King Mswati's gold:

Workers' rights and land confiscation in Swaziland's sugar sector

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I. INTRODUCTION

On 12 April 1973, King Sobhuza II decreed a national state of emergency thereby assuming total control over all aspects of Swazi public life. Political parties were banned and political activism was criminalised. Though the state of emergency was lifted in 2005, little has changed. The royal family has used *Tibiyo Taka Ngwane*, established in 1968 as a development fund, as the means to control the Swazi economy and to amass a large fortune. The King is the sole trustee of *Tibiyo* and the fund is immune from all judicial review. As such, *Tibiyo* is able to compete unfairly in the economy, undermining local business and discouraging much-needed foreign investment (FDI).

Sugar is Swaziland's most important industry. Swaziland is Africa's fourth largest sugar producer and it accounts for almost 60 percent of agricultural output, 35 percent of agricultural wage employment and 18 percent of Swaziland's GDP. It is known as 'Swazi Gold' because of the substantial revenue it generates for the country. However, for workers employed in the sugar industry, the sector has no such lustre; instead, workers live in extreme poverty despite long hours and hard work generating wealth for the King. Trade union activities are highly repressed, and laws such as the Sedition and Subversive Activities Act, 1938, Public Order Act of 1963 and the Suppression of Terrorism Act of 2008 are used to suppress trade union activity.

The Swazi sugar industry consists of four main actors:

1. large millers and estates (77 per cent of production);
2. large growers (17 per cent of production);
3. medium-sized growers (5 per cent of production); and
4. small growers (1 per cent of production).

Sugar is milled in one of Swaziland's three sugar mills, Mhlume, Simunye and Ubombo. They have a combined annual production capacity in excess of 800,000 tons. Sugarcane cultivation in Swaziland is only permissible through a quota issued by the Sugar Industry Quota Board. Millers and growers are represented, respectively, by the Swaziland Sugar Millers Association and the Swaziland Cane Growers Association.[1] The Swaziland Sugar Association, formed in 1964, is governed by the Sugar Act of 1967. It is responsible for providing the services necessary for the general development of the industry and the marketing of Swaziland's sug-

1 The Swaziland Cane Growers Association (SCGA) is a member owned/funded non-governmental (NGO) and not for profit (NFP) entity established through an Act of Parliament (Cane Growers Act No.12 of 1967 as amended) with retrospective effect to October 1963.

ar. The Swaziland Cane Growers Association and the Swaziland Sugar Millers Association are equally represented on the Swaziland Sugar Association's Council, the highest policy making body in the sugar industry.

South Africa's three biggest sugar companies, Illovo Sugar Ltd, Tongaat Hulett Sugar Ltd, and Tsb Sugar RSA Ltd are also heavily involved in the Swaziland sugar industry through their co-ownerships in production estates and mills.

As an African, Caribbean and Pacific (ACP) and Least Developed Countries (LDC) country, Swaziland has had duty-free and quota guaranteed access to European markets. This will be succeeded by the Economic Partnership Agreements between the EU and ACP States (including Swaziland). The country's exports to the EU have amounted to about 350.000 tonnes per annum.

Swazi sugarcane farmers and their families have come to depend on the EU market, selling 40 per cent of their output there in 2014. Access has been protected by EU caps on the amount of beet sugar grown in Europe. As part of the reforms to the EU's Common Agriculture Policy (CAP), quotas on beet sugar production are to be lifted in 2017.[2] Sugar prices have already dropped dramatically in recent years in anticipation of this reform.

In the SACU market, Swaziland delivers around 330.000 tonnes per annum. The implementation of the Dollar-Based Reference Price mechanism has resulted in the institution of a variable tariff that protects the SACU market from low cost imports. The SACU sugar price is expected to grow in line with CPI inflation (about 5 per cent per annum) for the foreseeable future and Swaziland sales into SACU are projected to grow at 3.25 per cent in the short term and 2.5 per cent thereafter.

Sales to the US benefited from a Tariff Rate Quota (TRQ), which permits access on preferential terms for a limited volume. Exports to the US have amounted to about 16.000 tons per annum. Notably, Swaziland lost trade benefits under African Growth and Opportunity Act (AGOA) in 2015 due to its systemic labour rights violations.

Despite the human rights concerns described in this report, a number of Swazi farms are fair trade certified, as explained in Section IV.[3]

2 Fairtrade has cited research commissioned by the UK Department for International Development (DfID) projecting that the change in EU agricultural policy is likely to push 200,000 people in African, Caribbean and Pacific countries into poverty by 2020. Recently, the Jersey Overseas Aid Commission announced an investment of £220,926 in order to counteract the impact of the removal of quotas. Sugarcane farmers will receive training on vegetable production and marketing in order for them to farm goods in addition to sugarcane.

3 Fairtrade Africa, Producer Profiles, accessed 4 April 2016 (http://www.fairtradeafrica.net/producers-products/producer-profiles/?submitProfileSearch=Search&producerName=0&floid=&productStandard[]=17c&Countries[]=53)

II. KEY PLAYERS IN THE SWAZI SUGAR INDUSTRY

1. Tibiyo Taka Ngwane

King Mswati's personal wealth is estimated by Forbes Magazine at around US$ 200 million. The king controls *Tibiyo Taka Ngwane*, a fund which was founded to purchase foreigners' interests in enterprises deemed essential to Swaziland's development. To establish the fund, every Swazi man was required to contribute one cow. The founding charter, although never registered, defined *Tibiyo* as a national asset held by the King in trust for all Swazis each of whom was deemed to be a shareholder. Swazi workers see none of the benefits of the fund. Income from *Tibiyo*, worth around USD 2 billion, supports King Mswati III, his dozen wives, their 27 children and the king's relatives. Like King Mswati, *Tibiyo* is immune from tax, civil suits and criminal prosecution. Over the past 45 years, *Tibiyo* has exploited its official status as a 'Swazi national empowerment vehicle' to acquire equity at nominal costs in key sectors of the Swazi economy. As a result of its unique status, *Tibiyo* is the dominant player in Swaziland's economy. King Mswati ensures that the government's laws and law enforcement, regulations, budgeting and contracting all work in *Tibiyo*'s favour while placing barriers against entrepreneurs who do not enjoy the King's protection.

Both King Sobhuza and King Mswati have expropriated villagers' land without fair compensation, which were subsequently folded into *Tibiyo*'s business assets. One example is the sugar producing fields of the Royal Swaziland Sugar Corporation (RSSC), which are located on highly fertile land previously occupied by prosperous communities which were forcibly relocated to a marginal farming area. This community now lives in dire poverty. Similarly, large areas in Big Bend which were developed into *Tibiyo*'s sugar cane business were acquired by King Sobhuza through expropriation without compensation. In Swaziland, property rights are insecure and rightful owners have no effective redress in the legal system. *Tibiyo* is not required to provide any financial statements nor disclose its budget to Parliament, as do parastatals.

Tibiyo is managed with King Mswati III as the sole trustee. The Committee members include members of the royal family, friends and political allies. They include:

1. Prince Fipha Dlamini: Chairman and Chief of Nkhungwini, senator and son to Prince Mkhosini, Swaziland's first prime minister and leader of King Sobhuza's party - Imbokodvo National Movement (INM)
2. Prince Simelane: son of Sobhuza II and brother to King Mswati III
3. Princess Sidvumolesihle: daughter to King Sobhuza II and sister to King Mswati III
4. Chief Ndzabankhulu Simelane: Sihlutse Chief and chairman of the National Emergency Response Council on HIV/AIDS (NERCHA)
5. Chief Dlaluhlaza Ndwandwe: Chief of Bulandzeni, son of Chief Madzanga Ndwanwe
6. Nokukhanya Gamedze: former senator
7. Sigodvo Motsa: King Mswati III's aid and employee of the King's Office
8. Mvuselelo Fakudze: accountant and partner at PricewaterhouseCoopers and nephew of King Mswati III
9. Mancoba Khumalo: former Conco CEO and now in Conco Ireland
10. Fikanebemanti Fakudze: son of Mangomeni Ndzimandze
11. Khephu Cindzi: senator
12. Lindiwe Chola Dlamini: Senior Energy Officer and daughter of opposition leader Dr Alvit Dlamini

Below are some of the sugar related companies under *Tibiyo*'s full or partial control:

Agriculture Company	Shareholding
Dalcrue Agricultural Holdings (Pty) Ltd. (Livestock, Sugar Cane and Dairy)	100 %
Inyoni Yami Swaziland Irrigation Scheme (Sugar cane & Livestock)	50 %
Royal Swaziland Sugar Corporation Ltd (Sugarcane & Sugar)	50 %
Ubombo Sugar Limited (Livestock, Sugarcane & Sugar)	
Sihhoye Estate (Sugar Cane)	100%
Sivunge Estate (Sugar Cane)	100 %

2. Royal Swaziland Sugar Corporation Ltd (RSSC)

The Royal Swaziland Sugar Corporation Ltd (RSSC) was formed in 1973 when Tibiyo, working with the Commonwealth Development Corporation (CDC), carried out a pre-investment study for the expansion of sugar production. This led to the construction of a third mill, entrusted to Tate & Lyle Technical Services Limited (TLTS), and completed in June 1975. At the same time, the Swazi government and *Tibiyo* entered into a wider partnership with the Tate & Lyle Group to realise the project. On 7th October 1978, King Sobhuza II dedicated the Swazi Third Sugar Mill 'Simunye Sugar Estate - We are one'.

In 2001, RSSC shareholders agreed to a merger with the neighbouring Mhlume Sugar Company and the enlarged RSSC was launched in 2002. Listed on the Swaziland Stock Exchange, RSSC is the largest company in Swaziland employing over 3,500 and producing two thirds of the country's sugar. It owns and manages over 15,607 hectares of irrigated sugar cane on estate land leased from the Swazi Nation and manages a further 5,018 hectares on behalf of third parties, delivering some 2.3 million tonnes of cane per season to RSSC's two sugar mills. RSSC also operates a sugar refinery at the Mhlume mill which produces approximately 170, 000 tonnes of refined sugar per season, and a 32 million litre capacity ethanol plant which is situated adjacent to the Simunye Mill.

a. Simunye Sugar Estate

Simunye Sugar Estate was developed by the RSSC in the late 1970's. Ten thousand hectares of light tree cover and bush were cleared to provide over 9,000 hectares of irrigated sugarcane together with roads, water storage, canal systems, offices, stores and maintenance workshops. In 1980 the Simunye Sugar mill was commissioned and capable of producing 120,000 tonnes sugar per annum initially. It was subsequently expanded in 2000 to accommodate cane purchased from new independent cane farmer schemes.

b. Mhlume Sugar Estate

In 1955, Mhlume (Swaziland) Sugar Company Limited was registered as a sugar factory and cane estate. This was a joint venture project between Sir J.L Hulett & Sons and the then-Commonwealth Development Corporation (CDC). The Mhlume Sugar Estate was incorporated in June 1958, and the mill was commissioned in 1960, with a production capacity of 90 tonnes cane per hour. In 1966, CDC bought out the Hulett shareholding and acquired sole ownership. This changed in 1977 when, on March 30th, the King acquired, in trust of the Swazi nation, 50 percent of the company's issued share capital.

3. Illovo

Illovo, a South African based company, has a 60 per cent share in Ubombo Sugar Limited with the balance of shares held by *Tibiyo*. The company is situated in the south-eastern region of Swaziland. It is an agricultural estate, with a factory and refinery and is able to produce raw and refined sugar. It has 1,229 permanent employees and 1,631 seasonal agricultural workers at peak periods. Ubombo Sugar Limited is one of three sugar producers in Swaziland whose combined total sugar output of more than 580,000 tons is marketed and distributed by the Swaziland Sugar Association (SSA).

4. Tongaat Hulett

Tongaat Hulett is an agricultural and agriprocessing company. Tongaat Hullet was founded in South Africa and has expanded its operations to include Swaziland-Tambankulu Estates. Tongaat Hulett purchased Tambankulu in April 1998. The estate has 3,67 hectares of fully irrigated cane, producing 62,000 tons of sucrose annually and is the largest independent sugar estate in Swaziland. The average yield per hectare is 125 tons/hectare/annum. The company employees about 300 Swazi workers.

5. Nsoko Msele Integrated Sugar Mill

Swaziland is proposing to build a new sugar mill to be known as Nsoko Msele Integrated Sugar Mill Project. The shareholders of the mill are NEWCO Sugar Milling Company and Nsoko Msele (Pty) Ltd. It will be constructed at Nsoko, Big Bend. This mill is expected to begin operations next year. The new mill is a joint venture between Nsoko Commercial Farmers and smallholder sugar cane growers from five surrounding chiefdoms - kaNgcamphalala, kaGasawaNgwane, kaMyeni, KaMngometulu and kaMatsenjwa. It is anticipated that the mill will create 5,000 jobs. Farmers from all the five chiefdoms involved in the project had been given free title deed land (TDL) measuring over 7,500 hectors through a Memorandum of Understanding (MoU) between Nsoko Commercial farmers and the concerned chiefs.

III. HUMAN RIGHTS IN THE SUGAR SECTOR

The primary labour laws of Swaziland include the Employment Act of 1980 (as amended) and the Industrial Relations Act (as amended). Swaziland ratified ILO Convention No. 87 on Freedom of Association and ILO Convention No. 98 on Collective Bargaining in 1978. However, its failure to comply with the obligations under these instruments has been repeatedly criticised by the ILO. A 2014 ILO High Level Fact Finding Mission found that the country had made "no concrete, tangible progress" on matters pending for over a decade. Indeed, Swaziland has received a special paragraph in the ILO Report of the Committee on the Application of Standards four times in recent years (2009, 2010, 2011, 2015), each time for serious violations of the right to freedom of association.

A. Workers' Rights

1. The Employment Relationship

In order to understand the rights of workers in Swaziland, it is necessary to understand that workers are hired under very different arrangements in the sugar sector.

Permanent: This group of workers usually has a direct, long term, relationship with an employer and possesses a formal, written contract of employment.

Seasonal: This group of workers is employed on a short term contract, the longest period being nine months. Within this group, there is a class referred to as 'returning seasonal employees', who are engaged every season year to year. They can be with the same company for up to thirty years. However, they are not entitled to the benefits that are enjoyed by permanently employed workers. Returning seasonal employees have no pension benefits, no medical aid and no allowances.

Casual: All companies involved in the sugar industry engage casual employees, who do the same type of work that is done by seasonal employees. Casual employees are the lowest paid, making on average about US$ 5.32 per day. Despite being engaged as casual employees, which means they ought to be paid at the end of the day, these workers are paid at the end of the month.

Associations: Associations have employees who are deemed 'shareholders'. With this part of the sugar industry, worker rights simply do not exist. In ninety per cent of the associations, employees do not have contracts of employment. There are no trade unions that operate in the farms owned by associations, and this is intentional. Employees engaged by associations most often are compelled to provide their own personnel protective equipment. Most work ten hour days without paid overtime.

Contractual: In order to cut costs, sugar cane producing companies have outsourced a number of jobs to contractors. The contractors do not sign contracts of employment with their employees. Contractors do not provide workmen's compensation insurances, leaving those injured at work without any support. In order to obtain employment with a contractor, workers must disassociate themselves with trade unions.

2. Prevailing Conditions of Work

The minimum wages and conditions of work in the agricultural sector are regulated in an April 2012 Government Gazette. While conditions on specific plantations may vary, the minimum standards are often not observed in the sugar sector.

Wages: The minimum wage schedule for agricultural workers is set forth below. On larger plantations, with a greater permanent workforce, the wages are found in a negotiated schedule which is higher that the regulated minimums.

Basic minimum wage per day	
General Labourer	E30.59
Seasonal Worker	E30.59
Stockman	E30.59
Watchperson	E45.80
Irrigator	E31.22
Plant or Pump House Attendant	E31.22
Field Induna	E45.80
Handyman	E38.17
Tractor Driver	E40.34
Farm Clerk/Storeman	E47.60
Heavy Machine Operator	E.54.66
Artisan	E71.51
Driver	E40.34
Driver (heavy duty)	E54.66

However, as illustrated in some of the cases in this report, workers are not paid even these minimums. Of note, the lowest band is just over US$ 1.90 per day ($2.20), the wage established by the World Bank below which one is considered to be in poverty.

Hours of Work and Overtime: The Gazette establishes that the normal work week is 54 hours spread over 6 days. However, workers commonly work in excess of the maximum hours of work – at least 60 hours a week (in particular those engaged as harvesters or in haulage). Further, the Gazette provides that workers shall be paid at a rate of 150% and 200% if on Sunday. Most workers employed as seasonal and casuals are never paid the overtime rate, or for overtime work at all.

Maternity Leave: In the Gazette, women are entitled to 12 weeks of maternity leave – 6 before birth and 6 after birth. However, seasonal employees are not entitled to maternity leave in practice. Further, every season these employees are subjected to a pregnancy test and returning seasonal employees who are pregnant are not engaged until the following season.

Personal Protective Equipment: The Gazette provides that workers are entitled to adequate and appropriate personal protective equipment free of charge. In most cases, workers are either not provided equipment or are required to purchase them at their own expense.

Benefits: Permanent employees enjoy employment benefits such as education allowance, medical allowance and bonuses. They are also members of a pension scheme. Seasonal employees are not entitled to any of the above benefits. The only exception is RSSC, which recently introduced a pension scheme for its returning seasonal employees. Negotiations between the unions and the other two major companies (Tongaat-Hullet & Illovo) have been ongoing for the past five years without yielding results.

3. Child Labour

The minimum age of employment in Swaziland is 15, and 18 for hazardous work (as determined by the government). However, Swazi chiefs at times coerce children and adults — through threats and intimidation — to work for the king. Swazi boys and foreign children are forced to labour in commercial agriculture, including cattle herding and market vending within the country.[4] In January 2015, Phineas Magagula, Minister of Education and Training, announced that opening of schools would be postponed from 20 January to January 27 citing ongoing national duties such as the annual weeding of the King Mswati III's fields by school children.[5] The decision was revised after an international outcry over the use of forced child labour in the country.

4. Freedom of Association

The Industrial Relations Act provides for the right to freedom of association and assembly, with limitations. These rights are also provided for in the Constitution of the Kingdom of Swaziland Act, 2005. Seasonal employees theoretically enjoy the rights to freedom of association and assembly but do not in practice. Those who chose to be active in union activities find themselves not being engaged the following season. The Swaziland Agriculture and Plantation Workers Union (SAPWU) is the main trade union within the sugar industry. It has branches in all the three sugar mills. It also has branches at Tambankulu where Tongaat-Hullet produces its sugar.

4 U.S. Department of State, 2015 Trafficking in Persons Report (http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243540.htm)
5 Swazi Observer, Govt postpones schools opening, 13 January 2015 (http://www.observer.org.sz/news/69379-govt-postpones-schools-opening.html)

B. Case Study

Case Study #1

Dismissal for his union activities

Mr Enock Dlamini drives a tractor to haul sugarcane. He has been with the Ubombo Sugar Company for over 25 years. Mr. Dlamini has been very vocal in defending the rights of returning seasonal workers. During his tenure as a shop steward, he has fought to ensure that employees have access to housing and other basic necessities - putting himself at odds with the company. When the season closed for the year 2015/2016, he was advised that his services would no longer be required during the following season as the department where he had been working would be outsourced. He has also been charged by the company on numerous occasions for specious offenses aimed at silencing his union advocacy.

Case Study #2

Abandoned after being poisoned by herbicides

Lomcwasho Sifundza is from Shewula, one of the communities that were established by people who were evicted to give way to the establishment of Simunye Sugar Estate (RSSC). The Shewula area is very remote and the land is barren, useless for subsistence farming. Lomcwasho is forced to seek employment at Simunye Sugar Estate as a returning seasonal employee. Her husband passed away in 2006 due to an AIDS related illness. She is employed as a knapsack operator (A3 wage rate below). Towards the close of the 2014/2015 season, she got sick and she went to Lusoti Clinic for treatment. The final results from tests showed that long-term exposure to the chemicals which she uses at work for spraying weeds is the cause of her illness. RSSC has refused to consider her case an occupational related illness, which would make her entitled to compensation under the Workmen's Compensation Act, 1983. With no arable land to produce food for her family, she is now living in squalor.

Case Study #3

Using violence to break peaceful strikes

Companies often interfere in union activity, including funding individuals to take leadership positions in unions to put them under management domination. The use of violence to break up protest action is routine in the sugar industry. In June 2014, 3,000 members of SAPWU went on strike at the Ubombo Sugar Company in the north east of the country. Workers demanded a 14 per cent pay increase to the monthly pay of just SZL1,500 (US$ 106) they were receiving. The company offered 7,5 per cent, prompting a strike. Workers had to stand up to intimidation by the military and security forces during the strike, which used teargas and water cannons while peaceful collective bargaining negotiations were taking place. The company also responded by taking legal action against the union alleging property damage such as "cutting flowers situated at the entrance of their administration block and destroying flower pots".

Case Study #4

No employment contracts, no set wages

Makhosini Ndwandwe is a resident of the Nyakatfo area. He is 55 years old. His family used to have five hectares of good arable land, but his land was expropriated without compensation and Vuka Sidvwashini Farmers' Cooperative was formed. Makhosini's family was excluded from those that were to benefit from the new formed cooperative. Makhosini was then forced to seek employment from a contractor that provides harvesting services to Vuka Sidvwashini. The contractor pays him SZL 2,500.00 (US$ 179.94) per month for the five to six months of sugar cane harvesting as a cane cutter. Although reguired in the Gazette, the contractor, Jozana Suppliers (Pty) Ltd, does not provide written, signed contracts of employment. The workers are not on employment grades and there are no performance appraisals.

Case Study #5

Excessive and unpaid overtime

Mandlenkosi Mdluli is employed by Tranship Logistics, one of the haulage contractors that provide haulage services to the many associations that cultivate sugar along the Komati River. Mandlenkosi has been with Tranship for ten years and earns SZL 7,000.00 (US$ 495) per month. In order for them to earn SZL 7,000.00, he must work at least 14 hours per day. He is not paid overtime for the excess hours of work. Unfortunately, people like Mr Mdluli find themselves unable to fight for reasonable hours or proper payment of wages because if they complain they are immediately dismissed.

C. Eviction, Land Occupations and the Unending Court Battles: The Story of Vuvulane Farmers and Tibiyo

Swazi Nation Land (SNL) is a trust held by the King. As explained above, the cultivation of sugar cane has resulted in numerous families being forcefully evicted from their land. The latest evictions occurred on the 4th and 5th February 2016 at Vuvulane Irrigated Farms where RSSC evicted farmers that have been occupying land since 1963. Twenty-two farmers were evicted from farms they have known to be theirs for more than 40 years.

When Simunye was established, 400 homes had to give way to the development of agricultural fields and the construction of a sugar mill and the villages for employees. These homesteads formed the communities now known as Mafucula and Shewula. At Nyakatfo, Mzaceni, KaNgcamphalala, Maphobeni and Malkerns jointly about 200 homes had to give way to sugar cane production. At Nkambeni area alone 100 homes gave way to the sugar plantation. No one received compensation. The King simply issued directives and the people packed their belongings and went to establish new homes in the areas the King designated.

Photo: Solidarity Center

Case Study #1

Royal Swaziland Sugar Corporation (RSSC) and Vuvulane Sugar

In August 2014 farmers stormed and possessed a SZL2.3 million (US$ 162,785) farm belonging to RSSC. Farmers claim that the land was given to them by King Sobhuza II, whose rule lasted from 1921 until 1982, and it has been their home ever since. RSSC and Mhlume Sugar Company have since taken 25 farmers to court demanding that they vacate the farm in question. The companies argued that the farmers have unlawfully, wrongfully and forcefully deprived them of the possession of certain farms. The farmers are said to have forcefully taken the farm in dispute and started ploughing and cultivating same on August 27, 2014. According to an application filed by RSSC, the farmers have blocked water canals used for irrigating the sugar cane on Portion 29 of Farm 860 with sand bags to divert the water and prevent irrigation of their sugar cane fields. High Court Judge Nkululeko Hlophe granted an interim order stopping the farmers from blocking irrigation water canals supplying RSSC farms at Vuvulane. No judge wants to be seen questioning the King.

The people have also questioned the King directly for his role in evictions in the sugar belt. During the Sibyaya called in August 2012, Kosiyemantjonga Mkhaliphi, 78, complained that the King had reneged on his promise to follow in the footsteps of his father – King Sobhuza II – when he ascended to the throne in 1986.

"At the inception of your reign, Your Majesty, you made a great promise to the nation! You said, during the course of your reign, you would follow in the footsteps of King Sobhuza," he said, and then paused before going on to say, "You haven't as yet started following in the footsteps of King Sobhuza. It has not happened."

The countrywide evictions that have pervaded this country in the recent past seemed to be Mkhaliphi's main concern. He said it was very disheartening that each time there were evictions, the King's name would crop up, courtesy of other royal family members.

"*If it is true that people are being evicted on the King's instructions, then it is very unfortunate. I am really not comfortable with the fact that a king is capable of evicting people. Where should they go?"* he asked, before emphasising that the King should relieve some of his brothers from positions of authority.

Mkhaliphi also touched on the issue of farms that fall under the ownership of *Tibiyo*. He suggested that these vast acres of land should be taken back to the people. *"What would His Majesty do with the land if it is not given back to the people, who are in a good position to till it?"* he enquired. He doubted that when the decision was taken that land should be held "in trust" for the nation, the intention was to open up a "free for all' among royalty. "*No, the intention was not to allow princes to ride roughshod over our interests,*" he emphasised. He asked, "*Who really owns land in the country: Swazis or Tibiyo?*"

To stop the Vuvulane farm dispute, Judge Mumcy Dlamini advised the farmers to approach the Prime Minister Sibusiso Barnabas Dlamini and/or the Ludzidzini Senior Council.[6]

6 http://www.observer.org.sz/news/65642-vuvulane-farm-sold-to-rssc-high-court-hears.html

IV. FAIRTRADE IN SWAZILAND

Fairtrade describes itself as "an alternative approach to conventional trade and is based on a partnership between producers and consumers. When farmers can sell on Fairtrade terms, it provides them with a better deal and improved terms of trade."[7] According to Dvokolwako Farmers Association Acting Chairman, Philemon Malandula, there are now seven Fairtrade certified organisations in Swaziland which together have about 2,300 individual members. The seven organisations were certified in late 2012 and early 2013. They are:

1. Phakama Mafucula Farmers Association
2. Komati Downstream Development Project (KDDP)
3. Dvokolwako Fair Trade Farmers Association
4. MM&N Farmers Company
5. Maplotini Multi Purpose Famers Cooperative Society
6. Mavalela One Farmers Association Limited
7. Maphobeni Farmers PTY

No doubt the Fairtrade program has benefitted some Swazi workers in the sugar sector through access to markets and premiums. As explained before, however, the King is a personal beneficiary of much of the wealth generated by the sugar economy. Moreover, interviews with hired labourers on certified sugar farms present a rather harsh reality. It is clear that workers do not benefit fully from the Fairtrade program despite the requirements of the 2015 Small Producer Organizations Standard,[8] which sets minimum standards for workers rights, including respect for fundamental labour rights such as the right to form a union and bargain collectively. Aside from the standard, these violations are also violations of the labour law of Swaziland.

Among key provisions which appear to have been violated, on one or more plantations:

3.3.14	(anti-union discrimination)
3.3.12	(freedom of association and collective negotiations)
3.3.16	(awareness of workers rights, including freedom of association)
3.3.17	(payment of wages)
3.3.21, 3.3.22	(legally binding written employment contract)
3.3.25	(equal conditions for local, migrant, seasonal and permanent workers)
3.3.35	(company provides personal protective equipment)

Most workers on certified plantations are not provided a signed, written contract as required by 3.3.21 and 3.3.22. Most workers are paid below the regional average wage for the industry and in one case below the minimum wage published in the government gazette, as required by 3.3.17.[9] It is also clear that the companies are not gradually increasing salaries above the regional average and the official minimum, as contemplated by 3.3.23; it is clear that the wages are insufficient to provide a decent standard of living by any measure. The minimum stipulated in the gazette is negotiated and sanctioned by the Labour Advisory Board, a tripartite alliance of employers, government and workers. Further, there are no unions on the certified farms and workers report not having been informed of their rights to freedom of association, as required by 3.3.16. Pregnancy testing is common throughout the sugar industry, which violates 3.3.2.

While working time violations are commonplace, the Small Producer Standard includes no limitations whatsoever on this most basic issue, except with regard to children. Section 3.3.8 provides that children under 15 "not work long hours" and 3.3.9 provides that children under 18 not work "excessively long working hours." This is a very serious shortcoming with the standard that must be corrected if it is to be meaningful. Farms certified under the Hired Labour Standard are in fact required to respect working hours and overtime rates.

The following is based on interviews carried out in early 2016 and describes conditions for hired labour on the farms run by the above certified organisations.

7 http://www.fairtrade.net/about-fairtrade/what-is-fairtrade.html

8 All of the farms certified as Fairtrade in Swaziland are certified under the Small Producer Organizations Standard, which is available at http://www.fairtrade.net/fileadmin/user_upload/content/2009/standards/documents/SPO_EN.pdf.

9 3.3.17. You and the members of your organization must set salaries for workers according to CBA regulations where they exist or at regional average wages or at official minimum wages for similar occupations whichever is the highest. You must specify wages for all employee functions.

1. Phakama Mafucula Farmers Association

The shareholders of Phakama Mafucula are the families that were evicted when the late King Sobhuza II established the Simunye Sugar Estates. Phakama Mafcula has only two permanent employees, the association's secretary and the farm manager.

At any given time, there are about twenty people working in the sugarcane fields as seasonal workers. The workers are not provided signed, written employment contracts. Lomangisi Sifundza, 35, is a widow having lost her husband to HIV/AIDS in 2014. She learned that she was infected with HIV when she was undergoing check-ups during her pregnancy with her third child, who was born in July 2013. Being faced with raising three children on her own, she sought employment close to home. She got a job during the 2015 harvesting season. She is a general labourer and her jobs include cutting and stacking sugar cane. Lomangisi works from 5:00a.m. to 3:00p.m. (10 hrs) from Monday to Friday. During the peak harvesting season, she works seven days a week and on average 12 hours a day. The overtime she works is not paid at the overtime rate. For this she earns, ZSL 700.00 every month, which is below the minimum wage established by the Gazette and below the World Bank poverty line.

2. Komati Downstream Development Project (KDDP)

Mfanasibili Dlamini, 48, is one of the permanent workers of Ingcayizivele Farmers Association, one of the farms under the newly developed KDDP project in Tshaneni, in the eastern part of Swaziland. He lives in Nkambeni, about an hour's drive from his place of work. Dlamini has been working for the association for the last ten years and is one of the few workers at his workstation as the others were off as it was not in season. Dlamini explained that there is no transport to work. Most of the workers travel to work on foot and are expected to work from as early as 5p.m., six days a week. The workers work 10 hours a day with the exception of Saturday when they work for 7 hours. The total number of hours worked per week are 57, not including travel time to and from work.

"I wake up at 3a.m. every day, as I have to walk for about two hours to work on foot at the wee hours of the morning. Even if there were public buses none would be operation at the time that we are supposed to be at work. By 5a.m. I am supposed to be here and this means I have to wake up very early and walk to work to keep time. In winter things get really difficult. as it is very dark and we are prone to all sorts of mischief along the way. I really would have loved if we had transport," explained Dlamini as he related his frustration with the daily routine.

He also expressed frustration with the management of the farmers' association. "*I don't know the last time we had a meeting to discuss finances of the organization or even to elect people. It has mutated into something I do not even know. Even us workers when we have complaints about personal protective equipment, salaries and general working conditions, our concerns don't get addressed because the site manager always claims that he is powerless to do anything about our concerns. For my biggest gripe is about the money we earn, it is way too little,*" explained Dlamini.

He earns about SZL1000 every month. The association says it cannot afford competitive salaries, as its earnings are dwindling yearly. Given the total hours worked, plus the overtime, he earns below the minimum wage established in the Gazette. Further, this is nowhere close to a living wage. With his wage, it is difficult to purchase groceries and pay school fees for the children. He has a child at Ndzingeni High School whom he says he can no longer support. "*I can't pay her school fees which is in excess of SZL10,000 per year with the peanuts I earn here. Last year I had to sell my cows to take her to school otherwise she would be at home,*" continued Dlamini.

3. Dvokolwako Fair Trade Farmers Association

The association has been embroiled in a long and bitter dispute as residents claim that their grazing lands were unlawfully expropriated for the development of the sugar plantation. It has 26 employees, four of whom are permanent. There is no staff association or union. Employees have no transport to work and travel long distances to work (about two kilometres or more) at (4 a.m.) in the morning. Employees are paid SZL 1,176 per month.

4. MM&N Farmers Association

This is one of the oldest associations, located at Sihhoye area in the Northen Hhohho Region along the Komati River. It is one of the associations that was established to provide sugar to the Mhlume Sugar Company. This association employs one person, the Secretary, as a permanent employee. It has 30 other employees who are employed as returning seasonal workers. The association provides no transportation to ferry workers from their homes the five kilometres, on average, to work. There are no sanitation facilities in the fields - only a pit latrine - and shower located at the farm offices. There is no union.

Mvinjelwa Hlawe has been with MM&N Farmers Association since 2013. He is a general labourer and a cane cutter. He earns SZL 900.00 as a general labourer. As a cane cutter there is no fixed salary, it depends on the number of rows of cane he is able to cut in a month. He is able to make about SZL 2,000.00 during the harvesting season as a cane cutter. The cane cutting work usually lasts no more than two months. Hlawe works for ten hours every day, and the two hours of overtime are not paid at the overtime rate. If you cannot put in ten hours, you are told to go and look for employment elsewhere. Hlawe reported that workers are not provided personnel protective equipment. The workers wear normal clothing - even those that carry pesticide spray on their back and fumigate the fields – despite the requirement in the Gazette. This is a violation of 3.3.35. He also explained that there are no inspectors who inspect the conditions of the farms, meaning that these practices are never addressed.

5. Maplotini Farmers Association

Maplotini Farmers Association is located in the Shiselweni region. Maplotini has one permanent employee - the farm manager. The rest of twenty the employees are seasonally engaged. There is no union. The workers have no written contracts.

Sibingile Vilakati (51) has been employed by Maplotini Farmers Association as a returning seasonal worker since the year 2010. Sibongile is a general labourer whose duties include weeding the sugarcane fields. Vilakati lives about three kilometres from the office of the association. She is expected at work daily as early as 4:30a.m. This means Vilakati has to be up by 3:30a.m. to prepare food for her two school-age children. She then leaves her home at about 3:50a.m. to walk three kilometres to work. She runs because she is afraid to walk due to the fact that at 3:50a.m. it is dark at the Lavumisa area. Vilakati starts work at exactly 5:00a.m. and ends at 2:00p.m. in the afternoon. The association does not pay her the extra hour she works every day. The hour a day spent travelling to work is not paid. According to the association; Vilakati starts work on arrival at the fields.

The plantation has only a rudimentary tractor to transport workers around the fields. The workers do not have any form of sanitation in the fields. There is also no clean water provided when employees are working in the fields. While the association is a member of the Swaziland National Provident Fund, the previous manager did not ensure that all workers were registered and all funds paid to SNPF.

She takes home a monthly pay of a mere SZL 1000.00 per month.

6. Mavela Farmers Association

Mavela Farmers Association is located at Dvokolwako area. The workers have no work written contracts and unpaid overtime is common. Bheki Magagula, 25, has been with Mavela Farmers Association since 2012. Magagula was one of the passengers in a tractor when the trailer became unhitched and lead to the death of six workers in 2013. He is one of the survivors. He did not receive any compensation for the injuries he sustained because the association did not have workmen's compensation policy or other insurance to cover the accident. He now has a slight disability and limps when walking. The association does not pay for any of his medical treatment when it is necessary. Magagula is forced to walk from home to work every day. Upon getting to the assembly point, he has to ride in a similar tractor trailer to the one in which he was injured. The association gives Magagula a SZL 950.00 salary.

IV. CONCLUSION

The lack of multi-party democracy and repressive legal framework preventing workers from exercising their fundamental rights in Swaziland has repeatedly come under scrutiny by the ILO supervisory mechanisms and the UN human rights monitoring mechanisms. The sugar industry is no exception with ample evidence of a systematic denial of the most basic rights including through the abuse of precarious employment contracts allowing employers to circumvent their obligations under national and international law. Jobs created in this sector are more often than not characterized by poverty wages, excessive hours of work without overtime pay and inadequate protection from workplace accidents and hazards. Most of the workers are not unionized as a result of anti-union discrimination and intimidation and do not have access to grievance mechanisms when they face abuse. Regrettably, farms certified by Fair Trade do not comply with the organization's own Hired Labour Standard.

Given the enormous challenges of the sector, urgent and decisive action by all stakeholders is required to shift labour practices and to bring them in line with international law.

The primary responsibility to protect fundamental rights and conditions of work lies with the Government of Swaziland, which should investigate the allegations of violations throughout the sector by carrying out comprehensive labour inspections pursuant to the standards set out in ILO Convention No. 81 on Labour Inspection. Reports of the number of establishments inspected, violations found and enforcement actions taken should be disclosed to the public. The government should guarantee that workers have access to effective judicial and non-judicial remedies for violations, including by obliging businesses to establish effective operational-level grievance mechanisms.

It is unacceptable that the level of the current minimum wage in the agricultural sector stands at the margin of the UN poverty line of US$2 per day. The immediate review of the Regulation of Wages (Agricultural Industry) 2012 by duly taking into account the needs of workers and their families in line with ILO Convention No. 131 is of utmost importance. Even permanent workers earning the higher wages rates in the industry are not able to make ends meet. Those at or near the minimum are living a bare existence.

The government should engage with social partners in order to consider the ratification of ILO Convention No. 184 on Safety and Health in Agriculture Convention (2001). Sugar workers should not have to fear discriminatory behavior from their employers for engaging in trade union activities. In this regard, it is crucial that the government implements the recommendations of the ILO's 2016 Conference Committee on the Application of Standards without further delay.

Tibiyo should be brought within the purview of national laws, including taxation, so that the revenue created by the sugar industry is beneficial to Swazi society and development beyond the royal elite.

Fairtrade International should ensure that its standards are upheld by instituting regular and comprehensive audits into certified Swazi farm associations with particular emphasis on the investigation of labour standards. Non-compliant associations should be admonished and certifications should eventually be withdrawn if their practices are not brought into compliance with Fairtrade standards. Most important, it is critical that democratic worker representatives are elected. The Swaziland Agriculture and Plantation Workers Union (SAPWU) should have access to the workers on Fairtrade certified plantations and be able to discuss the benefits of membership to workers. Workers should not fear retaliation for meeting with or joining the union.

Companies buying sugar from Swaziland should carry out due diligence as set out in the UN Guiding Principles and the OECD Guidelines where applicable in order to ensure that labour rights are fully respected, including by subcontractors. Measures taken to prevent, mitigate and address adverse human rights impacts should be disclosed.

Swaziland's trading partners such as the EU, South Africa and the United States should ensure that trade agreements that are entered with the country are coherent with international labour standards and make reference to the UN Guiding Principles. The EU should engage with the Government of Swaziland to ensure that the recommendations of the ILO supervisory mechanisms are implemented ahead of the ratification of the EU-SADC EPA.

Annex

Salary structure in the sugar industry

Salaries in the sugar sector are almost similar within the main companies. The structure of salaries is as follows:

Permanent employee's structure: Sugar factory hourly rated

Class	Starting rate	After 12 months	After 24 months	After 36 months	After 48 months
A1	11.72	12.05	12.20	12.55	12.75
A2	12.95	13.17	13.54	13.71	14.16
A3	14.45	14.88	15.28	15.56	15.97
B1	16.59	17.24	17.40	17.99	18.44
B2	19.46	19.86	20.40	20.73	21.32
B3	22.58	23.14	23.71	24.14	24.63
B4	27.85	-28.60	29.27	29.97	30.81
B5	31.47	32.17	32.97	33.54	34.30

Agricultural - daily rated employees

Class	Starting rate	After 12 months	After 24 months	After 36 months	After 48 months
A1	74.42	76.28	78.12	79.97	81.99
A2	82.85	83.78	85.37	87.07	89.20
A3	93.74	95.14	97.32	99.71	102.07
B1	108.52	109.99	112.75	115.56	117.56
B2	127.90	129.25	132.15	135.32	138.51
B3	149.98	151.54	154.90	158.12	161.49
B4	163.03	168.88	174.84	180.82	186.66
B5	192.36	198.59	204.77	210.94	217.09

Salary structure for seasonal employees

Employees working at sugar factory (hourly rated)

Class	Starting rate	After 48 months	After 60 months
A1	11.72	12.05	12.20
A2	12.95	13.17	13.54
A3	14.45	14.88	15.28
B1	16.59	17.24	17.40
B2	19.46	19.86	20.40
B3	22.58	23.14	23.71
B4	27.85	28.60	29.27
B5	31.47	32.17	32.97

Agricultural employees (daily rated)

Class	Starting rate	After 48 months	After 60 months
A1	74.42	76.28	78.12
A2	98.85	83.78	85.37
A3	93.74	95.14	97.32
B1	108.52	109.99	112.75
B2	127.90	129.25	132.15
B3	149.98	151.54	154.90
B4	163.03	168.88	174.84
B5	192.36	198.59	204.77

The figures reflected are in the Swazi currency Emalangeni.

Salary structure of employees of associations: daily rate

Class	Starting rate	After 12 months
Harvesters	80.00	90.00
Cultivation	50.00	65.00

E1=US$ 0.073

E1=€ 0.062

N.B. The salary structure above indicates salaries taking each class from a company that pays the lowest salary as per that particular category.

A3 is knapsack operator. This people use very dangerous chemicals. Falcon, roundup, sevein, beserpax, spot. These chemicals are very dangerous.

B3 is a bell tractor driver. B4 is a bell tractor operator, this is the machine used to load the sugar into the tractors.

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