

THE UNITED FISHERMEN

The Official mouthpiece of the Namibian Fishermen

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The Permanent Secretary of the Ministry of Labour, Bro-Matthew Shinguadja, as a self-styled facilitator met with the striking Fishermen on 27 June 2016 and then with the Steering Committee of the fishermen and the HR forum of fishing companies on 27 and 28 July to resolve the dispute between them.

We publish a shortened version of his report.

1. Meeting

On the 27th June 2016, the Steering Committee met with the Permanent secretary. It was made clear to them that in search of an amicable solution, there was no need to dwell on the past as the situation and facts surrounding it were common knowledge to everyone.

The main object of Government (Ministry of Labour, Industrial Relations & Employment Creation in particular) was to resolve the impasse amicably and to the fair satisfaction of the parties

The fishers presented three discussion points, namely:-

- (a) people should go back to work.*
- (b) conditions under which the people must go back to work. And*
- (c) what needs to be done to any company that refuse to agree with these suggestions/decree.*

They motivated or elaborated on these points, After discussion or engagement, the the following appeared to be the possible way to the resolution of the current stalemate:-(a) that the Fish Commission should remain (b) three (3) hours per day overtime should be implemented whether the fishers have worked or not while at sea.

However, even if they have worked more than three hours per day overtime that time will not be claimed. (c) eleven (11) hours should be considered as the normal working hours for the Fishing Industry for the interim period until such time variations have been granted or the Labour Act (Acy 11 of 2007) has been amended to take care of the Fishing Industry peculiarities and (d) Sundays/Public Holidays work should be treated as normal working hours/days (Public Holidays should be observed as such when fishers are not working).

On 28th June 2016, the Permanent Secretary engaged the Confederation of Namibian HR forum which representing the majority of fishing companies.

The companies' representatives stated that efforts were made to accommodate the fishers but they did not report

for work. As a result, some other people were already employed instead who have also families to feed. The other issue was that the striking fishers have conditions which they have put and if they are not met then how can they be re-employed.

2. Joint Meeting

The parties' positions were summarised as follows: The fishers representatives explained the status and purpose of the Steering Committee by emphasizing that it was mandated by the fishers themselves who were 828 at that time excluding Luderitz.

The HR forum representatives stated that issues by the fishers were noted

as the Association was not well prepared due to the short notice of the meeting.

The HR Forum indicated that they needed at least two weeks to consult. They further flagged the issue concerning the Referral of Dispute (Form LC21) to the Labour Commissioner which was more or less on the same issues and the date was already set.

The Steering Committee was advised to consult on the Referral of Dispute even if it was in the Unions name plus others – who are these others and how they will be affected in the process.”

Shinguadja granted the Association 2 weeks to consult amongst the fishing companies, but the final meeting was only convened on 20 July.

We also publish Shinguadja's shortened report.

“Pursuant on the first round of engagement/consultation that took place on 27th & 28th June 2016 at Walvis Bay, the last round took place on 20th July 2016 also at Walvis bay with the Parties' representatives as they were before.

The main objective was once again to engage the parties for a possible solution to the acrobatic situation that has been prevailing in the Fishing Sector since November 2015 as a result of the illegal strike. The HR forum reiterated its position that all fishers are free to apply for employment at their previous employers or any other employer for consideration just like any other employee.

It said that there are already employees employed some of whom are already on permanent contracts. The Steering Committee of fishers wanted to know how was it possible that some employees were made permanent in a short period of time while some of the affected fishers were employed for many years but they were never made permanent especially at Novanam Limited. The Committee further disputed that the current fishers on board fishing vessels were permanent as they know them and live with them as brothers and/or relatives.

The parties were consulted privately in order to try to understand reasons for the unwillingness to move from their position and some other issues in depth. From these private consultations with the facilitator it became apparent that parties have their positions firmly grounded with very little flexibility.

He also informed the parties that the Government is not legally empowered to take a hammer and resolve this

type of dispute that is why it was trying to seek a win-win solution. Win-win situation is heavily dependant on the parties' willingness to make it happen with the technical assistance of the facilitator. As there was no real progress and tangible changes in positions, the parties were requested to state as what would be their conclusions under these difficult circumstances.

The Committee said its mandate was that all the affected fishers should go to their work at the same companies and into the same positions. It also asked some questions for clarification such as is specific companies can indicate if they have vacancies and which fishers are to be recruited in these vacancies (new or old fishers). The Association said that the question can only be addressed by individual companies concerned.

The HR Forum stated its positions were as follows:- That there would be no re-instatement of the affected fishers.

The affected fishers have the right to approach their companies individually for possible employment as they were recruited individually. They also have the right to seek employment at any other companies just like any other employee.

That some of the affected fishers have already received letters of termination of employment which they have collected. Others are urged to go and collect their letters if they not done that as yet The facilitator then decided to close the meeting with the following conclusions:- **that there was no common understanding on how to resolve the issue of whether the affected fishers should go back to work and be employed by their former companies and into positions were they where before or not. That those affected fishers were free to approach their former employers for possible employment opportunity individually and they will be informed accordingly by individual companies.**

That the affected fishers who belong to Pension Funds were urged to approach their former employers for either to claim their benefits or transfer them, and That all parties were at liberty to fully but correctly brief their principles about these conclusions.

The facilitator thanked all for the attendance and the maturity they have demonstrated throughout the engagement. He further thanked the parties for their skills and deep understanding they have displayed at all times."

The Fishermen submitted a letter to Shinguadja on 28 July 2016 in response to his reports on the meetings with the fishermen and the fishing companies. They wrote,



"The Government of Namibia in terms of Article 1 of the Namibian Constitution shall uphold the rule of law.

Article 1 Establishment of the Republic of Namibia and Identification of its Territory
(1) The Republic of Namibia is here by established as a sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of

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law and justice for all. (2) All power shall vest in the people of Namibia who shall exercise their sovereignty through the democratic institutions of the State. (3) The main organs of the State shall be the Executive, the Legislature and the Judiciary.

You are the Executive which shall execute the law. We respond to your letters (reports) of 29 June and 22 July 2016, Summary of Engagements with Fishers Representatives and Fishing Companies, and Second Round of Engagement meetings.

We draw your attention to the fact that we complained to the Government over many years. The records will show that in 2014 we lodged complaints even with the Prime Minister when the Labour Ministry did nothing. Our complaints included, Forced labour for 21 hours on average per day, no health and safety measures and regular deaths and loss of limb at sea, no overtime payment as stipulated by the Labour Act of 2011, employment of unqualified persons in health and safety with fraudulent documentation, general-

ly no compliance with the laws of the country by the fishing companies. There is no living wage and the wages are far below the amount needed to sustain the fishermen's families.

The administration of justice by the Office of the Labour Commissioner is only corruption. The arbitrators are all corrupt and the law means nothing to them.

This matter would not have gone so far if there was a honest and decent administration of justice. Because of the impossible corruption in the Office of the Labour Commissioner we took our complaints to the Minister of Labour and to the Prime Minister. In terms of Article 1 they had the duty to uphold the law by forcing the fishing companies to stop their criminal and unlawful activities. The Government did nothing, which means that this Government does not respect its own Constitution and the Rule of Law.

But, Mr Shinguadja, you are an official of the Government. Government ministers and officials have shareholding and quotas in the fishing industries.

These are the problems we have

with your meetings.

Firstly, you are in conflict of interest because you have an interest to defend on the side of the fishing companies. The whole Government is in conflict of interest.

You came as a facilitator and not as a member of the Executive to execute the law. You said "both sides acted outside the law", but you did nothing to uphold and enforce the law. You leave it to the two parties and the fishing companies continue to act outside the law.

Because of your refusal to enforce thousands of fishermen are denied an income to which they are entitled by law. They are now 9 months without income.

You have not upheld the law and therefore you are an accomplice to the criminal conduct of the fishing companies and the impoverishment of Namibian workers.

We demand that you uphold the law and to call the fishing companies to book.

We will continue our struggle for justice.