

Southern Africa Labour and Development Research Unit

THE WIEHAHN COMMISSION : A SUMMARY

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PREFATORY NOTE

This working paper provides a summary of the first report of the Commission of Inquiry into Labour Legislation (the Wiehahn Commission). It incorporates some of the government's initial responses to the report drawn from a White Paper, the Industrial Conciliation Amendment Bill, and motions in the House of Assembly during June 1979 when the Bill was debated.

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CHAPTER I : INTRODUCTION

Appointment of the Commission

Economic growth and industrialisation led to shortages of skilled labour, particularly in the late 'sixties. Unskilled and semi-skilled workers, particularly Africans, were trained to higher level skilled work. (para. 1.2 and 1.3).

Because of the dualistic structure created by the industrial council system for non-African workers and the committee system for African workers, workers doing the same work in the same industry fall under different systems of negotiation. (para. 1.7).

Organised labour opposed the granting of negotiating powers to committees in 1977, because they were seen to be discriminatory, in conflict with industrial council powers and contrary to the interests of trade unions. Employers too, feared that they might be forced to use two different systems to cope with different groups of workers in the same undertaking. Some employers created extra-statutory systems of consultation and negotiation as a result. This, and the desegregation programmes in factories and offices initiated by some employers, indicate that labour law and labour practice are 'drifting apart'. (para. 1.8 and 1.9).

Unregistered trade unions for African workers are becoming a permanent feature and they enjoy moral and financial support on a broad front. The fact that they are not prohibited, although excluded from the provisions of the Industrial Conciliation Act, is an incentive to foreign labour and political organisations to give them overt and covert aid. Furthermore, they are used as vehicles for change by other non-labour organisations. (para. 1.10).

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1. (a) Report of the Commission of Inquiry into Labour Legislation : Part 1. R.P. 47/1979.
 - (b) White Paper on Part 1 of the Report of the Commission of Inquiry into Labour Legislation. W.P. 8-'79.
 - (c) Industrial Conciliation Amendment Bill. B.94-'79.
 - (d) Explanatory Memorandum on the Industrial Conciliation Amendment Bill, 1979. W.P. 5-'79.

At the same time, there are large numbers of migrants and commuters from outside the Republic's borders in the labour force. (para. 1.11 to 1.15).

All these developments have made it necessary to revise the labour system and labour legislation.

Background considerations :

- There have been major changes in the field of labour since the last commission was appointed thirty years ago. Speed is an important consideration in introducing changes. (para. 1.16.1).
- Many matters, particularly those concerning the economic and social security of groups of workers, are sensitive and emotional issues. (para. 1.16.2).
- The Commission cannot be influenced by foreign demands, but it is not possible to ignore foreign attempts to influence labour practices, for example through multinationals, codes of conduct etc. These could subject the system to extreme stress. (para. 1.16.3 and 1.16.4).
- The influence of the Commission's recommendations goes beyond purely labour matters.
- As much worthwhile legislation and practice as is possible should be maintained. (para. 1.16.6).
- New legislation must take account of future developments as well as present practice. (para. 1.16.7).
- Opposition and abuse will be reduced by the orderly and evolutionary development of the new system. (para. 1.16.8).

Premises underlying the recommendations :

South Africa subscribes to the principle of a free market economy. However, in practice the economy can best be described as mixed, with some government involvement, including involvement in and control over the relationship between employers and employees. Full involvement in the free enterprise system with as little government intervention as possible would give all groups a stake in the system and ensure a common loyalty to the system and to the country. (para. 1.19.1 to 1.19.4).

Any changes should not disturb the peace and harmony between employers and their employees or among employees themselves (para. 1.19.5). Neither must the introduction of a new system result in a lowering of standards in training for, admission to, and advancement in, employment. (para. 1.19.7).

CHAPTER II : THE CHANGING ROLE OF THE DEPARTMENT OF LABOUR

Introduction :

South Africa has a tripartite system in labour matters, in which rules are made by employers, employees and the State. (para. 2.2). Until recently the State's role in the labour field has been 'protectionist and regulatory' but developments in the last thirty years have added 'a more creative character to the State's involvement'. For this reason it is necessary to have a dynamic and efficient Department of Labour. (para. 2.3).

The Department of Labour :

The functions of the present Department are, broadly

- the utilisation and development of manpower;
- the regulation and facilitation of industrial relations;
- the protection of workers. (para. 2.7).

In a later report the Commission is to deal more fully with the future form and functioning of the Department of Labour. The immediate concern is with the image and name of the Department, and its function as a monitor of developments and progress in labour matters. (para.2.7 and 2.8).

The Department will continue to play a decisive role in labour matters and thus its image and its name are of vital importance. The name should be changed to reflect more adequately the Department's functions, in keeping with modern trends, and to herald a new era of dynamism in

the administration of labour affairs. The word 'labour', says the Commission, is taken to mean manual or blue collar workers, hourly paid or mostly unskilled workers, whereas the Department's role in fact is much wider - it covers the affairs of a significant number of white collar workers, for example. (para. 2.13 and 2.14).

Recommendations :

The Commission recommends that the Department of Labour change its name to one of the following:

- Department of Manpower; or
- Department of Manpower Development; or
- Department of Manpower Utilisation and Development. (para. 2.17).

The Government has accepted that the Department's name be changed to Department of Manpower Development. (W.P. para. 5.1).

National Co-ordinating and Advisory Body :

The Commission considers that the State has particular responsibility with regard to future planning, rationalisation and development of manpower. (para. 2.19). The State should introduce active policies and programmes to deal with:

- training and retraining of workers;
- creation of employment opportunities;
- the provision of labour market facilities to ensure a) the co-ordination of the supply and demand of labour, especially the allocation of labour at the right place at the right time, b) genuine freedom of choice by workers, and c) optimal utilisation of manpower resources;
- research with regard to supply and demand conditions in industries;
- evaluation of efficiency of labour market programmes and a review of labour policy;
- legislation and administrative practices;
- the preservation and promotion of industrial peace. (para. 2.22).

The Commission notes that it is the State which, in the final analysis, is responsible for the preservation of industrial peace. (para. 2.32). All these considerations call for the establishment of a national body which is representative of all sectors of the economy.

Recommendations :

The Commission recommends that a National Manpower Commission (N.M.C.) be established as a matter of priority. The Minister is to appoint members but these should be representative of the State, employers' and employees' organisations. The number of members should be in the discretion of the Minister who will also appoint the chairman. The terms of office are to be in the Minister's discretion but should be for at least two years and members should be eligible for reappointment. (para. 2.45.1 to 2.45.5).

The N.M.C. should be assisted by a strong professional secretariat, whose functions would be: a) to submit recommendations to the Minister on all labour matters, and b) to submit recommendations on matters of administrative routine referred to it by the Minister.

The National Manpower Commission should:

- continually survey and analyse the manpower situation both in South Africa and elsewhere, if necessary;
- keep abreast of trends in the international labour field;
- continually evaluate the application and effectiveness of labour legislation and practice;
- do research on the designing, planning and updating of manpower programmes;
- work in collaboration with other bodies on labour issues;
- have a tripartite executive committee;
- be able to appoint sub-committees;
- liaise closely with the Defence Manpower Board;
- report regularly on an annual basis. (paras. 2.45.1 to 2.45.13).

The Commission recommends that the Committee for the Better Utilisation of Manpower be dissolved. (para. 2.45.12).

The Government has accepted these recommendations with a few changes:

The N.M.C. will be established immediately by ministerial decision. The Minister will decide on terms of office for each individual on the Commission and there will be no two-year minimum.

The Minister will not nominate the executive of the N.M.C. - the Commission is to elect its own executive. (W.P. paras. 5.2.1 to 5.2.3).

The Government also points out that the Commission must guard against encroaching on the territory of the Department of Labour in matters of administrative routine. (W.P. para. 5.2.3).

CHAPTER III : INDUSTRIAL RELATIONS IN SOUTH AFRICA

Introduction :

The Commission surveyed the Industrial Conciliation Act of 1956, the Black Labour Relations Regulation Act of 1953 and the Wage Act of 1957. In spite of similarities, the systems provided for by the Industrial Conciliation Act and the Black Labour Regulation Act differ fundamentally. One important difference is the level at which agreements are concluded and the legal status of such agreements. The Industrial Conciliation Act provides for agreements to be concluded at industry level which have the effect of statute law. A breach of an industrial council agreement constitutes an offence under the Act. Under the Black Labour Relations Regulation Act, on the other hand, committees negotiate agreements at the level of the undertaking only. A breach of the terms of such an agreement is not a criminal offence. Neither works (or liaison) committees nor the unregistered trade unions have significant powers of intercession on employees' behalf. (paras. 3.8. and 3.9).

Two different systems thus operate within the same economy and African employees doing the same skilled work as white and 'coloured' employees in the same industry would fall under a different system from the latter. (para. 3.10).

The two main points of criticism which emerged from evidence were the lack of effective participation by African workers in industrial council decisions which affect them, and the disruptive effect which committee agreements could have in industries where industrial council agreements apply. (para. 3.11).

At the same time, matters like the management of trade unions, their areas of jurisdiction and their financial affairs, call for attention.

Trade Unions, Employers' Organisations and Industrial Councils :

At the end of 1977 there were:

- 84 registered white trade unions with about 390 000 members (5 in the process of cancellation);
- 49 registered 'coloured' trade unions with about 100 000 members (6 in the process of cancellation);
- 41 registered trade unions with mixed membership of about 180 000 (49 000 white and 131 000 'coloured' - 4 in the process of cancellation); (para. 3.17.1)
- 27 unregistered African trade unions with 55 000 to 70 000 members.

Statistics for African workers represented through the committee system were:

- 302 works committees representing 74 000 employees;
- 2 626 liaison committees representing 690 000 employees;
- 8 co-ordinating works committees and 8 co-ordinating liaison committees;

These committees acquired statutory negotiating rights in 1977. (para. 3.18). There were 243 registered employers' organisations representing 25 700 employers. (para. 3.17.2).

The Commission considers that the industrial relations system has a proven history of success, but that certain problems have developed, particularly with trade unions. (para. 3.20).

1. The finances of a small proportion of registered trade unions are unsatisfactory; 20 are either faced with liabilities exceeding assets or are in 'a parlous state'. The primary causes of this are poor financial management, inadequate official controls over income and expenditure and dwindling membership due to structural changes in the labour force. (para. 3.20.1).
2. The Commission has evidence that cases occur of trade union funds being used for purposes other than those provided for in the constitution, for example, where registered trade unions allot funds for the formation of African trade unions. (para. 3.20.2).

3. There is also insufficient clarity on criteria used to determine the representativeness of trade unions, and a need for the streamlining of registration procedures and amendment to constitutions. (para. 3.20.3).
4. Two developments which demand attention are the increasing prominence and de facto recognition of African trade unions and the efforts being made to monitor various codes of employment practices. A significant number of employers have recognised unregistered African trade unions in bargaining, thus conferring on them the privileges of recognition without the responsibility imposed by statute on non-African trade unions who do register. (para. 3.20.4).
5. The 'dissonance of this development with the ideal of orderly unionism acting within the law' is self-evident, the Commission says. The development of codes of employment practice is likely to impose strains on the management-labour relationship, particularly if they are monitored by agencies which have no vested interest in maintaining industrial peace. (para. 3.20.5).
6. It is necessary to clarify the relationship between unions and committees, especially since some unions have not acted in support of committees and have even opposed their establishment. (para. 3.20.6).
7. If committees are extensively used in negotiating agreements, problems of inconsistency with other agreements and wage measures could arise. (para. 3.20.7).

African Workers and Trade Unionism :

As far as African workers are concerned, industrial relations underwent dramatic change in 1973 with the Durban strikes. The African worker came to be seen as a possible means of achieving change in South Africa, not only in the economic sphere but in other spheres too. Furthermore, the strikes focussed international attention on African unions, giving rise to pressure groups.

The arguments against registration of African unions outlined in the Botha Commission (1948) are summarised. Many were repeated before this Commission, for example: that Africans are not sophisticated enough for unionism, that the desire on the part of African workers to form unions stems from non-African agitators and instigators, that Africans are foreigners in South Africa who could exercise union rights in their own states and that because of their numbers African workers would swamp existing unions and endanger the economic and political security of other workers. The Commission is prepared to accept that these arguments may have been justified in an earlier stage but argues that they have been invalidated by events in the last thirty years. (paras. 3.30 to 3.32).

It therefore considers that the status quo should not be maintained and advances the following reasons for advancing legal recognition to African unions:

1. Twenty-seven African trade unions already exist, many of them in strategic industries. Eleven of them are parallel unions, co-operating well with registered unions. (para. 3.35.1).
2. African workers are accepted as a permanent part of the economy. (para. 3.35.2).
3. Job advancement will place the statutory trade union system under stress if Africans continue to be excluded. (para. 3.35.3).
4. African unions are not subject to the 'protective and stabilising' elements of the system, or to discipline and control; in fact, they enjoy greater freedom than registered unions in that they could participate in party politics and could use their funds for any purposes which they saw fit. (para. 3.35.5).
5. The present situation not only prejudices existing registered unions but deprives African unions of protection. The interests of their members could better be served within a more structured and orderly situation. (para. 3.35.6).

against the system of free enterprise in South Africa. It would certainly add fuel to the flames of radicalism on the part of those who wish to overthrow the system and would have major international repercussions. (para. 3.36.6 and 3.36.7).

Once African union registration is accepted, questions of freedom of association and of trade union structure arise. (para. 3.42).

Freedom of association :

The question of eligibility for trade union membership in South Africa has always been a matter for the trade union to decide. However, some witnesses to the Commission suggested that the admission of migrant workers would lead to unions being 'swamped' and possibly abused for political purposes. The prevalence of migrants in certain industries (for example mining), their low educational level, their lack of experience of sophisticated industrial relations systems and the fact that a number come from 'countries which practise ideologies inimical to South Africa' could lead to unions with migrant members having a destabilising and disruptive effect on the industrial relations system. (para. 3.45.1).

But the Commission believes that no restrictions should be placed on any worker's eligibility for union membership. It advances several arguments in this connection:

1. The operation of the law should be extended to all those whose actions outside the law might disrupt industrial peace. (para. 3.57.1).
Denial of union rights to such a large part of South Africa's work force would constitute a rallying point for underground activity; an industrial relations problem would become a security problem. Foreign workers who tried to disrupt industrial peace for political purposes could be barred from the Republic. (para. 3.57.1, 3.57.2 and 3.57.3).
2. It is unlikely that unions would expose themselves to swamping by migrants when this could easily be prevented by restrictions on membership and voting imposed by the unions themselves. (para. 3.58.1).

Unions which defined their eligible constituency to include migrants would set themselves immense problems in achieving representativeness (and thus registration). (para. 3.58.3). Furthermore, it is unlikely that migrants would want to participate in unions on any significant scale since they earn predetermined contract rates. Thus allowing migrants to be eligible for membership does not mean that large numbers would in fact become members.

3. Distinctions between workers on the grounds of whether they are permanent residents, migrants or 'frontier commuters' would cause problems with negotiation at the workplace. (para. 3.58.7).
4. The question of trade union membership for migrants and commuters under South African statute is a private matter; a commitment on the part of the South African government to consult with self-governing and independent states does not confer on those states the right to interfere in a relationship from which even the South African government holds itself aloof. Thus the legitimate and recognised interests of the governments of these states does not extend to authorisation of trade union membership of their citizens. (para. 3.60.3). Furthermore, there are differences of opinion among the leaders of the black states on the question of trade unions, and if the decision were left to them it is possible that some workers in South Africa would have trade union rights and others would not. (para. 3.60.4).
5. A restriction on the rights of migrants and commuters to join unions would remove an existing right (the right to join an unregistered union). (para. 3.61.1). It would result in discrimination between people with the same nationality doing the same work. (para.3.61.2).
6. Finally, the restriction would be in contravention of ILO resolutions. (paras. 3.62.1 to 3.62.4).

Minority view : Commissioners Drummond, Grobler, Hechter, Neethling and Van der Merwe :

These commissioners support the principle of the right to organise but consider that frontier commuters and migrants should be 'phased in'

to the trade union movement through a process of consultation, deliberation and negotiation which could culminate in bilateral agreements between the South African government and the governments of the states concerned. (paras. 3.73 to 3.82).

The interests of those frontier commuters and migrants who might initially not be trade union members should be accommodated through the mechanism established under the Black Labour Relations Regulation Act, i.e. through enterprise-level committees. (para. 3.81.3).

There should be liaison with the governments of independent and self-governing states before legislative provision is made to extend trade union rights to citizens of such states who are permanently resident in white areas. (paras. 3.73, 3.77, 3.81, 3.81.2, 3.81.4 and 3.81.5).

Qualifying view : Commissioner Wichahn (Chairman) :

The Chairman considers that the main difference between the majority and minority views concerns the government's approach to the implementation of the principle of freedom of association if the latter be accepted. The recommendations thus become a matter for political and administrative decision by the authorities. The government would be likely to pursue its past practice of consulting all interested parties. (paras. 3.83.1 and 3.83.2).

Recommendations :

The Commission recommends that:

1. the fundamental principles underlying all adjustments to the industrial relations system should be
 - the preservation of industrial peace;
 - the establishment and growth of an integrated and unitary system incorporating both the industrial council and committee systems;
 - the fullest possible expression of the principle of self-governance;
 - the promotion of decentralised consultation and negotiation.
 (para. 3.153.1).

2. Individuals should be free to join any trade union of their choice and trade unions should be free to prescribe such membership qualifications as they see fit. Any union which meets the requirements for registration in the new system should be eligible for both registration and full participation regardless of the colour, race or sex of its members. (para. 3.153.2).

The government has accepted the first recommendation as a point of departure.

The government has accepted with certain reservations the principle of freedom of association but has decided that at present only those Africans who enjoy permanent residence in South Africa and are in fixed employment will automatically be eligible for trade union membership. The National Manpower Commission is to advise the Minister at an early stage on the criteria for 'fixed employment'. It will also provide guidance on exemptions. (W.P. para. 6.2.1).

Non-union members (migrants and frontier commuters) may in the interim be accommodated through the committee system. (W.P. para. 6.2.3).

On the question of consultation with other states on trade union rights, the government regards trade union membership as a domestic matter and although the possibility of consultation is not excluded, the government intends to maintain its autonomy and flexibility in this matter. (W.P. para. 6.2.2).

Further, the government accepts the principle of trade union autonomy, but is anxious to get guidance on the implementation of the principle from the National Manpower Commission.

In the Industrial Conciliation Amendment Bill, the government introduced a penalty of up to R500 (in respect of each person who is not defined as an 'employee', i.e. migrants and frontier commuters) on a registered union which admits such a person to membership or 'has any relationship' with such a person. However, this provision was amended at the committee stage of the Bill to permit registered unions 'to have a relationship' with non-employees but they still may not admit them as members. (Hansard 17 cols. 8287 to 8292).

Trade Union structure:

On the question of the racial composition of trade unions, the Commission concluded that trade unions and individuals should be afforded full freedom of association and that trade unions should be free to admit or bar from their ranks any individuals on the grounds of race, colour, or sex, i.e. uni-racial, 'mixed' or non-racial unions should be entitled to registration depending upon the circumstances of each case. (paras. 3.64, 3.66, 3.69 and 3.72). Although complications could arise from this approach, with the growth of a multiplicity of unions and divided bargaining, the Industrial Registrar after consultation with the National Manpower Commission could adopt a pragmatic approach - accepting some applications and rejecting others. (paras. 3.70 and 3.71).

The government while accepting the principle of trade union autonomy 'is anxious that the demands for adjustment ... should not be too taxing and that the Minister should have room for movement'. The N.M.C. will have to give guidance on the principle. (W.P. para. 6.2.4).

However, in the Industrial Conciliation Amendment Bill, the government has preserved the status quo on the registration of 'mixed' trade unions. However, at the committee stage of the Bill the Minister was empowered to register 'mixed' unions where the ratio between the number of employees of different population groups made it expedient to do so. (Hansard 17 cols. 8272 to 8278). He is, also, allowed to vary or extend the scope of such a union. (Hansard 17 cols. 8293 - 8294).

Trade Union management:

As a matter of principle, the Commission does not favour state regulation of eligibility for election to responsible positions in trade unions. But the problem is not of immediate urgency and for the foreseeable future it would be sufficient if the constitutions of trade unions and employers' associations were regarded as the most appropriate means for regulation of this matter. The National Manpower Commission should keep the matter under surveillance. (para. 3.85).

Registration of Trade Unions and Industrial Council Proceedings:

The principal criteria in terms of which applications for registration should be considered should be:

- the extent to which the organisation represents its eligible membership;
- the degree of organisation within the undertaking, trade, industry or occupation and the extent to which various 'interest groups' are represented;
- whether or not the organisation is a bona fide union, i.e. if it is relevant to the legitimate needs of the employer-employee relationship;
- the balance of representation of various population groups within a mixed organisation;
- economic activity and general conditions in the undertaking, trade, industry or occupation;
- the viability of the organisation;
- the likely contribution to industrial peace and 'the national interest'.
(para. 3.87).

A system of provisional and final registration should be established. Provisional registration would be necessary before organising activity could be permitted. This would give the union some protection and impose on it some limitations and would confer limited negotiating and representative powers on the union. Final registration would follow after a period of time provided 'certain requirements' were met. The registration of existing registered organisations should be left intact. (para.3.88). The interests of organisations which qualified for registration, the Commission suggests, should be protected by a statutory requirement that registration would be prerequisite for the legal validity and enforceability of agreements. (para. 3.89).

With the new definition of employee to include Africans, industrial councils should be enabled to achieve the necessary balance of power and protection. The Iron and Steel Industry agreements could serve as a model. This approach could be reinforced by various measures, contained in the Commission's recommendations.

Recommendations :

The Commission recommends that:

1. Eligibility for election as office bearers of a trade union should be at the discretion of the union itself and the duties and powers of such persons should be determined in the union's constitution by the union itself. (para. 3.157.1).
2. The National Manpower Commission should be requested to keep the position regarding the election or appointment of persons to office under surveillance and make recommendations if necessary. (para. 3.157.2).
3. Statutory provision should be made for a system of provisional registration of trade unions and employers' organisations. (para. 3.157.3).
4. Existing registered organisations should not be required to re-register but in all other respects should be subject to the new legislation. (para. 3.157.4).
5. Provision should be made on the staff of the Department of Labour for the appointment of financial inspectors to inspect and analyse the financial affairs of industrial councils, trade unions and their federations, employers' associations and their federations, works councils, works committees and regional bodies of the latter with a view to guarding against 'undesirable practices':
6. For industrial councils, the Commission recommends:
 - a statutory requirement of strict parity in the representation of the various employee parties to the council (para.3.157.17.1),
 - appropriate stipulations in industrial council constitutions subjecting voting on certain issues, including the admission of new parties, to a right of veto by any of the existing parties (para. 3.157.17.2),
 - appropriate measures for the handling of deadlocks arising from the exercise of the veto (para. 3.157.17.3),
 - recourse to the Industrial Court on matters of rights (para.3.157.17.4),
 - registration of the parties concerned as a prerequisite for the legal validity and enforceability of agreements (3.157.18).

The government has accepted these recommendations with the injunction that the National Manpower Commission must be particularly vigilant about any ill-considered or insensitive action which could inflict harm on relations between the population groups. Government has also warned that it will not hesitate to halt any undesirable trends. (W.P. para. 6.9).

At the committee stage of the Bill the government accepted an amendment providing the right of appeal to the industrial court where new parties have been refused admission to an industrial council through the exercise of an existing party's veto. (Hansard 17 cols. 8232 to 8263).

Closed shop:

The Commission considers that the closed shop practice is so firmly entrenched in South Africa that it cannot be abolished. Any attempt at abolition would cause widespread opposition and distrust. The status quo should therefore be maintained, subject to constant surveillance by the National Manpower Commission, with particular attention to matters such as infringement of rights and race distinctions. (para. 3.101).

Recommendation:

The closed shop practice should be retained on the present basis of the representative position before a closed shop can apply with retention of the provisions for exemption. (para. 3.157.19).

Minority view : Commissioners Botes, du Toit, Mokoatle, Steenkamp and Sutton:

These Commissioners argue that the closed shop is a means of restricting skills training at a time of 'dire need' for skills, and of limiting entry to the skilled trades, either in order to enhance artificially the market value of union members or in order to promote sectional interests. Further, the perpetuation of the closed shop contradicts the proposed abolition of job reservation and the likely development of trade union plurality. In a situation of trade union plurality the closed shop will carry the danger of extreme inter-union and union-employer tensions and of industrial unrest on racial lines. In practice, the closed shop gives the union leadership the power to control the labour market to the detriment both of the employer and of the other employees.

They therefore recommend that the conclusion of future closed shop agreements be prohibited but that existing agreements remain in force for as long as the parties so desire. (para. 3.103).

The government considers the minority recommendation the more logical. However, it is not inclined to introduce an absolute prohibition at this stage, and prefers to receive further guidance from the National Manpower Commission. In the meantime the practice will be suspended, no further agreements will be allowed but existing agreements, subject to the wishes of the parties concerned, are to remain in force. (W.P. para. 6.11).

Deduction of trade union membership fees (check-off) :

Generally the Commission accepts that the deduction of trade union fees is conducive to industrial peace and is best regulated by industrial council or similar agreements, through the system of collective bargaining. (paras. 3.104 to 3.109).

Recommendations :

1. Registered organisations should be allowed to continue to regulate the matter through collective bargaining.
2. No deduction of trade union membership fees should be allowed unless the individual employee has given written authorisation.
3. An individual employee should have the right to withdraw authorisation at any time.
4. Existing provisions in regard to the compulsory deduction of fees should be retained, but the racial proviso should be removed.
5. The deduction by employers of any payments in favour of any unregistered employees' organisation should be prohibited. (para. 3.159).

The government has accepted these recommendations but expects to receive further guidance from the National Manpower Commission on the reinforcement of safeguards against abuse of this facility. (W.P. para. 6.12).

Prohibition on political activities :

The Commission agrees with the prohibition on unions and employers' associations affiliating with or giving money to political parties and believes that it should be extended. (para. 3.110).

Recommendations :

1. The existing prohibition should be extended to include any legislative body at a national, provincial or local level. (para. 3.157.5).
2. Extension to include bodies not covered by the present prohibition should be effected by proclamation. (para. 3.157.6).

The government accepts these recommendations, in view of the dangers of 'unbridled political activity by trade unions'. It considers that politics has no place in industrial relations and that this is particularly important in view of the 'onslaught at present being directed at South Africa and the efforts which will undoubtedly be made to exploit the industrial relations system for political gain'. The National Manpower Commission will also be instructed to keep the matter under scrutiny. (W.P. para. 6.5).

Employees' organisations at the level of the undertaking :

The Commission considers that sound industrial relations rely on adequate organisation of employer-employee interaction at the level of the undertaking. The importance of enterprise level organisations is increased because most of the work force is in the 'unorganised sector'; but even in the organised sector such organisations can complement the role of trade unions. (para. 3.111). The Commission suggests that the growth and effective operation of enterprise level organisations should be encouraged within the overall industrial relations system. Subsequent parts of the Report will examine in more detail works, liaison and coordinating committees. (para. 3.112).

The functions of works committees are the communication of the wishes, aspirations and requirements of African employees to employers and the representation of African employees in any negotiations. Liaison committees consider matters of mutual interest to employers and employees and make recommendations to employers on matters affecting employees' interests and conditions of employment. The 1977 amendment to the Black Labour Relations Regulation Act conferred the right to bargain and to conclude binding agreements on wages and other terms of employment with employers. But, the Commission says, there is no evidence of such agreements being concluded. (para. 3.114).

Criticisms of the committee system presented to the Commission were that it operated too distantly from the industrial council structure. Because the system had bargaining power in the same areas as industrial councils, elements within organised labour, some employers' organisations and industrial councils were suspicious and dissatisfied. Because only Africans were affected the system was regarded as discriminatory. Furthermore, trade unions (particularly African) saw the committees replacing them at plant level. (para. 3.115).

The Commission notes the difficulties surrounding the committee system. It considers it necessary to distinguish more clearly between works committees and liaison committees. (para. 3.116).

The Commission considers the merits of the German system of works councils and concludes that the prospects for a similarly articulated two-level structure in South Africa are favourable. Industrial councils and committees should be integrated into a uniform system regulated by a single statute. Existing committees could continue to exist or be integrated into the new system. All employees of all population groups should be able to participate in the system of works committees and councils.

However, the crucial role of works committees and councils does not mean that the industrial council system should be undermined. Industrial councils should be protected. (para. 3.120).

Recommendations :

1. The expression 'works committee' should be retained but the expression 'liaison committee' should be replaced with the expression 'works council' in the legislation. (para. 3.157.8).
2. Statutory provision should be made for the integration of the industrial council system and the committee system and all population groups should be permitted representation in the unitary system. (para. 3.157.9).
3. Existing committees should continue to exist, with the option of integration as works committees or works councils in the new system. (para. 3.157.10).
4. The establishment and growth of committees should be actively encouraged, particularly where no industrial council exists. (para. 3.157.11).
5. Where an industrial council is registered in respect of an undertaking, industry, trade or occupation, a works committee or council should have no statutory bargaining powers. (para. 3.157.12).
6. Where no industrial council is registered, a works committee or council should have statutory bargaining powers only if a wage determination or other wage-regulating measure does not exist or has been in existence for longer than 12 months. (para. 3.157.13).
7. The National Manpower Commission should give constant attention to the question of future statutory bargaining powers for committees and councils in the light of developments. (para. 3.157.14).
8. Provision should be made for regional works councils for workers of all population groups. (para. 3.157.16).
9. The Department of Labour should open a new register for trade unions, employers' associations and industrial councils as well as for works councils and works committees. (para. 3.157.15).

The government has accepted these recommendations with the following reservations:

- It is necessary to prevent the merger of the two systems (industrial council and committees) from weakening the position of minority groups in the work force. Provision will therefore be made to ensure that any group which wishes to establish a separate organisation will have the right to do so. (W.P. para. 6.7.2).
- The government accepts that where industrial councils exist there must be a limit on the statutory negotiating powers of committees, but considers that these bodies should be permitted to negotiate on 'as many matters as possible' and to come to firm agreements with employers. Industrial councils should give committees and councils as much latitude as possible. (W.P. para. 6.7.4).

The Commission's recommendation on the statutory bargaining powers of committees and councils where no industrial council exists is accepted, but the National Manpower Commission is to consider how these bodies could be freed of the restrictions brought about by wage regulating measures. The negotiating powers of these bodies should, in the foreseeable future, be such that they enjoy the same autonomy as industrial councils. (W.P. para. 6.7.4).

Work reservation :

Statutory work reservation, under Section 77 of the Industrial Conciliation Act, was introduced in 1956. To protect the economic security of white workers, 28 determinations were published between 1957 and 1975. However, after 1962 there was a decline in the number of determinations. The economic growth of the late 1960s resulted in the movement of whites from reserved occupations into other categories; these vacancies were filled by blacks, so that the original reason for work reservation seemed to have lost much of its thrust. (paras. 3.126 and 3.127).

Three of the earlier determinations have been replaced by later agreements. In 1977 following the investigations of the Industrial Tribunal, the Minister

of Labour withdrew 18 determinations and suspended 2, leaving 5 in operation - in municipal services in Cape Town, motor assembly (2) and mining and building. (para. 3.128).

In evidence to the Commission, trade unions were divided on the question of work reservation, but employers were uniformly in favour of its abolition. Reasons given for abolition included:

- In essence work reservation was a negation of the free enterprise principle. It restricted the very category of workers - the potential leadership group - whose training and utilisation were essential for future economic growth.
- It had not in fact prevented friction between races and was and is immensely injurious to sound race relations. (para. 3.129.1).

The Commission, without examining the original reasons for the introduction of work reservation, considers it an impractical measure which has failed to provide the desired protection. It is untenable in view of developments on the labour front affecting African workers - more training, improved education, upward mobility in sectors not covered by work determinations, and increasing unemployment particularly among educated youths. Furthermore, the practice has harmed South Africa's international image. (paras. 3.129.3 and 3.129.5).

The Commission considers that the vested interests of individual workers or groups of workers must continue to be recognised and safeguarded. These interests include cultural differences, nationality, unbalanced numerical ratios resulting from historic and political and economic developments in certain sectors and industries, differences in housing patterns, in skills, in education and in the nature and extent of migration. (para. 3.133). However, safeguards should be based not on colour or sex but on skill or permanency in an urban area, with more emphasis on individuals than on groups. (para. 3.134).

The Commission therefore concludes that the principle of statutory work reservation should be abolished and replaced by other safeguards. In any case, the principle is being applied to such a limited extent that its existence is no longer justified. However, removal of the remaining five determinations could cause industrial unrest; they should be phased out, in the shortest possible time, but with consultation and consensus. (para. 3.139).

Recommendations :

1. The principle of statutory work reservation should be abolished by the immediate removal of Section 77 of the Industrial Conciliation Act. (para. 3.159.2).
2. Safeguards for individual and group interests should be introduced in the following way:
 - consultation between employer and employees before the introduction of changes in established labour practices, with recourse to the Industrial Court;
 - a requirement of consensus on these matters in industrial councils;
 - the adjudication of allegations of unfair dismissal by the Industrial Court;
 - amendment of the provisions of the Act which empower the Minister to reinstate employees or restore their terms and conditions of employment in the case of a dispute;
 - the strict application of the principle of equal pay for work of equal value;
 - training and retraining opportunities at the expense of the employer or in some cases the State with a guaranteed income during training;
 - the introduction of relocation allowances to facilitate labour mobility within industry;
 - the acceleration of training and retraining schemes;
 - the upgrading of semi-skilled workers through training and retraining;
 - the development of legislation on fair employment practices;
 - the restoration of industrial peace by ministerial order, through arbitration or other conciliation machinery, as a last resort. (paras. 3.159.2.1 to 3.159.2.11).

3. Existing work reservations should remain valid. (para. 3.159.3).
4. The Department of Labour should, however, make 'a determined effort' to phase them out in co-operation with interested parties. (para. 3.159.4).

The government has accepted these recommendations. It comments that legislative protective measures have a weakness in that decision-making does not take place at the level where it belongs - between the parties who are directly affected. However, some safeguards are necessary ... the usual decision-making processes do not afford minorities adequate protection unless effective checks and balances are built into the system. (W.P. para. 6.13.1 to 6.13.4). It reaffirms its present policy that remaining determinations will only be phased out after consultation with all the parties concerned. Suitable legislation has been introduced to effect these decisions. Moreover, the government, in the Industrial Conciliation Amendment Bill, has provided a very wide definition of 'unfair labour practice', although postponing the introduction of specific fair employment practices legislation, and has empowered the Industrial Court to rule on unfair labour practices. It has also enabled industrial councils by unanimous decision to rule on disputes about alleged unfair labour practices and made arbitration by the Industrial Court compulsory in such cases where no decision is reached by an industrial council or Conciliation Board. (B. 94-'79, clauses 1,8,9,11,13,14).

Furthermore, the government anticipates that the National Manpower Commission will have to provide guidance on the formulation and application of the vague notion of 'equal pay for work of equal value'. (W.P. para. 6.13.3).

CHAPTER IV : AN INDUSTRIAL COURT

Introduction :

This chapter deals with the settlement rather than the prevention of disputes and thus with machinery which may be used to resolve a dispute which has already arisen. (para. 4.3).

It is important to distinguish between different types of disputes, and particularly between disputes of rights and disputes of interests. Disputes of rights involve the legal rights of a party and require interpretation of statutory provisions and terms of agreements. All other disputes are considered disputes of interest; these can be settled by arbitration, mediation, conciliation, negotiation, or government action. (para. 4.5)

Most industrialised countries have set up special labour courts. The reasons for this are:

- the increasing volume and complexity of labour law;
- the rigidity and delays of the general courts;
- the fact that strikes and breaches of collective agreement need immediate hearing, which general courts are unable to provide;
- the use of the labour court as a mechanism to replace strike action with a judicial enquiry into the disputes. (para. 4.6).

Various attempts have been made to institute an industrial court in South Africa. The first attempt was made in 1932 with the Industrial Court Bill which made provision for the establishment of an industrial division of the Supreme Court of South Africa. It was withdrawn. The Commission of Enquiry into Industrial Legislation, 1951, considered that specific machinery to deal with labour was necessary, but its recommendations were not accepted. (paras. 4.13 to 4.17).

The Industrial Tribunal :

The Industrial Tribunal was appointed in terms of Section 17 of the Industrial Conciliation Act of 1956. It consists of the chairman, two members representing employers and two members representing employees. The

functions of the Tribunal set out in the Act include:

- hearing appeals from industrial councils, employers' organisations and trade unions, against the decisions of the Industrial Registrar;
- undertaking voluntary and compulsory arbitration of disputes;
- advising the Minister in connection with compulsory arbitration;
- determining, at the Minister's request, matters relating to demarcation between undertakings, industries, trades and occupations;
- investigating and recommending measures to prevent inter-racial competition in undertakings, industries, trades and occupations. (This relates directly to statutory work reservation).
- dealing with any other matter referred to it in terms of the Act;
- investigating and reporting on any matter referred to it by the Minister;
- dealing with all other necessary and incidental matters. (para. 4.20).

None of the Tribunal's functions are of a judicial nature. (para. 4.20).

A later part of the Report will deal with the status of the Industrial Tribunal more fully. (para. 4.20).

Institution of an Industrial Court :

Evidence before the Commission highlighted the need for a special judicial body to deal with labour issues. Points raised were: that the complexity of labour law placed an additional burden on courts already overloaded and demanded the presence of labour law specialists; rapid developments in industrial relations and labour generally needed quick action which general courts could not provide; the legal costs of the general courts were too high and often beyond the means of litigants, particularly in cases such as unfair dismissal; and, the general courts must apply legal principles, but in most labour cases disciplines other than labour law were equally important. (para. 4.22).

The Commission came to the conclusion that the establishment of a judicial body in the field of labour would be more than justified. Such a court would have wide jurisdiction over the interpretation of industrial instruments, over undesirable labour practices - particularly involving a unilateral change of labour patterns - and unfair dismissals, over the legality of strikes, etc., as well as over other disputes of rights in

the field of labour whether of a statutory or common law nature. It would thus evolve a body of case law contributing to the formulation of fair employment guidelines. (para. 4.24).

The Industrial Court should be a specialised court with its own status and country-wide jurisdiction, functioning through local divisions in the major industrial centres, with a presiding officer - the President of the Court - appointed from the ranks of judges or former judges of the Supreme Court, senior magistrates or lawyers of not less than ten years' standing. It should have civil but not criminal jurisdiction with the power to impose compensatory damages or fines. Consequently, labour legislation should be reframed to translate as many causes of criminal action into matters for civil action as is possible. It should employ less formal and complicated procedures than those of the general courts, adhere to principles of natural justice, keep costs of litigation as low as possible, and the presiding officer should be assisted by assessors on an ad hoc and parity basis in adjudicating all disputes. In its deliberations the Industrial Court should take into account sociological, economic and other extra-legal factors. (para. 4.25).

The existing Industrial Tribunal should be restructured and redesignated to constitute the Industrial Court. (para. 4.26).

Recommendations :

1. The Industrial Tribunal should be redesignated the Industrial Court and restructured to consist of a president who should be a senior jurist as the only permanent member of the court. (para. 4.28.1).
2. In a dispute he should appoint at least two suitably qualified assessors on a parity basis from names submitted in order of preference from parties involved in the dispute. (para. 4.28.3).
3. The Court should have the following functions:
 - interpretation of labour laws and regulations, industrial agreements, wage determinations, awards, etc.;
 - hearing of cases of alleged irregular and undesirable labour practices, for example unfair or unjustified changes in the established labour pattern of an employer or other actions which affect industrial peace; (para. 4.28.5.2)

- hearing of cases of alleged unfair dismissal, inequitable changes in employment conditions, underpayment of wages; (para.4.28.5.3)
 - adjudication of legality in terms of the law of strikes, lockouts, picketing, intimidation, boycotts; (para. 4.28.5.4)
 - settling of disputes of a non-legal character as at present, and also adjudication on matters of rights and settlement of disputes of a legal character; (para. 4.28.5.5)
 - development of a body of case law which would contribute to the formulation of fair employment guidelines through judicial precedent. (para. 4.28.6).
4. The Court should not have the jurisdiction to decide criminal cases at this stage but as many issues as possible under labour legislation should be converted into matters for civil action. The court should be considered a court of first instance where an offence appears to have been committed. (para. 4.28.7).
 5. The Court should be competent to award compensatory damages or fines, order reinstatement of terms or conditions of employment, or give any such order as justice and equity may demand. (para. 4.28.8).
 6. The right of appeal should lie to the Supreme Court of South Africa. (para. 4.28.9).
 7. A decision of the Court shall have the effects of a civil judgement of a general court. (para. 4.28.10).
 8. The Court should follow the principle of natural justice in hearings and decisions. (para. 4.28.11).
 9. Access to the Court should be open to all persons, groups and organisations and costs should be kept as low as possible in the Court's discretion. (para. 4.28.12).
 10. The Court should be free to take into account all extra-legal considerations which have a bearing on the matter before it. (para. 4.28.13).

from both a political point of view and from the point of view of some trade unions. However it considers that the present and potential future shortage of artisans in the Republic, in the townships and in the black states, makes it 'imperative' to review existing policy and practice. (para. 5.13).

Here the Commission points to a shortage of 9 667 artisans and 597 apprentices reported by the Department of Labour's Manpower Survey for April 1977. The shortages occurred mostly in metal, electrical, motor and building industries, and in some regions were more acute than the national figures suggest. (paras. 5.14 and 5.15).

At the same time, it is necessary to take into account the unemployment in the townships, particularly among educated youths. Their indenturing as apprentices would not only alleviate unemployment but 'could also satisfy the aspirations of some of them'. (para. 5.17).

Consideration will have to be given to whether all Africans should be trained or whether there should be distinctions on the basis of residence or citizenship. But in general, the Commission says, although legitimate fears exist, the total exclusion of Africans from training is no longer possible. (paras. 5.23 and 5.24).

Reservation : Commissioners Grobler and Neethling :

These Commissioners suggest that certain safeguards should be introduced. The utilisation of the services of African artisans should be controlled by the labour bureaux to ensure that the African areas are given priority; this would prevent a 'flood' of African artisans in the 'white areas' seeking employment with a consequent reduction in wages and deterioration of working conditions. (para. 5.25.1).

They suggest that the National Apprenticeship Board and the individual apprenticeship committees should have the statutory right to veto the admission of new parties to apprenticeship committees and the indenturing of individuals of any race to a particular trade. (para. 5.25.2).

They recommend accordingly, with the further proviso that only public centres established in terms of the Black Employees' In-Service Training Act, 1976, or other similar institutions should be used for the training of African apprentices. (para. 5.33).

Recommendations :

The Commission recommends that any person should be eligible for apprenticeship as long as his application complies with the provisions of the Apprenticeship Act and the Apprenticeship Committee concerned has recommended his application. (para. 5.32).

The protection of group interests should be achieved through negotiation, consultation and consensus, with recourse to safeguards such as those proposed for industrial councils. (para. 5.32.1.3).

Where possible, public centres established in terms of the Black Employees' In-Service Training Act should be used for the training of African apprentices. (para. 5.32.2).

Remission should be granted to indentured apprentices called up for national service whether or not they serve at their trade during the period. (para. 5.35).

The government has accepted these recommendations, 'in the belief that a valuable contribution can be made to the development of the self-governing and independent Black states by allowing the indenturing of Black apprentices in White areas ...' (W.P. para. 8.1.1).

The government considers that it would not be desirable to sacrifice flexibility by restricting training of African apprentices to the public centres referred to. (W.P. para. 8.1.1).

On the question of national servicemen, the government accepts the recommendations in principle but will not implement them until the Commission has investigated the matter further and the National Manpower Commission, National Apprenticeship Board and the Manpower Board appointed in terms of the Defence Act have considered the matter also. (W.P. para. 8.1.2).

Industrial Relations Training :

On the basis of a questionnaire which the Commission sent out, which elicited a 'representative cross-section' of opinion, the Commission notes that:

- interest in industrial relations training emerged mostly after 1971 and impetus was given to it by the 1973 strikes and the changes in the Black Labour Relations Regulation Act; (para. 5.57)
- many of the respondents to the questionnaire provide their own training, and put more than 48 000 people of all races through training up to the end of 1976; (para. 5.58)
- provision is mainly given for skills needed in the short term; (para. 5.59)
- in terms of the qualifications and competence of the trainers, at least one third of the training given in South Africa is of 'a dubious standard'. (para. 5.61).

Non-registered organisations - mostly African unions - rely to a great extent on outside sources, and make use of material 'of uncertain origin and questionable ideological motivation'. (para. 5.58).

Almost half of the organisations which provide training bear the cost themselves. Training for profit is undertaken by 17 organisations, all registered; of the unregistered organisations almost all are non-profit-making. There is evidence that substantial amounts of money from overseas are used for industrial relations training; where 'training material is of a nature unlikely to promote peaceful industrial relations there is usually a link with finance obtained from sources inimical to South Africa.' (para. 5.65).

In general the Commission considers that employers and unions alike should enjoy autonomy in training. However, it considers that some degree of regulation of industrial relations training is necessary and that training institutions and trainers should be registered. In the case of unregistered trade unions and private training institutions control is essential because:

- these institutions are not subject to the controls embodied in the Industrial Conciliation Act or Black Labour Regulation Act;

- unregistered private training institutions cater for workers from different industries as well as for non-workers, and employers may not always be satisfied with the nature and/or standard of training given to their employees, which may adversely affect relations in the workplace;
- registered trade unions are not able to exercise any influence over the training given at private institutions, possibly to their own members;
- private training institutions do not carry any responsibility for the results which may flow from their training. (para. 5.75 to 5.78).

Recommendations :

1. The State should encourage and facilitate industrial relations training by registered trade unions, employer associations and federations, works councils, committees and industrial councils through:
 - the formulation of broad guidelines for such training;
 - ongoing research into training;
 - expansion of adult education programmes particularly in literacy and numeracy. (para. 5.79.1).
2. Legislative provision should be made for the Secretary of Labour after consultation with the National Manpower Commission to approve a centre as a training centre. (para. 5.79.2).
3. Legislative provision should be made to prohibit any training in industrial relations except at approved centres. Exceptions are training given within the system of formal education, or by employers, registered employers' associations, registered unions, federations, industrial councils, registered works committees and works councils, or other bodies exempted by the Secretary for Labour. (para.5.79.3).

The government has accepted these recommendations and will instruct the National Manpower Commission to give the matter urgent attention. However the Minister and not the Secretary for Labour will exercise the power to approve industrial relations training centres and grant exemptions. (W.P. para. 8.2).

CHAPTER VI : SEPARATE FACILITIES AND SOCIAL SECURITY

The Commission considers two acts containing provisions relating to separate facilities: the Factories, Machinery and Building Work Act of 1941 and the Shops and Offices Act of 1964. (para. 6.1).

The Commission notes a general movement away from segregation of facilities. They consider this to be an essentially domestic matter requiring minimal state intervention.

Recommendations :

1. Section 5 (1) (h) bis of the Factories, Machinery and Building Work Act should be repealed and employers and employees should regulate provision of facilities for persons of different sexes, races and classes through the machinery of the proposed Industrial Relations Act. (para. 6.8.1).
2. Provision of such facilities should be included in the matters which may be regulated by an industrial council agreement. (para. 6.8.2).
3. Regulations made under Section 51 (1) (b) of the Act should be reviewed and where necessary brought into conformity with changes in social attitudes and practices. (para. 6.8.3).
4. Where agreement cannot be reached the issue should be referred to the Industrial Court for adjudication. (para. 6.8.4).
5. Section 31 (1) (g) of the Shops and Offices Act and Regulation 7 under that Act should be repealed and employers and employees should regulate the provision of facilities through consultation.
6. So far as the general public is concerned, admission to facilities should be left to proprietors, managers or occupiers of premises.
7. Disputes which cannot be settled through normal conciliation machinery should be referred to the Industrial Court for adjudication. (para.6.17).

The government has accepted these recommendations, but emphasises the importance of 'cautious handling' of the matter and the Minister will retain the powers he presently enjoys in the meantime. (W.P. para. 9).

COMMISSIONER NIEUWOUDT'S DISSENTING OPINION²

General premises :

- The political and constitutional framework is a given fact and recommendations should be framed within present policy.
- Within this framework any changes must be orderly and evolutionary and must not infringe any existing vested interests, traditions and rights. There must be maximum opportunity for consultation with interest groups.
- National security and safety must be of over-riding importance.

On work reservation :

Statutory provisions for work reservation should not be repealed because

- The provisions are merely the maintenance of a traditional work pattern which emerged on the basis of living standards, background, constitutional development and work area of different groups.
- Determinations are enforced with circumspection so as not to cause unnecessary dislocation.
- On the contrary the practice is necessary for inter-racial harmony, industrial peace and the optimal use of labour.
- Non-statutory measures are unacceptable because they are unproven and are unlikely to have the same success.
- The assurance that measures exist and can be enforced, even if at present only a small number of workers are affected by statutory work reservation, provides the job security which keeps certain groups of workers satisfied and makes them willing to negotiate with employers about job advancement for other workers.

2. Other minority opinions were advanced on specific issues. Commissioner Nieuwoudt, however, dissented from the majority consistently.

Therefore he recommends that the status quo be maintained.

On apprentices :

Africans should not be indentured as apprentices in 'white areas' because

- This will diminish the range and number of job opportunities for returning national servicemen.
- It could so affect wages of artisans that whites, 'coloureds' and Asians could be displaced and leave the industry concerned, with an overall harmful effect on the economy.

The right approach would be rather to provide for the training of African apprentices in independent or self-governing states or in the townships and their employment in such areas once they have qualified.

In exceptional circumstances African artisans could be employed in 'white areas' on a contract basis.

Therefore he recommends that African apprentices should not be indentured in 'white areas' but in self-governing and independent black states or in African townships.

On separate facilities :

The question of separate facilities in shops, offices and factories is a very delicate issue and changes could harm industrial peace and industrial relations.

Therefore he recommends that the status quo in regard to separate facilities in shops, offices and factories be maintained.

On black workers and trade unions :

The admission of Africans to registered unions and/or registration of African unions in terms of the Industrial Conciliation Act is undesirable because

- The activities of African unions will inevitably spill over into political and social matters.
- African unions are more likely than existing unions to make unreasonable demands. Stricter control over unions will be necessary and this will harm the rights of existing unions and the economy in general.
- Foreign criticism will not significantly decrease by the recognition of African unions.
- African unions through affiliation may be subject to aid or pressures from international bodies whose objectives are inimical to South Africa and who will try to influence the course of events.
- The 1973 strikes were caused by agitators and instigators outside the trade union movement and not by lack of recognition of African unions.
- The demands of African unions could easily be incompatible with those of other unions (e.g. on public holidays).
- Existing registered unions would be swamped by the admission of Africans and attempts to prevent this by membership qualifications in union constitutions would provoke unbearable pressures for removal of such restraints.
- Mixed trade unions will have difficulty conciliating demands of their members particularly where large numbers of whites are employed in the same classes of work as 'coloureds' and Africans. Social order and industrial peace will be disturbed.
- The tradition and characteristics built up by the registered unions, based on the cultural background and beliefs of members, can best be served by the maintenance of the status quo on registration.
- Africans are citizens of self-governing or independent states where they exercise political rights - the governments of such states should therefore be involved with the regulation of labour relations and should determine the extent of trade union participation inside these states.

He therefore recommends that

- African workers should be prohibited from joining any union in South Africa, registered or not.

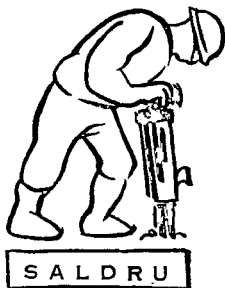
- The status quo regarding the provisions for registration in the Industrial Conciliation Act should be maintained.
- Steps should be taken to ensure the optimal use of available white, 'coloured' and Asian labour in South Africa.
- The interests of African workers should be taken care of in inter-state agreements.
- The government should expand its decentralisation programme to provide jobs for Africans in or near 'their own states'.

SOUTHERN AFRICA LABOUR & DEVELOPMENT RESEARCH UNIT

To anybody interested in what is happening in Southern Africa at the present time, it is clear that an understanding of changes taking place in the field of labour is crucial. The whole debate about the political implications of economic growth, for example, revolves very largely around different assessments of the role of black workers in the mines and factories of the Republic. Many of the questions with which people involved in Southern Africa are now concerned relate, in one way or another, to the field generally set aside for labour economists to cultivate. The impact of trade unions; the causes of unemployment; the economic consequences of different educational policies; the determination of wage structures; the economics of discrimination; all these and more are matters with which labour economists have been wrestling over the years in various parts of the world.

At the same time there are many who would argue that these issues are far wider than can be contained within the narrow context of 'labour economics'. These issues, it is pointed out, go to the heart of the whole nature of development. In recent studies, commissioned by the International Labour Office, of development problems in Columbia, Sri Lanka, and Kenya, for example, leading scholars have identified the three crucial issues facing these countries as being poverty, unemployment, and the distribution of income. Thus the distinction between labour and development studies is becoming more blurred as economists come face to face with problems of real life in the Third World.

It is here too that an increasing number of people are coming to see that study of the political economy of South Africa must not be done on the assumption that the problems there are absolutely different from those facing other parts of the world. Indeed it can be argued that far from being an isolated, special case, South Africa is a model of the whole world containing within it all the divisions and tensions (black/white; rich/poor; migrant/nonmigrant; capitalist west/third-world; etc.) that may be seen in global perspective. Be that as it may, the fact remains that the economy of Southern Africa (for the political and economic boundaries are singularly out of line with each other) is one of the most fascinating in the world. It is one on which far more research work needs to be done, and about which further understanding of the forces at work is urgently required. It is in order to attempt to contribute to such an understanding that Saldru is issuing these working papers.



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