 (as amended) further guarantees the right to strike; but also allows the Minister of Labour & Social Security to interdict and refrain workers and/or their representative organisations from participating in strike action, as long there is satisfactory proof to the court that the said strike action disrupts or threatens national security and interest. In a number of instances, government has utilised this section to undermine the right to strike, especially for public service workers.
20. The government uses intimidation to scare teachers against exercising their right to strike. During the 2019 strike, the government introduced and effected spot check forms; and this was aimed at forcing the teachers to abandon the strike. The government used media platforms to scare teachers that it would apply no work-no pay against all teachers who participated in the strike. The government implemented the no work-no pay rule to kill the spirit of workers and to neutralise the impact of the strike.

### The Right to Collective Bargaining

21. The IRA of 2000 which establishes several platforms that seek to promote social dialogue, tripartism and bi-partism; as well as the Employment Act, No.5 of 1980, which also establishes the functioning, especially of the Labour Advisory Board (LAB). The existence of another institution, the National Steering Committee on Social Dialogue (NSCSD), creates overlap, on-going confusion and paralysis of functionality the two platforms. And just like the JNF, both the LAB and the NSCSD suffer from undue political interference, partiality and perceived state partiality.
22. The existing Collective Bargaining Agreement (CBA) for the education sector is negotiated in accordance with the IRA 1980 (amended in 2000; 2014), and is binding to all teachers, to the Ministry of Education and Training, to the Teacher Service Commission and the entire Government. However, there are discrepancies.
23. The Public Service General Orders (partly expressed in the CBA, Section 10.6) mentions that probation in the teaching service is two years, while the IRA mentions that it is only three months. The practice has always been the 2 years, which affects the rights of workers, curtails their professional development and deprives them of their entitlements, rights and benefits as confirmed permanent teachers.



24. Section 2.11 of the CBA guarantees union access to information; be it professional employee information; notifications of job postings; agendas and minutes of all meetings and all relevant attachments; other information that may be useful in negotiations and grievance-handling processes; as well as other information that might be useful for purposes of effectively conducting official union business. The Public Services Act (2018), enacted to 'regulate' the behaviour of public service workers, effectively takes away the inalienable rights of public service workers as political beings and citizens of this country. Section 52 of the act criminalizes holding an elected position in a political organisation whilst in the employ of the public/civil service. It mentions the dismissal of such a public officer in the "public interest", which however is not clearly defined. Leaving such open phrases (subject to numerous interpretations in law) precipitates its misuse. Undoubtedly, just like other workers, public service workers are also entitled to civil and political rights, from expression, assembly, association and trade union organisation.
25. The government controls the Joint Negotiation Forum (JNF), as both the Chairperson and Secretary of the bargaining platform come from the Government Negotiation Team (GNT), and not the public service trade unions. In the last Cost of Living Adjustment (CoLA) negotiation round, for instance, government forcefully and unilaterally decided to award a 3.3 percent salary increment. Earlier, the Government ignored the recommendation of the salary review report to increase salaries for Head of Departments.
26. As stated in the UNESCO Global Framework for Professional Teaching Standards: *"Teachers are the professional leaders of learning in their classrooms and in their schools, and teachers' unions are the representative bodies that should guide the professional framework for teachers in all settings. Teaching practice must be evidence-based and student-focussed. Teachers must have access to continuous professional learning and development throughout their careers and must be involved in developing teacher as well as education policy more broadly. All highly successful educational systems rely on the experience and expertise of teachers to shape teacher and education policies"*.
27. The CBA confirms that there is a provision for 'study leave', which it defines as a leave of absence for a teacher for a period of not exceeding five years with pay. the biggest challenge is the eligibility of such a leave with pay. While the Teacher Service Development Department encourages teachers to further their studies, in practice only about 18 teachers per year are allowed to study, that is, teachers who are granted study leaves and are paid accordingly in line with the Regulations when they eventually take the leave. Obviously, this is a negligible figure given the demand. The application process for these opportunities with the ministry is long and tedious, and most teachers find these application guidelines not only long and cumbersome, but also unclear and time-consuming. Most teachers find themselves having to create alternative means to study, including having to source their own scholarships, admission into institutions of further learning and the time for their confidential study opportunities for fear of victimization. And even if the newly acquired qualifications would be declared to the school administrators, government would not pay according to the new qualifications, but according to the qualifications upon which one was appointed into the teaching profession by the TSC.
28. The Government is using casualization of the profession to weaken the power of education unions. Contract teachers are easily intimidated and less likely to participate in union activities, particularly in union struggles to demand improved teaching conditions.
29. The CBA between SNAT and the Government guarantees the provision of housing (in Section 3.10) for housing allowance; it even goes to the extent of qualifying the defining aspects of what is considered 'adequate and proper housing'. It mentions 'sound construction, electricity, in-door plumbing, safe and adequate water supply, as well as sufficient space to



accommodate the teacher and dependents. Furthermore, it stresses that in instances where there is no adequate housing, the employee is entitled to an unspecified monthly cash allowance, which can be adjusted annually by way of bilateral engagements between parties. However, contract teachers are not granted housing, and also not given the monthly cash allowance. Research shows that a sizeable number of teachers receive the monthly cash payments for housing – only claimed after a period of 6 months.

30. In July 2020, the Government announced, amidst protests by teachers and parents, that it would open schools during the period of COVID-19 without having taken the precautionary measures to contain the spread of the virus. The teacher union SNAT placed 15 demands before the reopening of schools. According to one newspaper article, one of the 15 demands was that SNAT “wanted all the 970 schools (primary and secondary) and 30 tertiary institutions (both public and private), to be extensively disinfected. This should apply to both urban and rural schools.” The Government went ahead and opened schools, without the due consultation of teachers as a key stakeholder.

### UPR Recommendation on problematic legislation

*Repeal laws that restrict civil rights, including the Royal Decree of 1973 and components of the Suppression of Terrorism Act, and develop a legislative framework to protect the rights to freedom of expression, association and peaceful assembly, including rights related to forming and participating in political parties and civil society organizations*

31. The 2008 Suppression of Terrorism Act and the 1973 King’s Decree, as well as the pre-independence Sedition & Subversive Act of 1939, are still in place and effectively ban political parties and places severe restrictions on civil society organisations, religious groups and media. The Suppression of Terrorism Act 3 of 2008 aims at discouraging progressives in general, and workers in particular, from exercising their right to freedom of association and expression.
32. Civil and political rights of workers and ordinary citizens are also severely curtailed by new laws including the recently enacted Public Order Act of 2017.

### List of abbreviations

CBA	Collective Bargaining Agreement
CoLA	Cost of Living Adjustment
EI	Education International
GNT	Government Negotiation Team
IRA	Industrial Relations Act
JNF	Joint Negotiation Forum
MoET	Ministry of Education & Training
SNAT	Swaziland National Association of Teachers
TSC	Teaching Service Commission

