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Director-General
ILO
route des Morillons, 4
CH-1211 GENEVA 22By telefax

TUR/XH

23 May 1996

Dear Mr. Director-General,

The ICFTU hereby submits a formal complaint against the Government of Swaziland for violation of Convention No. 87 on Freedom of Association and the Right to Organise, and Convention No. 98 on the Right to Organise and Collective Bargaining. We would appreciate it if this complaint could be transmitted to the Committee on Freedom of Association.

The complaint concerns intimidation and harassment of the ICFTU-affiliated Swaziland Federation of Trade Unions and its leaders by the Swazi authorities and security forces. It also concerns the 1995 Industrial Relations Act which severely violates the right to organise and to strike.

In October, 1993, the Swaziland Federation of Trade Unions (SFTU) submitted a list of issues for negotiation to the government. This list subsequently became known as the "27 Demands". The demands included legislation to allow courts to order the re-instatement of unfairly dismissed workers; the establishment of a national minimum wage; the establishment of a national social security scheme; maternity leave pay; a May-Day holiday; the setting up of an economic forum; an end to brutality by the city council against street vendors; an end to victimisation of journalists; no privatisation of water supply services; as well as demands for a more democratic and representative society.

On 21-22 February, 1994, the SFTU held a mass stayaway in support of its 27 demands. The demands became the subject of discussions and negotiations between the SFTU and the government. The government appointed a task force to analyse the demands. However no concrete proposals emerged.

Strikes in many sectors took place in the following months. Police used violence and tear gas on several occasions to suppress them. The authorities used the High Court to obtain restraining orders against strikers, thereby bypassing the Industrial Court system.

On 22 July, 1994, during a strike, a worker was shot by the police using live ammunition. His leg was fractured. The SFTU General Secretary, Jan Sithole, visited the factory but the worker had already been taken to a clinic. On his way to visit the injured worker, police told Jan Sithole that senior police officials wanted to see him. He was prevented from visiting the injured worker and ordered to the company's security offices where senior police officials were waiting. He was interrogated by the officials who tried, unsuccessfully, to link the SFTU with political parties which are banned under Swazi legislation.

The police then forced Jan Sithole into a car with three senior armed police officials. The car, which was followed by another containing four armed police officials, was driven into sugar cane fields. They stopped in the middle of isolated fields. The police officials told Jan Sithole that they regretted that the law allowing for a 60-day period of administration detention was no longer in force. They speculated about the fact that he had not already been arrested, because they said, he was causing unrest in the country and was making it ungovernable. The cars were then driven back to town and Jan Sithole was released after five hours' detention.

Subsequently, Jan Sithole was subject to police surveillance and received threats to his life through anonymous telephone calls. Three heavily armed men visited his house in his absence. The telephone was cut temporarily at the same time. There were rumours that some officials in government circles were planning an 'accident' to eliminate him. Plain clothes police monitored SFTU meetings and seminars. Bribes were offered to SFTU office staff to try and obtain SFTU minutes and documents.

A team of security police launched an extensive enquiry into Jan Sithole's citizenship with the intention of deporting him. They travelled to Mozambique and South Africa, but the exercise proved futile.

On 13-14 March, 1995, the SFTU held a stayaway in support of the 27 demands, and to express disappointment at the continued failure of the government to make concrete proposals to settle the issues. The stayaway paralysed the capital city Mbabane, and the country's main city Manzini. A number of workers were arrested for striking.

The government undertook to ensure that a solution was reached on some of the main issues within seven days. A parliamentary committee was established. However, despite the willingness of the SFTU to negotiate, no progress was made, and it became clear that the government was seeking confrontation.

On 24 March, the police served the SFTU with an injunction to stop them holding report-back meetings to membership planned for the following weekend. The two meetings, one of trade union officials, and one of workers, went ahead when the High Court ruled against the injunction.

At the end of March, 1995, the government introduced an Industrial Relations Bill into the National Assembly. This, and amendments to the Employment Act, were introduced without discussion in the tripartite Labour Advisory Board. The Bill was condemned by unions and employers alike for its serious violations of trade union rights.

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The Industrial Relations Bill was passed in the National Assembly on 7 December 1995, and on 19 January, 1996, the King of Swaziland gave his assent to it.

Among the provisions of the Industrial Relations Act (copy enclosed) which violate ILO Convention No. 87 are the following:

- The Act imposes penal sanctions for certain legitimate industrial relations practices. An official of a trade union federation who calls a strike can be punished by a fine of 5,000 Emalengeni or a maximum of five years imprisonment, or both, and a subsequent five-year ban on holding trade union office.
- Equally severe penalties apply to organisations or office holders calling, organising, or giving financial support to strikes in essential services. The Act gives a broad definition of essential services, and gives the Minister of Labour unilateral powers to amend it.
- The Attorney General can unilaterally apply for a declaratory order to stop a strike and the Minister of Labour can unilaterally apply for an order to interdict a strike on the basis of national interest, which is not defined.
- The Act gives the Commissioner of Labour the power to suspend an organisation or federation. This power is not subject to the approval of the judicial authorities.
- The Commissioner has wide powers to interfere in union constitutions.
- It bans the holding of more than one official position in a union as well as banning trade union officials from holding office in a political party.
- The Act restricts the activities of a union or federation by maintaining the limitations on their roles contained in the previous law to the offering of advice and services. Severe penalties, including dissolution, can be imposed on a union or federation which, during the preceding twelve-month period, has, in the opinion of a court, devoted more time and funds to campaigning on public policy issues than on occupational issues.
- It prohibits federations from calling rallies or mass-meetings.

After the March 1995 mass stayaway, there had been optimism that all the outstanding issues between the SFTU and the government would be settled, but this did not materialise. The parties remained apart on a number of issues and a climate of mistrust grew. The SFTU saw the provisions of the Industrial Relations Bill as a clear attempt to either neutralise or eliminate its leaders.

In early June, 1995, the authorities claimed that Jan Githole had no right to Swazi citizenship, despite the fact that he was born there, had lived there all his life, and had a Swazi mother. His father had come from Mozambique. The police came to his home at 01.00H on 3 June and gave him a letter from the Chief Immigration Officer ordering him to appear before a Citizenship Board on 22 June to justify his claim to

Swazi citizenship. Press reports speculated on his possible deportation to Mozambique.

Jan Sithole had applied for citizenship in 1979, in order to comply with 1974 legal requirements, and had received no response. Subsequently, under a 1992 Citizenship law, Swazi nationality was conferred on all persons whose father was not a Swazi, and all such persons were required to seek a certificate of naturalisation from the Minister of Home Affairs.

Jan Sithole's hearing by the Citizenship Board was postponed to 20 July. It did not take place. On 19 July, the authorities wrote to him asking for 'convincing proof that he qualifies under the Act as a citizen of Swaziland'.

On 9 July, the SFTU announced a national mass stayaway for 17 July after negotiations with the government on its demands had again failed. The SFTU said that many of the demands had not been met. Jan Sithole continued to receive death threats from an anonymous caller and the SFTU reported rumours that he would disappear before 17 July.

On 14 July, the Prime Minister issued Legal Order No. 100 designating the mass stayaway called by the SFTU as a boycott and making anyone furthering a boycott liable to six months imprisonment. The government mobilised the police, army and prison officers, and said they would use force against those participating in the stayaway. Troops were deployed in the main employment centres to intimidate workers. There were also threats, intimidation, and dismissals in workplaces.

The announcement of the stayaway led to a last minute agreement in tripartite negotiations, and the suspension of the stayaway for two weeks. A tripartite committee was established to examine the 1995 Industrial Relations Bill. On 21 July, the government revoked Legal Order No. 100.

In the late evening of 29 August, four armed and hooded men with automatic rifles stopped Jan Sithole in his car. They took his clothes, personal documents and SFTU documents, and locked him in the car boot. One of the kidnappers wanted to kill him. The car was driven to the outskirts of Mbabane where it was abandoned in the middle of the road on a blind corner. Jan Sithole was freed from the car boot early the next day by a passer-by.

The SFTU believe that government agents were behind the kidnapping and the attempt to kill him. The police were known to be in possession of the documents stolen by Jan Sithole's abductors.

We would like to recall that after these serious events the ICFTU sent a request to you for personal intervention with the Government of Swaziland. We would also like to note that in the second paragraph of the letter, dated 4 September, we referred to a new strike law. The information in that paragraph was incorrect. The correct information is that given above in connection with Legal Order No. 100 issued on 14 July.

On 15 November, six trade unionists and two members of pro-democracy groups were arrested in Mbabane. Among the trade unionists arrested were the following officials of SFTU-affiliated unions: Themba

- 5 -

Shongwe, Vice-President of the Media Workers Union; Barbara Dlamini, General Secretary, Hotel and Catering Workers' Union; Julia Ndwandwa, Treasurer, Ports and Telecommunications Union; and John Masombuka, President of the Street Vendors' Union. They were released the following day after interrogation. It was believed the arrests were linked to a pro-democracy civic meeting held on 11-12 November.

During the same month, Jabulani Nxumalo, the SFTU Assistant General Secretary, was dismissed from his job, under the pretext of a workplace reorganisation.

The SFTU announced that it would embark on mass action in early 1996 to continue to press the government to meet its 27 demands. In response to this, speaking on the government-owned radio station, a government official said that force would be used against striking workers.

On 16 December, the Deputy Prime Minister alleged that the SFTU was against the monarchy and was preparing to overthrow the King. This was strongly refuted by the federation.

The SFTU announced a mass stayaway for 22 January 1996 which would also call for the legalisation of political parties.

On 18 January, the Prime Minister issued Legal Notice No. 11 of 1996 which designated the stayaway as a boycott bringing it within the scope of the 1963 Public Order Act. Bail is not granted for charges under this Act.

On 22 January, Jan Sithole, Richard Nxumalo, the SFTU President, and Jabulani Nxumalo, the SFTU Assistant General Secretary, were arrested while holding a meeting with the Swaziland Federation of Employers. They were taken to Mbabane police station and charged under sections 40 and 75 of the Industrial Relations Act 1995. Their lawyer was allowed to visit them and was told that the case would be heard on the following day at 09.00H in Mbabane and that the three trade union leaders would be held at Piggs Peak, 70 km away. However the three union leaders were taken to Mliba police station, 93 km in the opposite direction. The police did not collect them until 13.30H the next day. Although they were told they were going to Mbabane, they were taken to another police station about 75km from Mbabane.

The conditions that the SFTU leaders were held in in Mliba were particularly appalling. They were held in a police cell one and a half metres square with three other people. The toilet was in the middle of the cell and contained no water.

The police brought a magistrate and the Director of Public Prosecutions to the police station to prosecute the case. By chance the President of the Swaziland Law Society saw the convey of cars. He arrived at the police station and found that the union leaders were already being charged under the Public Order Act of 1963 in connection with Legal Notice No. 11 of 1996, without a lawyer being present.

The President of the Law Society objected to the fact that they were being charged without a lawyer, and the case was adjourned. The President of the Law Society went to fetch the SFTU lawyer who had been told that the court hearing would be in Mliba. While on the way to Mliba

they were told by a police officer that the hearing would take place at Big Bend, about 113 km from Mbabane.

When the lawyers arrived the case had been heard. Bail had been refused. The magistrate remanded the three union leaders in custody pending another court hearing in seven days. The Director of Public Prosecutions recommended that they should be taken to a maximum security prison. The police refused to tell the lawyer where they would be imprisoned. Eventually it was discovered that they were taken to Big Bend prison for a short time and then transferred to Matsapa maximum security prison.

The following day, 24 January, the SFTU lawyer filed an urgent application for bail and challenged the charges in Mbabane High Court. On 25 January when the government's lawyers were scheduled to respond, the case was withdrawn.

In his summing-up, the judge made sharp criticisms about the way the state had handled the case. He said that false and misleading information had been given to lawyers about where the SFTU leaders were being held; the charges under which they were held; and the whereabouts of their court hearing. The judge was subsequently demoted from acting Chief Justice to the status of an ordinary judge.

After their release on 25 January, the three union leaders attended a union meeting at Simunye sugar estate. All the participants were checked to ensure that they were accredited trade union representatives. One car arrived with two registration numbers, one superimposed on the other. After checking it was established that the car had a government registration plate covered with a private registration number.

The two occupants of this car ran away. They were caught after a chase and it was found out that they were members of the police force. The car was searched. It contained revolvers and two pistols, ammunition, recording equipment and two way radios. There were several other number plates in the boot of the car. The SFTU reported this to the police who drove the car away. The government had deployed the army and the police in the area.

The SFTU suspended the stayaway on 29 January. The police had fired teargas and beaten workers during the stayaway and a sixteen year-old girl was killed by a stray bullet fired by the police.

The government subsequently told the SFTU that it had appointed five cabinet ministers to negotiate with them. The SFTU tried for two days to meet the government's negotiators but was not successful. On the following day the government sent a message that it would meet with the SFTU. The government knew that a meeting would not be possible because the SFTU leaders were attending the funeral of the girl who had been killed.

The SFTU planned a mass meeting on 4 February and the police threatened arrests and confrontation if it went ahead. The authorities banned the meeting.

On 7 February, Jabulani Nxumalo, the SFTU Assistant General Secretary was arrested and charged with forging a high school certificate

in 1984. He was released on bail. SFTU leaders continued to receive death threats.

The government filed new charges against the three SFTU leaders, two other senior union officials and the SFTU itself:

Jan Sithole	SFTU General Secretary and General Secretary of the Swaziland Agricultural and Plantation Workers' Union
Richard Nxumalo	SFTU President
Jabulani Nxumalo	SFTU Assistant General Secretary
Thamba Msibi	SFTU Trustee and President of the Swaziland Union of Non-Academic Staff of Higher Learning
Barbara Dlamini	SFTU executive member and General Secretary of the Catering and Allied Workers Union

They were charged under the Industrial Relations Act in connection with the January stayaway. They were summoned to a pre-trial on 29 March. Negotiations with the government were suspended because all the accused were in the SFTU negotiating team.

In view of the above, the ICFTU firmly believes that the Government of Swaziland is in clear contravention of ILO Convention No. 87 on Freedom of Association and the Right to Organise as well as Convention No. 98 on the Right to Organise and Collective Bargaining.

The climate of intimidation and violence directed against SFTU leaders and the lack of respect for human rights makes normal trade union activities impossible. The SFTU General Secretary, Jan Sithole, and other SFTU leaders are subject to systematic repression because of their trade union work. The right to strike is flagrantly denied and the extent of interference into trade union affairs by the Government is evidence of its intent to break-up the independent and democratic trade union movement.

We thank you in advance for your attention to this matter.

Yours sincerely,

Bill Jordan
General Secretary

copy enclosing Industrial Relations Act 1995 sent by post on 23 May

ICFTU

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Mr. Michel Hansenne
Director-General
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CH-1211 GENEVA 22

By telex

TUR/KH

29 May 1996

Dear Mr. Director-General,

Further to my letter of 23 May 1996 lodging a complaint against the Government of Swaziland, I would appreciate it if the following additional information could be conveyed to the Committee on Freedom of Association.

Please add the following underlined sections:

1. Page 1 paragraph 4

On 21-22 February, 1994 the SFTU held a mass stayaway in support of its 17 demands. The demands became the subject of discussions and negotiations between the SFTU and the government. The government, together with the other parties, appointed a task force to analyse the demands. However no concrete proposals emerged.

2. Page 2 paragraph 6

The government undertook to ensure that a solution was reached on some of the main issues within seven days. A parliamentary committee was established. However, despite the willingness of the SFTU and the Federation of Swaziland Employers to negotiate, no progress was made and it became clear that the government was seeking confrontation.

3. Page 5 paragraph 2

During the same month, Jabulani Nxumalo, the SFTU Assistant General Secretary, was dismissed from his job at the Royal Insurance Corporation, under the pretext of a workplace reorganisation.

4. Please add the following paragraph on page 5 after paragraph 2:

Towards the end of 1995 the authorities began investigating the citizenship status of Richard Nxumalo, the SFTU President. The police and members of the intelligence forces visited his home in the rural areas and on at least two occasions interviewed several people, including

- 2 -

his relations, about when his family had settled in the region. They also went to his employer to look at his employment records. The authorities claim that Richard Nxumalo is not a Swazi, but a South African.

5. Page 5 paragraph 6

On 18 January, the Prime Minister issued Legal Notice No. 11 of 1996 (copy enclosed as Appendix 1) which designated the stayaway as a boycott bringing it within the scope of Section 13 of the 1961 Public Order Act. Bail is not granted for charges under this Act. A copy of Section 13 of the Public Order Act is enclosed as Appendix 2.

6. Page 5 paragraph 7 and the subsequent paragraphs

On 22 January, Jan Sichele, Richard Nxumalo, the SFTU President, and Jabulani Nxumalo, the SFTU Assistant General Secretary, were arrested while holding a meeting with the Swaziland Federation of Employers. They were taken to Mbabane police station and told that they would be charged under Sections 40 and 75 of the Industrial Relations Act 1995. Their lawyer was allowed to visit them and was told that the case would be heard on the following day at 09.00H in Mbabane and that the three trade union leaders would be held at Piggs Peak, 70 km away. However the three union leaders were taken to Mliiba police station, 93 km in the opposite direction. The police did not collect them until 13.30H the next day. Although they had been told that they were going to Mbabane, the three union leaders were taken to a small police station in Siphofaneni about 75km from Mbabane.

The conditions that the SFTU leaders were held in in Mliiba were particularly appalling. They were held in a police cell one and a half metres square with three other people and without water or lights. The toilet was in the middle of the cell and contained no water.

The police brought a magistrate and the Director of Public Prosecutions to Siphofaneni police station to prosecute the case. By chance the President of the Swaziland Law Society saw the convey of cars. He arrived at Siphofaneni police station and found that the union leaders had already been charged under the Public Order Act of 1963 in connection with Legal Notice No. 11 of 1996. Their lawyer was not present. A copy of the charge sheet is enclosed as Appendix 1.

The President of the Law Society objected to the fact that they were being charged without a lawyer, and the case was adjourned. The President of the Law Society went to fetch the SFTU lawyer who had originally been told that the court hearing would be in Mbabane, and then subsequently told that the hearing would be in Big Bend.

When the lawyers arrived in Siphofaneni the case had been heard. Bail had been refused. The magistrate remanded the three union leaders in custody pending another court hearing in seven days. The Director of Public Prosecutions recommended that they should be taken to a maximum security prison. The police refused to tell the lawyer where they would be imprisoned. Eventually it was discovered that they were taken to Big Bend prison for a short time and then transferred to Matsapa maximum security prison.

- 3 -

7. Page 7 paragraph 3

They were charged under Section 40 of the Industrial Relations Act, read together with Sections 73 and 75, in connection with the January stayaway. They were summoned to a pre-trial hearing on 29 March. Negotiations with the government were suspended because all the accused were in the SFTU negotiating team.

8. We would also like to add that under Section 3 of the Public Order Act of 1963, the police are empowered to give or refuse permission for meetings and public gatherings. This can, and is applied to trade union meetings in Swaziland and thereby authorises the police to be present in trade union meetings. We enclose a copy of Section 3 of the Public Order Act as Appendix 4.

We thank you in advance for your attention to this matter.

Yours sincerely,

Bill Jordan.
General Secretary

Appendices (5 pages) as mentioned
copy also by post