

Report on the Swaziland Independence Conference (London, 19–23 February 1968)

Caption: Report on the Swaziland Independence Conference, held in London from 19 to 23 February 1968 between representatives of the United Kingdom and Swaziland. The independence of the African country was proclaimed on 6 September 1968.

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SWAZILAND INDEPENDENCE CONFERENCE, 1968

CONFERENCE REPORT

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The Swaziland Independence Conference was held in London at Marlborough House from 19 to 23 February, 1968. The Secretary of State for Commonwealth Affairs was in the chair for the opening and closing sessions. Lord Shepherd, Minister of State for Commonwealth Affairs presided at the remaining plenary sessions. A list of those attending the Conference is at Annex A.

THE ORIGINS OF THE PRESENT CONSTITUTION

2. The events leading to the establishment of Swaziland as a Protected State in treaty relationship with the United Kingdom are described in a White Paper (Cmd 3119) presented to Parliament in October 1966. The existing Constitution of the Kingdom of Swaziland based on the proposals described in that White Paper, is contained in the Schedule to The Swaziland Constitution Order 1967.* This Constitution came into operation on 25 April, 1967.

3. In the general election for the new House of Assembly held immediately before that date approximately 80 per cent of the registered voters cast their votes. Candidates belonging to the Imbokodvo National Movement won all 24 seats, gaining nearly 80 per cent of the votes cast. The Ngwane National Liberatory Congress who gained 20 per cent

*S.I. 1967 No. 241

of the votes, and the Swaziland Progressive Party and the Swaziland United Front who shared the few remaining votes, won no seats.

4. The agreement between Her Majesty and the Ngwenyama of Swaziland dated 24 April 1967 provided, inter alia, that Swaziland would become independent by not later than the end of 1969. On 12 and 13 September 1967 motions were carried unanimously in both the Swaziland House of Assembly and Senate in the following terms:-

"That this House authorises the Government of Swaziland to request Her Majesty's Government in the United Kingdom to introduce legislation in due course in the United Kingdom providing for the establishment of Swaziland as an independent sovereign state on 6 September 1968, and to request Her Majesty's Government to seek at the appropriate time the support of other Member Governments of the Commonwealth for Swaziland's desire to become a member of the Commonwealth."

On 3 November 1967 it was announced in Parliament that Her Majesty's Government had accepted these requests.

THE INDEPENDENCE CONFERENCE

5. In January 1968 the Secretary of State invited a delegation consisting of representatives drawn from both Houses of Parliament in Swaziland to a conference in London to

consider the Independence Constitution for Swaziland. The proposals of the Government of Swaziland concerning the Constitution and other arrangements for independence had been published in a White Paper in Swaziland in December 1967 and debated in the House of Assembly and the Senate on 22 and 23 January 1968. Both Houses adopted the recommendations in the White Paper unanimously subject to two amendments. These amendments were subsequently accepted by the Government of Swaziland. The proposals received by the Secretary of State from the Government of Swaziland are at Annex B.

6. The Conference discussed the proposals of the Government of Swaziland concerning the Constitution and approved them subject to certain modifications which are described in paragraphs 7 to 18 below. (The references are to the corresponding sections of the Swaziland Government proposals at Annex B.)

CHAPTER I - PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

7. The Conference agreed that the provision in sub-paragraph (a) of the first paragraph should be amended so that any matter which is at present within the original jurisdiction of the High Court of Swaziland, and which in future is entrusted to a quasi-judicial tribunal, should be determined in public.

CHAPTER III - PARLIAMENT

8. Although no comment on the proposals in the White Paper had been received by the Government of Swaziland from any of the opposition parties, the Conference had before them representations made earlier by the Ngwane National Liberatory Congress and by the Swaziland United Front to Mr. George Thomas, M.P., Minister of State for Commonwealth Affairs, during a visit which he made to Swaziland in October 1967. Both opposition parties had criticised the existing electoral arrangements and had proposed instead single-member constituencies in place of the existing 3-member constituencies.

9. To assist in the examination of this problem, the United Kingdom delegation provided the Conference with papers outlining the main types of electoral systems, and electoral practices in multi-member constituencies.

10. The Swaziland Delegation pointed out that the opposition parties had not presented any views to the Government of Swaziland when the opportunity to do so was provided to them after publication of the Swaziland Government's White Paper and before the debates in the Swaziland Parliament. The Government of Swaziland had however been aware, when framing their proposals, that at the General Election the Ngwane National Liberatory Congress had advocated a House of Assembly consisting of 60 members elected in single-member constituencies.

The Swaziland Delegation explained that in their view such a system would be totally inappropriate to a country of the size of Swaziland. The Swaziland Government had reached the conclusion, which was unanimously endorsed by the Swaziland Parliament, that the present system was best suited to the present needs of Swaziland, and that it ought not to be changed on the basis of the results of a single general election. The Swaziland Delegation pointed out that, while the provision for 3-member constituencies would be entrenched in the Constitution itself and therefore difficult to change, under the Constitution the voting system would be determined by the Parliament of Swaziland by a simple majority. If, therefore, experience showed a change in the voting system to be desirable, this would not constitutionally be difficult to secure.

11. The Swaziland Delegation stated that they were fully alive to the risks which could arise if there were a substantial opposition in the country unable to secure representation in Parliament. They pointed out, however, that the circumstances in Swaziland are such that all shades of public opinion can be made known in Parliament; and that in addition, the Constitution would continue to provide for nominated members in both Houses to represent interests not otherwise represented.

On this latter point they accepted the suggestion of the United Kingdom Delegation that the provision in the existing Constitution which precludes the appointment as a nominated member of the House of Assembly of a person who had stood as a candidate and failed to secure election, should be dropped from the Independence Constitution. They also agreed that the Independence Constitution should omit the provision in the present Constitution which restricts to economic, social or cultural interests, those interests which nominated members should be appointed to represent. The effect of these two amendments will be to make it possible for unsuccessful candidates at elections to be nominated as members of the House of Assembly.

CHAPTER V - LAND AND MINERALS

12. The United Kingdom Delegation regretted that the Government and Parliament of Swaziland were intending to depart from the provisions of the existing Constitution relating to minerals and mineral oils. They recalled that those provisions in the existing Constitution, which had resulted from a unilateral decision by Her Majesty's Government in the circumstances described in paragraphs 10-14 of

Cmd. 3119, had represented what Her Majesty's Government regarded as a reasonable compromise between the responsibilities of a Cabinet form of government in a modern state and recognition of Swazi respect for traditional authority. The United Kingdom Delegation asked the Swazi representatives to consider whether, if they could not retain the provisions of the existing Constitution, they could at least revert to the proposals which the Swaziland Government had submitted to their Parliament in January 1968 but which that Parliament had rejected. Under these proposals, in exercising his right to dispose of these assets the Ngwenyama would have been advised by a Minerals Committee consisting of the Commissioner of Mines and of an equal number of persons appointed by the Ngwenyama after consultation with the Swazi National Council and of persons appointed by the Ngwenyama acting on the advice of the Cabinet.

13. The Swaziland Delegation stated that this matter had been very carefully considered in Swaziland and that their present proposals had the full support of the Swaziland Parliament. They informed the Conference that an instrument was already in draft to set up a new Swazi National Fund, to be managed by a committee to be appointed by the Ngwenyama, into which mineral royalties would be paid, and which would have as its objective the general progress and welfare of the Swazi Nation.

14. The Conference recognised the strong feelings which were held in Swaziland on this question and accepted that in all the circumstances any other proposals would be unlikely to command at this stage the necessary degree of support in Swaziland to make them workable.

CHAPTER VII - THE PUBLIC SERVICE

15. It was agreed to omit the reference to deputy permanent secretaries in sub-paragraph (b).

16. It was agreed that there should be provision in the Independence Constitution requiring the Public Service Commission to act in a manner consistent with the general policy of the Government as conveyed to the Commission by the Prime Minister in writing.

CHAPTER IX - CITIZENSHIP

17. The Swaziland Government White Paper had proposed that birth in Swaziland after independence should not confer citizenship of Swaziland unless the father was a citizen. The Conference agreed that this would result in statelessness in some cases and that in order to avoid this a provision should be included in the Independence Constitution possibly on the lines of Section 25(3) of the Lesotho Constitution, which would have the effect of conferring Swaziland citizenship on persons born in Swaziland if they would be otherwise stateless.

THE PROVISIONS ESPECIALLY ENTRENCHED IN THE CONSTITUTION

18. After discussion the Swaziland Government Delegation agreed to modifications to the Appendix to Part I of their proposals in Annex B. The provisions for Oaths; Assistant Ministers; Diplomatic Representatives etc; the Police Force; and the Prison Service would be transferred from list A to list B. The provisions for Establishment of Parliament; Decisions of questions as to membership of Parliament; and Director of Audit (sub-sections (1) and (4) of Section 113) would be transferred from list B to list A.

19. The Conference also discussed the five other matters referred to in paragraphs 20 to 27 below.

COLONIAL STOCKS ACTS

20. The Swaziland Delegation confirmed that legislation would be enacted in Swaziland in the form appropriate to an independent country safeguarding the position of holders of stock issued by the Swaziland Government under the Colonial Stock Acts.

PUBLIC OFFICERS AGREEMENT

21. It was agreed that Her Majesty's Government and the Government of Swaziland would enter into a Public Officers Agreement in accordance with normal arrangements when independence was achieved.

TREATY RIGHTS AND OBLIGATIONS INHERITED FROM THE
BRITISH GOVERNMENT

22. At the request of the Swaziland Delegation the United Kingdom Delegation undertook to provide the Government of Swaziland with information relating to the international arrangements concerning the boundaries of Swaziland.

COMMONWEALTH MEMBERSHIP

23. The United Kingdom Delegation informed the Conference that the Commonwealth Secretary-General had advised them that all members of the Commonwealth had agreed that Swaziland should become a member of the Commonwealth on attaining independence.

LAND

24. Although this did not form part of the discussions on the Constitution, the Swaziland Delegation presented to the United Kingdom Delegation a claim in respect of the remainder of the land of the Swazi Nation which had been alienated in consequence of Orders in Council empowering such alienation after Britain assumed responsibility for the administration of Swaziland in 1903.

25. The Swaziland Delegation recalled that the complaint of the Swazis had been elaborated in petitions and memoranda submitted to the British Government over the years by the Swazi King. They maintained that the alienation of land was not justified on the following grounds:

(a) The assumption of jurisdiction under which alienation was effected was in breach of treaties providing for guarantees of the land rights of the Swazis.

(b) The granting of freehold titles of approximately two-thirds of the land area of Swaziland to concessionaires who enjoyed limited leasehold rights with terminable dates in almost all cases, was contrary to the traditional land tenure system which the British Government undertook to respect.

(c) The sale of further Crown Land to finance the administration of the Territory after the partition of Swaziland was in breach of undertakings to reserve such areas exclusively for Swazi Occupation.

26. The United Kingdom Delegation stated that, as they had consistently made clear in the past, they could not accept this claim. When the British Government had assumed responsibility for the administration of Swaziland they had inherited a land problem of indescribable confusion resulting from concessions which had been granted by King Mbanzeni between 1878 and 1890. These concessions had covered almost the whole of the Territory, and in many cases were overlapping. In some instances, also, they had been found to be in perpetuity. In the view of the British authorities of the day, the problem was such that it could only be solved by compromise and accommodation. While the United Kingdom Delegation recognised that the settlement may have resulted in individual hardships, they believed that, over the years, it had also brought considerable benefits to Swaziland. They recognised that the Swazis were not abandoning their claim; but the United Kingdom Delegation make it clear that Her Majesty's Government could not accept it. The Swaziland Delegation said that they regard the alleged confusion as not justifying the remedy of land alienation.

27. While it proved impossible to reconcile the views of the United Kingdom and Swaziland Delegations, the United Kingdom Delegation suggested that a practical

way of tackling the problems might be for the Swaziland Government to include suitable land settlement projects in the Development Plan they were now formulating, and the question of assistance towards the financing of this Plan could then be discussed with the United Kingdom in the context of future aid negotiations. The Swaziland Delegation, however, stated that their claim for the restoration of the land as of right was an issue separate from a development aid programme.

SWAZILAND INDEPENDENCE CONFERENCE, 1968

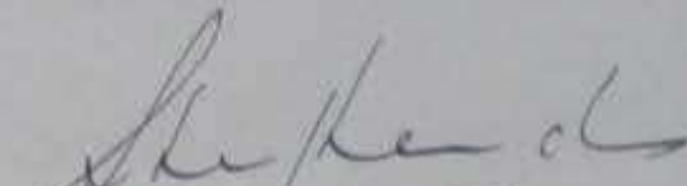
REPORT

Signed at Marlborough House, London, S.W.1.
on FRIDAY, 23 FEBRUARY, 1968

UNITED KINGDOM



Secretary of State for
Commonwealth Affairs



Minister of State for
Commonwealth Affairs

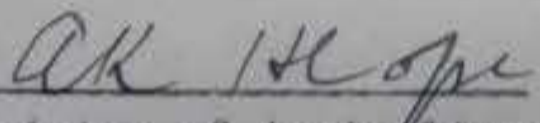
SWAZILAND



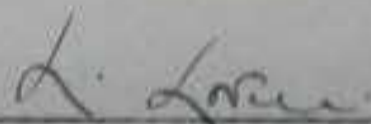
Prime Minister



Minister of Works,
Power and Communications



Minister of Agriculture



Minister of Finance,
Commerce and Industry



Minister of Health



Senate

SECRETARY-GENERAL



LIST OF THOSE ATTENDING THE CONFERENCE

UNITED KINGDOM

Secretary of State for Commonwealth Affairs,
The Rt. Hon. George Thomson, M.P.

Minister of State for Commonwealth Affairs,
The Rt. Hon. The Lord Shepherd

Officials

Sir Arthur Galsworthy, K.C.M.G.	Mr. D. G. Maurice
Mr. H. P. Hall, C.M.G., M.B.E.	Mr. W. C. Carrocher
Mr. M. G. de Winton, C.B.E., M.C.	Mr. G. Foggon
Mr. I. H. Cruchley	Mr. I. H. Harris
Mr. T. R. M. Sewell	Mr. J. E. Whitelegg
Mr. A. McM. Webster	Mr. R. F. R. Deare

Her Majesty's Commissioner, Swaziland

Sir Francis Loyd, K.C.M.G., O.B.E.

SWAZILAND

The Hon. Prince Makhosini Dlamini	Prime Minister
The Hon. L. Lovell	Minister of Finance, Commerce and Industry
The Hon. P. L. Dlamini, O.B.E.	Minister of Works, Power and Communications
The Hon. A. K. Hlope	Minister of Agriculture
The Hon. Dr. A. M. Nxumalo	Minister of Health
Mr. C. F. Todd	Senator

Officials

Mr. W. A. Ramsden	Attorney-General
Mr. H. M. Roemmele	Secretary to the Cabinet

SECRETARIAT

Mr. A. W. B. Strachan
Mr. R. G. Hyde
Mr. R. Weston
Mr. P. M. Platts
Miss I. Walton