SECOND CARNEGIE INQUIRY INTO POVERTY
AND DEVELOPMENT IN SOUTHERN AFRICA

Trade Unions in the homelands
by
Nicholas Haysom and Modise Khoza

Carnegie Conference Paper No.110

Cape Town 13 - 19 April 1984
Introduction

This paper serves merely to survey the operation of trade unions in the 'homelands'\(^{(1)}\). The emphasis is on the official framework and responses to trade unions rather than the actual state of unionisation of workers in these territories. The unionisation of workers by the independent unions\(^{(2)}\) in the bantustans has been very limited and the unions which have had to confront homeland structures have been unions based outside these bantustans whose membership has only occasionally spread beyond the border industries (industries formally outside the bantustans) into the infantile industry that exists in a few of the bantustans. For various reasons more fully elaborated below trade unions have concentrated on organising the unorganised workers in the main industrial centres of South Africa.

Before examining the homelands response to trade unionism and the unions themselves it would be appropriate to make some very general explanatory - and perhaps trite - remarks about the general relationship of such homelands to the political and economic structures of South Africa. The place of the homelands in the South African political economy goes some way in explaining the distinguishing features of the homelands' relationship to trade unions.
Separate Development

At the time of the unification of the four settler republics into the Union of South Africa on the basis of an all white parliamentary sovereignty, blacks had been granted the exclusive right of occupation of certain Crown-owned lands. These reserved areas, as we know, were the remnants of the land they once occupied but of which they had been dispossessed by conquest and by treaty. For the purposes of this paper we can trace the political and legislative developments which were to lead to 'separate development', to the Land Acts which partitioned South Africa into white and black land. The black areas constituting little over 13% of the land area of South Africa was to be set aside for occupation by blacks. The remaining area constituted 'white' land and blacks were prohibited from entering into any contractual arrangement whereby they could farm, lease or purchase such land. In due course blacks were prohibited from entering or being in or on white land unless they qualified to do so. They could qualify by, for example, being a properly registered labourer. The economic function of this geographical division had its origins in the maintenance of the rural end of the migrant labour equation. The subsistence economy sustained (in part) the individual migrant worker's family and provided the traditional tribal structure of social welfare. The central government was absolved from responsibility for the latter while employers needed only pay the migrant an amount to maintain an individual and not a household.
An ingenious system for channeling the labour flow into appropriate directions has been superimposed on this partition between these areas (including the industrial areas) and the economically disintegrating and structurally deprived reserves.

Influx control[^5] prohibits blacks from moving to urban (prescribed) areas without proceeding through a labour officer who controls such movement. Moreover the labour officer through the Labour Bureau framework established by the Black Labour Act may channel labour from certain areas into preselected industries (agriculture or mines) and refuse contracts or permits for other areas. These have been the legal mechanisms which have ensured the cheap labour South Africa's economic 'development' required[^6].

After 1948 the reserves/ homelands/ bantustans/ national states assumed a key political significance. The National Party proposed that it was incorrect to see blacks as a single racial category[^7]. They were to be regarded as eight ethnic nations (subsequently two more ethnic nations have been discovered including the Ciskei Xhosa). Each ethnic nation was to be entitled to its own independent homeland, that is one of the overcrowded and economically precarious reserves set aside for occupation by blacks. The corollary of the privilege of exercising political rights in a homeland is that political rights for blacks will never be contemplated or granted in
'white' South Africa. The reserves were elevated from disintegrating reserves, self-generating labour pools to the final solution to South Africa's political problems. In the Apartheid dream, there are no 'blacks' in 'white' South Africa, only foreign nationals who are there at the discretion of their hosts, to 'minister to their needs' and to be subject to their discriminatory laws. The homelands would be the place which would house the old, unemployed and disabled and to which these 'aliens' would or must return after their service. Already influx control violators who are citizens of 'independent' homelands are treated as aliens and 'deported' under summary administrative provisions(8).

There are some obviously disagreeable features to this policy apart from the fact that it has been imposed on blacks by whites for the benefit of whites. In the first place separate development is not regarded as an effective substitute for political rights and control over the actual political and economic structures which determine the living conditions of blacks.

Secondly separate development is a political policy not a 'natural state of affairs'. Demographic and economic factors have necessitated a high degree of violence and coercion to enforce the geographical separation (influx control, resettlement, group areas, prohibition of mixed marriages, etc.).
Thirdly the homelands have little economic or territorial integrity. They are overcrowded and the Quail, Buthelezi, and Tomlinson commissions have all reported extensive landlessness and also an economic dependence on remittances from migrants(9). There is little industrial development and these bantustans are dependent on South Africa for aid (in its disguised forms) as well as the sale to South Africa of the one commodity they have – the labour of their men and women willing and able to work. Unemployment in the homelands is exceptionally high. Of a population of approximately 10.5 million there are an estimated 0.5 million jobs outside the agricultural sector (10). The decentralisation programme pursued to entice industrialists to the 'border industries' or to 'growth points' inside the homelands has not really altered this picture. Between 1960 and 1982 only 160 000 jobs were created(11). One of the responses of the central and homeland administrations has been to suspend minimum wage measures in these areas (discussed below).

The homelands play a secondary political function in canalising and containing political, economic and social discontent arising out of South Africa's economic and political structure towards and within the homelands(12). The homeland rulers are increasingly called upon to police the policy of separate development and its resultant political and economic tensions by fair means or foul.
This position has pushed the homeland political structures into undemocratic and atavistic forms. The gradual devolution of legislative and executive powers to the homeland political structures has followed a twin process. On the one hand, traditional political tribal structures were bolstered and refashioned by administrative and legislative measures which replaced democratic institutions\(^{(13)}\). On the other hand, legislative and executive powers have been gradually granted to homeland political structures established on the foundation of the tribal structures mentioned above\(^{(14)}\). Such powers were devolved in close co-operation with the white central state. In the course of this process chiefs were given extensive executive authority, financial rewards, control over the distribution of social welfare grants (over and above their extremely important power to allocate land to their subjects). These tribal positions were subject to the approval of the authorities for their continued appointment. It is not surprising that in the homelands the appointed tribal chiefs overwhelmingly support the policies of separate development on which their substantially augmented rewards and powers was based. Nor is it surprising that at the date of independence the constitution of the homelands should reflect a lack of faith in representative democracy. Thus the Ciskei parliament comprised of 22 elected representatives and 32 appointed tribal personages. Only Bophuthatswana has a majority of elected to appointed members in their parliament.
The role of chiefs and headmen in engineering and coercing 'consent' to the homelands' ruling parties cannot be underestimated, if one wishes to understand the dynamics of homeland politics. Because of the increasing tension between chiefs and their subjects, an inevitable consequence of their inflexible and hierarchical function, many homelands bolstered the power of chiefs and headmen by granting them powers a police chief would envy.

The role of parliamentary opposition in the homelands is distinguished by the speed with which it dissipates, or is subjected to the use of security legislation, notably in the Transkei, Ciskei and Venda. Certainly extra parliamentary opposition from such groups as students has been met with swift and often brutal repression. In summary, the homeland authorities have assumed the security powers the central state preserved and have applied them - in some cases with even less restraint. A most disturbing trend has been the use of informal vigilante armies to crush or silence opposition.

For our purposes we would extract the following features of the homelands which have a bearing on their attitude to trade unions:
the political structures are ethnic and founded on rural and atavistic tribal structures. The political structures are necessarily undemocratic and authoritarian. Because of this the regimes are brittle and intolerant of opposition in any organisational form. There is minimal organised opposition to the homelands ruling parties.

The independent unions in South Africa which have had the most success in organising black workers are in contradistinction to homeland authorities non-ethnic, democratic, primarily urban based, forward looking organisations who may well reflect and articulate the opposition of their members to the economic (and possibly political) effects of apartheid. Indeed all the major independent unions reject the notion that the homelands constitute foreign states, and the belief that separate development is an appropriate political structure for their members. It is afterall their members who experience the affects of influx control, unequal living conditions, and political powerlessness. In the absence of other legitimate opposition in the homelands it is not surprising that they would be seen by the authorities and their members as a potential alternative opposition organisation.
(ii) the homelands are desperate to entice 'foreign' capital and are anxious to deliver as a primary enticement to industrialists a cheap labour force. Furthermore the homelands are dependant on the export of their labourers and are anxious that such migrant contracts as are offered (in the context of national unemployment) are offered to the subjects of their territories.

While the attitude of KwaZulu's Buthelezi is reflected in his involvement with the Chamber of Mines recruiting agency - T.E.B.A., Ciskei remains the most extreme example of such an approach to its subjects. Major General Charles Sebe (brother of the life president, and recently deposed chief of the security police) informed the press that he would establish a centralized labour information bureau which would monitor the performances and records of conduct of all Ciskeian workers. If Ciskeian workers had a record of union membership or participation in a strike it would be reflected in their records. As a consequence they would be by-passed by the official labour recruitment channels. It was reported in 1982 that the Ciskei Manpower Development Centre was logging reports from employers on workers performances. Workers who have 'misbehaved' are marked 'unreliable' (18). But even industrialists must have been startled when Manpower Minister Maqoma announced that he was planning punishment camps for migrant workers who breached their contracts. In consultation
with the then state security chief General Sebe he would introduce "disciplinary training" for these "unpatriotic" workers (19).

The application of the policies of separate development inside "white" South Africa has also affected the position of workers and their organisations in South Africa as a whole. The developments outlined above must be seen in the light of the strategy creating divisions between rural and urban blacks. Such a strategy is evident in more rigorous policing of influx control, harsh measures proposed to permanently seal rural blacks out of urban areas (the Orderley Movement and Settlement of Blacks Persons Bill) by preventing them from ever acquiring urban rights. Simultaneously various developments have been effected or proposed to give urban blacks a de facto more privileged and stable position relative to their rural counterparts. These policies in conjunction with the real conditions in the homelands - widespread unemployment and poverty exacerbated by influx control and resettlement - manages to create a division between workers with urban rights and rural blacks with limited access to employment or money. This division between black workers has confronted unions in a number of ways. Not only are their migrant members so much more vulnerable in the event of dismissal but also the conditions in plants in the border areas or in the homelands are of a much lower standard than plants (even owned by the same company) in the industrial centres. Thus decentralization
by industrialists to these areas effectively threatens the position of employees in the urban areas. Unions seeking to establish a national industrial presence and muscle must deal then with these disparities and divisions. Indeed, they have an interest in establishing uniform conditions. This, however, is exactly what the homelands want to avoid.

The above mentioned factors go some way in explaining why legislation dealing with employee rights and collective bargaining in the homelands is without exception more repressive and archaic than the legislation in central South Africa.

The Legal Framework - more farce than function

The legislative capacity of the homelands

The legislation dealing with industrial relations is complicated by two factors. Firstly the different constitutional status of the various homelands. Secondly the very different legislation that such homelands have promulgated. In order to explain the confused ensemble of relevant homeland legislation it is necessary to explain briefly the constitutional path of such homelands.
These authorities were first divided into the original 8 groups by the Promotion of Bantu Self Government Act of 1959, which Act also strengthened the tribal territorial authorities. It was on this foundation that the National States Constitution Act introduced a two phase constitutional development towards 'independence'. The Territorial Authority could on request be elevated to the first stage - a 'legislative assembly', and thereafter to the second stage - a 'Self-Governing' territory(20).

Apart from the various distinctions between these various phases such as the right of a self-governing territory to have their own Supreme Court, a Government Gazette, flag and a national anthem, the important distinction for our purposes is the right to promulgate its own laws - more particularly labour legislation.

Territorial Authorities administer their lands under the Department of Co-operation and Development and the regime of regulations promulgated under the Black Administration Act.

On reaching the status of a legislative assembly in which there are usually a minority of elected representatives and a majority of tribal personages, the assembly can legislate on matters listed in a schedule which includes labour matters(21) but excludes such areas as security(22). These powers are subject at this stage to the proviso that they
cannot repeal or amend S.A. legislation even in relation to fresh legislation on matters in the schedule. Thus South African statutes have precedence over homeland legislation although regulations promulgated in terms of such a new South African act do not have precedence over such legislation. It is not however clear whether these regulations automatically apply to the homelands.

The main distinction between this stage and the legislative status of a self-governing territory is that in respect of those areas in the schedule (which includes 'labour') such legislatures are entitled to repeal or amend South African statutes. Furthermore South African statutes governing areas in schedule 1 promulgated after this status has been reached, do not have effect. Such laws promulgated prior to this point remain in force until they are repealed (23) Essentially then all South African labour legislation dealing with matters on the schedule unless repealed is frozen at the stage at which the homeland becomes self-governing.

On 'independence' the legislature in these territories may pass laws on any matter without requiring the approval of the central government. However in each of the various homeland constitutions it is explicitly stated that all laws, including the central parliaments, which have effect in the homelands will remain in force unless expressly repealed or amended.
In the absence of its own labour legislation the labour legislation in effect will be the South African labour legislation as it was at the time the bantustans became "self-governing". As the South African legislation has altered quite substantially over the past ten years, and as the bantustans reached the second stage at different times, the task of unravelling the pertinent legislation in any one homeland is not easy. It requires a working knowledge of homeland history and two sets of statute books.

However, there is a further wild card in the pack. The wild card is proclamation R84 of 1970 as amended(24). The proclamation repealed the Industrial Conciliation Act 28 of 1956 and all Wage determinations (though not the Wage Act itself) in regard to blacks in the homelands. This proclamation was promulgated in terms of section 25 of the Black Administration Act(25) which allows for the State President to make or repeal or amend laws for any black area and to do so for only a section of the people living there if he so desires. This proclamation repealed the minimum wage and conditions of service measures applicable to black workers (not white workers) so as to allow for sub-minimum conditions in the homelands. This was presumably to attract investment and also to allow for the use of blacks in skilled positions at lower rates.
Thus, in order to determine the respective labour legislation in a bantustan one must take into account the changes in the South African legislation whilst bearing in mind that the Industrial Conciliation Act (now the Labour Relations Act) does not apply to blacks. This Act has been the vehicle for most of the central government's recent labour innovations.

Changes in the basic South African legislation

The Wage Act 5 of 1957 provided a mechanism for making determinations setting out minimum conditions of service. Criminal sanctions may be visited on persons who breach these conditions. Its major significance for black unions was that it provided statutory protection against victimisation for belonging to unions\(^26\). This Act is still in force.

The Factories Act\(^27\) and the Shops and Offices Act\(^28\) set out a basic set of conditions - but not wages - for workers in these institutions. The Factories Act is of greater significance because it is in terms of this Act that industrial health and safety regulations are promulgated. These regulations will be deemed to have been issued in terms of the new Machinery and Occupational Safety Act\(^29\). When the latter comes into effect it will replace the old Factories Act and extend the protection of these laws to workers in all industries including agriculture. The Basic Conditions of
Employment Act has recently come into effect repealing the Shops and Offices Act and the general conditions of service provisions of the Factories Act.

It was the Industrial Conciliation Act and the Black Labour Relations Regulation Act which provided the framework for the South African dual collective bargaining machinery. Until 1979 whites, coloureds and Indians could register trade unions and participate in the formal industry wide councils (Industrial Councils). Blacks were allocated plant based liaison committees and works committees in place of registered trade unions. More often they chose however, to operate in unregistered trade unions, outside of both these structures. In 1979, following the Wiehahn Commission report, the government amended the Industrial Conciliation Act to allow blacks to register trade unions, and it introduced an industrial court with powers to adjudicate on broadly defined 'unfair labour practices'.

Whether the fact of registration was a boon or an attempt to bring the independent unions under formal controls was the subject of much debate. The major consequence of registration was that it allowed non-racial unions the debatable reward of participation in Industrial Councils. But the amendment also extended protection against victimisation to all unions, whether registered or not, and provided conciliation machinery including access to status quo orders from the Industrial Court for all such unions. This latter relief has been used by a
broad range of unions and has effectively introduced a code of employee rights that is a significant advance on their previous position. In particular the court has made greater inroads in some areas of the employers' perogative to dismiss than workers in European countries have achieved.

The Black Labour Relations Regulation Act (30) has now been repealed (31) thus doing away with the dual system. This Act was originally introduced in 1953 as the Black Settlement of Disputes Act and amended after the 1973 strikes (32) to undermine or to provide an alternative to black unions. Whereas the 1953 Act had prohibited strikes by black employees, the 1973 amendment provided for such strikes via the institutions of collective bargaining it introduced. It recognises and protects only the plant based 'Works' and 'Liaison' committees. Workers seldom requested the formation of these committees, and it was employers who chose to impose these committees on their workforces as the sole bargaining agency (33). Employees who chose combinations (unions) in place of these ineffective committees and sought to achieve recognition of their unions by employers faced victimization (although in theory there was some protection under the Wage Act). The cumbersome procedures for dispute resolution made legal strikes virtually impossible. Of the hundreds of strikes by black workers that took place between 1973 and 1979 only two are known to have gone through all the formalities required under the law (34). Legal strikers were in any event subject to summary dismissal.
Applicable Labour Legislation in the Homelands

Lebowa; Qwa Qwa

These 'non-independent' homelands became self-governing on 2 October 1975 and 1 November 1974 respectively. Accordingly, the applicable labour legislation is the South African labour legislation on those respective dates, excluding in regard to blacks, the Labour Relations Act and all wage determinations. It appears that Factories Act regulations passed after these homelands became Legislative Assemblies would also not apply. However, the Wage Act would continue to offer protection against victimisation for belonging to a trade union. The Act governing collective bargaining would be the Black Labour Relations Regulation Act which provides only for the two kinds of plant committees. There is no duty to institute such committees and it is not known how many of such committees are in existence in these or any other bantustans. There is no indication that these bantustans intend to change this situation. Indeed Lebowa guarantees to prospective investors that they will not allow anything that would interfere with free enterprise.
Gazankulu

Gazankulu can be distinguished from the above only in that it became self-governing on 1 February 1973, prior to the Black Labour Relations Regulation Act 70 of 1973 which came into effect in July of that year. Accordingly the applicable legislation governing collective bargaining is the more archaic Black Labour Settlement of Disputes Act 48 of 1953 without the 1973 amendment. This Act prohibits all strikes by black workers and relies on the works committee as the collective bargaining unit.

Kangwane

Because the South African government intends to cede Kangwane to Swaziland, this homeland has not as yet been accorded the status of 'self-governing'. Accordingly all current South African statutes apply subject to the exclusion of the Labour Relations Act in terms R84/1970 in respect of blacks. Thus the anomalous position arises that the Wiehahn amendments opening the conciliation machinery to blacks are applicable to the territory and yet the 1970 proclamation continues to make the Act applicable only to non blacks.

The significant inclusion would be the Basic Conditions of Employment Act and the Machinery and Occupational Safety Act when the latter is brought into operation. The current position is that the law has been duly enacted but is
inoperative until a notice bringing it into operation is published in the Government Gazette(36). Note however that as the Black Labour Relations Regulation Act has been repealed, there is no statute governing collective bargaining for blacks and thus theoretically no criminal prohibition against spontaneous withdrawal of labour.

KwaNdebele

KwaNdebele became 'self-governing' on 20 March 1981. The Labour Relations Amendment Act which repealed the Black Labour Relations Regulation Act was introduced only after this date. Thus in KwaNdebele the statutes governing collective bargaining remain the Black Labour Relations Regulation Act for blacks and the Labour Relations Act for non-blacks - although as in Kangwane the latter act incorporates the 1979 amendment which opened the machinery of the act to blacks. However in KwaNdebele the Act does not incorporate the subsequent amendments introducing, for example, status quo relief from the industrial court in terms of S 43. In both Kangwane and KwaNdebele the Wage Act continues to provide protection against victimisation - subject to the difficulties in making use of this 'protection'.
KwaZulu

KwaZulu became 'self-governing' on 1 February 1977. It would thus be effectively in the same position as Lebowa and Qwa Qwa. However, the KwaZulu position is somewhat extraordinary. The KwaZulu legislature has in fact promulgated an amendment (36a) to the Industrial Conciliation Act 28 of 1956, which amendment purports to bring KwaZulu into line with the South African 1979 Amendments (36b). It provides for the registration of black trade unions, and an industrial court sitting at Ulundi which may adjudicate on 'unfair labour practices'. However, this amendment purports to amend an act which had not been operative for blacks in KwaZulu for 12 years. Accordingly, there is a substantial body of legal opinion that holds that both the principal Act and the amendment are still not applicable to blacks in KwaZulu (37). The KwaZulu government appears to have been ignorant of the 1970 Proclamation. At the least the KwaZulu amendment has altered the principal Act in regard to non-blacks. However no union has registered in KwaZulu, no industrial council exists, the Industrial Court has never sat, nor has a judge been appointed for the court. There does not appear to be an inspectorate of the non-existent industrial agreements applicable to whites.
Venda

Venda, like the Transkei, is an independent bantustan which has in fact passed its own Labour Act. Venda became self-governing on 1 February 1973. Shortly after 'independence' (13/9/79) it introduced its own labour legislation which does not even bring Venda into line with South African legislation as it was in 1953.

Thus the Venda Wage Act 5 of 1981 repeals the South African Wage Act but unlike that Act it does not provide protection against victimisation for trade union activities. The Minister of Economic Affairs who introduced the Bill into the Venda assembly explained - as had his white counterpart in 1953 - that "the country had not yet reached a stage of development that could entertain trade unions". He continued to say that he hoped such a stage would come in the near future but that the Venda Government would only allow trade unions when they were sure such unions 'had no outside influences'(38).

The Venda Labour Act 18 of 1982 established the liaison committee as the form of worker collective bargaining. This plant committee consists of only 50% elected worker representatives. The committee may be chaired by a management appointee. There is no protection against victimisation for the worker representatives sitting on this committee(39).
Nor is there access to outside experts. Such plant committees bear little relation to shop steward committees or say the West German factory committees which are premised on trade union structures.

Transkei

Transkei's constitutional path is slightly different from the other homelands in that it was used as a trial model and as a show piece for the international community. It was granted self government in 1963\(^{(40)}\) and became independent on 26 October 1976. On 'independence' the Transkei government promptly promulgated a Wage Act\(^{(41)}\) and a Labour Act\(^{(42)}\) and the Labour Relations Act\(^{(43)}\). The first and last mentioned Acts are similar to Venda's Wage and Labour Acts\(^{(44)}\) deals with labour recruitment. They too, deprive employees of protection against victimisation for trade union membership and install the ineffectual liaison committee as the collective bargaining agency. As in Venda and along the lines of the South African Black Labour Relations Regulation Act, labour disputes are to be settled by a labour inspector who may further refer them to a wage board.
Ciskei became 'self-governing' on 1 August 1972 and independent on 4 December 1981. The South African legislation which was 'frozen' on reaching self-government was - in relation to blacks - the archaic Black Labour Relations Regulation Act 48 of 1953 with the 1973 amendment. This Act, as mentioned above, made no provision for legal strikes and established the works committee as the officially sanctioned collective bargaining form. Ciskei has not passed any labour legislation since that date and accordingly the Wage Act continues to operate in that area.

There are a number of provisions of the Ciskei National Security Act (45) which do bear on the rights of association. The use of the standard homeland security legislation to detain or harass trade unions is will be discussed below. The Act does, however, directly impinge on unions by prohibiting all gatherings of more than 20 persons without magisterial permission (46). Another section (47) renders a person liable for up to 20 years of imprisonment if he interrupts any industry or undertaking or attempts to do so, with the intent of promoting any industrial, economic, or social aim. The Act does provide that a strike in compliance with the Industrial Conciliation Act is not illegal. But as this Act does not apply in the Ciskei (and never did cover black workers prior to 1972) it is not much protection at all. The section which prohibits 'intimidation' is far wider than the equivalent South African Act (48).
Bophuthatswana

Bophuthatswana became self-governing in 1972 and 'independent' in 1977. Bophuthatswana is the most 'developed' of the homelands, particularly in that it possesses strategic mining operations (see below). Its position then is substantially the same as the Ciskei had it not introduced its own labour legislation. Its security legislation\(^{(49)}\) also makes inroads on the right to freedom of association and assembly by inter alia restricting unapproved meetings of more than 20 persons, penalising encouragement or incitement to strike. Some of these provisions restricting the freedom of association and assembly\(^{(50)}\) may be at odds with its Bill of Rights in terms of which the notorious South African Terrorism Act of 1967 was declared void in 1982\(^{(51)}\).

More recently Bophuthatswana has introduced an Industrial Conciliation Act. This Act has not been brought into operation at the time of writing. It is similar in some respects to the South African Labour Relations Act and unlike KwaZulu they have correctly introduced a complete Statute. There are some aspects of the Act that need particular comment. The most noticeable feature is that the Act intends to bar 'foreign' (i.e. South African) unions by requiring trade unions to have their head office in Bophuthatswana and requiring that their officials be Bophuthatswana workers. The purpose is clearly to
prevent the operation and recruitment of workers in this area by the non-ethnic independent trade unions which have begun organising here,(M.A.W.U., A.F.C.W.U., N.A.A.W.U., N.U.M., etc.). Or, to put it another way, to isolate organisationally workers in Bophuthatswana from workers elsewhere in South Africa. This provision would seem to clash with the freedom of association guaranteed by the Bill of Rights(52). Apart from this provision the position of an unregistered union is substantially weaker than that of a South African counterpart. Such a union is barred from all conciliation machinery including conciliation boards and the Industrial Tribunal(53). This must be viewed in the light of the discretion of the Registrar to register a union or deregister it depending on whether it is a 'responsible' body "reasonably capable of taking part in the negotiation of matters of mutual interest between employer and employee". There is no definition of 'responsible' thus placing the power to register on a purely discretionary basis. This discretionary power could be used to keep unions unregistered. Furthermore registration will be refused where another union exists to represent the same interests ('or a part thereof')(54). The Registrar may also deregister a union(55). It is not suprising to find that the Act prohibits trade union affiliation or support to any political party. It also prohibits receiving loans, donations or assistance from bodies which the Minister may specify. The disputes procedure is a clear example of Bophuthatswana's desire to make legal strikes
impossible without prohibiting strikes explicitly. A dispute must be referred to the prescribed conciliation forum (industrial boards, councils or conciliation boards). If the dispute deadlocks it goes on to an industrial tribunal. If the union disagrees with the body's determination they must inform the Minister. The president may then declare the determination binding and final. If he does not the union may hold a secret ballot after 42 days from the publication of the tribunal's determination. Thereafter a legal strike may be called (which does not protect the employees from summary dismissal). Apart from this lengthy and unworkable procedure for conflict resolution the Act allows for other interventions\(^{(57)}\) to prevent the dispute machinery reaching the strike stage such as the ministerial appointment of a mediator.

The industrial tribunal bears little relationship to its South African counterpart as it has no jurisdiction to determine unfair labour practices. The South African court has made significant inroads in limiting employer despotic practices via 'unfair labour practice' determinations and particularly through granting interim relief. By failing to incorporate expeditious forms of industrial conciliation (including the withdrawal of labour) the Bophuthatswana legislation may well have undercut its own machinery - workers will strike illegally rather than pursue lengthy and frustrating channels.
Treatment of Trade Unions

This examination of the labour legislation in the respective homelands bears out the conclusions reached in the first part of this paper - that the homelands regimes by virtue of their nature and function are threatened by independent organisations. The labour legislation provides one index of their attitude to unions. The concrete responses to unions operating in their territory is another. However little unionisation has taken place within the homelands. The reasons for this are:

(i) the small scale and infant nature of industry in the homelands. The largest growth industry is usually the civil service and particularly the security apparatus. The civil service is itself used as a form of political control via recruitment criteria and the power of job allocation\(^{(56)}\).

Of the approximately 6,500,000 jobs in South Africa (excluding agricultural services) in 1980, only 597,000 were to be found in the homelands. This figure is in any event questionably high\(^{(57)}\). Of these employment possibilities Bophuthatswana and KwaZulu have the lion's share.

(ii) the as yet unconsolidated position of the independent trade unions in central South Africa by and large limits union involvement to the major industrial centres.
There are, however, some homelands whose inhabitants are increasingly affected by trade union organisation or the repression of trade unions. For these homelands this occurs in two ways. Firstly direct unionisation of workers at the few growth points inside homelands. Secondly because workers who work in 'South Africa' commute from these homelands on a daily basis. For the purposes of this paper the most significant of these are Ciskei, Bophuthatswana and KwaZulu. Thus nearly 39,500 people commute from KwaZulu on a daily or weekly basis (57a); 173,000 workers commute from Bophuthatswana and 38,000 from the Ciskei. A further 170,000 workers commute from the other seven homelands. For the above reasons the three homelands mentioned here will be dealt with in detail.

Ciskei

The Ciskei has a small industrial base with 28,000 jobs in the manufacturing sector (57b). There are a few undertakings near Mndantsane, notably Da Gama Textiles which employs some 4,000 employees, and some near Dimbaza - a former resettlement camp. However, Mndantsane, the second largest township in South Africa, is the dormitory town for East London. There is a strong trade union presence in this industrial area.

The Ciskei government has used the provisions of its security legislation to detain on several occasions the senior trade unionists of the G.W.U., S.A.A.W.U. and the A.F.C.W.U. as well
as members of other unions and numerous workers. Prior to its Internal Security Act, Ciskei authorities used Proc R252 to harass unions. This proclamation prevented union meetings by making gatherings of more than 20 people depend on the prior approval of a magistrate. It prohibited boycotts with the object of causing loss, disadvantage or inconvenience to anyone. It prohibited any statement which was likely to have the effect of subverting the authority of the government or anyone employed by the government or any chief or headman. The correct legislation enables the banning of people, publications and organisations in addition to the powers described above. Thus Thandani of the G.W.U., Norushe of the A.F.C.W.U. and S.A.A.W.U.'s Gqweta and Njikelena have each been detained on several occasions, sometimes for lengthy periods.

Thozamila Gqweta has been detained by the Ciskeian Secret Police or the South African Secret Police an estimated eight times. He has never been charged or convicted of an offence. Some of these periods of detention and solitary confinement have been lengthy. On at least one occasion he had been tortured. He testified in the trial before the Ciskei Supreme Court in March 1983, that he had been punched, stripped, suspended by handcuffs from a window bar while under interrogation. His mother and his uncle were burnt to death in a fire in which it is alleged that the doors of the house in which they were burnt to death were wired from the outside. His girlfriend, Diliswa Roxisa,
was killed shortly afterwards when Ciskeian police opened
fire on mourners returning from the funeral. When
interviewed by a correspondent from the American
Broadcasting Corporation, Charles Sebe explained the
failure to investigate the cause of death of Gqweta's
relatives by saying "people die in the bush". Wearing
sunglasses and a peaked cap he was asked how it was that
Gqweta's girlfriend appeared to have been singled out and
shot in the crowd of mourners. He replied "coincidences
happen".

In September 1981 Ciskei established a record by detaining 265
workers and unionists in terms of security legislation
including one group of 205 workers who were singing songs. All
were released. Indeed persons properly detained for political
reasons have constituted a small minority of the detentions.

Thus in March 1979 of the 75 persons in detention, 65 were
workers who had taken part in a strike.

In 1980 24 trade unionists were detained\(^{(57c)}\).

In 1983 30 unionists were detained\(^{(58)}\).

Life President Sebe openly regards SAAWU as an enemy of his
regime and in September 1983 he declared it an 'unlawful'
organisation' in terms of the Ciskei National Security Act Of
1982. Although all the independent unions representing some 250,000 workers condemned this move, the ban continues. This leaves many of the inhabitants of Mndantsane in the strange position that during the day while working in East London they may lawfully belong to SAAWU while in the evening they may not be members or office bearers on pain of harsh prison sentences. However there is clear evidence that S.A.A.W.U.'s stature in Mndantsane has grown, ironically, because of Sebe's response to it. S.A.A.W.U.'s case illustrates how repression of popular demands has increased the status of the unions and compelled the union into the political arena.

Sebe maintains that he is not opposed to unions - just the unions which operate in his 'country'. Sebe's sensitivity is clearly related to the fragility of his internal support. The clearest evidence of this is the brutal conduct toward commuters who boycotted buses partly owned by the Ciskei Government(59). But the other element in the regimes' treatment of unions and unionists relates to the desire to make Ciskeian labour docile and attractive to industry(60).

**Bophuthatswana**

Bophuthatswana is the showpiece of South Africa's 'independent homelands'. Being close to the main industrial centre of South Africa it has attracted the most industrial development, and like the Ciskei, houses many of the workers who commute to the
industrial centres near Pretoria and Brits. Its most successful growth point is at Babalegi which has most of the 161 factories in Bophuthatswana which employ 20,055 workers (60a). A further 46,000 workers are employed in the mining industry - dominated by Impala Platinum Holdings, and Rustenberg Platinum Holdings. Because of the nature of these enterprises Bophuthatswana has attracted some of the traditional mainstream craft unions in addition to the 'independent unions'. Bophuthatswana's approach to unionism is more subtle than that in the Ciskei but reveals the same reservations about independent trade unions as Venda et al. On the one hand Bophuthatswana legislation envisages unions, on the other hand it seeks to isolate such unions from the South African trade union movement.

The N.U.M. - UCAR dispute illustrates best Bophuthatswana's attitude and strategy towards independent unions (60b). After negotiating for recognition of their union the workers at Union Carbide's UCAR Minerals were informed in December 1983 that the company was willing to recognise their union but Bophuthatswana opposed this. The company informed the workers that legislation was to be introduced outlawing foreign unions. In January the N.U.M. (and certain other unions like S.A.A.W.U., S.A. Boilermakers Society and C.C.A.W.S.A.) received a letter from the Bophuthatswana Manpower Minister, Rowan Cronje, dated 9 January, informing them that unions were illegal in Bophuthatswana, and that the Act allowed only for domestic
unions. In fact Cronje's letter is incorrect. No legislation prohibits unions. UCAR management after showing workers Cronje's letter then suggested that the workers form their own union in Bophuthatswana. After discussing the matter the workers struck twice to obtain their demands for recognition. Carbide's response was that it was attempting to mediate between the N.U.M. and the Bophuthatswana government. Cronje still maintains that no country allows 'foreign' unions to operate. The N.U.M. and C.U.S.A. reply that this is a) not factually true, b) that they are not a foreign union as Bophuthatswana is not a foreign state, c) if 'foreign' investment is allowed there is no reason why 'foreign' unions should not also be allowed.

S.A.A.W.U. organising in Garankua, Babalegi and Rosslyn has also been warned against operating in Bophuthatswana, as have C.C.A.W.U.S.A. organising in the retail outlets—Metro Cash and Carry (60c). Like N.U.M. they have also received this information from management which alleges, conveniently, that they are bound by the Bophuthatswana government's attitude. This matter is likely to go to court as a contravention of Bophuthatswana's Bill of Rights. Bophuthatswana has favoured a new mineworkers' union to whose inauguration President Mangope was invited.

There have been incidents where union organisers have been harassed by the police. It is feared that Bophuthatswana might use its security legislation to prohibit union meetings of more
than 20 persons in the townships. It is such powers that affect unions organising in central South Africa but whose members reside in townships located in the homelands. Thus three organisers of NAAWU, the union organising automobile workers in the Pretoria area affiliated to FOSATU, were arrested in November 1982 in a township outside Pretoria while addressing a union meeting. They were charged with attending an 'illegal gathering'.

Bophuthatswana has taken a less severe approach to the all-white and expressly racist white Mineworkers' Union. This union somehow will not be hit by the provisions of the new Act as it will be allowed to retain its membership in Bophuthatswana. The quid pro quo is an agreement to train black miners to the status of blasters\(^{(61)}\). It will in any event be able to negotiate with management at the latters head office in Johannesburg. Such managements are now confronted with 2 union registration procedures for unions in the same extended industrial area of Pretoria, Witwatersrand and Bophuthatswana.

**KwaZulu**

KwaZulu is in a similar position to the above two homelands in that many of Natal's black workers in the Hammarsdale/Durban/Pinetown and Empangeni/Richards Bay areas commute from KwaZulu administered territory. Within KwaZulu itself the only real growth point is Isithebe which is comparatively very small.
The unions which have sought to organise within KwaZulu comprise many of the unions belonging to Fosatu's Northern Natal branch particularly MAWU in the metal and construction industries, and PWAWU in the paper industry more particularly SAPPI's Mandini plant. The NUTW has also organised within KwaZulu and one of their disputes is discussed in more detail below. These unions have had to confront one of the significant features of homeland based plants viz the disparity between wages in these areas and the industrial centres. Thus it was a condition of the recognition that a union would not demand uniformity of wages between its KwaZulu and other plants (61a).

Throughout the 1970's KwaZulu's Buthelezi sought to obtain loyalty and co-operation from the Natal based - primarily FOSATU - unions. Indeed in the past he has aggressively confronted the unions for failing to support Inkatha. These unions have resisted this incorporation on the basis of a purported desire to maintain an economics/politics divide. They have asserted that the industrial unions must and do span party political loyalties. Furthermore they have argued that union members only should dictate what strategies the union should take. Buthelezi and Inkatha have publicly and privately sought to manouvre the unions away from this position.

The KwaZulu Labour Relations Amendment Act, whether valid or not, reveals something of the official attitude to unions. The
interesting departure from the South African Act is that there is no bar to a union affiliating to a political party. This, it is argued, is presumably to allow for unions to join Inkatha\(^\text{61b}\). Another interesting departure is that the KwaZulu Act provides for Provisional registration. This provision was dropped from the South African Act because unions claimed it only subjected unions to a test of state approval. Buthelezi's desire to draw unions into Inkata is evident in his submissions to the American AFL-CIO recently published in the South African Labour Bulletin\(^\text{62}\). He declared that Inkatha did not wish to take over or assume the role of trade unions. However Inkatha would like trade unions to sit on its central committee and in due course it was hoped that it would be possible for Inkatha representatives to sit on the unions decision-making committees. This overture is not confined to unions operating within KwaZulu. While it can be stated that unions have not had to cope with the same harassment other homelands have subjected unions to, the control of township facilities by KwaZulu officials means that even unions organising commuting workers treat Inkatha delicately.

KwaZulu's current public attitude is to endorse the principle of unionisation and it has on occasion supported workers claims against industrialists in white South Africa\(^\text{63}\). Their attitude to unions and union demands within KwaZulu is more ambiguous.
The KwaZulu Bata Shoe Company dispute reveals a lot more about the KwaZulu official attitudes to unionism inside the KwaZulu area. KwaZulu, like the other homelands, has embarked on a campaign to attract capital investment within their boundaries. In some of these enterprises, homeland officials may have a direct interest although this was not the case in this instance. In the KwaZulu Shoe Company dispute, the workers reasonable request was for recognition of their trade union - NUTW from this multinational owned company. The wages were extremely low even for a textile company. The wages were as low as R14,00 per week. Two strikes followed management's refusal to recognise the union. KwaZulu's intervention consisted of discussing the matter with management appointees and thereafter instructing the workers to return to work without recognition of their union. The police proceeded to arrest the union organiser and disperse the employees. The union believes that the company was able to use the threat of withdrawal to another area to induce the KwaZulu authorities to behave in the way that they did.

Conclusion

The homelands then do not have a uniform approach to unions. At the least however, they all appear uncomfortable with independent unions. The legal framework for the recognition of unions is most restrictive. This framework in conjunction with draconian security legislation, and an official or unofficial
hostility constitutes obstacles to effective legal trade unions which can extend and protect the rights and position of workers in the homelands.

Yet it is these workers whose conditions are the most appalling. In South Africa the inducement behind industrial relocation to the homelands has been lower costs. Low costs in real terms often means low wages, inadequate health and safety measures and little or no enforcement of minimum standards.

The fact of the matter is that trade unions are indeed likely to expand into these areas. Homeland authorities who choose a combative attitude to these unions may well find, as Ciskei's Sebe has done, that such trade unions become a focus for mushrooming popular opposition to authoritarian rule, and that the homeland regimes will be closely identified by workers with the causes of their poverty. The strategy embarked on by these administrations is in line with the central states intention to divide workers along ethnic and regional lines and subject these workers organisations to close supervision. This runs directly counter to the principles and method of organisation of the independent unions. The independent unions purport to be building nationwide non-racial, democratic industrial unions insisting wherever possible on independence from direct control by the state or employers. The independent unions have rejected the political division of their members according to the official policy of ethnic homelands, but they also have a
direct interest in challenging the disparity in employee rights and working conditions in these homelands. Thus the treatment of trade unions and the extent of workers rights in the bantustans is likely to emerge as a hotly contested issue in the near future. It is unlikely that the terrain of this contest will be confined to these homelands.

Nicholas Haysom

Modise Khoza

NRLH/LSM
120384
0720J/59J
FOOTNOTES

We were fortunate in being able to draw on the preliminary research of A Freund (South African Law Bulletin Vol 8 No 8) and information from Carole Cooper's 'Homelands Attitudes to Trade Union' South African Review 1984 forthcoming.

1. In general the word 'homeland' is used to denote the former reserve areas now officially referred to as 'national states' or sometimes as bantustans. This does not mean that the author's consider such areas as 'homeland'. The word black is uncomfortably used to denote Africans. Although the word black is appropriately used in political parlance to include 'coloureds' and 'Indians' the statutes use the work black to mean African and the use of both terms in this article would have been confusing. The comments in themselves are an indication of how official terminology unobtrusively imprints itself on everyday discourse.

2. The adjective 'independent' is used to refer to those unions whose members are black and which are not affiliated to TUCSA. These unions, referred to as 'emerging' unions, include FOSATU, CUSA and the unregistered general unions.

3. Land Act 27 of 1913; Development Trust and Land Act 18 of 1936

4. Sec 26 of the Development Trust and Land Act No 18 of 1936; sec 10 of the Urban Areas Act No 25 of 1945; the Black Labour Regulations of 1965 (R1892/1965) and 1968 (R94/1968)

5. The mechanics established in the Bantu Abolition of Passes and Co-ordination of Documents Act No 67 of 1952, in conjunction with the Black (Urban Areas) Consolidation Act 25 of 1945

6. For a full description of their system see Haysom and Thompson Farm Labour and the Law Paper for Carnegie Poverty Conference. See also M Lacey in Black Sash December 1983 p


10. The actual figure for total employment in the BENSO Statistical Survey of Black Development, 1982 is 597 505. However this figure is open to doubt as more than half of the total is accounted for by a figure of 305 204 for KwaZulu. Yet the 1975 figure for KwaZulu was 67 000. As the authors know of no development which could account for such an explosive expansion, as BENSO figures have been criticised before on the basis of their wide definition of employment, as the development corporations and subsidised decentralisation can account for only 160 000 jobs created in all 10 of the homelands in the last 22 years, the BENSO figure is inexplicable. A Development Bank research officer claims the figure for KwaZulu is closer to 70 000. Interview B. Thompson 1984.

11. ibid

12. See G. Mare 'Homeland Tragedy, Farce and Function' S.A.R.S. 1982 and also Streek and Wicksteed Render unto Kaiser Ravan 1981

13. the Black Authorities Act, 68 of 1951; Promotion of Black Self Government Act, of 1959


15. Hammond-Tooke has pointed out that in fact this system of using chiefs and headmen whose status is enhanced and fixed from above regardless of their subjects wishes has no traditional counterpart (cited in G. Mare Homelands Tragedy Farce and Function S.A.R.S. 1982). It is merely a distortion of traditional authority structures.


17. Haysom Ruling with the Whip C.A.L.S. 1983; Mare op cit; See also Inkatha's actions on Ngoye campus and afterwards.


19. Golden City Press 22, 5, 83
Theoretically the South African government will accede to such requests depending on inter alia the economic development of the territory and its 'ability to carry out its duties effectively'. In practice however the South African government has been only too willing to see the bantustans reach the 'independence stage' as soon as possible. This procedure was modelled on the earlier constitutional path of the Transkei.

Sec 3 of the National States Constitution Act read with Schedule 1. Note that 'labour matters' excludes the Workmans Compensation Act and the Unemployment Insurance Act.

At this stage the S.A. Government's (State President in Council) approval is required before the Act in question is formally promulgated.

These bantustans domestic legislation continues to require the approval of South Africa before its promulgation.

Proclamation R84 repealed the Industrial Conciliation Act 28 of 1956 (now called the Labour Relations Act) in respect of areas referred to in S 21(1) of the Trust Act, Act 18 of 1936 and areas referred to in S 25 of the Black Administration Act. This is 'Scheduled' land and effectively all black owned and Trust owned land in the 'Released' areas. These are the areas of which the bantustans are composed. It further repealed all Wage Determinations issued in terms of the Wage Act before or after the promulgation, but did not repeal that Act itself. However it also provided that no employee shall suffer a reduction of wages or other benefits as a result of this measure while employed by the same employer. This proclamation excluded the Transkei from the area of its operation.

R 124 of 1971 amended the proclamation by making it applicable to blacks only.

R 94 of 1972 extended the ambit of the measure to industrial areas in the Transkei.

R 102 of 1972 reiterates that the proclamation shall not apply to persons other than blacks.

This measure did not repeal the I C Act but excluded blacks from the operation of Industrial Agreements.

Sec 25 of Act 38 of 1927

Sec 25 of Act 5 of 1957

The Factories, Machinery and Building Works Act 22 of 1941
28. The Shops and Offices Act 41 of 1939
29. Act 6 of 1983
30. Act 48 of 1953
31. The Labour Relations Amendment Act 57 of 1981
32. The Black Settlement of Disputes Act 48 of 1953 amended by the Black Labour Relations Regulation Act 70 of 1973
33. See Barge et al The Case for African Unions Nusas 1977
34. At Armourplate Safety Glass, Springs; and at Eveready, Fort Elizabeth.
35. Wage determinations in force prior to 1970 would apply to workers still employed by the same employer for whom they worked in 1970 prior to R84/1970. See fn 24. R94/1972 makes current determinations applicable to non-africans in these homelands.
35a. Carole Cooper op cit.
36. Sec 42 of Act 6 of 1983
37. See A Lawyer 'Homelands Labour Laws' SALB Vol 8 no 8 p73-74. Note however that this opinion does not take into account that the principal Act was not entirely repealed in KwaZulu. It was made applicable to non blacks only. Apparently some of the official legal advisers believe that the KwaZulu Act implicitly repealed the proclamation. The issue is whether an amendment which alters a principal act must by neccessary implication also repeal a proclamation that restricts the ambit of the act. Where the amendment has such far reaching implications including criminal prosecutions it seems that more than an 'implication'is required particularly where such implication in respect of blacks is not the only conclusion. Accordingly it seems that the appropriate solution is for the KwaZulu assembly to expressly repeal the proclamation and/or introduce a complete and fresh Labour Relations Act
39. Section 15 of Act 48 of 1982
40. Transkei Constitution Act 63 of 1963
42. Act 14 of 1977.
47. Sec 4 of Act 13 of 1982.
48. Intimidation Act, No 72 of 1982
51. S v Marwane 1982(3) SA 717(A).
52. See Sec 16 of Ch II of Act 18 of 1977.
54. Sec 42 ibid.
55. Sec 54 ibid.
56. See Haysom op cit.
56a. Carole Cooper op cit.
57. See footnote 10 supra.
57a. Carole Cooper op cit.
57b. ibid.
57c. ibid.
58. ibid.
60. see part 1 of this paper.
60a. Carole cooper op cit.
60b. ibid.
60c. ibid.
61a. Carole Cooper *op cit.*
61b. ibid.
62. See 'Inkatha and Black Workers of South Africa' *South African Labour Bulletin* Vol 9, No 4, p81, 82.
63. KwaZulu officials thus agreed to suspend eviction of dismissed employees whose rents were in arrears during the Alusaf and Richards Bay Coal Terminal strikes. Dkadka’s mediating role in 1973 is an example of KwaZulu's early appreciation of the danger of overtly siding with management.
63a. Carole Cooper *op cit.*
These papers constitute the preliminary findings of the Second Carnegie Inquiry into Poverty and Development in Southern Africa, and were prepared for presentation at a Conference at the University of Cape Town from 13-19 April, 1984.

The Second Carnegie Inquiry into Poverty and Development in Southern Africa was launched in April 1982, and is scheduled to run until June 1985.

Quoting (in context) from these preliminary papers with due acknowledgement is of course allowed, but for permission to reprint any material, or for further information about the Inquiry, please write to:

SALDRU
School of Economics
Robert Leslie Building
University of Cape Town
Rondebosch 7700