



Police Labour Relations in Namibia: Time for a New Beginning?

Workshop Report

By

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Foreword

The Consultative Workshop on: The Police and Correctional Services Labour Relations in Namibia. "Time for a New Beginning" Hosted by the National Union of Namibian Workers (NUNW) and its Partners was held in Windhoek at the Safari Court Hotel from 23-24 September 2008.

I gladly accepted the NUNW's invitation as a full participant and to preside as chairman over the proceedings of the 4th session as well as the overall workshop *rapporteur*. I therefore, have great pleasure in presenting this concise report.

The ultimate purpose of the workshop was primarily to consult and to understand the limitations imposed on Police Officers and the employees of the Prison and Correctional Services by the restrictive and prohibitive nature of the Labour Act as well as the Regulations passed under the Police, Prison and Correctional Services and, City Police Acts, relating to the rights of these groups of employees to freely associate, i.e form or belong to a trade union of their choice.

The objective of this exercise was the union's desire to establish a trade union organization for these aforementioned groups of employees after such consultations and having drawn specific lessons from the experiences of its International colleagues and friends. This objective is most challenging as it has to be tested against the applicable provisions of the liberal Namibian Constitution, National legal instruments and international Conventions ratified by Namibia.

The Workshop was an historic one in that it challenged deep-rooted views and entrenched positions held by the different stakeholders in respect of the issues pertaining to labour relations in these forces. This was evident in the, at times lively discussions that showed that there were differences between the immediate concerns of the Police managers and the unionists. As the great

liberal sociologist, Max Weber, pointed out that we are called upon in life to serve different goals. The goals of political action rest on values different from those of scholarly reflection and direct us to give priorities to different obligations. However, activist and “managers” do not inhabit different worlds.

The workshop itself was clear evidence of that as the participants were resolute at its conclusion that the legal challenges and reservations expressed by some were not their strong weakness but rather a weak strength in the campaign that needs to be worked on and improved in order to effect a change of the authorities’ mindset. This positive attitude is buttressed by the Hon. Minister of Labour and Social Welfare’s preparedness to explore together with the stakeholders how to take the discussion forward in the “quest to find better living conditions for **all** our people” (emphasis mine). As different issues were raised some important issues were inevitably overshadowed by others in discussions.

Some of the stakeholders who were invited to participate in the panel discussion regarding “**The Police and Correctional Services Labour Relations in Namibia: Current State and Challenges and Time for a New Beginning**” did not show up and did not deputize anyone in their place and those whose papers were read on their behalf failed to avail copies of their papers. It was further regrettable that a representative of the International Labour Organization (ILO) from Pretoria who was expected to present a paper on International Requirements and Good Practices for Representation and Collective Bargaining in the Police Force and Prison Services failed to turn up.

Furthermore, the finalization of this report was delayed by the failure of some presenters to avail copies of their discussion papers despite strenuous efforts by the secretariat and a grace period of several weeks. The Reports is therefore, deprived of the benefits of these relevant reference documents.

The response to the workshop invitation was dramatic as over 52 of the 60 invited participants attended and it enjoyed both electronic and print media coverage.

Finally I would like to congratulate the NUNW and its Partners for initiating the idea and all the delegates and participants who stated their different views and opinions on the various issues discussed at the Workshop in a mature and responsible manner which, I am sure, will stimulate more focused discussion on the subject matter and determine the road forward in the effort of heralding a new era for these aforementioned groups of employees.

I am grateful to the NUNW and its Partners for involving me in the Workshop and to Mr Hüberr Rene Schillinger and Mr Evilastus Kaaronda for comments on the initial draft of this Report.

Date: 24 November 2008

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REPORT OF THE WORKSHOP

1.

INTRODUCTION AND OPENING REMARKS

The opening session was chaired by *Mr E. M Manga*, NUNW, 2nd Vice President, who in the introductory remarks, after welcoming the Hon. Minister for Safety and Security, pointed out that the Workshop was an initiative from the workers and was not intended to cause trouble, but a search for social justice in order to promote and sustain democracy, harmony, peace and tranquility as Police Officers as workers are entitled to have and lead a decent life referring to the Minister's re-action to the dilapidated housing conditions in the North and stressed that the plight of the Police at the workplace should be looked into.

Mr Evilastus Kaaronda, Secretary-General of NUNW, explained that the purpose of the Workshop was to study and understand the laws applicable to the Police force and Prison Services relating to Labour matters with reference to the Labour Act in a constitutional democracy referring to Act 21 of the Namibian Constitutions. He pointed out that the Police Act is silent on the issue of trade unions but the Regulations passed under the Act put restrictions on the Constitutional right to form or participate in trade union activities in the sense that prior written authorization of the Inspector-General is needed to do so. To this end, regional representatives from both Police management and Police unions from the Republic of South Africa, Lesotho and Swaziland were invited to share their experiences and expertise. He expressed the hope that the discussions would be transparent and sincere as the Police and Prison Officers should not benefit from spill-overs but collective bargaining and that the endeavours will have the Minister's blessing.

Mr Hubert Rene Schillinger, Resident Representative of Friedrich-Ebert-Stiftung (FES), Namibia, a co-sponsor of the Workshop in welcoming the participants informed the workshop that although the FES has actively supported the NUNW

and its affiliates in the area of capacity building and public dialogue for many years, the issue of Police Labour Relations has never come up as a priority, presumably, because of the sensitivity thereof. He further suggested that as the workshop was consultative in nature it provided a platform for exploring possible avenues and legal ways of improving the rights of workers in both the Police and Prison and Correctional Services in respect of representation and collective bargaining regarding labour issues in their work environment. In the understanding of some of the concerns and the recognition of the challenges, particularly the legal ones, the belief is fortified that the opportunities of establishing regulated and orderly labour relations in both services will by far outweigh these challenges and allay fears. The participation of workers reworking conditions will build morale and commitment to the service in both the Police force and Prison and Correctional Services. Representative organizations such as trade unions and/or staff associations have the potential to contribute positively to the overall effectiveness and professionalism of these services.

Mr Walter Don, Chief Executive Officer: Nammic- Financial Solutions, co-sponsor of the workshop briefly explained that the organization was owned by the unions and as such catered for the members and supported the initiative.

2.

KEYNOTE ADDRESS AND OFFICIAL OPENING

The workshop was opened by the *Hon. Dr Nicky Iyambo*, Member of Parliament, Minister of Safety and Security who in his opening address reminded the participants that:

“... it is very important that you take note of the provisions of our national laws. The Labour Act, Act 11 of 2007 makes provision for the constitutional commitment to promote and maintain the welfare of the people of Namibia as in Chapter 11 of the Namibian Constitution. In addition the application of the Labour Act covers almost all employers and all employees in Namibia except members

of the following institutions; Namibian Defense Force; Namibian Police Force and members of the Municipal Police Services; Namibian Central Intelligence Service; and the Namibian Prisons Service. It is my opinion that there were very good reasons as to why the abovementioned institutions were excluded from the application of the Labour Act. In the same vein I would think that there may be good reasons why the National Union of Namibian Workers as a host for this workshop would want the abovementioned government institutions to belong to Labour Unions. Therefore, I urge all participants from Police and Prisons Services to listen very carefully to what the Union has to say.” He also assured the workshop that the Police were free persons and should express their minds freely and expressed the desire that there should be no name-calling.

He stressed the fact that the law enforcement agencies in Namibia, such as the Defense Force, Police Force, Prisons and Intelligence Services are statutorily precluded from joining trade unions as they have to operate impartially. He referred to the Police Administrative Manual, Chapter 2 and Regulations 15, section (ab), (i), (ii) and (iii) which makes it an offence for a member to establish or join, takes part or associates with the activities, objects or matters of a trade union without the written permission of the Inspector-General. He further maintained that unionizing the Police, Prisons and members of the City Police Services may not be a solution to the collective bargaining as the existing grievance procedures are adequate and in conformity with the Namibian legal instruments. He in conclusion recorded that “the decision to exclude the Police Force and Prisons Service members from becoming members of trade unions is in the interest of National security.”

Thereafter the chairman invited questions and in response to a question as to what the Namibian Constitution says regarding the rights of the individual are concerned the Hon. Minister replied that Parliament legislate the operative law and the Constitution contains mere guidelines for Parliament.

3.

POLICE LABOUR RELATIONS IN SOUTH AFRICA

3.1 A Trade Union View

Mr Abbey Witbooi, General Secretary, Police and Prisons Civil Rights Union (POPCRU) in his presentation to the workshop stressed that the restrictive/prohibitive/labour regulations are incompatible with fair labour relations and as such are tools of oppression. In his introduction he gave a historical background of the formation of POPCRU, which emerged as a result of the peoples' struggle against the apartheid regime and its evils of discrimination, racism, salary discrepancies, non-recognition of trade unions and victimization of members. POPCRU became the voice for the members and fought for the creation of a platform where these issues could be addressed.

After the recognition of POPCRU by the South African Police and the Department of Correctional Services a reshape of the Police and Correctional Services labour relations to be in line with the new democratic dispensation began in recognition of the rights enshrined in the Constitution of South Africa. This led to the introduction of Police labour regulations which articulated how collective bargaining would be conducted as well as regulating relations between the department and organized labour. POPCRU belief was always that the Police fell within the category of workers due to the fact that they sell their labour to government upon monthly remuneration like most workers. The relationship is that of an employer and an employee like in the case of factory worker. This is so, because in a democratic country, fundamental rights of individuals are guaranteed and protected, e.g freedom of association and collective bargaining rights. He continued to elaborate that:

“In the Correctional Services the situation was different though unions were not allowed, there was a staff association which enjoyed these rights and was operating under the auspices of the newly enacted Labour Relations Act that

generally regulated labour relations in the post-1994 era. After the recognition of POPCRU not much changed except that structures had to be aligned with the new Labour Relations Act. We advocated for the abolishment of the Police Labour Regulations and for the inclusion of the Police within the frame of the Labour Regulations Act and we successfully lobbied government in that regard. According to the ILO Conventions Police and Correctional Officers are classified as essential service and are not allowed to strike. That principle applies in our case but however, the law makes provisions for an institutionalized dispute resolution and arbitration processes. This has taken the form of the Safety and Security Sectoral Bargaining Council, which my colleague will delve on its *modus operandi*. This structure assists in promoting and strengthening social dialogue.”

He further dealt with the project on the unionization of the Police in the SADC and listed a few examples of POPCRU solidarity work.

3.2 A Police Management View

Mr M. Magwentshu, Representative of South Africa Police Services (SAPS), dealt with the legislative framework pertaining to labour relations in South Africa as contained *inter alia* in the Constitution and Labour Relations Act and elaborated on collective bargaining. The South African Constitution provides that workers shall have the right to form and join trade unions and employees shall have the right to form and join employer’s associations. Both shall have the right to organize and bargain collectively. Workers shall have the right to strike for purposes of collective bargaining. He stressed that one does not need permission to exercise these rights entrenched in the Constitution.

The purpose of the Labour Relations Act, 1995 is to regulate the enjoyment of organizational rights by the trade unions, to promote and facilitate collective bargaining at the workplace and sectoral level; to regulate the right to strike and the recourse to lock-out in conformity with the Constitution; to provide user

friendly procedures for the resolution of disputes and to give effect to the public international law obligations of the Republic.

The Labour Relations Act covers all employees under one Act (Public Service and Police employees); created bargaining fora for the public service as a whole (PSCBC) and designated sectors for example the Safety and Security Sectors (SSSBC).

As far as the collective bargaining is concerned in the Police Force, any office bearer or official of a representative trade union is entitled to:

- a) Enter the employer's premises in order to recruit members or communicate with members' interests;
- b) hold meetings with employees outside their working hours at the employer's premises; and
- c) stand for elections and to be eligible for appointment as a trade union shop-steward and is elected or appointed to carry out the functions of trade union representative in terms of this Act or any collective agreement.

Section 20 of the Act gives parties a right to conclude collective agreements in respect of organizational rights. The collective bargaining arrangement in the SAPS is organized around the SSSBC where the representativeness of a trade union is decided. As an evolving organization, the SAPS faced challenges, for example the change from a militaristic Police force to a civilian one; the historical legacy of a Police that was used to enforce apartheid; and changing of the mindset and adapting to new ways of policing in a democratic environment. According to him collective bargaining has resulted in a platform of positive spin-offs as policies are custom-made for the Police and grievance procedures include shop-stewards.

3.3 Collective Bargaining

Ms K. Mosoane, Representative of the Safety and Security Special Bargaining Council (SSSBC), an independent body informed the workshop that the South African Constitution contains a Bill of Rights which enshrines the rights of all citizens including freedom of association and articulates certain labour rights, like the Right to:

- a) fair labour practices;
- b) form and join a trade union and to participate in the union activities;
- c) strike; and
- d) every employee has the right to participate in the activities of the organization; and every trade union, employers' organization and the employer has the right to engage in collective bargaining. To give expression to these fundamental rights within the Public Service, the Labour Relations Act of 1995 (LRA) was enacted. As a result members of the Police service were granted the right to freedom to associate in trade unions and to participate in collective bargaining and protection against unfair labour practices.

3.3.1 Establishment of SSSBC

Collective bargaining in SAPS dates back to 1994/5 with the establishment of the National Negotiation Forum (NNF) which was governed by the SAPS labour Relations Regulations. The SSSBC was established in 1999 as a result of the amalgamation of the NNF which covered the functional uniformed members and the Department Bargaining Council which covered the civilian component. The SSSBC operates within the ambit of the Labour Relations Act, SAPS Act, the Public Service Act, SSSBC Constitution, Collective Agreements reached in Public Service and the Constitution of RSA.

3.3.2 Parties to the Council and its Objectives

The parties are SAPS, POPCRU, South African Police Union (SAPU) and an admission threshold of 30 000 members. the objectives of SSSBC are to: enhance labour peace and provide a forum for collective bargaining in the sector; negotiate and conclude collective agreements on matters of mutual interest; implement, monitors and enforce collective agreements; promote a sound relationship between the employers and employees; prevent and resolve disputes, provide effective and expeditious resolutions of disputes and consider and deal with any other matters that may affect interest of parties to the Council.

3.3.3 Powers and Functions

Are to implement and monitor those collective agreements that have been concluded in the PSCBC; resolve disputes between the employers and trade unions admitted to the Council and its employees; administer funds to be used to resolving disputes, collective bargaining and general administration of the Council and promote and establish training and education schemes, *inter alia*.

For the purposes of collective bargaining the employer party and the labour parties collectively have equal powers before the Council. Many collective agreements regulating the employer-employee relationship in the Police Services have been concluded like working hours, full time shop-stewards, promoters, special leave, salaries, transfers, etc. Where collective bargaining becomes protracted and results in a deadlock the parties declare a dispute and the matter of mutual interest is dealt with in a high level of maturity.

3.3.4 Dispute Resolution

The LRA gives broad powers to Bargaining Council and such statutory powers are used to provide conciliation and arbitration services; conducting fact finding exercises and making advisory arbitration awards. The types of disputes are either of **mutual interest/refusal to bargain** which are collective in nature and arise from disagreements during negotiations and **Rights disputes** which are

individual ones relating to unfair labour practices (promotion); unfair dismissals; interpretation and application of collective arguments and unilateral change of terms of conditions of employment.

3.3.5 Mechanism of Resolving Disputes

There are three types:

- a) **Conciliation**, which entails a fact finding hearing concluded with the assistance of a third party in an attempt to trying to assist the parties to settle the matter.
- b) **Arbitration**, an adjudication process to make a final and binding award and finally
- c) **Conciliation-Arbitration**, which is a joint conciliation and arbitration hearing were the conciliation precedes the arbitration and the process takes place on the same day.

In conclusion she stated that:

“Despite numerous challenges, the SSSBC has largely met its objectives in ensuring labour peace in the safety and security sector by facilitating orderly collective bargaining. The social partners have, through social dialogue, demonstrated a commitment to ensure labour peace in the safety and security sector by dealing with challenges in a co-operative and constructive spirit.” She recommended that politicians should engage their counter parts to harmonize labour relations. She elucidated the meaning of a dispute of **right**, i.e a right one already has and a dispute of **interest**, i.e a right one wants to attain. She iterated that if the internal grievance process is unsuccessful a dispute is declared and a arbitration process is resorted to (a review process) and there is no right of appeal.

Ms Bobby Kandjala, NUNW Regional coordinator as chairman of this session presided over a very lively discussion. Some of the members from the Police

force questioned the cost effectiveness of the procedure followed to address the problem and questioned the meaning of “time for a new beginning.” They argued that it would have been cost effective had the union started to engage the law-makers rather than the Police management. They were satisfied that the current grievance procedures in Namibia were adequate and sufficient referring to the resort that can be had to the Ombudsman or the Courts as a last resort. The Police arguments were primarily procedural than substantial.

4.

Police Labour Relations in the Region

4.1 The Case of Swaziland- A Trade Union View

Mr K. Mhlanga, Secretary-General, Swaziland Police Union could not be at the workshop but graciously availed his prepared discussion paper in which he stated that the union in Swaziland was formed in January 2007, (SWAPU). As soon as the membership increased, trouble started for the founders and leaders. The same fate befell the Swaziland Correctional Union (SWACU) founded in February 2007. The Unions believed that section 32 of the Kingdom’s young Constitution adopted in 2006 guaranteed rights to all workers without exclusion to form or join unions for the protection and promotion of their interests.

The Union leaders were accused of “mutiny” and victimized. He was suspended and the president was dismissed. Court battles ensued and he was re-instated but the union registration case was lost at the Supreme Court of Appeal but with the directive that the laws governing the Police must be reviewed as a matter of urgency to allow for the existence of unions in the Police and Correctional Services without the right to strike as “this would perhaps give meaning to the Bill of Rights in the Constitution.” Despite this the government remains arrogant and non-responsive while fights and diminished trust within the ranks in the Police Services characterize day-to-day life.

He was highly appreciative of the international interventions by POPCRU and ICPRRA (International Council of Police Representations Association) in their struggle. The former physically supported their struggle and played a liaison role in networking them with the rest of the world and the latter offered due advice to the Police administration and the union.

The present situation in the Kingdom remains worrying as union members are victims of arbitrary punishments, transfers, charges, dismissals and continued threats and harassment. For this reason he called on SADC member States to intervene timeously before the situation gets out of hand. He commended the Namibian government, the Police administration and the department of Prisons for hosting this important workshop as “You have been proactive and have prevented or minimized possible organizational infighting which we have already experienced. Such fights can never be good for State peace and security. By all means they should be avoided. I hope you learned from our mistakes and have avoided falling in to the same trap.” In conclusion he challenged the regional leaders “to solve and stop the political conflicts and deliberate misuse of power through deployment of police and security personnel for selfish gains. Let us uphold the spirit of *Ubuntu*, allow police to execute internationally recognized professional standards in upholding the rule of law without fear or favour, affection or ill-will and protect the citizen’s fundamental rights without exclusion. Limits should be in place as we provide essential service to the public, and those limits should be justifiable in an open, decent and democratic society. we are born free, and then let us not allow ourselves to be unjustifiably chained. Let us altogether with all stakeholders in our communities within the SADC bloc strive fro a crime-free and prosperous Region by making it a point that **THOSE WHO PROTECT OTHERS ARE PROTECTED.**”

4.2 The Case of Lesotho- A Staff Association View:

Mr N. Rantjanyana, President, Lesotho Mounted Police Staff Association pointed out in his presentation that the problems in the Lesotho Police force are attributed to a colonial legacy which led to a break down in discipline and professionalism- a situation where junior force members would arrest senior force members. The new Police Act democratized the force that led to the formation of the Association which voluntary membership is limited to junior members. The Police Act prohibits the Police from forming or joining unions. They are covered by the Public Service Act. Deadlocks in disputes whether of rights or interest are referred to the High Court.

5.

Correctional Labour Relations

5.1 Swaziland Trade Union View:

Mr B. Gumede, representative of SWACU, stated that in Swaziland they have a Police as well as a Correctional Association but these have been dodo's for the past 20 years as they failed to address the needs of junior officers. In the light hereof junior officers of both the Police and Correctional Departments decided to rather form a Union to give them a platform to effectively address their concerns. This led to the victimization of some of the members who were suspended or dismissed. The Police and Correctional Acts are in conflict with the constitution but due to Swaziland being a Monarchy where the King rules and compete with the constitution they failed to register the union. When they resorted to the High Court with the support of POPCRU they lost. Currently they are strategizing to find ways and means of pushing the matter further as the abuse of the junior officers at the hands of the seniors is escalating.

5.2 The Namibian Trade Union View

Mr Manfred Jatamunua, Deputy Secretary-General, Public Service Union of Namibia started off by giving an overview of the labour relations in the Namibian

Police by reminding the participants that the Namibian Labour Act does not apply to the Police force and pointing out that Police Regulation 5.2 (a, b) makes it an offence for a member without the written permission of the Inspector-General to form or join a trade union etc and further Regulation (a, c) provides that an officer shall be guilty of a misconduct if he/she attempts to secure intervention from political or outside resources in relation to his or her own or another member's position or conditions of employment or functions in the force.

Although Regulation 6(a) allows officers to be represented by a legal practitioner at disciplinary hearings no financial assistance with the legal cost is provided for and they have to bare the cost on their already meager salary. Their conditions of service and wages are recommended by the Public Service Commission upon submissions made by the Inspector-General to the Prime Minister for approval. As the Inspector-General hardly ever engages the members of the force to determine what they want before making the submissions he felt that the Inspector-General can never represent the interests of the officers adequately as he is effectively their employer. Therefore, collective bargaining in the Police is needed in respect of disciplinary hearings, promotions, transfers, duty rostering, grievance handling, job security, housing allocations, legal drafting, and issues related to the course and scope of duty. He set out the benefits that could come from proper intervention of trade unions.

In respect of the Prison Services overview he pointed out that the Labour Act of 1992 allowed members of the Prison and Correctional Services to form or belong to trade unions of their choice and consequently members joined either PSUN or NAPWU. The unions represent their members in disciplinary hearings and grievance handling especially relating to transfers, promotions, salaries and wages disputes, duty rostering, overtime work and pay and other conditions of service.

Sections 10 of the Prisons Act provides for the establishment of a Prisons Council whose function it is to, *inter alia*, consider or enquire into and make recommendations to the Minister with regard to any matter pertaining to conditions of service of members other than those provided for under section 13 of the Public Service Act and make recommendations on the appointment and promotion of senior prison members (other than the Deputy Commissioner) to the Commission.

However, the new Labour Act of 2007 excludes the Prison Service from its scope of application and thereby takes away a right that is provided for in Act 21 (1) (e) and 95 (d) of the Namibian Constitution and ILO Convention 87 and 98. According to him such exclusion is contrary to all forms of progressive thinking and practices and is retrogressive and should be opposed by all means necessary. In conclusion he expressed the hope that the workshop would pass resolutions that will lead to a movement to amend the Act in the best interest of workers (Police Officers and Correctional Officers). “Democratization of Police and Corrections will enhance professionalism and an improved service to the nations.”

During the discussion *Commissioner Endjala* pointed out that the Namibian Police force was a constitutional creation and does not exist in vacuum. He wanted to know the benefits the NUNW will derive from unionizing the Police force. He further pointed out the problem inherent in such a move negatively affecting the discipline and impartiality of members especially when such a Police union is affiliated to a political party. The Police force as a professional organization should remain such. He however stressed that he was there to learn.

6.

Panel Discussion: Current State and Challenges

Those Police officers who were in attendance informed the workshop that they had no mandate to participate in the group sessions as they were not empowered to partake in the technical discussion of the workshop. Consequently the working groups' discussions were altered to a plenary discussion and due to time constraints deferred to the next morning.

6.1 Plenary Session

Mr Abel Kazondunge, NAFAU President allowed the *rapporteur* to give a summary of the proceedings of the first day were after the discussions resumed in respect of the legal framework for better representation and grievance Procedures. *Commissioner Endjala* stated that the structures for addressing grievance procedures were well established from top to bottom and vice versa without elaboration. Other avenues open to Police officers are the Ombudsman, Courts, Anti Corruption Commission or Prime Minister. He stressed that in this respect the Police management is guided by the Police Act and Regulations.

The legal advisor, legal Department of NamPol pointed out that the *audi alteram partem* rule is always applied in grievance handling and referred to Regulation 31 dealing with redress of wrongs, the Police Act and the Manual. He further pointed out that it was a policy matter to allow or not allow trade unions representation. He said that an accused officer can apply for legal aid.

Mr Witbooi pointed out that there is some conflict in the statement that an aggrieved officer may have outside representation or legal representation or Ombudsman and the prohibition contained in Regulation 15. This dichotomy remained unexplained.

6.2 Grievance Procedure in the South African Police Force

When this topic came up for discussion the Namibian Police representatives objected to the presentation by South Africa, Lesotho and Swaziland on the ground that they were not requested to prepare and make a presentation there-
anent and requested indulgence to be granted an opportunity to prepare for such a presentation. The chairman overruled the objection and allowed the presentation to go ahead. The Police then refrained from and neglected to make any contribution or representation concerning this issue.

Mr Magwentshu gave the legal framework applicable in grievance handling in South Africa setting out the role players, the function to be performed and the time limits (periods) within which the grievance should be addressed (See Appendix 14). Once a grievance has been lodged it goes to the supervisor within 3 days; failing to resolve the issue, it goes to the grievance officer within 7 days, who has 10 days to resolve grievance, failing which he compiles a report which is sent to the shop-steward and LRO Joint Grievance Resolution team within 10 days and finally, they submit a general report within 10 days in the event of failure to the internal Mediation. All in all there are 30 days for a resolution of the grievance internally; failing which it is referred to an outside source within 10 days. No legal representation is allowed. Swaziland has no time limit for redressing grievances.

Mr C. Mutjavikua, Managing Director, Labour Investment Holding (PTY) Ltd gave an exposition of the Tripartite Labour Relationship that exists between the Government, employers and employees. In certain instances the government acts in both capacities as government and employer. Conditions of employment in the past created problems that led to the labourers organizing themselves in attempts to improve their conditions of employment. He stressed that there is no collective bargaining structure in the Police force and posed the question whether the officers are convinced that they have problems and are aware that they have rights to be represented and participate in grievance procedures and to enjoy the

rights enshrined in the ILO Conventions etc. The NUNW should arrange and assist this process of setting up their collective bargaining structures. In order to achieve this, the Police officers should start to organize themselves from the shop-floor level like in the days of colonialism when it was hard to organize workers freely. They went underground and operated and organized the workers clandestinely. According to him the intervention came late after independence and is long overdue.

6.3 Suggestions

Witbooi suggested that the NUNW should engage in discussions:

- a) How to define Police and clarify what is meant by the Statement that Police are not workers but servants, what is meant by servants;
- b) what model of representation will be good for Namibia- a trade union or an Association in line with the National Laws;
- c) with the view of advancing the opinions of their members;
- d) analyzing the legal instrument- constitution, statutes imposing limitations and/or prohibitions on the Police, Prisons and Defence Forces;
- e) to identify stakeholders and engage those who would give legitimacy to the program;
- f) that the International Council of Police Representations Association (ICPRA) must be sensitized to apply pressure on the government-NUNW must be instrumental and critical in guiding the process; and
- g) considering arbitration to facilitate and expedite the process; and further suggested that labour relations in SADC must be harmonized and disparities be done away with.

In the summary the chairwoman, *Ms Connie Pandeni*, NUNW National Treasurer, stated that a way forward must be mapped out and a legal framework is needed for the achievement of the goal and the shareholders in the campaign should be determined.

Thereafter, a general discussion followed where the position of the members of the Police and Prisons forces were questioned and doubt expressed as to how to get the Police on board as especially the Police are afraid to engage the process. Concerns were expressed as to whether the Labour Act and the Police Regulations were constitutional.

Constable Tjingaete, a non-uniform policeman, informed the participants that the officers live in a dark house and need some light as they are indoctrinated and bombarded with propaganda of the evils of trade unions. He expressed the desire of organizing themselves at shop-level as the force needs improvement.

7.

Workshop Recommendations

The following recommendations were unanimously agreed upon and made:

- a. Seek the assistance from ILO and ICPRA for the appointment of a mediator to advise and make recommendations concerning the way forward in realizing the objective of the formation of a union representation and collective bargaining for the Police force and Prison Services;
- b. do a case study through ICPRA;
- c. put up a trade union consisting of the civilian component of the Police force;
- d. organize from grassroots to form a union by starting at the shop-floor level in various towns;
- e. address the Labour Act relevant provisions with the next amendment;
and
- f. educate the targeted groups about the benefits of union representation and collective bargaining.

Closing Remarks

Summing up the workshop the *rapporteur* gave a brief outline of the proceedings of the past two days and read an extract from the conclusion of his discussion paper.

8:

Closing Ceremony

In his closing address the *Hon. Immanuel Ngatjizeko*, Member of Parliament of Labour and Social Welfare, referred to "...this important Consultative Workshop on Labour Relations relative to the Police, Prisons and Correctional Services in Namibia." He referred to the Labour Act which expressively excluded those groups from its scope, except in respect of the prohibitions against discrimination. Therefore, there is no provision in National Law for collective bargaining between employers and employees in the services.

He congratulated the NUNW for the approach that it had accepted to place this topic on the national agenda for discussion and bringing together many of the stakeholders to begin consultations on what is not a simple subject. He aligned himself with the opening remarks of the Hon. Minister of Safety and Security that the uniformed services are excluded from most of the provisions of the Labour Act because of their unique role in the maintenance of security in the country and the need for them to operate impartially. Although the existing legal framework governing the Police-the Police Act and the Regulations-does not permit trade union activity without the written consent of the Inspector-General, the question has been opened for discussion whether the law should be changed to provide affirmative obligations and rights to collective bargaining in the two sectors.

He stressed that the issues concerning labour relations in the Police and Prison and Correctional Services must be considered within the framework of our Supreme Law, the Namibian Constitution, Sub-Article 1 of Article 21, which right is not absolute, as it must be read subject to Sub-Article (2). Therefore, he

warned that the discussion relating to the formation of trade unions to represent the sectors must take into account not only freedom of association but also the interests of national security and public order and draw attention to paragraph 10 of the ILO Conventions 87- Freedom of Association and Protection of the Right to Organize of 1948 and 98- Right to Organize and Collective Bargaining of 1949 respectively, to which Namibia is a party. He promised that they were prepared to explore how to take the discussion forward.

In conclusion he stated that:

“The Government of the Republic of Namibia in general, and the Ministry of Labour and Social Welfare in particular, remain committed to the spirit of tripartism and stands ready to engage all stakeholders in finding solutions to national challenges, as we march ahead in our quest to find better living conditions for all.” And with that declared the workshop officially closed.