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Dr. Tomaz Augusto Salamao

Executive Secretary

Southern Africa Development Commission

Gaborone

Botswana

10th December, 2010

Dear Sir,

**Petition from the African Regional Organisation of the International Trade
Union Confederation (ITUC-Africa) Southern African Human and Trade Rights
Network on Human and Workers' Rights Deficits in Zimbabwe, Swaziland and
Madagascar and an Appeal for urgent intervention**

We, the trade unions from the SADC region meeting in Gaborone, Botswana on 9th and 10th December 2010 under the platform of the ITUC-Africa Human and Trade Union Rights Network bring you warm compliments from the leadership and the larger membership of our unions at national and continental levels and wish to draw the attention of your Office and the Commission to systematic and disturbing human and worker's rights violations in Zimbabwe, Swaziland and Madagascar including lack of commitment on implementation of the SADC social charter by all partner states.

Today is the International Human Rights Day declared and dedicated to and for people of the world to take stock, access and draw global attention to the state of people's rights worldwide. And for us workers and working families and trade union organisations in Africa, we are using the occasion of the event to draw attention to the deploring state of rights in the above stated countries manifest in massive, but avoidable abuses, infringements and violations. These

violations have to varying degrees impinged upon and undermined opportunities necessary for the free and full development of persons and groups.

Sir, let us quickly point out that the issues of human and workers' rights violations in Southern Africa is not limited alone to these countries under focus. However, we are compelled by the sense of urgency and serious worries about the degrees of gross, manifest and repeated rights abuses in these countries informed our decisions to focus on these countries. It is on the strength of these concerns therefore that we catalogue the violation and passionately urge your Office and the Commission to act and take decisive actions to arrest the situations, rein in impunity and cause a restitution process that will assuage and compensate for past abuses.

Let us also quickly add that the situations of gross rights violations in these countries date back to over two decade's timeframe. We are however going to constraint ourselves to not too far, however, with different timelines as it concerns each of the three countries under focus. For Zimbabwe, after the crisis of the 2008 elections and the subsequent intervention of the Southern African Development Commission (SADC) that led to the Global Political Agreement (GPA), which worked out a power sharing arrangement between the Zimbabwe African National Union- Patriotic Front (ZANU-PF), Movement for Democratic Change (MDC-T), and MDC-?

Just as we note that the GPA and its product- the inclusive government is an undemocratic arrangement, we nevertheless continue to laud and commend SADC for that successful intervention initiative to rein in peace and restore sanity. The country has since begun to witness some progress in the economic and social spheres of the nation as inflation has and continued to be managed and reined in and social services provisions have improved. And while we are compelled to believe that gradually the real dividend of the GPA and especially that of democracy will be felt, we are sadden by the fact that politicians and government has continued to act in ways and through actions that erode the primacy on rights.

Similarly, we are also concerned that SADC has not effectively followed through in terms of monitory and supervision to ensure that the spirits and letters of the agreement are followed through. What presently obtains therefore is that mistrust amongst signatories and confusion reign where for instance, President Mugabe continue to refuse to reappoint an independent Attorney General, the Reserve Bank Governor and the swearing in of Deputy Minister for Agriculture Roy Bennett despite his acquittal by the High Court of Criminal Charges.

A fundamental point that is missing within the understanding of the interim political arrangement under the GPA is that it was a process to restore the respect and sanctity of the mandate of the electorates and Zimbabwean citizens in general in terms of how they want to be governed. Rather and unfortunately, the arrangement has been seen and taken as one necessitated to bring peace amongst some three political parties. The point therefore is that while government and governance has manifestly failed to factor in the voices and concerns of citizens and groups, they continue to deny and violate their rights. For instance, workers and trade unions have continued to be denied the rights to freedom of association, expression and movement.

There have been well documented cases of physical serious and some cases fatal assaults and attacks on trade union members and their leaders. The continuous use and existence of the Public Order and Security Acts (POSA) and the manipulation of the labour Act have been used as combined tools to deny workers' rights and the enjoyment of same. These denials, abuses and violations have continued to make life difficult for workers, their organisations and leadership to effectively act in the defence, protection and promotion of their concerns, interests and privileges.

These denials and abuses have continued to be perpetrated in systematic and systemic ways as alluded to by the recent ILO Commission of Inquiry report. The same report is herewith attached here for your perusal, reference and action, please. It is on the foregoing that the following demands are therefore made as irreducible minimum demands that will help assuage losses from denials and violations of rights and contribute to the prevention of further and future abuses.

Concerning the situations in Zimbabwe, we are making the following demands:

- For trade unions to exercise their free and full freedom of association, expression and movement, there is a need to get rid of all repressive laws like the Public Order and Security Act (POSA) used to curtail rights.
- Similarly, the Labour Act which currently gives the Minister of Labour enormous powers to control unions and the non recognition of the right to strike needs to be reformed.
- Reform of the Constitution of Zimbabwe in a transparent and people driven process other than the current process that is politically driven by a selected few and marred by violence and intimidation.
- Halt all forms of trade union repressions, especially the continuous prosecution in court of trade unionists in line with the full letters of the ILO Commission of Inquiry Recommendations. Similarly, we demand that trade unionists forced into exile been given no-conditions attached opportunities to return to the country.

- Full operationalisation of the Zimbabwean Human Rights Commission through adequate funding and enactment of the relevant enabling law. This organ will help to ensure future protection for human and workers right just as it would have helped to heal the wounds of the past through a truth and reconciliation process.
- Adequate and full compensation for persons who are victims of human and workers violation as restitution is a part of the healing and reconciliation process.
- Effective reinforcement of the rule of law and the role of the courts-the absence of justice breeds a culture of impunity and this manifestly puts civil liberties in perpetual harm's way. We demand that the judiciary be strengthened and made independent and political commitment to non-interference is not only demonstrated, but guaranteed.

For the situation in Swaziland, after the 1973 emergency decree by the King, true, genuine and participatory democracy has eluded the people. The Tinkhundla System, which is touted as a cultural way of governance authentic to the people that was used to replace multi-party democracy has become a manipulative process for self perpetuation and aggrandisement by the monarchy, his household and lackeys. The king, his family and his privileged associates continue to live luxurious, ostentatious and flamboyant lifestyle while majority of the people languish in abject and endemic poverty, which affect even the working population.

For instance, about 70% of working people earn below the poverty datum line of 2 USD a day. In addition, more than 300,000 of the Swazi population depend on donor food aid. Unemployment is estimated at 33% and it is likely to increase in the years ahead amid a complete absence of any unemployment social security safety nets even as the effects of the global financial and economic crises rage. Despite the global campaign under the United Nations Millennium Development Goals, Swaziland has still not enforced a universal free primary education system. The economically active population is the most hit by the HIV/AIDS pandemic within the 26% of the population infected and living with the virus. And when the numbers of those affected like orphaned children and aged persons are added to the statistics, the corresponding effects assume human catastrophic situations. Yet the Monarchy and government continue to fritter scarce resources to service personal tastes and fancies.

The present political arrangement where the King wields absolute power by appointing the appoints the Prime Minister, the entire cabinet, all envoys, 66% of the members of the House of Senate, 20% of the members of the House of Assembly, the entire House of Chiefs, all Commissioners, all Regional Administrators, all the Judges, all Public Commissions (Judicial Service Commission, Electoral and Boundaries' Commission, Human Rights Commission, Anti-corruption Commission, etc.) and all his advisers. The King, not Parliament chooses the Prime Minister and entire cabinet. The Parliament has no practical oversight role over the executive arm of government. Oversight bodies are filled with loyalists and cronies thus rendering these vital institutions for ensuring checks and balances useless, ineffective, inept and mere window dressing. The King is above the Constitution which is supposed to uphold and he cannot be sued

civilly and/or criminally. The Constitution cannot be amended unless he consents. The King also controls all the land, minerals and water resources.

The 2003 Constitutional review process initiated following immense internal and external pressure, barred all civic groups including trade unions from submitting to that process. This non-inclusive Constitutional making process gave birth to the current 2005 Constitution that is exactly a carbon copy of the 1973 Proclamation of Absolute Monarchy given that it fell far short of the interests and aspirations of the citizenry as well as the standards laid down in the Universal Declaration of Human Rights and the African Charter of Human and Peoples Rights. For instance, the 2005 Constitution bans political parties from registration, excludes some from participating in the national general election and all the Bill of Rights section is heavily impacted by claw back clauses, giving the rights on the one hand and taking it away with the other. The King has continued to ignore the ruling of the African Commission on Human and Peoples Rights concerning political parties. But workers and the people of Swaziland have and are demanding a return to popular participatory multi party democracy.

Similarly, workers have continued to be denied their rights to freely assemble except upon the granting of Police permit and when such permits are obtained by trade unions, the Police have severally forcefully interrupted and disrupted legitimate workers activities with fatal effect in some cases. For instance, during the 2009 May Day (Workers Day celebration on May 1st, 2009) in Mbabane, the police forcefully invaded the venue of the event to arrest persons who they alleged were wearing PUDEMO T-shirt. And in one of such arrests, a trade union activist Jele Siphon died suspiciously in custody. And in September 2010, a pro-democracy meeting organised by workers was forcefully interrupted and participants including international guests were arrested, detained and manhandled.

- The abrogation of the over 37 years old Public State Emergency and the removal of all laws that prohibit political assembly
- A quick return to multi-party democracy and a democratic popular participatory constitution-making process through a convocation of a democratically elected National Constitutional Assembly
- Ensure the true promotion and realisation of fairer distribution of national wealth through pro-poor and people policies, programmes and public expenditures
- Fully respect and implement ILO Conventions on working standards to be done in full consultation and participation of trade union organisations
- Ensure an independent and free media and the judiciary, as well as the unconditional release of all political prisoners and return of all political exiles

These demands represent the irreducible minimum of the various demands sought and pursued by the workers and people of Swaziland. And we are hopeful that SADC will contribute to the process to achieve these demands.

On the Madagascan situation, we have witnessed the situation over the years where political stability has become very fluid with unexpected changes that have greatly disturbed the cohesion and communality in the society. This has seriously affected life and living in Madagascar and the various multiplier effects have brought about hardship and sufferings to the citizens. Moreso, it is one such unpredictable, mostly undemocratic power change that recently made SADC to suspend the membership of Madagascar, a move widely commended by Africans. The international community like the United States, the European Union and others has also joined in taking and announcing different sanction actions against the current government.

Furthermore, the fluid political situation in Madagascar besides weakening stability and peace has also brought about the situation where civil liberties, rule of law and prosperity and well being of citizens strongly threatened.

However, we must point out that suspending and imposing sanction action without effective follow-up action to extract the necessary political change have made these actions largely symbolic, ineffective and in fact hurting the people. For instance, as a result of the suspension of the American Growth and Opportunities Acts (AGOA) access for Madagascar by the United States of America, over 200, 000 direct jobs have been lost. Besides, illegal logging, exportation and trading in Timber by the current government, a practice and development that undermines the potency of the sanctions, deflect the effects on the government and imposes sufferings on the people. We therefore make the following demands as minimum panacea to addressing the political issues in Madagascar.

- Demand that sanctions such as effective and genuine ban on the visas and freezing of the accounts of the people blacklisted by the AU and EU should be pursued by SADC as an instrument to ensure some genuine and inclusive transition towards a process of free and democratic elections. Furthermore, that these sanctions should be effectively enforced, supervised and monitored.
- We demand that SADC consider strongly the embargo on the trade in “bois de rose” as the continuous exporting and trading in this produce by government and its agents has made continued to make the other sanctions weak and largely ineffective.
- That SADC look into the humanitarian crises the political instability has caused in Madagascar with a view to providing succor for the suffering poor in the communities.

- Besides, sanctions alone will not solve the political problems in Madagascar, for some measure of peace that will give room for a pro-people participatory process towards national solution, we demand that SADC work and collaborate with African Union to ensure that the “Maputo Agreement”, which proposed a power sharing arrangement among the four political parties should be implemented

We note that Zimbabwe, Swaziland and Madagascar are signatory to the African Union’s Charter on Human and Peoples’ Rights, Southern Africa Development Community (SADC) Principles and Guidelines on Democratic Elections, as well as signatory to other bilateral and multilateral mechanisms for the promotion of democracy and Human Rights. They are therefore duty bound not only to be seen to practically observe and respect these commitments, but to also apply and implement these commitments.

We are therefore calling on the Commission to as a matter of urgency to demand that the governments of Zimbabwe, Swaziland and Madagascar demonstrate sincere commitment to act in accordance with the principles establishing the commission, especially Article 4 of the treaty. It is our considered opinion and a worrying one too that the present practices and actions of governments of these countries are not in tandem with the letters and spirit of the principles and objectives of the Treaty, which amongst others is to promote and achieve sustainable development as human and workers rights continue to be in deplorable situations. These practices hurt civil liberties and undermine genuine popular participatory democracy and rule of law.

We are confident that your Office and the Commission will act and side with the people by making and taking the necessary actions to cause our demands to be met, which we considered as necessary steps to the attainment and promotion of justice for all.

Yours faithfully

1. Kwasi Adu-Amankwah – General Secretary ITUC-Africa

FOR AND ON BEHALF OF THE ITUC-AFRICA

2. Barnes Dlamini – President SFTU

FOR AND ON BEHALF OF WORKERS OF MEMBERS OF THE SWAZILAN FEDERATION OF TRADE UNIONS (SFTU)

3. Jose Ranrianasolo – Secretary General FE. SI. MA

FOR AND ON BEHALF OF WORKERS OF MEMBERS OF THE FOUR MADAGASY TRADE UNION CENTRES

4. Japheth Moyo – Deputy Secretary General (ZCTU)

FOR AND BEHALF OF ZIMBABWE CONGRESS OF TRADE UNIONS

5. Gadzani Mhotsha - Secretary General BFTU

FOR AND ON BEHALF OF BOTSWANA FEDERATION OF TRADE UNIONS (BFTU)

6. Dorothea Makusu

FOR AND ON BEHALF OF THE MALAWI CONGRESS OF TRADE UNION

Cc: Chairperson, Southern African Development Commission

Chairperson African Union Commission