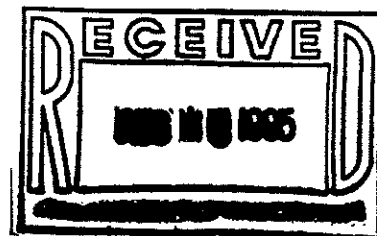


SOUTHERN AFRICAN TRADE UNION
COORDINATION COUNCIL
AND
ICFTU AFRICAN REGIONAL ORGANISATION



REPORT OF JOINT MISSION TO SWAZILAND
17 - 21 JULY 1995.

7 AUGUST 1995

BACKGROUND:

1. The Swaziland Federation of Trade Unions (SFTU), Federation of Swaziland Employers (FSE), Swaziland Federation of Labour (SFL) and the Government of the Kingdom of Swaziland, have been involved in negotiations over a period of nearly two years, in order to resolve issues formally raised by the SFTU in October, 1993. The issues, which are popularly referred to as "The 27 Demands" have been the subject of intensive debates and discussions at various levels of the Swazi society and two mass-stayaways, on 21-22 February, 1994 and on 13-14 March 1995.
2. The demands encompass a wide range of issues, and include for example the following:
 - (a) establishment of a national minimum wage
 - (b) end of brutalisation of street vendors
 - (c) proper accomodation for police officers and their families
 - (d) establishment of a national social security scheme
 - (e) involvement of workers in a constitutional forum
 - (f) maternity leave pay
 - (g) no privatisation of water services
 - (h) setting up of an economic forum
 - (i) no tax increase this year (1994)
 - (j) bus owners to be exempted from certain sales tax
 - (k) no victimisation of journalists

A copy of the demands entitled "The 27 Demands - now under consideration", signed by the Minister of Labour and Public Services is attached as appendix No 1.

3. Negotiations have been protracted, but substantial progress in resolving the issues has also been made. In fact, after the mass- stayaway in March this year there was some optimism that the issues would all be settled. Quite clearly, this has not been achieved, and the parties remain apart on a number of issues, which most observers regard as "resolvable". What seems to have happened over the period of these negotiations is that the negotiating partners, especially those on the government and the SFTU's side have been growing into mistrust of each other's intentions as well. This has lately been made more difficult because of the introduction into the National Assembly by the Government of a new Industrial Relations Bill

which criminalises industrial relations. The general feeling is that the bill is meant "to get at the SFTU leaders", and either "eliminate them" from being trade union leaders or "neutralise them". At the same time there are frequent references in newspapers, to the effect that SFTU has a "hidden agenda", and therefore is not ready to reach a settlement on its demands, with the government.

4. The government raised the issue of Jan Sithole's citizenship in early June and press reports speculated on Sithole's possible deportation to Mozambique, where his father came from, inspite of the fact that Jan Sithole was born in Swaziland of a Swazi mother, and has lived all his life in that country. He was subsequently called to appear before the Citizenship Advisory Board on June 21, 1995, to justify his claim to Swazi citizenship.
5. These issues have not helped the negotiation process; on the contrary they have engendered a climate of mistrust and hostility. As negotiations stalled, the SFTU decided to call for another mass-stayaway on 17 July, in order to put further pressure on the government to negotiate. On 14th July the Prime Minister issued an order which designated the "mass-stayaway" as a boycott claiming that there was a need to protect life and property. The Order stated:

"Any person with intent to further a designated boycott who by word of mouth publicly or by making a publication (as defined in subsection 9), advises, induces or persuades or attempts to advise, induce or persuade any person or class of persons to take any action which has been specified in relation to boycott, shall be guilty of an offence and liable on conviction to imprisonment, not exceeding six months".

A copy of the order (number 100) issued by the Prime Minister is attached as appendix No. 2.
6. The government also mobilised the police, army and prison officers, and made it clear in public statements that they would be ready to use force against those participating if the mass stayaway took place. The SFTU called a mass meeting of workers, on July 16, at which a decision was taken to suspend the mass-stayaway until the end of July 1995, to give negotiations another chance. The decision was taken amidst calls by some workers, that the SFTU leadership was "selling out".
7. It was with this background, and the overall situation in the country, that the Southern African Trade Union Coordination Council and the African Regional Organisation of the International Confederation of Free Trade Unions decided to send a technical mission, to study the situation and report back.

TERMS OF REFERENCE:

8. The mission was to assess the possibilities for the parties in the negotiation process to:
 - (a) resolve the remaining issues on "The 27 Demands", on their own, or
 - (b) whether some form of outside intervention was necessary to assist the parties in this process.
 - (c) Follow-up the "Jan Sithole Citizenship issue," and
 - (d) Make Recommendations, incidental thereto.

COMPOSITION OF THE MISSION:

9. The mission was composed of:
 - I. Martin Setlhare, representing the African-American Labour Centre.
 - II. Mahlomola Skhosana, Deputy General Secretary, National Council of Trade Unions, representing the Southern African Trade Union Co-ordination Council.
 - III. Bangumuzi Sifingo, International Secretary, Congress of South African Trade Unions, representing the Southern African Trade Union Co-ordination Council.
 - IV. Kele Zidana, representative, International Confederation of Free Trade Unions/African Regional Organisation.
The group appointed Kele Zidana, to be its spokesperson.

MEETINGS:

10. The mission met with government officials, leaders of the SFTU, the Executive Director of FSE, and the Personnel Manager of Ubombo Ranches. The mission also met with several members of the diplomatic missions accredited to Swaziland. A list of the persons the mission met is attached as appendix No. 3.

POLITICAL SITUATION:

11. Swaziland which borders between Mozambique and South Africa, became independent on 6 September 1968. It has a population of 850,000. Since 1973 the country has been ruled by an absolute monarchy with essentially two branches of government; the so-called modern arm headed by a Prime Minister, and the traditional arm. The latter is said to be the main arm of the government. It is known that at least six political parties exist but they are not allowed to participate in the political system. In 1993, two commissions known as Vusela were appointed to review the political system. It was widely believed then that the commissions would recommend that political parties be allowed to participate in the system. But

this was not done, instead while introducing secret ballot for those to be elected into the National Assembly, they were still to be elected indirectly. During the elections campaign, the political parties called for a boycott of the elections and it is believed that this has had a negative impact on the electorate as the turnout was low. Out of 80,000 registered voters, only 11,000 were said to have voted. The Parliament consist of two houses; the National Assembly and the Senate. The majority of members are appointed by the King.

12. It is apparent that there is considerable agitation in Swaziland especially among the youth and those in major employment centres, who see the current political system, failing to meet their expectations. Against this background, account must be taken on the impact of the democratisation process which has taken place in Southern Africa, and especially in South Africa.

THE ISSUES:

13. THE 27 DEMANDS

According to the SFTU 15 of its demands have been resolved. There are however 12 issues still to be resolved. The employers representatives on the other hand felt that most of the demands the SFTU had put forward had been "addressed to", since they were in the draft bills. However, they agreed with the SFTU, that the Industrial Relations Bill currently going through Parliament was totally unacceptable, since it introduces measures that would make the normal practice of industrial relations more difficult. To this effect, they said they had issued a joint statement with the SFTU to make their position clear to the government and to the general public. The government representatives told the mission that as of July 1995, 16 issues had been settled and 8 were being processed through legislative measures. There remain two issues, since one had been merged with another demand. Of these one on social security, was being handled through the Provident Fund Board, and government had already endorsed, a proposal from the board, and was awaiting its implementation. As regards to the other issue; the establishment of a national minimum wage, they said that the government was still giving consideration to the matter and would soon come up with its proposals.

CHANGES IN LAW:

14. The 27 Demands, called for amendments to various laws in Swaziland, and in particular, the Employment and Industrial Relations Acts. The government decided to introduce a new Industrial Relations Bill and made amendments to the Employment Act. While the SFTU finds many of the proposals on the Employment and Industrial Relations Bills objectionable, it is particularly incensed with proposals in the Industrial

Relations Bill, which clearly seek to criminalise the industrial relations system, and are not only in violation of trade union rights, but in complete disregard of Swaziland's commitments and obligations to respect international labour conventions. The government introduced the bill into the National Assembly without taking it to the tripartite Labour Advisory Board, thus failing to respect established procedures and practices. The SFTU demanded that it should be withdrawn from the National Assembly, but to no effect. As it has already been noted, the FSE also found the bill to be totally unacceptable and in a joint press statement issued by the FSE and the SFTU, dated 18 April the two organisations said they "reject this bill in its totality". A copy of the joint press statement issued by the FSE and the SFTU is attached as appendix No. 4.

15. The government representatives told the mission that the SFTU and FSE had the Industrial Relations Bill since 13 April 1995. While the FSE had submitted its view on the bill, it was said that the SFTU had failed to submit its proposals. Attempts had been made by both the SFTU and FSE to lobby Parliament against the Bill without any visible impact and although the FSE submitted its views on the Bill later on, the mission was told that not a single proposal from the FSE was included in the Bill. The SFTU took the view that since the Bill was already in Parliament, and the government refused to withdraw it, it was pointless to submit its proposals.

THE JAN SITHOLE CITIZENSHIP ISSUE

16. On June 2, 1995, Jan Sithole, General Secretary of the SFTU received a letter from his country's Chief Immigration Officer. The letter delivered to him on the eve of his departure to attend the 82nd Session of the International Labour Conference in Geneva, served notice to the effect that an application for registration as a citizen made more than 15 years ago had been revived for consideration. The notice repudiated his Swazi citizenship on the grounds that he had himself:

"acknowledged that he is a non-Swazi by applying for registration"

and demanded the surrender of his Swazi Passport. He was further summoned to appear on June 22, 1995, before the Citizenship Advisory Board to discuss his status in Swaziland. Prior to this, a statement appeared in the press, suggesting that he was to be deported to Mozambique. These moves were followed on July 17, 1995, by another letter, this time, from the Minister for Home Affairs ordering Sithole to provide:

"convincing proof that he qualifies under the (Citizenship) Act as a citizen of Swaziland"

A copy of the letter from the Minister for Home Affairs is attached as Appendix No. 5.

17. Jan Sithole's father was born in Mozambique, whereas his

mother was a Swazi. He was born in Swaziland in 1953, and his Swazi birth certificate states that he is a Swazi. Sithole has lived all his life in Swaziland and has been using a Swazi travel document for many years.

18. The 1974 Citizenship Act permitted a non-Swazi citizen to apply for citizenship by registration. Many persons born in Swaziland were uncertain of their citizenship status. Such persons it was said, were advised by the immigration authorities to apply for registration as a citizen so as to place their citizenship beyond dispute. In 1979 Jan Sithole applied for registration as a citizen. No response was received to his application. In 1992, a new Citizenship Act broadened and clarified the qualification for Swazi citizenship, that included the conferment of citizenship by virtue of birth. Jan Sithole has now applied for a certificate of nationality to confirm his status as a citizen.
19. The SFTU and the general public take the view that Jan Sithole is being harrassed and victimised because of his trade union work. It is important to note that Jan Sithole's case, is by no means the only one. The mission was informed of other cases of harassment.

OBSERVATIONS:

20. Although the Kingdom of Swaziland has made considerable progress in reforming its political institutions, it would appear that the reforms have not met with the expectations of some sectors of its population. The SFTU has to operate under these circumstances, and it is not surprising that some of its demands appear to be overly political, since its members have no other channel to obviate their grievances.
21. The mission was surprised and disappointed because of the manner the authorities had handled the issues of "the 27 Demands" especially in respect to the content of its proposals to amend labour laws, and the manner in which the Industrial Relations Bill was introduced into the National Assenbly. Not only were the proposals themselves in violation of trade union rights, but also in disregard of the provisions of Conventions 87, 98 and 141 to which the Kingdom of Swaziland has ratified. This smacks of an era in Southern Africa, which many thought was now a thing of the past. Nonetheless, the government representatives, whom the mission met showed a desire to resolve the issues through negotiations. Given that the Ministry of Labour and Public Service is the principal arm of government on these matters, the mission was optimistic that there was still some room for a negotiated settlement.
22. It was also apparent to the mission that most people in Swaziland including foreign observers thought that the issues were resolvable, and they hoped that they would be resolved through negotiation. It has to be noted that the mission also

found that there was considerable support for the SFTU's position among its members, supporters and others, and it would be helpful if this was sufficiently appreciated by the government.

ACKNOWLEDGEMENT AND APPRECIATION:

23. The mission would like to record its appreciation to all those who met its members often at short notice, and for their valuable contribution to the mission's work. It is a matter of regret that the mission was not able to meet with many of those it had hoped to meet, especially within government, employers and trade union circles. The failure to meet with the leadership of the Swaziland Federation of Labour is particularly regrettable. This was due to lack of time.

RECOMMENDATIONS:

24. The mission recommends that the parties be encouraged to move forward through negotiations. However in view of the mistrust which exist between the principal parties, the mission is of the opinion that an independent facilitator could also assist the parties to reach a satisfactory conclusion.
25. The proposals to amend labour laws and especially the Industrial Relations Bill if implemented, could worsen the industrial relations situation in the country, apart from the fact that the proposals are in violation of trade union rights and international labour standards. In view of this, the mission recommends that the international community must do everything possible to persuade the Swazi authorities to drop its punitive and unacceptable proposals and ensure that they are not enshrined into law.
26. The Swaziland government must be left in no doubt that threats and harassment of trade unionist cannot be allowed to continue. In particular they should declare unequivocally that Jan Sithole is a Swazi national. Any further attempts to deny him his right to Swazi citizenship should be met with an international campaign against Swaziland. Meanwhile the mission recommends that a fund should be established to ensure that Jan Sithole is properly and effectively defended.
27. The situation in Swaziland should be kept under constant review, and another mission at a political level should visit Swaziland at an appropriate time.

LIST OF PERSONS THE MISSION MET IN SWAZILAND

SWAZILAND FEDERATION OF TRADE UNIONS:

Richard Hxumalo	President
A. Nkambule	Vice President
Jan J. Sithole	General Secretary
Jabulani M.C. Nxumalo	Assistant Secretary General
Mrs Elizabeth Morris	Executive Committee Member
Barbara Dlamini	General Secretary, Swaziland Hotel and Catering Workers Union.
Joe Dlamini	Swaziland Agricultural and Plantation Workers Union
David Matse	President, Swaziland Post and Telecommunication Workers Union.
Magwagwa Mdluli	President, Swaziland National Association of Civil Servants
Jameson Mkhonta	General Secretary, Swaziland National Association of Civil Servants
Themba Shongwe	Vice President, Media Workers Union of Swaziland.

GOVERNMENT OF THE KINGDOM OF SWAZILAND

The Hon, Mr. A.H.H. Shabangu	Minister of Labour and Public Service.
Sandile Ceko	Principal Secretary
R. Bhembe	Commissioner of Labour.
I.V. Dlamini	Legal Adviser.

FEDERATION OF SWAZILAND EMPLOYERS

Musa I. Hlophe,	Executive Director
Mandla I. Hlashwayo,	Personnel Manager, Ubombo Ranches Ltd.

BRITISH HIGH COMMISSION

H.E., Mr. Richard Gozney	High Commissioner
Julian Chandler	Deputy High Commissioner

EMBASSY OF THE UNITED STATES OF AMERICA

H.E., Mr. John Thomas Sprott	Ambassador
Michael E. Malinowski	Deputy Chief of Mission
Richard Kaminski	Legal Adviser

MOZAMBIQUE EMBASSY

Fernando Safrao Alberto	First Secretary
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SOUTH AFRICAN HIGH COMMISSION

H.E., Mr Walter Louw	High Commissioner
Ray Deysel	Third Secretary

THE 27 DEMANDS - NOW UNDER CONSIDERATION

1. Reinstatement clause under the industrial relations Act, 1980 (Section 13).

There was no consensus on this issue and therefore government had to take a position which will reflect the country's long term interests. Government has considered the facts from both the employers and workers and have taken a position to be recommended to Parliament soon in the form of an Amendment Bill.

2. Removal of the six months ceiling in the industrial relations act, 1980 (Section 13(4)).

There was no consensus on this issue and the government had to take a position in the light of the facts presented as well as its own research findings.

Government has made a decision and will recommend it to Parliament through an Amendment Bill, as in (1) above.

3. Recognition of May Day.

There was a consensus on this issue and Government is in agreement with this recommendation. The 1st May will be a Public Holiday in Swaziland as decided by Government with effect from 1995 and a Gazette will be issued by giving effect on this decision as well as the Public Holiday to be dropped to give way for this new Public Holiday.

4. Tax exemption for all terminal benefits.

There was a consensus on the recommendation that this matter be pursued with the Tax Advisory Board. Government is therefore in full support of this recommendation.

5. Maternity Leave Pay (Compulsory for one month).

There was no consensus on this demand and therefore Government has to take a position having regard to the consequences of this issue on the employment of women and other relevant facts.

Government has considered this issue and has made a decision which will be recommended to Parliament through an Amendment Bill.

6. Contracting out of services

There was a consensus on the forms of contracting out which are undesirable and on the processes to be followed in effecting such where necessary. Government is in full support of the conclusions arrived at and approves of this recommendation.

7. Security deposit of wages (Employment Act, 1980 Section 2).

There was a consensus on this issue and government is active on this issue. Government's position will be presented to Parliament in the form of an Amendment Bill. Where liquidation is the case, the Amendment Bill will come through the Company Act.

8. Proof of economic decline of an enterprise before effecting retrenchment.

There was a consensus on this issue and the Government has taken a decision to effect the spirit of early consultations between the Social Partners on matters of mutual concern. Government will be recommending to Parliament changes through an Amendment Bill.

9.1. Conversion of the Swaziland National Provident Fund into a National Pension Scheme.

There was consensus on this issue and Government through the Board of the National Provident Fund has commissioned studies to refine the ILO Report on this subject. The result of the consultancy will be shared with the tripartite partners once available.

9.2. Swaziland National Provident Fund members right to borrow money using fund as collateral.

There was consensus on the action to be taken on this issue. Government accordingly supports this view and will await the outcome of the study mentioned under 9.1. above.

10. Seasonal employees should qualify for pension benefits.

There was consensus on this issue and Government accordingly supports the recommendation that this matter must be handled at plant level and at wages council levels. There is therefore no need to legislate on this issue.

11.1 Affirmative action should be gazetted.

There was consensus on this issue. Government accordingly supports the view and have already set up a drafting committee chosen by participants at a workshop of stake-holders including workers and employers, to produce a draft for a Bill of Localisation which will be presented to parliament once ready. However it should be noted that Government may not adopt the term "affirmative action" as used since the meaning may not be explicit and certainly not relevant to the Swaziland context.

11.2 No Discrimination by big companies and multi-national corporations.

There was consensus on this issue and Government accordingly supports the conclusion. Government further would like to make it known that the Country's Labour Laws support no discrimination in all forms regardless of the size and origin of the Employer. The work being done on 11.1 above will address the issue of the employment of expatriates.

11.3 to 11.9

Since there was consensus on these issues Government accordingly accepts the consensus position and will take these points into account in drafting the bill mention under 11.1

12. All workers should have a right to strike

There was consensus on the issue of essential services requiring consideration. Government supports this view and will include changes in the amended labour laws having regard to current trends in the world and will take into account the opinions of the ILO draft and the Wiehahn Commission.

13. Establishment of a National Minimum Wage

There was consensus on this issue and Government accordingly supports the need for expert advice on this subject. Steps are already being taken to solicit such assistance from competent authorities.

14. Proper accommodation for the police and their families.

There was consensus on this issue and government views the issue of accommodating all its employees adequately as a priority. Police are therefore included in this policy.

15. End Brutalization of Street Vendors

There was consensus on this issue and government notes the concerns raised. Government's position is that the informal sector, including street vending, has to be promoted but properly regulated. Government has taken a decision that the Ministries of Health, Commerce and Industry as well as Housing and Urban Development should develop a comprehensive policy to deal with the operations of the informal sector and in particular pay special attention to the problems facing street vendors. Action is already at an advanced stage in addressing this problem within urban centres. Government retains her duty to maintain law and order.

16. Water services not to be privatised

There was consensus on this issue and government's position is that there was never an intention to privatise the Water and Sewerage Board.

17. No tax increase this year

There was consensus on this issue and government notes that so far there has not been any tax increase. Government further notes that the workers are represented as well as employers in the Tax Advisory Board which advises the Ministry of Finance on this matter.

18. Employees elected to Parliament.

There was consensus on this issue. For this reason the government has commissioned a consultancy to, among other things, advise on the best policy option on this subject.

19. No victimisation of journalists

There was consensus on this issue. Government's position is that there is no victimisation of Journalists in the country and there are structures to ensure that they operate freely.

20. Setting up of an economic forum.

There was consensus on this issue. Government's position is that the Economic Review Commission should be used by all parties to make such suggestions so that such a forum is set up from the commission's recommendations in order to serve as a permanent structure for economic issues.

