

## **Statement on The Wiehahn Commission Report and its Implications issued by FOSATU after its Central Committee Meeting on the 18 and 19 May 1979**

FOSATU views the Wiehahn Commission recommendations and more particularly the Government White Paper with considerable misgivings. The Report, White Paper and various Ministerial Statements reflect an ignorance and misperception of the aims and objects of the unregistered union movement and its present operations. This is not surprising in view of the persistent disregard on the part of the Government for the views of these organisations.

FOSATU believes that at this time the best move towards a fair and stable industrial relations structure would be to remove the racial discrimination in the definition of employee in the Industrial Conciliation Act.

The effect of the Report and the White Paper has, however, been to change the whole context of registration and operation of unions from one of reasonable legislative certainty to one of unreasonable administrative discretion and uncertainty. This change is held to be necessary to protect existing organisations against disruption by African workers and their unions. The latter parties are thus surely justified in treating these new elements of discretion with the utmost caution.

FOSATU, therefore, believes that the Report and the White Paper do not represent the substantial move towards non-racial freedom of association that is being claimed for them. In certain important respects there is the clear prospect of an actual retraction of rights enjoyed by African workers in the present dispensation.

FOSATU particularly wishes to note the following major problem areas that reinforce this view:

**Migrant Labour** - a major positive aspect of the Report was the recommendation that there be no restriction on the eligibility of individual workers for union membership. However, the White Paper recommends restricting eligibility to those 'who enjoy permanent residence in South Africa and who are in fixed employment'.

This constitutes a **very serious** and in FOSATU's view, an unacceptable restriction for the following reasons:

It conflicts with the principle of freedom of association as the majority Report very competently argues.

It constitutes a loss of union rights for what is probably the substantial majority of existing members of unregistered trade unions.

By using the structures of separate development it will exclude the substantial majority of African workers from membership and if carried through in terms of existing legislation, the numbers of eligible workers will decline absolutely and as a proportion of the workforce.

FOSATU believes that **all** workers working in South Africa irrespective of race, creed, sex or country of origin should have the full rights normally accorded in an industrial relations structure.

Registration - the new provisions for registration in the Report and apparently accepted by the White Paper introduce an unacceptable process of administrative discretion which was not present in the existing legislation. For instance, the Registrar can now take into account 'any other factor which would serve to maintain peace and harmony within the undertaking, industry trade or occupation, and the national interest in general'. This extends discretion to absurd lengths and has the effect of calling the principle of freedom of association into serious doubt.

It has also been stated by the Minister that mixed unions will not be registered for the time being. FOSATU believes in the full freedom of association so that all workers should be allowed to join the union of their choice. FOSATU, therefore, believes that this restriction is unacceptable.

Industrial Councils - FOSATU is very concerned about the recommendations accepted by the White Paper that there should be veto rights on certain matters, such as the admission of new parties, for existing parties to the Industrial Councils. This can only be seen as giving unnecessary powers to existing parties that are likely to be prejudicial to new entrants to the system of Industrial Councils.

Industrial Courts - in view of the discretionary powers of the administrators the Industrial Court assumes a particular significance. However, once again the scope of the court has been expanded so that extra-legal considerations can be taken into account in deciding on matters.

For instance the Report mentions that anthropological factors could be taken into account which in South African society can be little cause for comfort. This could be a serious problem for a new Court such as this, where the same body will be making new laws well as carrying it out.

The fact that the Report and the White Paper accept that African workers should have the right to be members of registered unions has been seriously altered by these qualifying factors - the major ones of which are outlined here. FOSATU therefore has serious reservations as to whether the Commission will lead to an organised trade union movement that is not bedevilled by racial and craft frictions.

## **FOSATU Central Committee Statement on the Amended Industrial Conciliation Act that forms the basis for the Joint Stand with other Unions**

### **What have we been struggling for?**

There is no doubt that it is the years of struggle by workers and the representative organisations that have led to the changes in the legislation. However, the acceptability of these changes depends on what we have been struggling for.

Our struggle has been for the right to freedom of association as set out in the internationally accepted I.L.O. Charters and to build an effective and powerful labour movement. Our struggle has not been to achieve registration as an end in itself.

We have struggled to eliminate the legislatively enforced racial divisions in the labour movement that have weakened it and made it largely ineffectual.

We have struggled to limit state interference in labour relations to a minimum. The powers of the state and its officials must be minimal, clearly defined in law, open to question and with a guaranteed right of appeal by affected parties to the independent judiciary.

We have struggled for the fundamental principle of worker control of their own independent trade unions through free elections in their factories.

We have struggled to establish broadly based industrial unions on a national basis so as to escape the fragmented, craft based divisions that characterise the weak registered union movement.

### **Have we won our struggle?**

Both the Amended Legislation and the unprincipled actions of the majority of the registered trade union movement must cause us to answer no to this question.

#### **The Legislation:**

1. Retains racial restrictions on membership and racially segregated executives in the case of mixed unions.
2. Retains restrictions on the right to registered union membership.
3. Introduces new areas of Ministerial discretion and powers of exemption.
4. Introduces new areas of discretion to the Registrar in the form of provisional registration where in addition he need give no reasons for his actions.
5. Introduces a National Manpower Commission with wide powers of investigation and recommendation but no legislatively established guidelines as to the procedures of investigation.
6. Introduces an Industrial Court that adjudicates on disputes of right and of interest and in addition will establish its own rules of conduct. The Industrial Court cannot replace the independent judiciary and the normal courts.

#### **The Actions of the Majority of Registered Unions:**

The Principles outlined above have been fought for with valour and at great cost to the labour movement throughout the world.

Regretably here in South Africa the leadership of the great majority of the registered trade union movement seems incapable of taking any stand of principle. The majority of this leadership and that of certain other unaffiliated unions, have shown that their actions are governed by expediency.

Unfortunately it would appear that in general only those registered unions adopting a misguided racist stand have shown themselves prepared to defend principles.

Since the decision on the amendment to the Industrial Conciliation Act in 1956, the registered trade union movement, with a few heroic exceptions,

have done very little to organise African workers. On the contrary, they have expelled African unions from their ranks after Ministerial threats, and in the 1970s, generally adopted a hostile stand toward the independent unregistered unions.

Now these registered unions are falling over themselves to form new unions for African workers without a single word of criticism for the substantial shortcomings that remain in the legislation. Furthermore, these unions are receiving employer backing and support in a well-planned offensive against the existing independent unregistered unions.

We do not hold all members of these unions or all registered unions to account for these actions. We are confident that there are those who will still act with integrity and in the best interests of workers. However, we despair of TUCSA ever taking any principled action.

### **Should We Register?**

In considering our joint course of action in the present situation we have been strongly influenced by the unprincipled actions of the majority of the existing registered unions and the support they are receiving from employers and potentially the state.

We believe that we would be sacrificing the best interest of all workers if we were to surrender our present role as a representative voice of integrity and allow the voices of expediency to dominate.

However, it would be pointless to seek registration in order to maintain our position, but in doing so to sacrifice the principles set above.

We therefore resolve that:

1. We will act as FOSATU and that a registration working group will be set up to co-ordinate the actions of all unions in seeking registration on following basis:
  - a. It is of paramount importance that non-racial unions will be registered with no racial divisions in their executive structure.
  - b. Provisional registration will not be accepted so that registration will be effected as final registration as presently embodied in the Act.
  - c. that the spirit of registration will be such that it is designed to acknowledge existing unregistered unions and not eliminate them.
  - d. Registration will be for broadly based industrial unions and will not be used to fragment and localise existing organisations.
2. Whether registered or unregistered, we will strive to eliminate all restrictions on Union membership other than those prescribed by union constitutions and all areas unnecessary state discretion and control.