REPORT OF THE FACT-FINDING AND CONCILIATION COMMISSION ON FREEDOM OF ASSOCIATION CONCERNING LESOTHO

1. Appended to this note is the report of the Fact-Finding and Conciliation Commission on Freedom of Association appointed by the Governing Body to examine the complaint of infringements of trade union rights in Lesotho, first presented to the ILO by the Lesotho General Workers' Union in two communications dated 12 October 1970 and 23 March 1971.

2. Lesotho ceased on 15 July 1971 to be a Member of the ILO although it remained a member of the United Nations. This necessitated referral of the complaint to the Economic and Social Council of the United Nations in terms of the procedure agreed upon between the United Nations and the ILO and approved by the Economic and Social Council in Resolution 277 (X) adopted on 17 February 1950.

3. In accordance with this procedure the Secretary-General of the United Nations, in communications dated 28 December 1971 and 28 February 1972, sought the consent of the Government of Lesotho to the complaints being referred to the Fact-Finding and Conciliation Commission. The Government's consent was notified to the Secretary-General in a communication dated 21 March 1972, and at its 1818th meeting, held on 2 June 1972, the Economic and Social Council decided to refer the allegations to the ILO Fact-Finding and Conciliation Commission.

4. The Governing Body accordingly appointed, at its 189th Session (February-March 1973), a panel of three members of the Fact-Finding and Conciliation Commission on Freedom of Association to examine the complaint of alleged infringements of trade union rights in Lesotho.1

5. In the above-mentioned Resolution 277 (X) the ILO is invited by the Economic and Social Council "to make suitable arrangements which would permit the Fact-Finding and Conciliation Commission of the International Labour Organisation to transmit to the Council any reports or cases regarding non-members of the International Labour Organisation"; and "to include in the annual report of the International Labour Organisation to the United Nations an account of the work of the Commission".

6. Further, as indicated in a previous case2, the reports of the Fact-Finding and Conciliation Commission do not constitute judgments calling for decision by the Governing Body, but are an account of the inquiry carried out by the Commission regarding freedom of association, of which the Governing Body is invited to take note.

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1 GB.189/7/25.
2 See Minutes of the 167th Session of the Governing Body, p. 87.
7. The Governing Body may therefore wish to take note of the report of the Fact-Finding and Conciliation Commission and request the Director-General:

(a) to transmit the report to the Economic and Social Council; and

(b) to include in the annual report of the International Labour Organisation to the United Nations an account of the work of the Commission.


POINT FOR DECISION:

Paragraph 7.
REPORT OF THE FACT-FINDING AND CONCILIATION COMMISSION ON FREEDOM OF ASSOCIATION CONCERNING LESOTHO
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>PART I</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CHAPTER 1</strong></td>
<td></td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>1-10</td>
</tr>
<tr>
<td><strong>CHAPTER 2</strong></td>
<td></td>
</tr>
<tr>
<td>REFERRAL OF THE CASE RELATING TO LESOTHO TO THE FACT-FINDING AND CONCILIATION COMMISSION ON FREEDOM OF ASSOCIATION AND APPOINTMENT OF A PANEL OF THE COMMISSION TO EXAMINE THE CASE</td>
<td>11-30</td>
</tr>
<tr>
<td><strong>CHAPTER 3</strong></td>
<td></td>
</tr>
<tr>
<td>SUMMARY OF THE CASE BROUGHT BEFORE THE COMMISSION</td>
<td>31-46</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PART II</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PROCEDURE ADOPTED BY THE FACT-FINDING AND CONCILIATION COMMISSION</strong></td>
<td></td>
</tr>
<tr>
<td><strong>CHAPTER 4</strong></td>
<td>47-56</td>
</tr>
<tr>
<td>FIRST SESSION OF THE COMMISSION</td>
<td>47-49</td>
</tr>
<tr>
<td>SUBMISSION OF WRITTEN STATEMENTS</td>
<td>50-56</td>
</tr>
<tr>
<td><strong>CHAPTER 5</strong></td>
<td>57-111</td>
</tr>
<tr>
<td>VISIT BY THE CHAIRMAN TO LESOTHO</td>
<td>57-111</td>
</tr>
<tr>
<td>General arrangements for the visit</td>
<td>57-58</td>
</tr>
<tr>
<td>Economic and geographical aspects of Lesotho</td>
<td>59-69</td>
</tr>
<tr>
<td>Evidence and information obtained in Lesotho</td>
<td>70-111</td>
</tr>
<tr>
<td>Government's reply to allegations</td>
<td>74-80</td>
</tr>
<tr>
<td>Visits of the Chairman to the Printing Workers' Unions at Morija and Hazenod</td>
<td>81-88</td>
</tr>
<tr>
<td>Meeting with representatives of the Basutoland Federation of Labour</td>
<td>89-99</td>
</tr>
<tr>
<td>Meetings with representatives of the Lesotho General Council of Workers</td>
<td>100-102</td>
</tr>
<tr>
<td>Meeting with Organisation of Employers</td>
<td>103-105</td>
</tr>
<tr>
<td>Meeting with individual witnesses</td>
<td>106-111</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PART III</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CHAPTER 6</strong></td>
<td>112-135</td>
</tr>
<tr>
<td>FINDINGS AND RECOMMENDATIONS</td>
<td>112-135</td>
</tr>
</tbody>
</table>
Appendices

Appendix I - Communications of 12 October 1970 and 23 March 1971 from Lesotho General Workers' Union to the Director-General of the International Labour Office.

Appendix II - Communication of 13 December 1971 from Ministry of Foreign Affairs, Lesotho to the Director-General of the International Labour Office.

Appendix III - Communication of 1 June 1972 from Basutoland Federation of Labour to the Secretary-General, United Nations, New York.
PART I

CHAPTER 1

INTRODUCTION

1. The Fact-Finding and Conciliation Commission on Freedom of Association was established by the International Labour Organisation in agreement with the United Nations in 1950.

2. The procedure for the examination of allegations of infringements of trade union rights has already been described in the Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning Persons Employed in the Public Sector in Japan. It has also been set out in detail in a series of ILO official documents, in particular, in a number of reports of the Committee on Freedom of Association of the Governing Body. It does not, therefore, appear necessary to give a detailed explanation of that procedure in the present report.

3. The function of the Commission is to examine such cases of infringements or alleged infringements of trade union rights as may be referred to it, to ascertain the facts and to discuss the situation with the government concerned with a view to securing the adjustment of difficulties by agreement. In principle, no case may be referred to the Fact-Finding and Conciliation Commission without the consent of the government concerned.

4. The case dealt with in the present report is one of the four cases in which a government has given the required consent to the referral of a case to the Fact-Finding and Conciliation Commission.

5. Allegations of infringements of trade union rights are examined in the first instance by the Committee on Freedom of Association of the Governing Body of the International Labour Office, which has considered over 800 cases since its establishment in 1951. The case concerning alleged infringements of trade union


3 The only exception is in respect of any complaint relating to the application of a ratified Convention in the case of which the Governing Body may designate the Fact-Finding and Conciliation Commission as a commission of inquiry under article 26 of the Constitution of the International Labour Organisation.

rights in Lesotho was submitted to the Governing Body Committee on Freedom of Association which submitted a report thereon to the Governing Body in November 1971.

6. Special circumstances arose in the present case since Lesotho, on 15 July 1971, ceased to be a member of the International Labour Organisation, although it remained a member of the United Nations. This withdrawal from membership of the ILO necessitated the referral of the matter to the Economic and Social Council of the United Nations in terms of the procedure initially established between the ILO and the United Nations for the examination of complaints of infringements of trade union rights. The consent of the Government of Lesotho to the matter being submitted to the Fact-Finding and Conciliation Commission of the International Labour Organisation was obtained by the Secretary-General of the United Nations in March 1972.

7. The Panel of three members of the Commission designated by the Governing Body to examine the case consisted of Mr. ANDREAS MAVROMMATIS (Cyprus), former Minister of Labour and Judge, District Court (Chairman); Mr. H.S. KIRKALDY (United Kingdom), Professor Emeritus of Industrial Relations in the University of Cambridge, member of the Committee of Experts on the Application of ILO Conventions and Recommendations; and Dr. F.A. AJAYI (Nigeria), former Solicitor General and former Attorney General of the Western State of Nigeria.

8. The Commission met for the first time in Geneva on 2 and 3 April 1973 to determine its procedure. It was arranged at that session to give the parties and certain other organisations the opportunity to submit any further information relating to the matters at issue, and on receipt of such information to meet again to consider the further measures which appeared to be called for to enable the Commission to discharge its duties. Since no further information was received the Chairman, with the agreement of the Government, carried out a mission to Lesotho between 11 and 20 January 1975, accompanied by one member of the Commission's secretariat. The Commission finally decided to meet again in Geneva between 21 and 23 May 1975 to consider the findings of the Chairman, formulate its conclusions and adopt its report. Dr. Ajayi, a member of the Commission, was unable, for reasons of health, to attend the final session of the Commission in Geneva. Prior to this session, however, Dr. Ajayi submitted written comments on the draft report which had previously been sent to him. The comments made by Dr. Ajayi were discussed and accepted in full by the other members of the Commission and taken into account in the final report of the Commission which was approved and signed by Dr. Ajayi in Lagos.

9. A description of the procedure followed by the Commission, an analysis of the information and evidence put before it and the Commission's findings and recommendations are contained in Chapters 2 to 7 of this report.

10. In accordance with the special procedure established between the International Labour Organisation and the Economic and Social Council for the examination of cases of infringements of trade union rights in the case of States which are not members of the International Labour Organisation, but which are members of the United Nations, this report will be transmitted to the Secretary-General of the United Nations by the Director-General on behalf of the Governing Body.
CHAPTER 2

REFERENCE OF THE CASE RELATING TO LESOTHO TO THE
FACT-FINDING AND CONCILIATION COMMISSION ON
FREEDOM OF ASSOCIATION AND APPOINTMENT OF A
PANEL OF THE COMMISSION TO EXAMINE THE CASE

11. In a communication dated 12 October 1970, addressed directly to the ILO, the Lesotho General Workers' Union filed a complaint of infringement of trade union rights in Lesotho. Further information in support of their complaint was supplied by the complainants in a communication dated 23 March 1971. The complaint and the supporting information were transmitted to the Government of Lesotho for observations by two letters from the Director-General dated 3 November 1970 and 20 April 1971 respectively.


13. At the time of its admission to membership of the ILO on 31 October 1966 Lesotho confirmed its assumption of the obligations deriving from the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which the United Kingdom had formerly declared applicable to Basutoland. Under article 1, paragraph 5, of the Constitution of the ILO, "when a Member has ratified any international labour Convention" its withdrawal from the Organisation "shall not affect the continued validity for the period provided for in the Convention of all obligations arising thereunder or relating thereto".

14. The complaint and the information available were examined by the Committee on Freedom of Association in November 1971, when it reported to the Governing Body on the matter. Its conclusions are contained in its 126th Report, which was approved by the Governing Body at the latter's 184th Session (November 1971).

15. In the above-mentioned report the Committee observed that at the time the complaint was received, when Lesotho was still a Member of the ILO, it appeared that the allegations of the complainants as formulated called in question some of the standards laid down in the freedom of association Conventions ratified by Lesotho, as well as generally recognised principles on the subject.

16. These principles are essentially as follows:

(i) Freedom of assembly for trade union purposes and the right to express opinions through the press constitute one of the fundamental elements of trade union rights.

(ii) Workers should have the right, without distinction whatsoever - mainly without discrimination of any kind on the basis of political opinion - to join the union of their choice.

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1 The text of the communications dated 12 October 1970 and 23 March 1971 are reproduced in Appendix I of this report.

2 Article 16 of Convention No. 87 is worded as follows: "1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered. 2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article." Article 11 of Convention No. 98 is couched in the same terms.
(iii) No person should be discriminated against in his employment by reason of his trade union activities or membership; not merely dismissal but also compulsory retirement or termination of services would be contrary to the principle that there should be no anti-union discrimination in respect of employment if the activities in respect of which action was taken against an employee were in fact lawful trade union activities.

(iv) In all cases, including cases in which trade unionists are charged with political or criminal offences which the Government considers have no relation to their trade union functions, the persons in question should receive a prompt and fair trial by an independent and impartial judiciary. Irrespective of the opinion that might be formed as to the political aspects of a state of emergency, it is desirable that measures of detention should be accompanied by adequate judicial safeguards applied within a reasonable period and that all detained persons should receive a fair trial at the earliest possible moment.

17. It was because the principles set forth above appeared to have been called in question in the present case that the complainants' allegations were transmitted to the Government of Lesotho for observations in accordance with the usual procedure of the Committee on Freedom of Association. However, in view of the Government's failure to furnish these observations to the ILO prior to the date on which Lesotho ceased to be a Member of the ILO, it was impossible for the Committee to examine the substance of the case and submit conclusions and recommendations to the Governing Body.

18. In a communication dated 13 December 1971 the Government communicated certain observations in connection with the complaint. These observations were transmitted to the United Nations.

19. In its above-mentioned report the Committee on Freedom of Association pointed out that according to the procedure for the examination of complaints of alleged infringements of trade union rights agreed upon between the United Nations and the International Labour Organisation, before the Governing Body refers to the Fact-Finding and Conciliation Commission on Freedom of Association an allegation which it has received against a member of the United Nations which is not a Member of the ILO, such allegation should be referred to the Economic and Social Council for its consideration. In Resolution 277 (X) approving the arrangements, the ILO was invited to refer, in the first instance, to the Economic and Social Council any allegations regarding infringements of trade union rights against a member of the United Nations which is not a Member of the ILO. If the Governing Body has before it such allegations regarding infringements of trade union rights it will, before referring them to the Commission, refer them to the Economic and Social Council for consideration. The procedure provides that the Secretary-General of the United Nations will seek the consent of the government concerned before any consideration of the allegation by the Economic and Social Council; if such consent is not forthcoming, the Economic and Social Council will give consideration to such refusal with a view to taking any appropriate alternative action designed to safeguard the rights relating to freedom of association involved in the case.

20. In these circumstances, having regard to the situation described in the preceding paragraph, the Committee recommended the Governing Body -

(a) to refer to the Economic and Social Council for consideration, in accordance with Resolution 277 (X) of 17 February 1950, the complaint presented by the Lesotho General Workers' Union against the Government of Lesotho, which is no

\[\text{The text of this communication is reproduced in Appendix II of this report.}\]

\[\text{This procedure is set forth in the letter of 19 January 1950 from the Director-General of the ILO to the Secretary-General of the United Nations stating the proposed terms of reference of the Fact-Finding and Conciliation Commission, which were subsequently approved by the Economic and Social Council when it adopted Resolution 277 (X) concerning trade union rights (freedom of association) on 17 February 1950 in the course of its Tenth Session.}\]


\[\text{See First Report of the Governing Body Committee on Freedom of Association, para. 20.}\]
longer a Member of the ILO;

(b) to note that, in accordance with Economic and Social Council Resolution No. 277 (X) of 17 February 1950 it is for the Economic and Social Council to decide what further action it proposes to take in the matter by seeking the consent of the Government of Lesotho to the case being referred to the Fact-Finding and Conciliation Commission on Freedom of Association or being dealt with in any other manner.

21. The complaint having been thus referred to the Economic and Social Council, the Secretary-General of the United Nations, in communications dated 28 December 1971 and 28 February 1972, sought the consent of the Government of Lesotho to having the allegations referred to the ILO Fact-Finding and Conciliation Commission on Freedom of Association. In a reply to these communications, addressed to the Secretary-General by the Permanent Representative of Lesotho to the United Nations and dated 21 March 1972, the Government stated that it had no objection to the complaint being thus referred.

22. At its 1818th meeting on 2 June 1972 the Economic and Social Council, having taken note of the allegations and of the position of the Government of Lesotho, decided to refer the allegations regarding the infringements of trade union rights in Lesotho to the ILO Fact-Finding and Conciliation Commission.

23. In a letter dated 19 June 1972 the United Nations transmitted to the ILO a further communication in connection with the complaint, dated 1 June 1972 and addressed to the Secretary-General of the United Nations by the Basutoland Federation of Labour, of which the complainant organisation is an affiliate.¹

24. In communications dated 9 August 1972 the Director-General informed the Government of Lesotho and the Lesotho General Workers' Union of the decision of the Economic and Social Council to refer the complaint to the Fact-Finding and Conciliation Commission and requested each to submit not later than 15 September 1972 any additional information or observations in connection with the complaint as well as any other information which would be of assistance to the Commission in its inquiry.

25. In a communication dated 5 September 1972 the complainants stated that trade union rights continued to be infringed in Lesotho and that the notices of intention to cancel the registration of unions affiliated to the Basutoland Federation of Labour, which had been served upon the unions concerned by the Registrar, had neither been withdrawn nor confirmed. The complainants added that in the event of confirmation of these notices it was their intention to institute court proceedings. No additional information or observations have been received from the Government.

26. When the Governing Body at its 111th and 112th Sessions (March and June 1950) appointed the members of the Fact-Finding and Conciliation Commission it also provided for the possibility of arranging for its work to be done by panels of not less than three or more than five of its members.²

27. Pursuant to this provision and having regard to the nature of the case, it seemed that a panel of three members of the Commission would in all the circumstances be most appropriate for accomplishing effectively and in a relatively short time the task which it was proposed to entrust to the Commission.

28. The procedure in force provides³ that the Commission "is essentially a fact-finding body", but "is authorised to discuss situations referred to it for investigation with the government concerned with a view to securing the adjustment of difficulties by agreement". It followed from these terms of reference, which were agreed between the Governing Body and the Economic and Social Council in 1949, that, while the Commission would be free to hear evidence from all concerned, any discussions which it might have "with a view to securing the adjustment of

¹ The text of the communication dated 1 June 1972 is reproduced in Appendix III of the present report.


³ Ibid., para. 13.
difficulties by agreement" would be discussions with the Government; it would not be authorised to undertake any discussions in the nature of negotiation with political parties or industrial organisations.

29. At its 189th Session (Geneva, February-March 1973) the Governing Body of the International Labour Office approved the proposal made by the Director-General that the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association to examine the complaint of alleged infringements of trade union rights in Lesotho should be composed as follows:

**Chairman:** Mr. Andreas Mavrommatis (Cyprus), former Minister of Labour and Judge, District Court;

**Members:** Mr. H.S. Kirkaldy (United Kingdom), Professor Emeritus of Industrial Relations in the University of Cambridge, member of the Committee of Experts on the Application of ILO Conventions and Recommendations;

Dr. F.A. Ajayi (Nigeria), former Solicitor General and former Attorney General of the Western State of Nigeria.

30. The decisions of the Governing Body were brought to the attention of the Government of Lesotho and the complainants by communications from the Director-General dated 3 April 1973.
Before describing the way in which the Commission set about its duties and determined the working methods which it would adopt, it appears desirable to set out the position as it was when the matter came before the Commission. The purpose of this chapter is to provide such an account.

In their various communications the complainants alleged that the declaration of a state of emergency on 30 January 1970 and the suspension of the country's Constitution, one of the effects of which was that the courts could not sit during the period of suspension, were seized upon by the Government as a pretext and an opportunity for a policy of anti-union discrimination against which the workers were unable to defend themselves.

During the state of emergency, declared the complainants, workers were denied freedom of assembly. They were not allowed to hold any meeting to discuss workers' problems, nor to meet for committee transactions. Workers were employed according to their political inclinations. If the workers were politically anti-, not pro-government in their activities the state of emergency was applied to them by the authorities so as to get them out of their jobs indirectly.

According to the complainants, the anti-union acts of the Government took the form of measures of persecution consisting mainly in arrests or dismissals. Specific allegations were made in this respect and the following account of the events which had taken place was given.

The officials of the Basutoland Federation of Labour (BFL) negotiated in writing with different government departments which had dismissed members of the autonomous trade unions affiliated to the BFL - the Lesotho General Workers' Union, the Lesotho Transport and Telecommunication Workers' Union, the Lesotho Industrial, Commercial and Allied Workers' Union and the Lesotho Typographical Workers' Union.

According to the complainants, some government departments, such as the health department, did not negotiate with the BFL trade unions; instead of recourse being had to the negotiation machinery, officials of the BFL were said to have been persecuted and imprisoned.

When the trade union officials insisted on the use of the negotiation machinery, government officials such as the Permanent Secretary to the Ministry of Public Works refused to negotiate with them, stating that their request was premature due to the state of emergency, and arguing that the permanent secretaries had been instructed by the Cabinet Ministers not to discuss any matter relating to the dismissal of members of the BFL trade unions.

The complainants went on to state that when the representatives of the BFL trade unions had negotiated with the Ministry of Agriculture, Co-operatives and Marketing, the Acting Permanent Secretary of the Ministry disclosed the reason for dismissal as being political activities. "When the trade union officials of the BFL quoted ILO Convention No. 87", continued the complainants, "the Permanent Secretary declared that he had no comments to make thereon, but that on the instructions of the Cabinet Ministers his ministry could not reinstate collectively dismissed workers nor pay their accrued rights such as money in lieu of notice, holidays with pay, gratuities and other legal remuneration."

The complainants continued that, when the BFL trade union officials negotiated with the Public Service Commission, which is supervised by the Prime Minister, his secretary stated that the reason for the terminations was known to the employees and that he had been given instructions by his superiors not to discuss any matter relating to the dismissal of members of the BFL trade unions. The complainants added that all these negotiations ended in deadlock, since the courts were suspended and the labour officer was working under the instructions of the Cabinet Ministers.

The complainants described the following action which, they stated, had been taken against the following members of the National Executive Council of the BFL: General Secretary, Mr. Shakhane Mokhehele, interrogated and imprisoned without
a court hearing; President, Mr. S. Lets'oara, interrogated and imprisoned without a court hearing, and then released; Lesotho Industrial, Commercial and Allied Workers' Union (LI&U): Chairman, Mr. B.R. Honese, interrogated and imprisoned without a court hearing; Secretary, Mr. P. Holatoli, interrogated, imprisoned and then released without a court hearing; Organising Secretary, Mr. O.S. Moremi, persecuted, interrogated and imprisoned without a court hearing; committee member, Mr. T. Setlaba, persecuted, imprisoned and interrogated without a court hearing; Lesotho General Workers' Union (LGWU): Organising Secretary, Mr. H.N. Pekosela, persecuted; committee member, Mr. T. Metsing, interrogated, persecuted and imprisoned without a court hearing; Lesotho Transport and Telecommunication Workers' Union (LTU): Secretary, Mr. S. Horeke, imprisoned, persecuted, and interrogated without a court hearing.

41. The complainants made the following allegations with respect to the trade unions affiliated to the BFL. Members of the Lesotho Industrial, Commercial and Allied Workers' Union had been dismissed and their accrued rights and terminal benefits forfeited; in the case of Mr. T. Thamae and other white-collar workers such as Messrs. P. Pitse, N. Lenka and R. Sonopo their terminal benefits had been forfeited. The Government encouraged private enterprises such as wholesalers and retail shops to dismiss members of the LI&U. Mr. Mohale, who was employed by the wholesalers Hoshal Gevisser, had been persecuted and imprisoned without a court hearing. Employees of the Public Works Department - i.e. of the Government - such as Messrs. H. Hatlanyane, Tjama Mpela, Joseph Hlalele and other white-collar workers had been dismissed without benefits.

42. The complainants declared that more members of the Lesotho General Workers' Union had been dismissed than members of the other autonomous trade unions affiliated to the BFL. The members of the LGWU had been deprived of their accrued rights and legal entitlements such as holidays with pay, gratuities and money in lieu of notice. The complainants supplied a list of the names of 55 persons who were said to have been dismissed from the Queen Elizabeth II Public Hospital, 23 persons allegedly dismissed from the Mohlosi Hospital, 11 persons dismissed from the Butha Buthe Hospital, 21 persons dismissed from the Mohale Hoek Government Hospital and 23 persons dismissed from the Department of Agriculture.

43. In addition, the complainants alleged that the premises of the Maseru branch of the Lesotho Typographical Workers' Union had been searched by troops, the union's printing press closed down and its national newspapers banned. Some of the workers - of whom Mr. Albert Khesuoe was an example - were said to have been imprisoned, interrogated and persecuted; the manager of the printing works, Mr. Setlola Mokachane, had been declared an outlaw and a reward of 200 rands had been promised to anyone who can tell his whereabouts. According to the complainants, the premises of the Maseru branch had been requisitioned by the Government and members of that branch persecuted, interrogated and dismissed, their terminal benefits having been forfeited. The persons in question were Mr. Seiso Majara, Mr. S. Kalaka, Mr. Lefa Setlola, Mr. J. Sehalahala, Miss J. Jasong, Mr. Mots'oame and Mr. Mokati Mpholo. The complainants added that all these workers and others not mentioned had been interrogated and persecuted at the Deputy Prime Minister's residence by youth league party supporters and members of the armed forces. At Moriga, continued the complainants, where the premises of the LTWU branch are owned by the Lesotho Evangelical Church, its printing press had been closed down, the church newspapers banned and the Chief Editor, Mr. S. Serutla, persecuted and imprisoned. All of these events had happened without any court hearing.

44. The complainants declared that members of the Lesotho Transport and Telecommunication Workers' Union had been dismissed from various government departments where they were employed, forfeiting their accrued rights and legal entitlements upon termination. The following persons were mentioned as having been dismissed in these circumstances: Mr. S. Bamohlanka, Mr. S. Moeletsi, Mr. B. Masia, Mr. D. Mochochoko, Mr. T. Mokolobela, Mr. D. Pitso, Mr. M. Ramoko, Mr. M. Mohapi, Mr. D. Moeletsi, Mr. J. Mathe, Mr. L. Babeli, Mr. S. Masuenyane, Mr. Mochekela, Mr. S. Rafutho, Mr. L. Kotola, Mr. M. Motsseaua, Mr. F. Leseli, Mrs. M. Mohapi and Mrs. Mpho. The Government was also said to have persecuted and imprisoned some members of the LTUU working for private firms such as the Standard Bank Ltd., and to have encouraged the Bank to deprive them of their terminal benefits. Mr. Mathakhoe, a driver for the Standard Bank, was said to have been persecuted and imprisoned and then released, and Mr. E. Sello, a messenger at the same Bank, was alleged to have been imprisoned, interrogated and then released. The complainants asserted that all these measures had been taken without reasonable excuse and without a court hearing.
45. In a later communication the complainants transmitted a copy of a notice, issued by the Registrar of Trade Unions in terms of section 14 of the Trade Unions and Trade Disputes Law 1964, of intention to cancel the registration of the Lesotho General Workers' Union on the grounds of the failure of that union to submit annual returns. Subsequently, the complainants supplied copies of similar notices which had been issued against the Lesotho Industrial, Commercial and Allied Workers' Union and the Lesotho Transport and Telecommunication Workers' Union for the same reasons.

46. The Government's only observations on the allegations brought against it were contained in a communication dated 13 December 1971 in which it stated that the allegations related to various steps which the Government had taken to preserve law and order and, above all, the security of the State. The list of names supplied by the complainants, it added, included civil servants who had been dismissed on account of repeated defiances of the Civil Service Regulations. The allegation that the Government sought to restrain normal and legitimate trade union activity was false and was rejected as not being consistent with the facts. In no instance, continued the Government, was action ever taken against any person on the grounds that he was a member or office-holder in any trade union. Action was directed against politically motivated acts of subversion by individuals some of whom by chance were members of some trade unions. For civil servants who were aggrieved, procedures have been laid down, in accordance with which they can air their grievances or have them redressed. They can do so as members of the Civil Servants Association. No civil servant was permitted to be a member of a trade union. Trade unions were aware of these restrictions imposed on civil servants. The motive for involving civil servants in trade union activities was political gain for the trade unions concerned rather than the welfare of the civil servants involved, who must have been aware that they were being exploited by those who claimed to champion their cause.

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1 This communication and notice are reproduced as Appendix III of the present report.

2 The reply of the Government is reproduced as Appendix II of the present report.
CHAPTER 4

FIRST SESSION OF THE COMMISSION

47. The Fact-Finding and Conciliation Commission held its First Session in Geneva on 2 and 3 April 1973; the purpose was to determine the working methods and procedure which it would adopt in examining the case before it. In the course of this session the members made a solemn declaration in the presence of the then Director-General of the International Labour Office, the late Mr. Wilfred Jenks. In calling upon the members of the Commission to make this declaration the Director-General made the following statement:

Gentlemen, you have been appointed by the Governing Body of the International Labour Office as the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association to which the Governing Body, at the request of the Economic and Social Council, has referred the case of alleged infringements of trade union rights in Lesotho. This case is a special one, since Lesotho, although still a Member of the United Nations, is no longer a Member of the International Labour Organisation having formally withdrawn from membership of the ILO with effect from 15 July 1971. The allegations have, therefore, in accordance with the procedure established for such cases in 1949 and 1950, been referred to the Fact-Finding and Conciliation Commission at the request of the Economic and Social Council of the United Nations, the consent of the Government of Lesotho to the allegations being thus referred having first been sought and obtained by the Secretary-General of the United Nations.

When the Governing Body had before it the question of the establishment of the Commission, it recalled that the procedure in force for the examination of allegations of infringements of freedom of association provides that the Commission "is essentially a fact-finding body", but "is authorised to discuss situations referred to it for investigation with the Government concerned with a view to securing the adjustment of difficulties by agreement". It follows from these terms of reference, which were agreed between the Governing Body and the Economic and Social Council in 1949, that, while the Commission is free to hear evidence from all concerned, any discussions which it might have "with a view to securing the adjustment of difficulties by agreement" would be discussions with the Government of Lesotho; this Commission is not authorised to undertake any discussions in the nature of negotiation with political parties or industrial organisations.

It was on the basis of the above understanding that the Government was requested to give its consent to the referral of the case to the Commission, and it was on the basis of this understanding that the Government has given its consent to the case being so referred.

The task entrusted to you, therefore, is that of ascertaining the facts without fear or favour. You are responsible to your own consciences alone.

The Governing Body has approved a form of solemn declaration whereby members of the Panel undertake to perform their duties and exercise their powers honourably, faithfully, impartially and conscientiously. This solemn declaration corresponds in its terms to that made by judges of the International Court of Justice.
I shall therefore call upon you to make, in turn, this solemn declaration.

48. The members of the Commission thereupon made the following declaration:

I solemnly declare that I will honourably, faithfully, impartially and conscientiously perform my duties and exercise my powers as a member of the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association appointed by the Governing Body of the International Labour Office in accordance with the procedure in force for the examination of complaints of alleged infringements of freedom of association, to examine the complaints of alleged infringement of trade union rights in Lesotho which have been referred to the Commission.

49. In the course of the First Session the Commission took cognisance of the case and determined the procedure it would follow in the initial stages of its examination of the case.

SUBMISSION OF WRITTEN STATEMENTS

50. The Commission decided to offer to the Government of Lesotho and to the complainants, that is the Lesotho General Workers' Union, as well as to the Basutoland Federation of Labour, which had supported the complaint, the opportunity to submit any further written statement which they might wish the Commission to consider, not later than 30 June 1973.

51. The Commission reserved its view concerning the extent to which it would be necessary to enter into the developments in the situation since the complaint was originally submitted; it decided, however, that it would welcome any indication which the complainants might be in a position to give concerning the extent to which, in their views, the various matters raised in the complaint still gave rise to issues of current and substantial importance calling for full investigation by the Commission.

52. The Commission also decided to give an opportunity to the international organisations of workers and employers having consultative status with the International Labour Organisation, that is the International Organisation of Employers, the International Confederation of Free Trade Unions, the World Confederation of Labour and the World Federation of Trade Unions, as well as the Union of Employers of Lesotho, to submit to it, not later than 30 June 1973, any written statement that they might wish to make concerning the matters at issue.

53. The Commission further decided that any additional information submitted in accordance with the above-mentioned decisions should be communicated to the Government of Lesotho and to the complainant organisation; and that they should be afforded an opportunity to present their comments thereon.

54. Finally, the Commission decided that it would then meet again to consider, in the light of the information and evidence available to it, the further measures which might appear to be called for to enable it to discharge the duties entrusted to it.

55. The Commission's first report was signed on 3 April 1973 and presented to the Governing Body at its 190th Session (May-June 1973). The report read as follows:

1. At its 189th Session (Geneva, February-March 1973) the Governing Body of the International Labour Office decided that the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association to examine the complaint of alleged infringements of trade union rights in Lesotho should be composed as follows:

Chairman: Mr. Andreas Mavrommatis (Cyprus), former Minister of Labour and Judge, District Court;

Mr. H.S. Kirkland (United Kingdom), Professor Emeritus of Industrial Relations in the University of Cambridge, member of the
Committee of Experts on the Application of Conventions and Recommendations;

Dr. Ajayi (Nigeria), former Solicitor General and former Attorney General of the Western State of Nigeria.

2. The complaint having been referred to the Economic and Social Council, the Government of Lesotho, in a communication dated 21 March 1972, addressed to the Secretary-General of the United Nations, had indicated that it had no objection to the complaint being referred to the Fact-Finding and Conciliation Commission.

3. The Panel was sworn in by the Director-General of the International Labour Office, and held its first session in Geneva on 2 and 3 April 1973.

4. At this session, the Commission took cognisance of the case and determined the procedure which it will follow in the initial stages of its examination of the case. It has, in particular, afforded the Government of Lesotho and the complainant organisation (the Lesotho General Workers' Union), as well as the Basutoland Federation of Labour, which supported the complaint, and the Union of Employers of Lesotho, an opportunity to submit further statements on any information relating to the matters at issue, which might assist the Commission in completing its task. Communications to this effect were sent to the Government of Lesotho, the Lesotho General Workers' Union, the Basutoland Federation of Labour and the Union of Employers of Lesotho.

5. The Commission also decided that any statement or information thus transmitted would be communicated to the Government of Lesotho for its comments. The Commission will then meet again to consider, in the light of the information and evidence available to it, the further measures which appear to be called for to enable it to discharge the duties entrusted to it, and will report thereon to the Governing Body in due course.

Geneva, 3 April 1973

(signed) A. Mazoomatis,
Chairman.

H.S. Kirkaldy,

P.A. Ajayi.

56. The Commission reported to the Governing Body at its 191st Session (November 1973) that it had planned to meet in October 1973, but, not having received the observations which it had invited from the Government and the complainant organisation, had decided to postpone its meeting to some later date; and that in a communication dated 3 October 1973, the Government of Lesotho stated that negotiations were underway with the complainant organisation, that prospects for a settlement of the case were good, and that a detailed memorandum would soon be despatched to the Commission.
CHAPTER 5

VISIT BY THE CHAIRMAN TO LESOTHO

General arrangements for the visit

57. On 17 September 1974, the ILO Area Office in Lusaka transmitted a communication which it had received from the Government of Lesotho in which the Government expressed its regret that no information had been supplied to the Commission. The explanation given by the Government was that a reorganisation had taken place and a new Ministry of Commerce and Industry had been created which also had responsibility for labour, geology, mines and tourism. The Honourable J.R. Moitshe had been appointed Minister of Commerce and Industry. On 2 October 1974, the ILO Area Office in Lusaka was informed by the Office of the United Nations Development Programme in Maseru that the Government would welcome an early visit of the Commission. This request was communicated to the Chairman of the Commission who instructed the Office to obtain the Government’s agreement to a mission of approximately seven days being carried out during the period between 20 December 1974 and 20 January 1975. Having regard to all the circumstances of the case, the Commission had agreed that, subject to the Government’s agreement being obtained, the mission would be carried out by the Chairman alone, accompanied by one member of the secretariat.

58. The agreement of the Government to such a visit taking place was communicated to the ILO on 16 December 1974 and arrangements were made for the Chairman and a member of the secretariat to visit Lesotho from 13 to 20 January 1975. The Government was duly informed of these arrangements and requested to ensure that the necessary facilities would be provided to enable the Chairman to carry out his mission. In particular, the Government was requested to make suitable arrangements to enable the Chairman to meet the Minister of Commerce and Industry as soon as possible after his arrival. The Government was also informed that the Chairman would wish to interview certain representatives of workers’ and employers’ organisations as well as any other persons who might be able to assist the Chairman in his inquiry.

Economic and geographical aspects of Lesotho

59. Completely surrounded by the Republic of South Africa, Lesotho is an isolated country having an area of 11,716 square miles of which approximately three-quarters is hilly or mountainous. Its population — mainly African, of Sesotho language — is about one million, most of whom inhabit the western lowlands and about 15,000 of whom live in Maseru, the capital.

60. Both the natural and human resources of Lesotho are underdeveloped, there being little evidence as yet of exploitable minerals and the main part of the labour force being engaged in subsistence agriculture. With the possible exception of diamonds, the most abundant and most valuable national resource in Lesotho is water. The whole country abounds in streams and springs, most of which are normally perennial, and one of the largest rivers in Southern Africa, the Orange River, has its source in the mountains of Lesotho. However, in spite of the abundance of water, the lack of irrigation results in fairly frequent droughts and consequent food shortages.

61. Lesotho migrant workers form a vital part of South Africa’s labour force and constitute a substantial proportion of Lesotho’s total population. At any given time, about 200,000 of the able-bodied men are engaged in unskilled jobs at low-level wages, mainly in the mines and on the farms of South Africa. Certain economists have considered that the very low level of wages paid to these migrant workers does no more than to maintain the subsistence level of agriculture in Lesotho and to perpetuate migrant labour.

62. The level of literacy is relatively high, at 60 per cent, although this literacy is primarily of the elementary school level and is not of a nature that could make any appreciable contribution to economic development.
63. The subsistence agriculture is said to be a natural consequence of the system of land tenure prevailing in Lesotho, a system based on custom and long tradition, according to which every Basuto family is entitled to a share of land rights based on the assumption that every family household must produce its income, wholly or in part, directly from the land. Ownership of the land is vested collectively in the nation and it is not the ownership of the land but the right to use it that is allocated. The granting of land rights is conditional on the individual’s giving allegiance to his chief, and a man may forfeit his right to his land through failure to cultivate it or because of disloyalty to his chief.

64. As a result of the mountainous nature of the country only about 15 per cent of the area of Lesotho is suitable for cultivation. Even here crop yields are extremely poor owing to unsuitable climatic conditions and lack of proper agricultural machinery and equipment. Lesotho, however, is rich in livestock, in particular sheep and goats, and wool and mohair are two of the country’s main exports.

65. Since independence efforts have been made to develop small industry and in 1967 the Government created the Lesotho National Development Corporation for the promotion of manufacturing and processing industries as well as mining and commerce. There now exists a number of small factories although the scope for further industrial development is immense.

66. The principal source of mineral wealth is diamonds but up to the present, exploitation has been minimal. There are, however, fairly extensive excavation projects in progress and several major mining companies have undertaken bulk sampling with a view to establishing full-scale mining operations.

67. It is probably still premature to state that Lesotho’s self-sufficiency will be reached in the near future. The economic problems are great and it will take much effort and substantial development before the country’s economic dependence upon South Africa can be minimised.

68. Along with Botswana (formerly Bechuanaland) and Swaziland, Lesotho (formerly Basutoland) was, until 1966, a British Protectorate, or High Commission territory. In 1966, independence was achieved, and a constitutional monarchy under King Moshoeshoe II, established. At the time of independence the two major political parties in Lesotho, the National Party, led by Chief Leabua Jonathan, and the Congress Party, led by Ntsu Mokhehle, were fairly evenly matched and in the elections which preceded independence, Chief Jonathan's National Party had acquired an over-all majority of only two seats, leaving the country in a somewhat confused, as well as tense, political atmosphere. During the first post-independence elections in 1970 the Prime Minister, Chief Jonathan, amidst mounting political warfare on many issues, including relations with South Africa, assumed power and declared a state of emergency which lasted until 1973.

69. The Constitution provides for a National Assembly of 60 elected members together with an Upper House or Senate composed of the 22 Principal and Ward Chiefs and 11 persons nominated by the Paramount Chief.

Evidence and information obtained in Lesotho

70. The Chairman, accompanied by a member of the ILO secretariat, arrived in Maseru on 13 January 1975 and, with the assistance of the Resident Representative of the United Nations Development Programme Office in Maseru and the head of the Labour Department (which is part of the Ministry of Commerce and Industry), proceeded to establish a programme of work which would enable him to carry out as full an investigation as possible into the allegations which had been made. The Chairman requested the Labour Commissioner Mr. P.R. Sekhomo, to arrange meetings with the Minister of Commerce and Industry, Mr. J.R. Hoitse, the Permanent Secretary for Commerce and Industry, Mr. Monyake, and members of the Public Service Commission and representatives of the employers’ organisation and certain workers’ organisations. In addition, the Chairman requested the Labour Commissioner to arrange interviews with a number of those persons who had been named in the complaints as having been persecuted, imprisoned or dismissed from employment.
71. The Chairman was informed by the Labour Commissioner that the Government's statement in answer to the allegations would be given by a special committee consisting of representatives of several government ministries.

72. In view of these arrangements, courtesy visits were paid on 14 January 1975 to the Minister of Commerce and Industry and the Permanent Secretary of this Ministry, both of whom extended a welcome to the Chairman and expressed their willingness to co-operate as far as possible in assisting the Chairman to carry out his task of investigating the questions at issue. Owing to the fact that the Labour department had only recently come under the Ministry of Commerce and Industry, the Chairman decided to explain in greater detail the purpose of his visit, to discuss only the broader issues involved in the case and to hear whatever general observations the Minister and the Permanent Secretary might wish to make on the matter.

73. On 14 January 1975, the Chairman met the special committee which had been convened by the Labour Commissioner to present the Government's reply to the allegations brought against it by the complainants. This committee was composed of representatives of the Ministry of Foreign Affairs, the office of the Cabinet, the Central Planning Office, the Ministry of Commerce and Industry and the Labour Department.

**Government's reply to the allegations**

74. Acting as spokesman for the special committee mentioned above, Mr. T. Makeka, Legal and Treaties Officer of the Foreign Office, explained that, following the elections which took place in January 1970, the situation in the country was such that the Basutoland National Party, which had assumed power, felt itself bound on 30 January 1970, to declare a state of emergency and suspend the Constitution. Violent disturbances, involving the loss of human life and property, were widespread and there followed a wave of arrests of members of the opposition party (the Basutoland Congress Party) on account of their involvement in the disturbances. During the emergency, the courts operated normally, although there may have been some delay in dealing with certain cases as a result of the temporary absence of the then Chief Justice and also as a result of the shortage of court staff and the large number of cases involved. Mr. Makeka emphasised that all cases were dealt with by the ordinary courts under the normal criminal procedure in which the accused enjoyed full rights of defence and appeal to the Court of Appeal (which then covered Botswana and Swaziland, in addition to Lesotho). Sentences of up to four years' imprisonment were passed on those who were convicted, account being taken of any period during which an accused had been detained prior to being brought to trial.

75. The action taken by the Government following the declaration of the state of emergency was in no way directed against the trade union movement, but it was the case that a number of trade unionists belonging to the Basutoland Federation of Labour had been arrested and detained on account of their active political involvement in the disturbances or for reasons unconnected with their trade union activities. The leadership of this Federation, it was stated, included active leaders of the Basutoland Congress Party who often held political meetings in their trade union premises. After the declaration of the emergency, trade union premises had been searched and quantities of bombs and ammunition had been discovered. Action had been taken against the General Secretary of the National Executive of the Basutoland Federation of Labour, Mr. Shakhane Mokhehle, because he was also Secretary-General of the Basutoland Congress Party and his arrest was in no way connected with his trade union activities. The same applied, it was stated, to all other leaders and members of the Basutoland Federation of Labour or its affiliates who had been arrested or imprisoned after the events of January 1970.

76. As for the allegation that trade unionists had been dismissed from their employment during this period, it was stated that dismissals had taken place, both in the public and private sectors but, again, this action was directed against active members of the Basutoland Congress Party and not against trade unionists. In the Civil Service, a number of persons who supported or who were sympathetic to the opposition party had been dismissed on the grounds that their political activities or sympathies constituted a danger to the smooth running of government affairs. There was again no question of dismissing trade unionists as such. An association of civil servants existed but this was never registered as a trade union nor considered as such. Even the members of this association never at any time considered themselves to be trade unionists or the association to be a trade union.
A substantial number of summary dismissals had taken place, in some cases with loss of pension and gratuity rights, but everyone affected by such measures enjoyed a right of appeal to the courts if they considered their dismissals to be unfair.

77. Meetings of trade unions, it was pointed out, had at no time been prohibited although, under the state of emergency, it had been necessary to impose certain restrictions on freedom of assembly in general. Copies of letters between the Government and the acting Organising Secretary of the Lesotho General Workers' Union, Mr. M.N. Pekosela, were submitted to the Chairman as evidence that trade unions functioned even during the state of emergency. Any laws or regulations enacted at that time were generally applicable and nothing was specifically directed against the trade unions. One newspaper, it was added, owned by the Congress Party, was banned on account of articles containing political propaganda and incitement to overthrow the Government by force.

78. The Labour Commissioner exhibited a letter dated 13 June 1970 from the Lesotho General Workers' Union requesting information concerning complaints procedures for trade unions. He also produced a copy of a reply which he had written, dated 30 June 1970, in which he stated that the complaints procedure was outlined in Parts IX, X and XI of the Trade Unions and Trade Disputes Law, 1964, and in Notice 119 (Unfair Labour Practices (Procedure) Rules), 1967, copies of which had been sent to all trade unions when it was published in the Gazette on 8 December 1967. This correspondence, claimed the Labour Commissioner, also showed that trade unions still were free to function after the events of January 1970. In further support of his statement, the Labour Commissioner exhibited correspondence between the Labour Department and the unions (including the complainant union, the Lesotho General Workers' Union), calling upon them, on 20 January 1971, to submit their annual returns and statement of membership as required by law. The Chairman was also shown other correspondence which had been exchanged between the Labour Department and the unions in the years 1971 and 1972. In particular, in 1972, invitations had been extended to unions, including the Lesotho General Workers' Union and the Lesotho Typographical Workers' Union, to nominate a representative who would be considered for appointment to a National Advisory Board on labour matters. The unions had failed to respond positively to this and had replied with a complaint that trade union activities were still subject to intolerable restrictions. When asked about the issue of notices of intention to cancel the registration of unions affiliated to the Basutoland Federation of Labour, the Labour Commissioner replied that this had not been proceeded with in view of the complaints to the ILO and the setting up of the Fact-Finding and Conciliation Commission.

79. At a meeting with the Minister of Justice, Mr. C.D. Molapo, on 15 January 1975, it was confirmed that a state of emergency had been declared by the Government on 30 January 1970 when it was discovered that the opposition Congress Party had attempted, during the elections, to interfere with the voting by the removal of ballot boxes from polling stations. Following the declaration of the state of emergency, there were isolated, although sometimes serious, incidents which had led to a number of arrests being made. The Minister explained that the state of emergency was lifted by the Emergency Revocation Proclamation, No. 1 of 1973, which also rescinded the regulations made under the Emergency Powers Order, 1970. In January 1974, a new attempt to overthrow the Government by force had resulted in the arrest of 176 persons, of whom about 100 had been released and the rest were facing trial. Among these, Mr. Shakhane Mokhehle, who was General Secretary of the Basutoland Federation of Labour as well as Secretary-General of the Basutoland Congress Party, was now facing trial on charges of having, along with others, attacked police stations in various parts of Lesotho in an alleged plot to overthrow the Government by force. The Minister pointed out that Mr. Shakhane Mokhehle was the brother of the leader of the Congress Party, Mr. Ntsu Mokhehle, who was presently living in exile.

80. At a further meeting with the Labour Commissioner, the following information was given to the Chairman concerning the registered trade unions in Lesotho: (a) the Lesotho Labour Organisation, having a membership of 30, was registered on 4 March 1966, with effect from 6 March 1962; (b) the National Union of Printing, Bookbinding and Allied Workers, having a membership of approximately
was registered on 16 November 1965, with effect from 1963; (c) the National Union of Construction and Allied Workers (affiliated to the Lesotho Council of Labour), having a membership of 460, was registered on 12 October 1967; (d) the Lesotho Union of Bank Employees, having a membership of 81, was registered on 26 February 1971; (e) the Lesotho Industrial, Commercial and Allied Workers' Union (affiliated to the Basutoland Federation of Labour), having a membership of 1,712 of whom only just over 100 were fully paid-up members, was registered on 27 October 1967; (f) the National Union of Textile and Allied Workers' Union (affiliated to Lesotho Council of Workers), having a membership of 91, was registered on 25 September 1970; (g) the Lesotho Transport and Telecommunications Workers' Union (affiliated to the Basutoland Federation of Labour), having a membership of 300, of whom 92 were fully paid-up members, was registered on 17 December 1965, with effect from 24 April 1959; (h) the Lesotho General Workers' Union (affiliated to the Basutoland Federation of Labour), having a membership of 525, of whom 218 were fully paid-up members, was registered on 15 November 1965, with effect from 16 November 1954; and (i) the Lesotho Typographical Workers' Union (affiliated to Basutoland Federation of Labour), having a membership of 60 to 70, was registered on 25 May 1966, with effect from 1952.

Visits of the Chairman to the Printing Workers' Unions at Morija and Hazenod

81. In view of the allegations made in connection with the Morija Branch of the Lesotho Typographical Workers' Union (affiliated to the Basutoland Federation of Labour), the Chairman requested that arrangements be made for a meeting with members of the executive committee of the Morija Printing Workers' Union. At the same time, the Chairman requested that similar arrangements be made for a meeting with the executive committee of the Printing Workers' Union at Hazenod (an affiliate of the Lesotho Council of Workers).

82. Morija is situated at a distance of approximately 40 kilometres to the south of Maseru and Hazenod approximately 15 kilometres, also south of Maseru. Visits to both of these villages took place on 15 January 1975.

83. At Morija, the Chairman met the President, Secretary and one other representative of the Printing Workers' Union who gave evidence that 34 out of 50 workers at the printing works were members of the union and that no worker was a member of any union affiliated to the Lesotho Council of Workers.

84. Questioned about the events which followed upon the declaration of the state of emergency in January 1970, the witnesses informed the Chairman that, although no one in Morija had been dismissed from his employment, about 10 of their union members had been arrested in connection with the political disturbances which followed the elections. None of these, it was stated, had been arrested in connection with their trade union membership or activities but solely on account of their political sympathies with the Basutoland Congress Party. One member of the executive had been arrested in March 1970 and detained in Maseru until he was acquitted by the court 15 months later. During his detention he had suffered ill-treatment, but his arrest, he stated, had been in connection with the murder in Morija of a member of the Basutoland National Party. He had been brought before the court three months after his arrest, and he had been represented by a defence lawyer at all stages of the proceedings.

85. Meetings of the union, it was explained, were greatly curtailed following the emergency and application had to be made to the police for permission to hold any general union meeting. A permit to hold a meeting could not be obtained and applications to the police went without reply. Even now, permission had to be obtained and as a result of these difficulties as well as the union's policy of non-cooperation with the Government, the union had not made any annual returns to the Labour Department since 1970.

86. The Printing Workers' Union at Hazenod comprises 164 members out of 200 workers and is an affiliate of the Lesotho Council of Workers. The nine-man executive committee of the union was met by the Chairman.

87. The version of this union of the events of January 1970 and the period following the declaration of the state of emergency was that no member of the union had been arrested or dismissed and that, although police permission was required before a meeting could be held, this was at no time refused and was in fact always
granted in time. The union had never been obstructed in any way from carrying out its normal trade union activities. The Committee agreed that the Printing Workers' Union at Morija had greater problems regarding the right to hold meetings since, about one year previously, they had invited the union to hold a joint meeting to discuss common problems. This invitation was rejected by the Morija Union on the grounds that it could not obtain permission to hold a meeting.

88. The Mazenod Union claimed that it was independent of politics and did not support any of the political parties. Relations, however, with the Labour Department, they stated, were far from good and liaison with this Department was difficult. Owing to the low level of the standard wage (about 60 cents per day), and the lack of job opportunity in Lesotho, their bargaining power was negligible. Nothing was ever obtained from the employers through negotiation and the union had never been able to obtain a system of annual increments nor any practical facilities for carrying out trade union activities.

Meeting with representatives of the Basutoland Federation of Labour

89. On 15 January 1975, the Chairman met three representatives of the National Executive Council of the Basutoland Federation of Labour (of which the complainant union, the Lesotho General Workers' Union, is an affiliate). The representatives were Mr. N. Pekosela, Secretary-General of the Lesotho General Workers' Union and acting Secretary-General of the BFL (in the absence of the Secretary-General, Mr. Shakhane Mokhehle, who was standing trial on charges of treason), Mr. S. Moreke, General Secretary of the Lesotho Transport and Telecommunications Workers' Union and Mr. R.H. Mosee, National Chairman of the Lesotho Industrial, Commercial and Allied Workers' Union and Acting President of the Basutoland Federation of Labour.

90. The Chairman was informed that the Basutoland Federation of Labour was affiliated to the All-African Trade Union Federation (AATUF) and that, at the time of the elections in January 1970, the total membership of its four affiliated organisations was in the region of 12,000 compared with the total membership of the Lesotho Council of Workers which, at that time, was only about 300 or 400.

91. On the subject of arrests of trade unionists following the declaration of the state of emergency, the Chairman was told that of the 16 members of the National Executive of the BFL, 6 had been arrested, including Mr. S. Mokhehle, General Secretary of the Federation. Mr. Mosee stated that he himself had been arrested on 25 August 1970 and, although the reasons for his arrest had never been given, he had been interrogated about his involvement in subversive activities. During the period he was kept in detention (26 August 1970 to 12 August 1971), he had at no time appeared before a court. In August 1971, he was given an opportunity to state why he should be released and his release, on 12 August 1971, was conditional upon his reporting daily to the police. On 8 November 1971, he was again arrested and detained until November 1971, when he was released and banished to a region in the mountains to which he was restricted. These restrictions were finally removed in November 1972.

92. Mr. Moreke had been arrested on 18 April 1970, interrogated about subversive activities and his alleged part in a plan for the escape of certain persons who had been detained, and imprisoned from 19 April 1970 until 3 January 1972 without having been brought before a court. On 4 January 1972, he was restricted to a district outside Maseru until 16 December 1972, when the restriction was lifted.

93. According to Mr. Pekosela, he had been restricted to his home following an interrogation by the police, which had lasted two weeks, concerning his part in an alleged plot to overthrow the Government. Since Mr. Pekosela had not been detained, it was he who took over the running of the Federation and was the signatory of the complaint presented to the ILO.

94. One of the main complaints was that meetings were impossible and no reply had been received to applications by the BFL to hold them.

1 The South African Rand (100 cents) is equivalent to approximately Sw fr 3.85.
95. The BPL delegation told the Chairman that not only were certain officials of the BFL active members of the Congress Party, but a certain amount of political activity had actually taken place in the BFL premises. These premises had subsequently been searched, the office destroyed and documentation removed by the police. Mr. Shakhane Hokhele, General Secretary of the BFL, had been arrested on account of his activities on behalf of the Congress Party but the BFL representatives stated that they were satisfied that he was now receiving a fair trial with all the benefits of a proper defence.

96. Dismissals had taken place on a wide scale, especially in the Civil Service, although these had also extended into the private sector. A file containing approximately 75 dismissal notices addressed to individuals by various ministries (the majority having been employed in the Health Service) was exhibited to the Chairman who noted that all of these dismissals had taken place in March or April 1970.\footnote{In addition, one of the witnesses communicated to the Commission during its final session, certain information concerning his dismissal and loss of benefits.} The dismissals had been summary and, with the exception of one, which gave political activities as the reason for the dismissal, no grounds for the dismissals were stated.

97. In most cases, forfeiture of sometimes considerable gratuity and pension rights was involved. The BFL delegation was convinced that all these dismissals were politically motivated and not directed against any particular trade union, which in any event could not have been the case since none of the civil servants dismissed belonged to a BFL affiliated union, or to any other trade union.

98. For a considerable time after the declaration of the state of emergency, the BFL delegation explained, trade union meetings could not be held and it was only in 1971, when the Lesotho General Council of Workers became, with government support, better established, that permission to hold meetings became more easily obtainable. Despite this, even as recently as 28 July 1974, the BFL had been refused permission to hold a meeting.

99. Referring to the allegation concerning the issue of notices of intention to cancel the registration of three of the affiliated organisations of the BFL for failure to lodge annual returns, the delegation explained that, on a number of occasions, approaches had been made to the Labour Department to obtain the appropriate annual return forms but the Labour Commissioner had refused to supply these. He did not, however, proceed with the cancellation of the registration of the unions concerned because of the fact that the Lesotho General Workers' Union had submitted complaints to the ILO, and a Fact-Finding and Conciliation Commission had been established.

Meetings with representatives of the Lesotho General Council of Workers

100. The Organising Secretary of the Lesotho General Workers' Council told the Chairman that the Council had been formed in 1963/64 by Mr. T. Lepole, son-in-law of the Prime Minister. He added that it had a total membership of about 1,500 workers and was affiliated to the International Confederation of Free Trade Unions. For six months after the events of January 1970 the Council was not permitted to hold meetings, but thereafter there was no difficulty in obtaining permission to do so. Permission had never been refused and full co-operation was maintained between the Council and the Department of Labour. Following the emergency situation, there had been no dismissal of members of the Council, which included, shop, construction, textile, printing and hotel workers.

101. Questioned about relations between the Council and the Basutoland Federation of Labour, the representatives of the Council stated that not much was known about the BFL, but an approach had been made by the BFL to discuss possible amalgamation with the Council. The BFL had, however, failed to exhibit its constitution to the Council for examination and the two organisations had not met to discuss the matter further. The Council, it was emphasised, did not support any political party and did not want to be amalgamated with the BFL if its association with the Congress Party remained as strong as it had been in the past.

102. The Chairman was told about the difficulties of the trade union movement as a whole, especially with regard to the relationship between trade unionists and employers whose attitude, it was stated, was, in general, hostile towards any
attempts made by the trade unions to obtain improved conditions for their members. Some contracts of employment contained clauses prohibiting trade union membership and many trade union members had otherwise been victimised because of their union membership.

Meetings with Organisation of Employers

103. In the course of the mission the Chairman met a committee of seven members of the Employers' Organisation whose chairman, Mr. E.E. Clifford, explained that the Organisation was entirely non-political and was made up mainly of commercial traders.

104. In general, the emergency situation of 1970 had not led to any interference by the authorities in the running of business. One member of the Committee, however, informed the Chairman that he had ignored a request by a local official to employ only those workers who had employment cards. Such employment cards, it was stated, were only being issued at the time to National Party supporters. Another member of the committee stated that he knew of one case in which an employer had been asked by the police to dismiss five employees, since their loyalty to the Government was in doubt. Instances of this kind, the Chairman was told, had been numerous in the early part of 1970.

105. As far as the employers were concerned, trade unions were weak, badly organised and of no real consequence, and contact with them was rare. Most of the members of the committee had heard little or nothing of the Basutoland Federation of Labour. Whatever was known about this Federation, it was stated, was synonymous with party politics, and it was not their wish to become involved in anything political.

Meetings with individual witnesses

106. In addition to the above meetings, the Chairman was able to interview a number of individuals who had either been sent by the trade unions or who approached the Chairman of their own accord. In all, 14 persons were heard individually by the Chairman and, except for one case, no other witnesses were present during these hearings. The majority of the persons heard were former civil servants who had worked in various ministerial departments and all had been dismissed from the service in the early part of 1970, forfeiting pension rights and entitlement to gratuities. These witnesses included the former Labour Commissioner and Registrar of Trade Unions, Mr. Peter Pule, who had been dismissed from office in March 1970, and Mr. Shakhane Hokhehle, the imprisoned Secretary-General of the BFL. Six of these witnesses had been arrested and detained, four for short periods of up to two weeks, and two, for one year and 15 months respectively. Those who had been detained had all been interrogated in connection with subversive activities or their associations with the Congress Party. Apart from one of these witnesses, a member of the Lesotho Industrial, Commercial and Allied Workers' Union and a branch chairman of the Congress Party, all stated that they played no active part in politics, although some admitted that they had voted for the Congress Party in the 1970 elections. Some witnesses stated that political involvement was, in certain cases, used as an excuse to dismiss persons in order to promote others to the posts thus vacated.

107. The former Labour Commissioner/Registrar, Mr. Peter Pule, a capable and experienced civil servant, informed the Chairman that he had been dismissed since it was not considered that he could show complete loyalty to the National Party. He had not, however, forfeited any pension rights or gratuity. Mr. Pule, like several other dismissed civil servants, stated that, as government officials, they were not in a position to subscribe to any political party.

108. Some of the witnesses interviewed told the Chairman that when they were dismissed they did consider taking the matter before the courts. In view of the emergency situation, however, they had concluded that to do so would have been useless and may have resulted in measures of reprisal being taken against them by the authorities. A few witnesses indicated that, even now, they would be afraid to make any claim for compensation for sums lost through dismissal. Others were apprehensive that, having given evidence before the Commission, they might be subjected to questioning or punishment afterwards.
109. Mr. Shakhane Mokhehle was interviewed by the Chairman in Maseru prison where he had been detained for one year. This interview took place in the presence of prison officials although this fact did not appear in any way to prevent the witness from presenting his evidence without any fear of reprisals. Mr. Mokhehle was, at the time of the mission, standing trial before the High Court, along with 29 other supporters of the Congress Party, on charges of high treason. The charges were a sequel to the disturbances which took place in Lesotho in January 1974 when armed groups attacked several police stations in various parts of the country in an attempt to overthrow the Government. Mr. Mokhehle told the Chairman that his arrest, detention and trial were solely in connection with his political activities and had nothing to do with his trade union position or activities. In the course of the mission, the Chairman visited the High Court where the trial of Mr. Mokhehle was in progress. This trial was being conducted before a judge and two legal assessors and strict rules of procedure were being applied. Mr. Mokhehle, who was legally represented was satisfied that all the formalities of normal judicial procedure were being observed.

110. As to the position of the Basutoland Federation of Labour, Mr. Mokhehle openly criticised the attitude of the authorities towards the Federation and added that the whole problem lay with the Labour Department which, following the instructions of the Government, afforded no co-operation or assistance to the Federation. He alleged that, on government instructions, the Labour Department would not issue employment cards to persons who went to the Department to seek work, but who were not National Party supporters.

* * *

111. Prior to leaving Lesotho, the Chairman had a further series of brief meetings with the Minister of Commerce and Industry and with the leaders of both the Basutoland Federation of Labour and the Lesotho Council of Workers in order to discuss the general trade union situation in the light of all the information supplied to the Chairman in the course of the more formal interviews and meetings.
PART III

CHAPTER 6

FINDINGS AND RECOMMENDATIONS

112. The first post-independence elections in Lesotho were held in January 1970. These elections, which were closely contested by the National Party, led by Chief Leabua Jonathan, and the Congress Party led by Mr. Ntsu Mokhele, were followed by a political crisis in which the constitution was suspended and a state of emergency declared by Prime Minister Jonathan whose National Party had assumed power. In certain parts of the country sporadic, although at times serious, disturbances took place, but the Government, which had the backing of the police force, was soon able to bring these under control. Anti-government feeling and activity persisted, however, and it was not until 24 July 1973 that the state of emergency was lifted and the emergency regulations rescinded.

113. Particularly in the months following the declaration of the state of emergency the Government set about eradicating what it considered to be subversive elements in the opposition Congress Party and there followed a wave of arrests and dismissals of persons said to be actively plotting the overthrow of the Government by force and even of persons who were simply supporters of the Congress Party. These arrests, which included leaders and members of certain trade unions, together with the restrictions which had been imposed on the meetings of trade unions, gave rise to the submission to the International Labour Organisation, on 12 October 1970, of a complaint of infringements of trade union rights by the Lesotho General Workers' Union, an affiliate of the Basutoland Federation of Labour.

114. As regards the allegation that trade unionists had been arrested and interrogated and, in some cases, detained, the Chairman of the Commission was able, in the course of his visit to Lesotho, to interview a number, selected at random, of the many persons who had been named in the complaint as having been arrested or detained, as well as the most important leaders of the unions involved. In addition, certain other persons who had not been named in the complaint came forward of their own accord, or at the request of the complainants, to give evidence concerning their arrest or detention, or to speak of the events which had given rise to the complaints. All the witnesses on this subject, including the members of the National Executive of the Basutoland Federation of Labour who had been arrested, admitted that they were supporters of the Basutoland Congress Party, and a few had been actively engaged in that Party as local branch agents or organisers.

115. In the course of the hearings of witnesses it became clear that the Basutoland Federation of Labour identifies itself closely with the opposition Congress Party, and the evidence showed that it was almost exclusively for this reason that members of this organisation or its affiliates found themselves victims of the measures taken by the Government during the state of emergency. Significantly, every witness who had been arrested or interrogated stated that his sympathies lay with the Congress Party and that, when interrogated, they had been asked about their political activities and their involvement in acts considered by the authorities to be subversive. No witness was able to say that his trade union activities contributed to his arrest or detention, apart from stating that the authorities appeared to take the view that any person connected with the BFL or one of its affiliates was necessarily anti-government and possibly involved in a plot to overthrow the Government.

116. From the available evidence it was clear, however, that many persons, including trade unionists, where there was suspicion of their involvement in activities of a subversive nature, had been detained on one or several occasions, sometimes for periods of up to two years, without being formally charged or brought to trial. This was admitted by the Government who put forward the explanation that this had been due to a shortage of magistrates and a backlog of cases to be tried. The Commission does not find such an explanation to be entirely acceptable. The investigation revealed that, although the courts never ceased to function normally throughout the emergency situation, a number of persons, including trade unionists,
were preventively detained for as long as the Government considered these persons to be a threat to its stability. In most cases no attempt was made to obtain remand or other orders from magisterial courts.

117. One trade unionist who had been detained for 14 months in connection with a political murder had been brought to trial, acquitted and subsequently released. This witness admitted that he had the benefit of legal counsel throughout the proceedings and that he had no criticism to offer concerning the conduct of his case.

118. In the course of his visit to the High Court, the Chairman noted that the trial of Mr. Shakhane Mokhehle, Secretary-General of the BFL, who had been imprisoned since January 1974 on charges of plotting to overthrow the Government by force, was being conducted in a formal and proper manner and that the rules of normal judicial procedure were being strictly observed. Mr. Mokhehle, along with 29 others, was being defended by 4 barristers and the trial was being heard by a judge of the High Court, assisted by two assessors (who were present to advise on questions of customary law). Again, there was no question that the charges brought against Mr. Mokhehle were in any way connected with his position or activities as a trade unionist and this was subsequently admitted by him during his interview with the Chairman.

119. On the question of arrests and detention, the Commission concludes that the measures which were taken against workers in general and against certain trade unionists in particular were not connected with their trade union activities as such, and that those members of the Basutoland Federation of Labour who were arrested or detained were subjected to such measures exclusively because of their personal political convictions and because of the very close association of the Federation with the opposition Congress Party.

120. Nevertheless, in view of the sometimes long periods during which certain trade unionists were detained without trial, the Commission, while refraining from expressing an opinion on the political aspects of the state of emergency, would point out that measures of preventive detention are liable to involve serious restrictions on the exercise of trade union rights and should be accompanied by adequate judicial safeguards applied within a reasonable period, and that all detained persons should receive a fair trial at the earliest possible moment.

121. In this connection, a further point should be mentioned. Certain witnesses, whose credibility the Chairman considered to be beyond question, had suffered ill-treatment whilst in detention or during interrogation. With regard to these allegations the Commission would point out that trade unionists, like all other persons, should have the right not to be arrested except in accordance with the ordinary criminal procedure and the right to enjoy the guarantees afforded by due process of law in accordance with the principles enunciated in the Universal Declaration of Human Rights; and the authorities should issue special instructions prescribing effective penalties to guarantee protection against all forms of pressure during detention. While the Commission fully realises that the complaints must be examined without losing sight of the state of emergency which was proclaimed in the country, it is nevertheless bound to investigate allegations of violations of human rights which are closely related to the free exercise of trade union rights and, in particular, to the freedom and personal safety of a number of trade unionists. From the information obtained, the Commission can only conclude that, as a result of the events which followed the emergency situation, declared in January 1970, the safeguards required for the enjoyment of these rights were impaired and fundamental human rights and freedoms were violated in a number of cases.

122. On the question of dismissals, the Commission notes that these took place mainly in the Civil Service where approximately 300 persons in various departments lost their jobs. All the civil servants interviewed by the Chairman during his visit had been members of the Civil Service Association, which is neither a registered trade union nor was it considered by anyone to be performing trade union functions. The Chairman had been told that this Association was more of a consultative body than an occupational organisation and that its meetings were held at irregular intervals. Most of these civil servants had been dismissed summarily in March or April of 1970 and dismissal had involved forfeiture of all gratuity and pension rights. Since it was admitted by the Government that the normal procedure through the Public Service Commission was not followed, it was not considered essential to question members of the Public Service Commission on the matter of dismissals.
123. While none of the former civil servants interviewed by the Chairman had been in any way active in party politics, all seem to have had sympathies towards the Congress Party and a number of them had in fact voted for that Party at the 1970 elections. It is significant that none of these persons had come before the Public Service Commission, the body normally competent in matters of dismissal, and that none had sought redress through the courts for wrongful dismissal and payment of terminal benefits. Theoretically, this may have been possible, but the general view was that any attempt to redress the situation would have been useless, if not dangerous, at least so long as the state of emergency prevailed. The Government had also spoken of consideration being given to the reinstatement of a number of former civil servants and some entertained the hope that, since the political situation in Lesotho was now more settled, reinstatements would soon take place.

124. As for dismissals in the private sector, it seems likely, from the evidence obtained, particularly from the employers, that there were cases in which pressure was brought to bear upon some employers to terminate the contracts of workers who supported the Congress Party.

125. From the evidence available it seems clear to the Commission that the dismissal of workers was part of the Government's policy to purge both the public and the private sectors of political elements which were not favourable to it. There is no evidence put forward by any of the witnesses that anyone was dismissed on account of his trade union activities or his membership of the Civil Service Association or of any trade union.

126. The Commission accordingly finds that the dismissals did not in themselves constitute a violation of trade union rights; it would point out, however, that dismissals of the kind encountered in the present case are not in conformity with the generally accepted principle that any form of discrimination in respect of employment on the basis, inter alia, of opinion should be eliminated. Bearing in mind that the majority of those dismissed - namely the civil servants - found themselves unable to obtain any assistance from their own Association, and that many of them actually sought the advice and assistance of the Basutoland Federation of Labour at the time of their dismissal, the Commission recommends that the Government should recognise the existence of the Civil Service Association as an occupational organisation whose duties include the promotion and defence of the economic interests of its members. The Association, for its part, should play a more active role in furthering and defending the interests and conditions of its members and former members and utilise the privileges accorded generally to trade unions under the Trade Unions and Trade Disputes Law, 1964, which covers government as well as other workers. The Commission would also express the hope that the Government will implement the assurances given by the Minister of Commerce and Industry to give serious and urgent consideration to the question of reinstating, as far as possible, those persons who were dismissed shortly after the state of emergency was declared and to re-examine the position regarding the gratuity and pension rights forfeited by them.

127. Sufficient and reliable evidence was put before the Commission to prove that the allegation concerning the issue of employment cards by the Labour Department only to workers who were pro-government was well-founded, although the extent of this practice was difficult to determine. The Labour Commissioner had pointed out that such a practice would be alien to the policy of his department and had given an assurance that it would not be resorted to in the future. It appears however that this practice did exist and that it affected workers who were members of organisations affiliated to the BFL and hence thought to be supporters of the opposition party. The Commission finds that acts of this kind are discriminatory and are not in harmony with the principles already quoted above. The Commission hopes that this practice has now been eliminated and that appropriate instructions will be given to the Department of Labour that employment cards should not be withheld because of political opinion or membership of any trade union.

128. Restrictions imposed on the right of assembly constituted the most serious aspect of interference in the normal running of trade union affairs following the emergency. It was, and still is, the case that trade unions require special permission to hold general meetings, and the evidence obtained shows that, again because of its political associations, the Basutoland Federation of Labour and its affiliates experienced much greater difficulty in obtaining such permission than its counterpart, the Lesotho Council of Workers. The latter organisation had informed the Chairman that although permission to hold meetings was necessary this had never been refused and was always granted timeously. On the other hand, the Commission notes from the correspondence exhibited and evidence led that the BFL and
its affiliates had applied to hold meetings but had either been refused permission or had received no reply. Although the unions produced letters of complaint to the Labour Commissioner, little was done to facilitate the holding of meetings of the BFL or its affiliated unions. On one occasion permission had been granted subject to the date of the meeting being changed since the date planned for the meeting fell on a religious holiday. This was treated by the union as a refusal of permission and the meeting was not held.

129. In the period following the declaration of the state of emergency, during which there were public disturbances, the authorities were extremely reluctant to permit meetings of any kind, more particularly meetings of those trade union organisations which were strong supporters of the opposition party. However, from the information at its disposal and, in particular, from the assurances given by government officials on this question, the Commission is of the view that, at present, there is no reason to believe that permission to hold meetings will not be granted, provided that it is requested in proper form and provided that there is no reasonable cause to believe that such meetings will involve any threat to public order.

130. The Commission considers that measures of a purely political nature taken by a government, such as those taken under a state of emergency, are matters which fall outside its competence, except in so far as these measures may have an effect on the free exercise of trade union rights. Measures taken, even during an emergency situation, such as restrictions on the right of assembly, may constitute serious interference by the authorities in trade union affairs except where such measures are necessary because the organisations concerned have diverged from their trade union objectives or have defied the law. The Commission would point out that, in any case, measures of this kind should be accompanied by adequate judicial guarantees which may be invoked with reasonable ease.

131. The Commission wishes to point out that the right of trade unions to hold meetings freely in their own premises, without the need for previous authorisation and without control by the public authorities is a fundamental element in freedom of association. The Commission would also draw the attention of the Government to the desirability of giving the trade union movement the greatest possible freedom of action in the occupational sphere which is compatible with the maintenance of public order. It is to be hoped that the Government will reconsider the situation in the light of these principles and that all trade unions will soon be able, in a climate of normalcy, which is one of the main conditions for the effective exercise of trade union rights, to hold their meetings freely and without the necessity of applying for previous authorisation to do so.

132. In a situation such as that of Lesotho, where a part of the trade union movement has experienced serious difficulties because of its close political associations, the Commission considers it desirable to draw attention to the distinction between trade union freedom and the performance of essentially political activities, which are different in character. In a resolution on the independence of the trade union movement adopted by the International Labour Conference in 1952, it was stated that the fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers and that when trade unions, in accordance with the national law and practice of their respective countries and at the decision of their members, decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social or economic functions irrespective of political changes in the country. In the same resolution, it was stated that governments should not attempt to transform the trade union movement into an instrument for the pursuance of political aims nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political party. The Commission considers, on the other hand, that if there exists a general prohibition on trade unions from engaging in any political activities, this may raise difficulties by reason of the fact that the interpretation given to the relevant provisions in practice may change at any time and considerably restrict the possibility of action of the organisations. It would, therefore, seem that States should be able, without prohibiting in general terms political activities of occupational organisations, to entrust to the judicial authorities the task of repressing abuses which might, in certain cases, be committed by organisations which have lost sight of the fact that their fundamental objective should be the economic and social advancement of their members.
133. The trade union movement in Lesotho is weak and disunited. Both of the main organisations, however, appear to be fully conscious of their weaknesses and appreciate that added strength as well as a more dynamic and constructive approach to trade union matters could be obtained through the voluntary amalgamation of the two organisations. The Commission notes with interest the move made by the Basutoland Federation of Labour to hold discussions with the Lesotho Council of Workers on this question although no such discussions have yet taken place, probably because of the different political views held by those two organisations. In this connection the Commission hopes that the Government in its desire to promote a strong trade union movement by avoiding the disadvantages resulting from an undue multiplicity of small and competing trade unions, whose independence may be endangered by their weakness, will seek to encourage these organisations to join together voluntarily to form a stronger and more united organisation, rather than impose upon them by legislation a compulsory unification which deprives the workers of the free exercise of their right of association and runs counter to the principles which are embodied in the international labour Conventions relating to freedom of association by which Lesotho is bound.

134. All the above matters were brought to the attention of the Minister of Commerce and Industry by the Chairman of the Commission prior to his departure from Lesotho. In addition, the Chairman had suggested that a great improvement could be achieved in the relations between all the trade unions and the Department of Labour if steps were taken to improve efficient contacts between that Department and the unions. The Department was seriously understaffed and unable to cope with the many requests for assistance and guidance both by trade unions and individual workers. The Commission considers that it is of the utmost importance that serious and urgent consideration be given by the Ministry of Commerce and Industry to the question of increasing the staff of the Labour Department and, more generally, of improving its effectiveness not only in implementing existing labour legislation but also in assisting the trade union movement as a whole to develop into an effective organ for the advancement of the economic and social interests of its membership.

135. Finally, the Commission would add, with regard to the individual persons who were interviewed by the Chairman in Lesotho or who communicated information to the Commission, that it trusts that these persons will not suffer any reprisals or be penalised on account of their co-operation with the Commission in carrying out its task of investigating the questions before it.

* * *

136. In conclusion, the Commission would like to place on record its gratitude to the Government of Lesotho and to the trade union organisations and the organisation of employers for their co-operation in its proceedings, in particular during the visit of the Chairman to Lesotho. A special word of thanks is due to Mr. P.R. Sekhomo, Labour Commissioner, whose task in making arrangements for meetings of the Chairman with the parties in Lesotho was not an easy one but one which he performed willingly and with unfailing courtesy. The members of the Commission wish further to express their gratitude to Mr. A. Rabbah, Resident Representative of the United Nations Development Programme in Lesotho, and his staff, for their valuable assistance during the Chairman's stay in Lesotho.

(signed) Andreas Mavrommatis,
Chairman.

H.S. Kirkaldy.

F.A. Ajayi.


Lagos, 30 May 1975.

Postscript

Having signed this report, the members of the Commission wish to express to the Director-General of the International Labour Office, and to the members of the staff of the Office who were associated with the Commission in its work, their warm thanks for all the help which they have received at all stages of the proceedings.

A.M.
H.S.K.
F.A.A.
APPENDIX I

Communications of 12 October 1970 and 23 March 1971 from the Lesotho General Workers' Union to the Director-General of the International Labour Office

Communication dated 12 October 1970 from the Lesotho General Workers' Union to the Director-General of the ILO

The report on suspension and infringement of the freedom of association.

On 30 January 1970, the Prime Minister declared a state of emergency in Lesotho and suspended the country constitution.

On 31 January 1970, National Council of BFL met Labour Commissioner, Mr. Peter Pule to discuss the operation of trade unions under the affiliation to BFL.

LIAU was represented by: Secretary, Mr. Holatoli, and Chairman, Mr. E.B. Monese. LGWU was represented by Organising Secretary, Mr. N.M. Pekosela. LTTU was represented by Secretary, Mr. S. Moreke.

The above named officials of trade unions of BFL met Labour Commissioner, Mr. Peter Pule. When discussing questions of state of emergency, the Labour Commissioner suggested that the above named trade union officials of BFL should carry out their disputes on normal ways, but they should know that there will be no court cases for the courts to act within the powers of the suspended constitution.

On 9 February 1970 the workers were dismissed collectively from the Agriculture Department which is a government sector. The report of collective dismissed workers were dealt with by the officials of BFL, made resolution that the Commissioner should be reconsulted for there is no protection of trade union members under the autonomous trade unions of BFL.

On 10 February 1970, officials of trade unions of BFL met the Labour Commissioner Mr. Peter Pule to act as conciliator between the trade unions of BFL and government employers who dismissed members of trade unions of BFL officials. Those of BFL present in discussion were:

(1) LIAU - Chairman, Mr. B. Monese.
(2) LGWU - Organising Secretary, Mr. N.M. Pekosela.
(3) LTTU - Secretary, Mr. S. Moreke.
(4) Labour Department Commissioner, Mr. Peter Pule.

Labour Commissioner suggested to meet the above named trade union of BFL on the next day that was 11 February 1970. On the next meeting trade union of trade unions of BFL were told that the Labour Commissioner has gone for leave. After two weeks' time the officials of trade unions of BFL were officially told that the Labour Commissioner, Mr. Pule has been dismissed and no person will act in his powers.

From that time the freedom of association was infringed and application of ILO Convention No. 87 was infringed.

1. During the state of emergency in Lesotho, workers are denied freedom of assembly, that is, they are not allowed to hold any meeting to discuss workers' problems, nor to meet for committee transactions.

2. Workers are employed according to their inclinations, if the workers are politically anti-, not pro-government in their service the state of emergency is applied on them by authorities, to check them out of their works indirectly. So that is how the workers are humiliated and kept off their services in Lesotho.

Labour Office

This Office is there to sort out workers who happen to seek for the works. They are required to produce certificates of their memberships with the ruling
political party or a witness who is a committed member of the aforesaid party may
give assurance, failing to follow that above-mentioned conditions, the people are
employed. That is the workers who are not politically supporting the ruling party.

ACTION TAKEN BY THE TRADE UNIONS OF BFL

The officials of BFL wrote letters of negotiation to different government
employers where the members of the autonomous trade unions of BFL have been
dismissed.

Results of negotiation

Some Government Ministers such as health departments did not negotiate with
trade unions of BFL instead of considering the machinery of negotiation with the
trade union officials of BFL were persecuted and imprisoned.

When the trade union officials insisted on the negotiation machinery,
ministers such as Ministry of Public Works, Permanent Secretary, refused to
negotiate with the officials of the trade union of BFL stated that the officers of
trade unions are premature of the state of emergency. The permanent secretaries are
instructed by the Cabinet Ministers not to discuss any matter of dismissal during
the state of emergency.

When the trade union officials of trade unions of BFL negotiated with the
Ministry of Agriculture and marketing society, the Acting Permanent Secretary
disclosed the reason of dismissal as political activities.

When trade union officials of BFL quoted ILO Convention No. 87, the Permanent
Secretary declared to have no further comments, but his ministry under the
instruction of the Cabinet Ministers cannot reinstate collectively dismissed workers
nor pay their accrued rights such as money in lieu of notice, holidays with pay,
gratuity and other legal remuneration.

When trade union officials of trade unions of BFL negotiated with Public
Service Commission, which is, supervised by the Prime Minister Secretary under him
stated the reason of terminations are known to the employees like Mr. S. Mohape and
he, Secretary of Prime Minister is given instruction by his high authorities not to
discuss any matter relating to dismissal of members of trade unions of BFL.

When trade union officials of BFL negotiated with the Secretary of National
Assembly, which is Parliament, the Secretary paid to members of trade unions of BFL
money in lieu of notice, e.g. Mrs. Sefali.

Mrs. Manchelete Mokebisa, other trade union members. All these negotiations
ended with deadlock for the courts are suspended, the labour officer working under
the instruction of the Cabinet Ministers. That is why we had to seek for advice and
help from Director-General Secretary.

We, as the National Executive Council elected by four autonomous trade unions
affiliated to Basutoland Federation of Labour, that is, Basutoland Federation of
Labour affiliation. Autonomous trade unions affiliated to BFL are:

(1) Lesotho General Workers' Union.
(2) Lesotho Transport and Telecommunication Workers' Union.
(3) Lesotho Industrial Commercial and Allied Workers' Union.
(4) Lesotho Typographical Workers' Union.

We hereby submit the case of workers persecuted, imprisoned interrogated and
their terminal benefits are forfeited.
1. BFL (1) General Secretary, Mr. Shakiane Mokhehle interrogated and imprisoned without court hearing. (2) President Mr. S. Sets'oeara interrogated, imprisoned without court hearing and released.

2. LIAU (1) Chairman, Mr. B.R. Monese interrogated, imprisoned without court hearing. (2) Secretary Mr. P. Molatoli interrogated, imprisoned and released without court hearing. (3) Organising Secretary, Mr. O.S. Moremi persecuted, interrogated and imprisoned without court hearing. (4) Committee Member, Mr. T. Setlaba persecuted, imprisoned and interrogated without court hearing.

3. LGWU (1) Organising Secretary, Mr. M.N. Pekosela persecuted. (2) Committee Member Mr. T. Metsing interrogated, persecuted and imprisoned without court hearing.

4. LTTU (1) Secretary, Mr. S. Moreke imprisoned, persecuted and interrogated without court hearing.

LESOTHO INDUSTRIAL, COMMERCIAL AND ALLIED WORKERS' UNION

The members of LIAU were dismissed, their accrued rights and terminal benefits were forfeited. Mr. T. Tlhaba and other white collar workers such as Messrs. R. Pitse, N. Lenka, R. Sonopo and others who are not included in this list their terminal benefits were forfeited.

The Government of Lesotho encouraged the private sectors such as wholesalers and retail shops to dismiss the members of the said trade union.

Mr. Mohale who was employed by private sector wholesalers, Moshal Gevisser was persecuted, imprisoned without court hearing.

From public workers' department which is government sector, workers were dismissed and benefits were forfeited, e.g. Messrs. M. Matlanyane, Tjama Mpela, Joseph Hlaele and other white collar workers not included in this list.

LESOTHO GENERAL WORKERS' UNION

The members of LGWU dismissed are more than its autonomous trade union under BFL affiliation. The members of the said trade union have been deprived from their accrued rights and legal entitlement such as holidays with pay, gratuity, money in lieu of notice. All the terminal benefits were forfeited.

The members of the said union dismissed by the Queen Elizabeth Public Hospital are as follows:

(List of persons)

LESOTHO TYPOGRAPHICAL WORKERS' UNION

One branch of Lesotho Typographical Workers in Maseru township was searched by the clique of soldiers, and the printing press was closed down and its national papers were declared banned. Some of the workers were imprisoned, interrogated and persecuted, Mr. Albert Khesuoe is an example. The Printing Press manager, Mr. Setlolela Mokachane was declared an outlaw and people were promised a grant of R200.00 if they could tell his whereabouts.
The branch in Maseru township owned by the Lesotho Government its workers were
persecuted, interrogated and dismissed and their terminal benefits were forfeited. Those are:

1. Mr. Seiso Najara.
2. Mr. S. Kalaka.
3. Mr. Lefa Seutloali.
4. Mr. J. Sehalahala.
5. Miss J. Jasong.
6. Mr. Mots'ane.
7. Mr. Mokati Mpholo.

All these above named workers and other workers who are not included here were
interrogated, persecuted in tent at Deputy Prime Minister's residence by his youth
league party supporters and clique of soldiers.

Other branch of LTWU at Morija owned by Lesotho Evangelical church, its
Printing Press operation was interrupted and the said church newspapers were banned
and the Chief Editor Mr. S. Serutla was persecuted and imprisoned. All above-
mentioned happened without court hearing.

LESOTHO TRANSPORT AND TELECOMMUNICATION WORKERS' UNION

The members of this trade union were dismissed from various government
departments and their accrued rights and legal entitlement were forfeited on
termination, e.g. Messrs:

1. S. Ramohlanka.
2. S. Moeletsi.
3. E. Masia.
5. T. Moholobela.
6. B. Pitsa.
7. M. Ramoko.
8. M. Mohapi.
10. J. Matho.
11. L. Babeli.
12. S. Masuoenyane.
13. Mr. Mochekela.
15. L. Kotola.
17. P. Leseli.
18. Mrs. M. Mohapi.
19. Mrs. Mpho.

The Government persecuted and imprisoned some workers of LTU from private
sectors such as the Standard Bank Ltd. and encouraged the Bank to forfeit their
terminal benefits, e.g. Messrs. Mathakho - Standard Bank driver was persecuted and
imprisoned and released, and N. Sello - Messenger of Standard Bank imprisoned,
interrogated and released.

All these above allegations were done without court hearing or reasonable
excuse.

Communication dated 23 March 1971 from the
Lesotho General Workers' Union to
the Director-General of the ILO

We have very much appreciated your information that you have taken our case on
57 the Session on 22 February 1971.
We have learnt from your letter that Lesotho Government has not given answer. We enclose some more evidence to case. And we shall wait for next session result.

We thank you for your participation in this matter.

Yours faithfully,

(signed)

N.M. Pekosela,
National Organising Secretary.

ANNEX
(referred to in communication of 23 March 1971)

Lesotho General Workers Union,
P.O. Box 322,
MASERU, Lesotho.

Chief of the International Labour Standards Department.

N. Valticos Esq.,
Postal CH 1211 Geneve 22.

Telegrammes: Interlab Geneve.
Telex: 22.271

We received the letter from you dated 3rd Nov., 1970 though, it delayed reaching us. It seems that there is an allegedly criminal action of interfering with air mails from abroad, in our country.

There is violation of laws, trade union constitutions of autonomous trade unions of Basutoland Federation of Labour and of the ILO Convention No. 87.

We substantiate this by enclosing the photographed letters of so called cabinet personnel, and the government sector, Ministry of Agriculture. And the copies of Trade Union of B.F.L. when negotiating with the aforesaid Ministries of Agriculture and of Health are herewith enclosed for your security.

We therefore aware of the awareness of the fact that the so called government has no way of dealing with the situation, it has created in the country. It applies pressure to the trade unions of B.F.L. and its workers at various categories of works.

We beg leave to ask for a full report of the freedom of association committee in this matter when dealing with our various reports submitted to the ILO office.

We hope action speaks louder than words.

With the full compliments of season.

Yours fraternally,

(signed)

N.M. Pekosela
(Org. Secretary.)
APPENDIX II

Communication of 13 December 1971 from the Ministry of Foreign Affairs, Lesotho to the Director-General of the International Labour Office

Ministry of Foreign Affairs,
P.O. Box 527,
MASEBO

13th December, 1971.

Sir,

I am instructed by the Honourable the Prime Minister and Minister of Foreign Affairs to acknowledge receipt of your communication TUR 1-180-1 of 25 November 1971 in which you once more refer to allegations of infringements by the Government of Lesotho of the ILO Convention No. 87. The contents of the Committee's 126th Report on Case No. 638 have also been noted.

It is rather surprising to find it mentioned in the Report that no "reply has been received from the Government", in view of the fact that a reply to your even referenced letter of 11 June 1971 which referred to your earlier communications of 3 November 1970 and 20 April 1971 respectively, was dispatched on 20 July 1971. All I can do here, therefore, is to reiterate the substance of that earlier letter, in case through mishap you are not in receipt of it to date.

The allegations levelled against the Government of Lesotho by the Lesotho General Workers Union - all of them purporting to show that the Government is in breach of its international obligations under the ILO Convention No. 87 on the Freedom of Association and the Right to Organise - relate to various steps taken by the Government to preserve law and order, and above all the security of the State. The list of names of people submitted to you includes civil servants who were dismissed on account of repeated defiance of the Civil Service regulations which they knew only too well.

The allegation that the Government sought to restrain normal and legitimate trade union activity is false, and must be rejected outright for its obvious lack of verisimilitude with the existing facts. In no instance was action ever taken against any person for the reason that he was a member or office-holder in any trade union. Action was directed against politically motivated acts of subversion by individuals some of whom by chance were members of some trade unions. For civil servants who are aggrieved, procedures have been laid down in accordance with which they can air their grievances or have them redressed. They can do so as members of the Civil Servants Association. No civil servant is permitted to be a member of a trade union. Trade unions are aware of these restrictions imposed on civil servants. Involving civil servants in trade union activities was a deliberate attempt to mislead the ILO headquarters. The motive was political gain for the trade unions concerned rather than the welfare of the civil servants involved, who must have been aware that they were being exploited by those who claimed to champion their cause.

I would like to assure you that the Government does not take action against trade unions unless they deviate from the paths described in their respective constitutions, to engage in activities solely intended to threaten law and order the security of the State.

Accept, Sir, the assurance of my highest consideration.

I have the honour to be, Sir,
Your obedient Servant,
(signed)
G.T. Lebona
for PERMANENT SECRETARY FOR FOREIGN AFFAIRS

The Director-General,
International Labour Office,
CH 1211, Geneva 22.
APPENDIX III

Communication of 1 June 1972 from the Basutoland Federation of Labour to the Secretary-General, United Nations, New York

Basutoland Federation of Labour,
P.O. Box 266,
MASERU, Lesotho.

1st June, 1972.

The National Executive Board of Basutoland Federation of Labour forward the copies of notices to cancel the autonomous Trade Unions of B.F.L.

You will remember that we still have the case No. 50223/1 Lesotho which has not reached settlement, but before any decision of the said case has been arrived at we have received the letters of notice, of the cancellation of Trade Union, the same notice has been announced by Lesotho Radio on 5.5.72, as confirmation cancellation of autonomous Trade Unions of B.F.L. and the person Mr. P.R. Sekhomo has not been declared as the Registrar of Trade Unions he has been acting as the Labour Commissioner of Trade Union.

The so-called the Registrar of Trade Unions has known the violation of Trade Union and Trade Dispute Law by his government circles he has been indifferent. He is making this intended Trade Union interference because his Government does not want to stand for the case.

We would therefore appeal to Governing Body for financial assistance to take up initiative steps against this intended action.

Please use Barclays Bank D.C.O. No. 581125186 No. I A/C Maleleka Pekosela this fund will be use for solidarity of all autonomous Trade Union and the case of this nature.

We hope and trust that you will help us at your earliest time.

Yours faithfully,

(signed)

N.H. Pekosela
GENERAL SECRETARY B.F.L.

Registrar of Trade Unions,
P.O. Box 216,
MASERU

5th May, 1972.
NOTICE OF INTENTION TO CANCEL REGISTRATION

To: Lesotho General Workers Union,
P.O. Box 322, Maseru.

I hereby give you notice pursuant to section fourteen subsection (3) of the Trade Unions and Trade Disputes Law, 1964, that on expiry of two months from the date hereof I propose to cancel the registration of Lesotho General Workers Union as a trade union under the said Law unless before the expiration of such period, cause is shown to my satisfaction why such registration should not be cancelled. The grounds on which I propose to cancel the registration are: failure to submit annual returns.

Dated this 5th day of May 1972.

(signed)

P.R. Sekhomo
REGISTRAR OF TRADE UNIONS