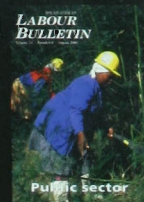
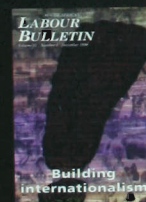
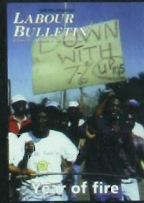
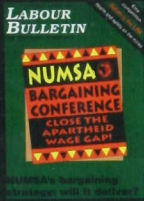
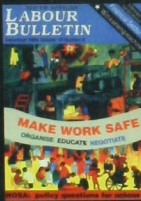
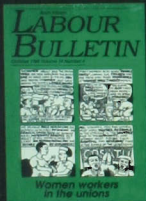
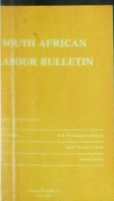


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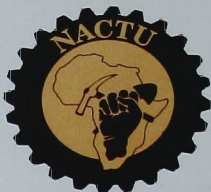
# LABOUR BULLETIN

Volume 24 Number 6 December 2000

S. 741 183 5/00



# Where to now?



**AN INDEPENDENT DEMOCRATIC WORKING  
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## itorial notes



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and Warren Parker) for all  
ensure a successful 2000

*Tanya van Meelis*  
Editor

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Where to now? This special edition theme tries to capture some of the major challenges facing the labour movement as it moves into 2001

Some articles raise legal challenges – Mlamuli Makhubo and Phillemon Moghamme assess the impact of the proposed labour law amendments, Shane Godfrey and Darcy du Toit propose making workplace forums compulsory for companies with over 50 employees, Anton Roskam and Dons Tshepe put forward ideas on how to better deal with retrenchments. Organisational challenges are captured in Chns Bonner's outline of challenges facing trade union education, Karl von Holdt's analysis of ungovernability in unions; Liesl Orr's understanding of COSATU's gender policy and how it was adopted at COSATU Congress, and John Pape's explanation of how SACCAWU is using research and publications to mobilise members around parental rights

Simiso Nkwananya's reply to Dale McKinley's article in the previous edition adds to the debate on political challenges facing unions. Challenges around vulnerable workers are captured in Jan Theron's article on responding to externalisation and Natasha Distiller's article on the need to decriminalise sex work. While the range of articles provide food for thought, the limited space (even in this extended edition) does not allow for us to capture all the challenges facing labour or all the different views on how to address these challenges. Doing this is part of a longer and exciting process for the Bulletin. Next year, we



together with other partners and generous funding by FES, will be hosting a small conference on the future of organised labour. This edition will hopefully feed into the conference, while the conference outcomes will feed into further editions of the *Bulletin*.

We can celebrate surviving another year and providing our readers with a quality publication at below cost. This is made possible by our funders' generous support. We are thus very grateful to the American Center for International Labor Solidarity, Entraide et Fraternité, Friedrich Ebert Stiftung (FES) and the Strengthening Civil Society Fund – Department of Labour. Our columnists – Cheadle, Thompson and Haysom, the Competition Commission, Nedlac, and the NPI – have continued to provide us with quality articles and helped us improve our self-sufficiency.

Lastly, I'd like to thank the *Bulletin* staff, Board members and extended family (William Matlala, Di Stuart, and Warren Parker) for all their hard work to ensure a successful 2000.

Tanya van Meelis  
Editor

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*The views expressed by contributors are not necessarily those of the editorial board of Umnyano Publications*

## Strange days

### CRUCIFY THEM

Sometimes REDEYE feels lazy and not in the mood to look for things to write a column on. Luckily, it is not necessary to be diligent when writing a column like this what with people like Tony 'ya balho ka moka' Leon around.

REDEYE could devote this whole column to the Democratic Alliance's posters. It could start with Leon's 'don't stand so close to me' pose, continue with the quick tan he or his poster people used and end with the replacement of the 'unfair property rates' slogan with the new and improved 'for all the people'.

However, REDEYE will only focus on one poster *this time*. It proclaims 'Nail them and jail them'. Now REDEYE is aware that a lot of Leon's followers support the death penalty. REDEYE just hopes the DA has not gone even further by calling for the introduction of crucifixion.

### JOHNSON-ING THE GOVERNMENT

In this issue of the *Bulletin* readers will notice ads congratulating the *Bulletin* on its 25 years of existence.

Astute readers will notice that there is no ad from the government. REDEYE needs to explain this: If the government decided to put an ad in the *Bulletin*, it would have had to pay for it. But REDEYE thought it would be useless contacting Essop Pahad for a paid ad.

REDEYE suggested the *Bulletin* ask Shaun Johnson to ask Minister Pahad for an ad as he is independent.

REDEYE wanted to call him at his office but could not find a government telephone

directory. Strange days indeed! Indeed!

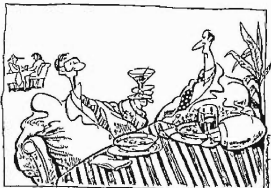
### QUOTAS, QUOTAS, QUOTAS!

Some local companies are creative and forward thinking. They see niches and grab the opportunity to fill them. They embrace change and abide by new legislation.

REDEYE heard of such a company.

It seems there is a simpler, faster, better way of filling up your quota of disabled people in the company according to the requirements of the Employment Equity Act. Send out an e-mail to existing employees urging them to report any disability they might have to the human resource office. Those with disabilities can then be included in the reports on employment equity for the Department of Labour.

REDEYE is now waiting for e-mails that ask whether there are any white people with a black ancestor. The really desperate companies might consider looking for males with a female ancestor.



"If we pay them starvation wages—  
why do they need a lunch break?"



Dear Editor,

The comment by John Pape in the October 2000 edition of the *Labour Bulletin*, refers

The comment makes certain broad sweeping statements in relation to FEDUSA which are incorrect and misleading. I trust you will rectify this matter in your next edition. I discussed Mr Pape's article with him and he advised me that his article intended challenging an article written by Etienne Vlok in your June 2000 edition, which allegedly stereotyped both FEDUSA and COSATU.

This might be so, but in doing this he should have based his conclusions on the correct facts. I intend addressing some of these conclusions and assumptions now.

Firstly, FEDUSA is not in anyway 'apolitical'. FEDUSA is politically independent and non aligned. A federation is by its very nature a 'political animal' and FEDUSA is no exception.

Mr Pape further states that FEDUSA passes few resolutions and policies. This is not correct. The FEDUSA national committee and management committee meet on a regular basis, where policy is formulated and resolutions are taken. Our congress, as the highest decision-making body, ratifies these decisions.

I have invited Mr Pape to pay the FEDUSA head office a visit next time he is in Johannesburg, in order to acquaint him with some of these resolutions and policies. I sincerely hope he takes up the offer.

Five of the six FEDUSA national office bearers (president, three vice-presidents and national treasurer) are elected by congress. Only the general secretary is

appointed. For Mr Pape to state that most of the top leadership is appointed is clearly not correct.

FEDUSA is a non-racist, gender sensitive federation which organises any worker regardless of his/her political affiliation. Our membership spans the full political spectrum.

We therefore have socialists, conservatives and others within our ranks. To label us as conservative, stereotypes us, albeit incorrectly, and Mr Pape is accordingly in no position to criticise Mr Vlok, who wrote the first article. The majority of our members are not socialists, nor are they conservative. I would imagine they view themselves as being social democrats.

The biggest mistake Mr Pape has made is to link FEDUSA's operation to the colour of a person's skin and gender. FEDUSA focuses on worker related matters with due cognisance being taken of wider socioeconomic issues. Anything to the contrary cannot be substantiated.

Whether you are black or white, male or female does not matter to us. Mr Pape should read our constitution. This document and other relevant information may be found on our web site at [www.fedusa.org.za](http://www.fedusa.org.za).

Finally, FEDUSA was formed on 1 April 1997 and as such is barely three years old. Only Mr Pape will know what the 'noticeable changes within FEDUSA in the last couple of years' are.

As far as we are concerned being relevant, effective and outspoken is 'business' as usual.

Yours faithfully,

*Chez Mlanti*  
General secretary, FEDUSA

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# Restructuring and job security

We often speak to union organisers and workers who want to try and interdict retrenchments. They are angry when we tell them that an urgent interdict will probably not be successful. They are dependent when the Labour Court rejects their urgent interdict application. Their sense of outrage is even greater when the Labour Court interdicts their attempts to engage in strike action over these matters.

Unions seem powerless in the face of the tidal waves of retrenchments that result from business restructuring. They blame the law and the Labour Courts. What are the answers?

The answers are not only legal, they are, in the main, economic. Unions must be equipped to challenge the restructuring and job losses that are taking place at each enterprise. In order to do this they need alternative ideas. But they also need to be able to create the legal space that allows them to advance their ideas and interests.

We want to add some thoughts to what labour's strategic programme to address restructuring and job losses could entail. These thoughts do not constitute a complete answer. We will concentrate on ways to create space for labour to campaign for its alternative ideas.

In most cases the process of dialogue between union and management is either

*Anton Roskam and Doris Tsbepe investigate from a legal point of view possible ways to counter-act the job losses that result from business restructuring.*

confined to a consultative forum or a forum dealing with retrenchments. It is in the process of consulting about retrenchments and restructuring that unions feel weakest. The reasons for this vary, but include that some union organisers mistakenly believe that workers cannot strike about consultative issues. Other reasons relate to campaigning for appropriate collective agreements and the fact that unions do not have the resources, capacity, skills or expertise to contest complex restructuring models, for which management has usually hired expensive 'expert' consultants. These restructuring models are made all the more complex when restructuring and retrenchments are intertwined.

## Multi-faceted strategy

Unions should not confine the programme for creating the legal space to advance

Column contributed by Cheadle, Thompson and Haysom

their ideas and vision to one front. A multi-faceted strategy is called for, which includes:

- creatively using the strike weapon about issues relating to the restructuring and retrenchments;
- relating to restructuring and job security;
- challenging some of the perspectives argued at (and adopted by some judges of) the Labour Court,
- campaigning for changes to the LRA, particularly section 189.

These strategies are not mutually exclusive, and indeed, it would be unwise to concentrate all the union movement's energy on one of them. We will consider each in turn. However, because so much has already been written about changes to section 189 of the LRA, we will concentrate on the first three.

### The strike weapon

For some strange reason a notion has developed in union and management circles that workers cannot embark upon protected strike action about consultative issues, only negotiable ones. This is a fallacy - it is incorrect.

Protected strikes may take place about all matters that are of mutual interest between employer and employee except matters covered by section 65 of the LRA. Key amongst these exceptions are that workers may not strike if a party has the right to refer the matter for adjudication (ie to arbitration or the Labour Court) or the matter is already regulated by an agreement.

Therefore, even if management is 'consulting' about a matter, a union is not precluded or prevented from tabling a demand on the issue and referring a dispute in terms of the applicable dispute resolution procedures. Once the dispute resolution procedures are completed the

workers may embark upon protected strike action in support of that demand.

The situation is trickier when it comes to strikes over restructuring issues that will lead to retrenchments because the LRA requires disputes about unfair retrenchments to be adjudicated upon (ie referred to the Labour Court). Management often tries to re-craft the dispute as one that is about retrenchments, which would make a strike unprotected.

The Labour Court, when assessing whether a strike is protected or not, will not simply look at the demands to ascertain the issue in dispute giving rise to the strike action. They will look at all relevant materials including minutes of meetings, correspondence, etc to see what the true issue in dispute is.

This means that unions must be careful about how they declare and process disputes because they are always in danger of having their strike action declared unprotected and interdicted.

However, strike action is certainly not precluded. Unions need to:

- identify early on in the process of engagement the issues that would be organisationally best to mobilise their membership on;
- carefully define the dispute so that the workers are not precluded by section 65 of the LRA from embarking on strike action;
- process the disputes timeously so that there is a need to exercise power the union is able to call out a strike within as short a time as possible.

The kinds of issues that workers can strike about include:

- job security collective agreements;
- re-employment collective agreements;
- severance packages;
- private internal dispute resolution procedures;

- preferential tenders for retrenched workers,
- a ban on outsourcing, casualisation, alternatively arrangements relating to outsourcing and casualisation that protect workers' terms and conditions of employment, benefits, bargaining arrangements and health and safety conditions, etc

There are many other issues that workers could strike over. All it requires is creativity.

### Collective agreements

Linked to the creative use of the strike weapon is the demand for job security collective agreements.

The LRA provides for labour market flexibility in the sense that management and unions may conclude a collective agreement about virtually any matter of mutual interest. The concept 'matters of mutual interest between employer and employee' is very broad.

Therefore unions need not rely upon the LRA where it is not in their interests. They may propose and campaign for collective agreements that protect job security. When management refuses to sign the collective agreements unions may call for strike action that is in support of the collective agreement. Whether the collective agreement is concluded or not is a question of power.

But what should the collective agreements contain? The answer to this question is not easy. Collective agreements of this nature are complicated and difficult to draft. They require much thought and creativity.

Some of the issues that these collective



*Retrenched workers should be confident that their union did all that was possible to save jobs*

agreements should cover include:

- what should be contained in a notice of possible restructuring and retrenchment,
- when should management inform unions of their intention to restructure;
- the information that should be disclosed to the union,
- resources, including the provision of expert consultants, that will be put at the union's disposal (at management's expense) to analyse the information,
- alternatives to retrenchment that must be considered by management before proposing the possible restructuring and retrenchments,
- legitimate reasons for dismissals for operational requirements, including

what constitutes a substantively fair dismissal;

- when it is appropriate to outsource, if ever;
- the process of bargaining and disclosure of information that must take place before transferring employees in terms of section 197 of the LRA;
- the minimum conditions upon which transfers in terms of section 197 may take place, including the effect of such transfers upon employees' benefits (for example, pension and provident funds, medical aids, etc) and bargaining arrangements;
- a dispute resolution process in terms of which, for example, the substantive and procedural fairness of retrenchments may be tested by way of expedited mediation and arbitration before the dismissals take place, or, the business decision to retrench is adjudicated upon;
- the terms of re-employment of dismissed workers;
- severance payments and contributions to medical aids and housing subsidies for workers who are dismissed and remain unemployed;
- work security and training funds for employees who are retrenched

Too often the restructuring and retrenchment process is dominated by management's proposals. All the union is left to do is haggle about the severance package and social plan. By being proactive workers could put in place job security agreements that make it more difficult for businesses to retrench without a genuine operational necessity. It may also open up the space for unions to contest the need for the retrenchments and propose alternatives. Businesses may then think twice about dismissing and will genuinely seek alternatives that cater for workers' job security interests.

## The Labour Court

Management lawyers at the Labour Court are advancing a number of problematic arguments when it comes to retrenchments. Unfortunately these arguments seem to be increasingly accepted.

The first is that the Labour Courts tend to conflate the substantive fairness of a retrenchment with whether there is an operational requirement. Substantive fairness of a dismissal is much more than whether or not the dismissal is based upon an 'economic, technological, structural or similar need' of the employer.

Substantive fairness involves considering all relevant factors including:

- the context within which the retrenchments are taking place;
- the nature of the operational requirement;
- whether there was a rational and justifiable connection between the operational requirement and the dismissals;
- whether the dismissals were necessary;
- the impact of the dismissals on the dismissed employees;
- whether there were any reasonable alternatives, in particular whether there were less restrictive and less disadvantageous means to achieve the employer's purpose;
- whether the operational requirement giving rise to the dismissals was the fault of the employer;
- the extent, if any, to which the employer was able to foresee the operational reasons for the dismissals and whether the employer took any reasonable steps to prevent these operational reasons;
- whether the employer took any steps to minimise the disadvantage or harm caused to the dismissed employees and the reasonableness of these steps



*Unions must be careful about how they declare and process disputes to ensure protected strike action*

Unions and their lawyers need to raise these issues when challenging unfair retrenchments in the Labour Court. If they do not do this then we should not be surprised to find that the Labour Court adopts a very narrow interpretation of what constitutes substantive fairness, which in effect is whether or not there is a justifiable operational requirement.

The second argument often put forward by company lawyers is that workers who are to be retrenched should not be able to approach the Labour Court for an urgent interdict because they have an alternative remedy. That remedy is to declare a dispute, have it conciliated and then approach the Labour Court in the normal course.

At the request of management the Labour Court sometimes ignores the effect of a retrenchment before the matter eventually is adjudicated upon at the Labour Court, which can be in excess of

two years. How does an employee pay a housing bond in the interim? How does a parent pay for school fees in the interim? How does a dismissed worker buy food for her dependant parents or children? These issues are for some judges irrelevant. The worker must simply cope until the trial in two years time.

Moreover, in many cases once the matter is heard at the Labour Court re-instatement is impossible or impracticable.

This is where workers feel the Labour Court is not even-handed. The Labour Court is willing to intervine and interdict a strike on an urgent basis. They do not tell the employer that it cannot interdict because it has an alternative remedy, namely to sue for damages in the normal course. But when it comes to retrenchments they send the workers away and in effect tell them to come back much later.



*Unions need to find creative ways of challenging job losses resulting from restructuring.*

Unions and their lawyers must vigorously contest this trend of denying workers the right to approach the Labour Court for an urgent interdict before a retrenchment takes place

### The LRA

A lot has been said about section 189 of the LRA. In principle the problems are threefold:

- ❑ No guidance is given to the Labour Court in the LRA or the Code of Good Practice on Dismissals (that is a schedule to the LRA) about what constitutes substantive fairness in the context of retrenchments. This must be spelt out in greater detail.
- ❑ Management easily dominates the process of consultation in section 189 of the LRA. Where possible, control of the process should be arrested from management and placed in the hands of neutral third parties.
- ❑ Workers are not able to exercise power about retrenchments, even where the

disputes that manifest about the retrenchments involve restructuring issues about which there may be deep differences between unions and management. An example of this is privatisation or partial privatisation. Unions need to campaign for changes to the LRA. We suggest that the amendments to the retrenchment provisions concentrate on the problems referred to above.

Labour cannot rely upon possible changes to the law only to bail them out of the quagmire they find themselves in. A multi-faceted strategy is necessary to create space to contest the restructuring process so that workers' interests, which presently relate to job security, are protected and advanced ★

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*Anton Roskam and Doris Tshepe are attorneys at Cheadle Thompson and Haysom Inc. The views expressed in this article are their own and not necessarily the views of the firm*



# Workplace forum proposals

## *opportunity or threat?*

One of the most contentious issues during the Nedlac negotiations over the new LRA was the provision for workplace forums. It is rumoured that on one occasion business heatedly debated this topic with labour into the early hours of the morning. Agreement could not be reached and business eventually conceded defeat. The workplace forum, they stated, was not the most important item on their agenda and they were not prepared to push it further. They therefore agreed with labour that the entire chapter in the bill dealing with workplace forums might as well be scrapped.

At that point Tito Mboweni (then Minister of Labour) intervened. He told the weary negotiators that government would not consider dropping workplace forums from the Act. They were of fundamental importance to the new industrial relations regime being introduced and would be included no matter what. If the parties could not agree to a remodelling of the workplace forum provisions, they would go into the Act as is. The negotiators had no alternative but to stick to their task. Negotiations continued and eventually an agreement around workplace forums was reached, which was included in the Act, passed in September 1995.

The key features of this model were as follows:

- A workplace forum can only be

*Shane Godfrey and Darcy du Toit report on research done on worker participation and workplace forums. They conclude that workplace forums should be made compulsory for firms with over 50 employees but should be limited to compulsory information sharing only.*

established in a workplace with more than 100 employees

- A workplace forum can only be established if a majority registered trade union (or two or more registered unions that together have majority membership) applies for its establishment
- A workplace forum is elected by all employees in the workplace (excluding senior management), and is charged with representing the entire workforce, whether or not they are union members. If certain conditions are met, a union-based workplace forum can be established, which will entitle the union to appoint its shopstewards as the forum representatives
- The employer and trade unions have a

completely free rein to negotiate the design of the forum. If they reach an agreement in this regard none of the provisions of the Act apply (ie they are not bound by any of the provisions of the Act in designing the forum), although the forum will be a statutory workplace forum. Only if no agreement can be reached after facilitation by the CCMA may the commissioner determine the constitution of the workplace forum in accordance with the Act.

- The employer must hold regular meetings with the workplace forum at which it must present reports on the firm's financial and employment situation, its performance since the last report, and its anticipated performance in the short and long term. The employer must, furthermore, consult the forum on any matter arising from the report that may affect employees in the workplace.

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*A workplace forum is entitled to be consulted by the employer about proposals relating to a long list of operational matters, including restructuring the workplace...*

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- A workplace forum is entitled to be consulted by the employer about proposals relating to a long list of operational matters, including restructuring the workplace (notably the introduction of new work methods and new technology), changes in the organisation of work, partial or total plant closures, operational requirements dismissals, and criteria for merit increases or the payment of

discretionary bonuses. Matters can be added to this list by collective agreement or by a bargaining council with jurisdiction.

- The employer must consult and reach consensus with a workplace forum before implementing any proposal concerning four further matters, namely disciplinary codes and procedures, rules relating to the conduct of employees in the workplace, affirmative action measures, and changes to the rules of social benefit schemes. Further matters can be added to or removed from this list by collective agreement. If consensus cannot be reached over any proposal regarding the above four matters it must be resolved by arbitration.
  - The workplace forum can also call for a meeting with the employer to review existing criteria for merit increases or the payment of discretionary bonuses, disciplinary codes and procedures, and rules relating to the conduct of employees in the workplace.
  - An employer must disclose to the workplace forum all relevant information that will allow the forum to engage effectively in consultation and joint decision-making.
  - A workplace forum can invite any expert to attend meetings of the forum, including meetings with the employer, and such an expert is entitled to any information to which the forum is entitled. Office-bearers or officials of the representative trade union may also attend meetings of the workplace forum, including meetings with the employer.
  - If the workplace has 1 000 or more employees the forum can appoint one of its members as a full-time member.
- Mboweni's insistence on workplace forums remaining a part of the LRA is not

surprising. The drafters of the Act had been given a brief to give effect to government policy as reflected in the Reconstruction and Development Programme (RDP), which called for legislation that would 'facilitate worker participation and decision making in the world of work'. This included 'an obligation on employers to negotiate substantial changes concerning production matters or workplace reorganisation within a nationally negotiated framework'. Furthermore, the explanatory memorandum that accompanied the Act in its earliest version stressed the importance of workplace forums for the process of enterprise restructuring to improve productivity and become internationally competitive. They were thus seen as institutions that had a vital role to play in securing economic growth.



Former Minister of Labour, Tito Mboweni

### Non-compulsory

Given these imperatives it is perhaps surprising that the establishment of workplace forums was left in the hands of representative trade unions rather than being made compulsory. It is particularly surprising when one notes that German and Dutch works councils, which served as reference points for the drafters of the Act, are compulsory. The government, however, took heed of labour's perception of workplace forums as a threat to union organisation and left the power to establish forums in the hands of unions.

A number of commentators expressed concern that this would undermine the effectiveness of statutory worker participation. Events have proved them correct. The rejection of workplace forums by COSATU unions has meant that in the four years since the LRA was promulgated, only 78 applications have been made for

workplace forums. The requirements of the Act were met in only 17 instances and

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*Many governments would have been tempted either to drop workplace forums from the statute or to bite the bullet and make forums compulsory. The South African government has done neither...*

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workplace forums established. Statutory worker participation has therefore to date been a failure. Many governments would have been tempted either to drop workplace forums from the statute or to bite the bullet and make

forums compulsory. The South African government has done neither, although the proposed amendments to the LRA signal that the government is as committed as ever to workplace forums. The amendments envisage that workplace forums may also be established in the following workplace situations:

- where there are less than 100 employees, a forum can be established in firms of any size;
- in which there is no registered trade union, the majority of employees can apply to establish a workplace forum;
- in which the majority of employees are not trade union members, a registered trade union can apply to establish a workplace forum together with non-union members if a majority of the total workforce support the application. In other words, the applicant union does not have to represent a majority of employees in the workplace as long as the application has the support of the majority of employees.

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*The proposed changes to the Act will therefore increase the possibility of workplace forums being established in workplaces of all sizes, if there is majority support for a forum, other than in those workplaces in which there is a representative registered union that does not wish to trigger a forum.*

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The proposed changes to the Act will therefore increase the possibility of workplace forums being established in workplaces of all sizes if there is majority support for a forum, other than in those

workplaces in which there is a representative registered union (or a single unrepresentative registered union) that does not wish to trigger a forum. The existing rights of registered trade unions should in most cases not be undermined since a workplace forum does not infringe on those rights, and employers will not be able to collude with minority groups of employees to establish 'sweetheart' forums because majority support is always needed.

The overall effect on unions will probably depend very largely on the unions themselves, and especially on their capacity to support their members at workplace level. German and Dutch experience shows that works councils in non-unionised workplaces tend to become dependent on union support for training, bargaining expertise etc. Unions which lack this capacity may well struggle to organise employees at non-unionised firms that have established workplace forums, and will also probably struggle to make any headway against a competing registered (unrepresentative) union that has established a forum at a firm.

But the worst-case scenario of employees resigning *en masse* from a union with which they are dissatisfied in order to establish a workplace forum is unlikely to materialise as long as workplace forums lack the power to bargain over wages, represent workers in disciplinary proceedings or perform other functions that unions normally perform. The Act does not allow workplace forums to do any of these things.

## Response

The continued commitment of the government to workplace forums and the proposed amendments call for a response from unions. What should this response be? A lengthy research project on worker



*Unions prefer to engage management in shopsteward management meetings and negotiations*

participation commissioned by the Workers' College, done in conjunction with a research project sponsored by the South Africa Netherlands Project for Alternatives in Development (SANPAD) comparing worker participation in South Africa, the Netherlands, Belgium and Germany, gives some pointers

Firstly, workers and unions must not view the envisaged changes in isolation. What is needed is a thorough debate about the workplace forum model as a whole and worker participation in general. The above research indicates that while most unions have rejected workplace forums, similar non-statutory worker participation schemes, initiated and largely designed by management, are thriving at many firms, often with the active participation of members of unions that reject workplace forums. In many cases unions seem to have little knowledge of these schemes and do not have guidelines for their members as to how they should engage in

them. The rejection of workplace forums therefore does not stop worker participation or any threat that this might hold for union organisation. Policy needs to be developed around workplace forums and non-statutory forms of worker participation.

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*It was almost impossible to establish what union federations' policy was on workplace forums or worker participation.*

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It was almost impossible to establish what union federations' policy was on workplace forums or worker participation. Only in the case of FEDUSA were we able to establish what the official policy was – it did not have an official policy, it was left to affiliates to decide. For the rest, federation officials seemed to want to

keep as far away from the issue of workplace forums and worker participation as possible.

An earlier phase of the research had found that at the affiliate level there was a lack of clarity about union policy on workplace forums and worker participation. There was also a lack of understanding of the LRA's provisions in respect of workplace forums. Unions were, furthermore, receiving little direction from their federations on these issues. All this points to an absence of debate in unions about workplace forums and worker participation. It is therefore not surprising that union members are being drawn into participatory schemes being initiated by management.

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Much of the above is well known. The September Commission pointed to the lack of experience amongst officials with regard to worker participation and the absence of strategies for implementing participatory engagement. Its conclusion was for COSATU 'to develop the experience and expertise within the unions to engage in workplace democratisation'. In line with this objective it proposed that 'every affiliate should set up a project team to target three to four companies or workplaces for pilot projects'. The idea was that the project team would 'drive a programme for workplace democratisation at the targeted companies',

in order to 'build up a cadre of experienced shopstewards and head office officials - who can then support shopstewards in an increasing number of workplaces'. In this way, 'a strategy for implementation becomes at the same time a strategy for building capacity'.

It is unclear whether any affiliates have set up such project teams. Our research did not encounter any. It is also unclear whether, given the speed at which management appears to be moving in introducing participatory schemes (and the possible impact of the proposed amendments), unions will be able to build capacity quickly enough to allow their members to engage effectively in participatory structures.

The research concluded that building capacity to engage in participatory structures is the key for unions. But how can the LRA be amended so as to allow unions time for building capacity without losing the potential benefits of workplace forums (namely the rights that they give to workers), and without posing any threat to union organisation?

### **Proposal**

Our own proposal, based on the findings of the above research projects, is that workplace forums should be made compulsory in all firms above a certain size (say 50 employees). But the function of such a compulsory forum should be limited to information-sharing only - ie they will not take part in consultation and joint decision-making. At the same time extensive training programmes must be developed by government and unions to build the capacity of officials and members to participate in decision-making in firms. Such programmes should provide both procedural and substantive training, ie training in problem-solving skills as well as training on financial statements, job

grading systems and other topics of consultation and joint decision-making

Although we propose that consultation and joint decision-making should not be compulsory, we do not believe they should be removed from the statute. Unions should retain the right to 'trigger' consultation and/or joint decision making rights at a workplace once they believe that their members are ready for such a level of engagement. In doing so the sort of flexibility to customise the workplace forum through collective agreement that is currently part of the Act should be retained.

### Implications

What will such a change to the workplace forum model mean for unions? Firstly, statutory structures for participation will be secured at all workplaces with more than 50 employees but limited to information-sharing only. Because they would not have consultation or decision-making powers, such forums could not compete with union organisation.

At the same time unions' capacity will be boosted by the extensive training programmes that we believe should be introduced by government and unions. Then when a representative union believes that its members have the capacity to effectively consult and jointly decide issues with management and that such consultation and joint decision-making will not undermine collective bargaining, it can trigger these rights.

It should be noted that the more unions are active in capacity-building and developing supporting expertise and services for their members in workplace forums, the less the threat such structures will pose for organisation. In fact, the more unions display their abilities in regard to workplace forums the more they could actually become vehicles for organising previously unorganised workers.

There is no guarantee at this point that government would be prepared to pump money into a training programme on worker participation or whether such a programme could be financed via the new skills development dispensation. However, the amendments need to be negotiated at Nedlac.

The compulsory system that we argue for above should be very attractive to government given its strong commitment to workplace forums. The trade-off that unions should demand for showing their support for such a system could be a commitment from government to finance training and capacity-building. The trade-off from employers will be paid time off for forum representatives to attend such training.

The compulsory system outlined above will not stop management initiating participatory schemes. However, if management are compelled to meet with a forum and provide it with information on a regular basis – and they see that capacity is being developed amongst workers with a view to upgrading that forum in future for the purpose of consultation and joint decision making – they are likely to have less incentive for setting up a competing structure that may be sidelined in a few years. A system of compulsory forums that provides unions with the right to upgrade their powers could have the effect of 'crowding out' management-initiated structures. It would certainly be better than the situation that currently prevails – or the situation that might be ushered in by the proposed amendments. ★

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*Shane Godfrey is senior researcher in the Labour and Enterprise Project, based in the Institute of Development and Labour Law and the Sociology Department at the University of Cape Town. Darcy du Toit is Dean of Law at the University of the Western Cape.*

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# Sex work

## *a labour issue*

**S**WEAT (Sex Worker Education and Advocacy Taskforce) is a Cape Town based NGO that provides information and education to sex workers on the issues of safer sex and human rights

Its service delivery programmes over the past seven years have focused on direct outreach work with sex workers, working both indoors (in massage parlours, escort agencies and brothels) and outdoors (on the streets)

The term 'sex worker' has been adopted by sex workers themselves. The word 'prostitute' has many negative connotations. It implies specifically a woman who refuses to obey the rules for 'good' women in our communities. It has often been used to suggest that there is something 'wrong' with the woman – it is a comment on her psychological state. It also focuses on the ways in which sex workers are different from other workers, and reinforces the idea that sex workers should be outcasts from society. This exclusion makes the sex worker vulnerable to abuse, because outcast status denies sex workers the legal, social and other protections that are available to workers.

The phrase 'sex worker' points out that people (both men and women) who sell sex for a living are engaged in a form of work. It shifts the emphasis from a moral judgement to a discussion about labour

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*Natasha Distiller outlines the conditions that sex workers work under and calls for decriminalising and regulating the adult commercial sex work industry:*

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and human rights. The relationship between sex worker and client is one of an exchange of labour for remuneration. Accordingly, different services have different prices. In addition, sex workers offer a variety of services, from sexual acts of all descriptions, to stripping, escorting, and massaging.

When SWEAT talks about sex workers, we mean adult commercial sex workers. Children are legally protected against sexual abuse by laws that already exist, and the exploitation of underage sex workers is a different issue from that of consensual adult commercial sex work.

Issues facing sex workers in a criminalised system are strongly related to struggles for basic human rights, and for decent working conditions, particularly for the poor who work in informal sectors. While not all sex workers are women, there are also important intersections with the problem of violence against women in South Africa.

## Human rights vs morality

There are many reasons why people enter into the sex industry. Some sex workers work full-time, some work to supplement incomes or pay off student loans. Some enter the industry for limited periods of time, some remain in the industry for years. Poverty and unemployment are also factors, and for many workers, especially on the streets, sex work is a means of survival. Some of these women and men have limited other choices. Some sex workers hate what they do, as people in many other jobs hate what they do. However, it is very important to realise that not all sex workers are victims. Many sex workers do see their work as a job.

Furthermore, there are many kinds of work done mainly by poor women that can be exploitative, like some work done on farms or in factories. This is why it is important that sex workers access their labour rights. That way, sex workers can begin to be protected from:

- doing work they do not want to do,
- being forced to work by managers, gangs, or abusive partners;
- being forced to work in conditions that are exploitative

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*The fact that sex work exists in all countries regardless of different socioeconomic conditions, and that sex workers come from all classes, races and educational backgrounds, means that sex work is here to stay.*

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The fact that sex work exists in all countries regardless of different socioeconomic conditions, and that sex

workers come from all classes, races and educational backgrounds, means that sex work is here to stay. The most important thing is to create a society where sex workers have more choices than they do currently. This means that if they want to leave sex work, they should be able to do so without being stigmatised for the sex work they have done. It means sex workers should be able to speak up for themselves without fear of arrest, abuse, or marginalisation. It is possible that the most damaging aspect of sex work is the way sex workers are judged by their communities. This judgement often forces sex workers to lie about what they do, or to remain silent about the various abuses they may have survived or continue to survive, from clients, managers, partners, or service providers such as police or health workers.

If an individual has reservations about or objections to sex work, that person is free to choose not to go to a sex worker, not to become a sex worker, not to associate with sex workers. But we have an obligation, as members of a society that is working very hard for human rights for all its members not to allow abuse, violence and exploitation to continue.

## Working conditions

Many sex workers face violence, abuse and exploitation within the sex industry. Sex workers are particularly vulnerable to rape, physical assault and verbal abuse. But it is not only clients and exploitative pimps who are violent to sex workers. Because of the criminalisation of the industry, the police, passers by and larger social communities can also perpetuate violence against sex workers freely.

The stigma and difficulties faced by all rape survivors apply to sex workers as well. However, sex workers face additional stigma and difficulty because of the

attitudes of police and the public to their work. As a result, sex workers are hesitant to report rape. Sometimes sex workers are subject to being raped by the police themselves.

The continued criminalisation of sex work in South Africa is a major factor preventing effective HIV prevention programmes amongst sex workers. Because of the criminalised nature of their work, street sex workers are often forced to work in remote or poorly lit areas where they are less visible. This means they are more vulnerable to forced unprotected sex or other forms of violence, from clients and non-clients alike. Within the broader context of violence in the criminalised industry, sex workers may face violence and abuse if they try to insist on condom use. In addition, some clients refuse to use condoms. Some sex workers, particularly those in disadvantaged socioeconomic communities, when faced with this refusal, are not in a position to argue. Alternatively, clients may offer more money for sex without a condom. In addition to this economic reality, and the threat of violence that can accompany a request for condom use, sex workers engaged in survival sex may well risk an illness that may manifest in five years if they have to feed their children today.

This raises the important question of clients' equal responsibility for practising safer sex. There is obviously a need for intervention targeted at clients. However,



*The Department of Labour has to decide if sex workers are employees or independent contractors and tax them accordingly*

clients constitute an extremely hard-to-reach population, especially when sex work is criminalised.

There are also specific labour issues faced by sex workers indoors and on the street.

### **The indoor industry**

Although supportive and respectful management does exist within the sex industry, labour practices which would be considered illegal under the LRA and the BCEA are common within the industry. No regulatory body exists to enforce

standards for work. Even where sex workers do have contracts with an agency, they have in practice no recourse to the law to enforce their rights. This means that management can break contracts at will.

Conditions faced by sex workers working for exploitative agencies include:

- very long working hours (up to 18 hours a day),
- little time off,
- arbitrary spot fines for breaking house rules, sometimes without a list of rules ever being provided,
- limitations on their freedom of movement;
- abuse by clients and managers, including the assumed right for managers to 'test drive' workers;

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*Although supportive and respectful management does exist within the sex industry, labour practices which would be considered illegal under the LRA and the BCEA are common within the industry:*

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- sex workers having to share beds and/or sleep in the same beds that they work in, sometimes without a change of linen.

In addition, the gains made for workers by the HIV movement cannot be enjoyed by sex workers. Management can insist on an HIV test, and SWEAT knows of at least one agency where workers were not informed of the results. In addition, confidentiality is not always respected.

Last year SWEAT's Indoor Outreach Project worked with a group of male-to-male agencies in Cape Town and formulated a code of conduct. This included respecting the labour rights of

sex workers, not employing underage workers, and not allowing drugs on the premises. However, there is no way to enforce this code.

One of the ways forward could be for local municipalities, which currently license escort agencies and massage parlours in the same way as other businesses, to take responsibility for enforcing a code of conduct that has been mutually agreed upon by all stakeholders, including sex workers themselves. However, for this to be effective, it would require the recognition of sex work as a legitimate form of labour and an end to the criminalisation of the industry.

### **The outdoor industry**

One controversial labour issue on the streets is that of pimping. It is important to differentiate between exploitative pimping and supportive pimping.

When a sex worker pays someone to watch over him/her to ensure his/her safety, to arrange work, or to handle his/her money, the question of who is the employer and who is the employee arises. Pimps, or managers, can also be husbands or partners of sex workers, which complicates the business relationship.

There has been an increase in gang involvement on the streets of Cape Town in recent years. This has led to exploitative pimping, more drugs in the outdoor industry, and an alarming increase in underage sex workers on the streets. It is imperative that the link between the sex industry and organised crime is broken, to ensure that workers are not being forced into working, or selling drugs, or working under exploitative conditions.

### **The way forward**

There are a number of labour issues that need immediate attention. Sex workers,

like many informal or seasonal workers, have fluctuating incomes. Street sex workers would need to be taxed in the same way as other informal workers. For the indoor industry, the Department of Labour has to decide if sex workers are employees or independent contractors, and tax them accordingly. A sectoral determination process for the sex industry would help to clarify the many issues facing workers and employers in the industry. However, sex work needs to be decriminalised in order for this to occur.

The unionisation of sex workers is also an important way to ensure that workers' labour rights are protected. However, as a result of the stigmatisation and criminalisation of their work, it is almost impossible for sex workers to mobilise publicly at the moment.

### Legal reform debate

Sex work is criminalised in South Africa under the Sexual Offences Act (1957). It is illegal to sell sex, to profit from the sale of sex, or to run a brothel. Notably, it is not a crime to buy sex. The South African Law Commission is currently reviewing the legislation that criminalises adult commercial sex work. The two broad models that are available as alternatives to criminalisation are legalisation and decriminalisation. It is important to understand the differences between the two, especially as the Law Commission's discussion document will be available for public comment, hopefully early next year.



*It is illegal to sell sex, to profit from the sale of sex, or to run a brothel.*

### Legalisation

Legalisation suggests that the sex industry is tolerated, but is still seen to require special regulation in a way that implies its difference to other industries. In a legalised system, certain conditions under which sex work is allowed to occur are defined by law. If sex work happens outside these laws, it remains illegal. Many of the laws typical to a legalised system (such as zoning, mandatory registration or health checks) do not take workers' needs into account. This makes it difficult or impossible for some workers, typically the most vulnerable, to comply with the

legislation. Accordingly, they continue to work in a criminalised industry, with little recourse to any kind of protection or access to services. In this way legalisation differs from decriminalisation in that it implies the existence of a legal industry, with an illegal industry still operating outside its borders.

### **Decriminalisation**

Decriminalisation means the removal of laws that criminalise adult commercial sex work. This does not mean the removal of laws against abuse or underage sex work. It implies that those sections of the Sexual Offences Act that criminalise adults selling sex or profiting from the sale of sex will be abolished and will not be replaced with other laws. It is also possible to decriminalise sex workers but continue to criminalise third party involvement, like managers or pimps. However, this results in a situation where significant aspects of the industry are still criminalised, and the problems associated with criminalisation continue to exist.

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*Decriminalisation has to exist with regulation, just as all industries have regulations specific to their conditions. Labour legislation that applies to other workers in South Africa offers starting-point regulation.*

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Decriminalisation has to exist with regulation, just as all industries have regulations specific to their conditions. Labour legislation that applies to other workers in South Africa offers starting point regulation. There are many stakeholders in the sex industry: management, clients,

communities within which sex work takes place, and sex workers. Any special regulation, over and above labour legislation, would need to take into account the needs of all the stakeholders.

Decriminalisation is the model most likely to take into account the needs of sex workers themselves. This is a vital aspect of any regulation of the sex industry; if the regulation is to be effective in controlling the industry within a human rights framework. Decriminalisation allows as its starting point the idea that sex work should not be seen as intrinsically different to other work, and thus has more potential to address the real needs of the workers.

Unfortunately the criminalisation of sex work in South Africa has meant there is very little sex worker activism here, but organised movements of sex workers internationally are unanimous in calling for decriminalisation as the system that best protects their rights.

The decriminalisation of the sex industry is not an automatic solution to the issues that will face local authorities when it comes to regulating the industry. But it is the only viable starting point to ensuring the rights of workers. Sex workers, like other workers, are just trying to make a living in a country where employment opportunities are limited for many. In order to give meaning to our human rights culture, their work must be recognised so that no working sector of our society is unable to benefit from the human and labour rights enshrined in our Constitution. ★

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*Natusba Distiller does advocacy work for SWEAT. SWEAT believes that decriminalising and regulating the adult commercial sex work industry is an important step towards dealing with the violence and exploitation that occurs in the industry. SWEAT can be contacted at Tel: (021) 418-7875 Fax: (021) 418-7857 email: sweat@tafrica.com*

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# Labour law amendments

## *a serious attack on workers' rights*

The current labour law amendments come against the backdrop of the chorus of 'unintended consequences' and 'inflexible labour market policies' sung by government and business. The Ministry of Labour is at pains to convince everyone within earshot that the proposed amendments represent a balance between the interests of workers, business and society.

However, we hold the view that on the whole, these proposed amendments represent a serious attack on workers' rights – gained through hard fought battles. Through this article we will attempt to show that

- some of the proposed amendments, if implemented, will reverse the major gains achieved over many decades of struggle, and
- other amendments do not go far enough in addressing the concerns they purport to

### LRA

The Labour Relations Amendment Bill, 2000 seeks to amend certain key provisions of the LRA. This article will deal with the proposed amendments that will impact negatively on trade unions.

#### *Extending agreements*

The bill aims to give employers who are not parties to bargaining councils an

*Mlanuli Makhubo and  
Phillemon Mottlhamme assess  
the impact the proposed labour  
law amendments will have on  
trade unions.*

opportunity to make representations about collective agreements which could be extended to them. Government thus attempts to relieve SMMEs of what it terms 'onerous obligations imposed by bargaining council agreements'. This, government thinks, will result in job creation.

We submit that government has bought business' argument that legislation is responsible for the lack of job creation. This is ironic when viewed against government's repeated assurances that it does not subscribe to this view. For us, the real problem is the investment strike, which can be traced back to the 70s, long before our present labour law regime. It is therefore misleading to suggest, even by implication, that 'flexible' labour market policies will result in job creation.

The effect of this amendment will be to open floodgates for employers to apply for exemption from bargaining council agreements. In terms of the proposed new section 32, the minister may not extend a

collective agreement to non-parties unless he/she is satisfied that employers who are not party to the council have been given an opportunity to make representations. If the minister decides not to extend a collective agreement because of the representations made, this will amount to exemption by default. If this happens, many workers will run the risk of being stripped of even the most basic rights. This will have catastrophic consequences for workers.

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*It is a known fact that small businesses are amongst the most exploitative employers in the labour market. This amendment will formally license them to exploit workers at will.*

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It is a known fact that small businesses are amongst the most exploitative employers in the labour market. This amendment will formally license them to exploit workers at will. The possibility also exists that some employers might hold the process at ransom and delay it.

The explanatory memorandum to the bill claims to seek to address the concern that employers and their collectives as well as trade unions are not granted the right to make representations. Yet the amendment extends this right exclusively to employers. We can safely conclude that employers are the sole and exclusive beneficiaries of this amendment.

#### *CCMA arbitration fees*

Presently the CCMA may not charge fees for conducting arbitrations. Section 25 of the bill seeks to alter this situation by allowing the CCMA to charge a fee for

conducting arbitrations involving employees who fall within a certain income bracket. According to the explanatory memorandum to the bill this is meant to discourage so-called high-income earners from referring matters to the CCMA. If this amendment is effected these workers or their unions will have to either refer matters for private arbitration or pay CCMA arbitration fees. If they refer to private arbitration they will have to jointly foot the bill with the employer as is currently the case. This would be very costly for workers and for trade unions, especially since the earning thresholds are not defined and will probably be set by the minister by proclamation.

It is unfair to punish workers on the basis of their income. It would also be a travesty of justice if the workers, whose taxes are already being used to fund the CCMA, were expected to pay again in order to use that institution's services. This proposed amendment also negates the philosophy behind the founding of the CCMA, namely, cost effective, friendly and accessible dispute resolution.

The net effect of this amendment is that it will undermine organising efforts by trade unions and thus weaken the labour movement.

#### *Unfair dismissals*

Section 41 of the bill proposes two of the most drastic changes to the LRA. These changes, if implemented, will take us back by decades.

The first seeks to set the probation period at six months, unless the parties specifically agree to a shorter period. The effect is that a probation period is set by default. Since in practice agreements at the beginning or in contemplation of the employment relationship happen at the instance of the employer, the default period will probably apply in most cases.





*Workers gained their rights through hard fought battles*

This will expose newly employed workers to a lengthy period of uncertainty about their future and does not augur well for workers and their rights

The second amendment on unfair dismissals elevates procedure over substance in dismissals for poor work performance or for incompatibility. In fact the amendment seeks to do away with the requirements for substantive fairness in these types of dismissals

Currently, in cases of dismissal for poor work performance, substantive fairness means that:

- the employee failed to meet a performance standard,
- the performance standard is reasonable and was known to the employee at the relevant time,
- the employee was given a fair opportunity to meet the performance standard,
- the sanction of dismissal was appropriate punishment for failure to

meet the required performance standard

The effect of the proposed amendment is that an employer will not be required to prove any of the above elements. Since there can be no inquiry into the reason for the dismissal, this would mean that in most cases the mere allegation by the employer that the employee was dismissed for poor work performance or for incompatibility will be accepted as fact. The potential for abuse in this situation is self-evident. At the very least this proposed amendment is sloppily drafted and will lead to problems of interpretation and applications. Many employers already flout procedural and substantive fairness principles. It is frightening to contemplate the extent of violations that will be ushered by this amendment.

As if this is not enough, the bill goes on to define fair procedure within the context of conduct-related and capacity-

related dismissals. It provides that fair procedure shall mean an opportunity for the employee to put a case forward with the assistance of a shop steward or co-employee. It then exempts employers from following this procedure, but does not define the circumstances when exemption is allowed. Employers are also exempt from the requirements of a formal hearing.

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*...any law that allows for the dismissal of employees without going into the merits of such dismissal and without giving them an opportunity to put their case on merit is inconsistent with the guarantee in section 23.*

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The proposed new section 188 is, in our opinion, not likely to pass the constitutionality test as it infringes on the right to fair labour practices conferred by section 23 of our Constitution. It should be obvious that any law that allows for the dismissal of employees without going into the merits of such dismissal and without giving them an opportunity to put their case on merit is inconsistent with the guarantee in section 23. In terms of section 2 of the Constitution, any law that is inconsistent with the Constitution is invalid. The amendment is also contrary to the principles of natural justice, particularly the right to be heard.

#### **Retrenchments**

Section 42 of the bill seeks to impose a duty on employers to give notice to the minister before they dismiss 500 or more employees in any given 12-month period. The section also empowers the CCMA to

appoint a facilitator to assist the parties in the retrenchment consultation, and spells out the powers and functions of such facilitators. We believe that the requirement of 500 is too high and if 499 employees are retrenched they receive no protection under this amendment.

We submit that the major problem with section 189 is not so much whether there should be consultation or negotiation about retrenchment. In our view the real problem is the definition of operational requirements in section 213. The definition is so broad that an employer can retrench for any reason on earth.

Employers have been known to use this definition to retrench for reasons as flimsy as 'non-core business', amongst others. This definition of operational requirements needs to be tightened to guard against abuse.

#### **Right of representation**

Sections 26, 27, 28 and 37 of the bill seek to amend the provisions of the LRA dealing with the right of representation in conciliation, arbitration and the Labour Court. The proposed amendment is on two levels. First it proposes that a director or employee of a holding company be allowed to represent a subsidiary company and vice versa, at CCMA and Labour Court proceedings.

While this amendment is not necessarily prejudicial to the labour movement, we suggest that the same underlying consideration be extended to the labour movement in the interests of fairness. Federations and their affiliates respectively, are the labour movement equivalents of holding companies and subsidiary companies. Employees of a federation should be allowed to represent an affiliate in any of these proceedings and vice versa.

The second aspect of the amendment seeks to limit trade unions' right to

represent workers at conciliation, arbitration and the Labour Court, by providing that trade unions can represent only those workers who were members of the trade union when the dispute in question arose. The current LRA does not have this proviso, so for example, workers can join a trade union after being dismissed but before making a referral to the CCMA or the Labour Court. The union would have the right to represent such workers. The Labour Court has also held that a member need only have been a member at the time that the referral is made and not when the dispute arose.

The effect of the proposed amendment is to alter this situation and entitle unions to represent only those workers who were members prior to their disputes arising. This will have the unfortunate results that one of the most valuable organising tools is taken away from trade unions. It is a well known fact that trade unions have been using CCMA cases to tap the unorganised sections of our workers. Most workers join unions because they have problems at that time.

#### *Workplace forums*

Section 17 of the bill seeks to allow minority unions and non-unionised workers to form workplace forums. The current position is that workplace forums can only be initiated by a majority trade union or by minority trade unions who jointly have a majority. This can be done only in workplaces employing more than 100 employees.



*NACTU's national education officer, Phillemon Motthamme*

If this amendment were effected, non-unionised employees would be allowed to trigger the formation of workplace forums, even in small workplaces. Some employees and employers could collude to keep trade unions out of their workplaces, which could lead to union bashing. Trade unions have for good reason, been reluctant to embrace the concept of workplace forums. Some of these reasons are:

- Very few issues are the subject matter of joint decision-making (section 86), most issues are for consultation (section 8 i). This means that the employer makes the final decision on these issues. This makes the whole consultation process a sham.
- The issues for consultation are a priority only to employers, (for

example, mergers and transfers, exemptions from collective agreements, merit increases, plant closures, workplace restructuring etc). There is a real danger that workers, and by implication trade unions, are likely to be used to rubber stamp management decisions on these crucial issues.

- There is also the concern that the workplace forums will usurp the functions of authentic bargaining forums and structures
- To the labour movement, the workplace forums look like something akin to the old liaison committees.

In general, workplace forums will tend to weaken the trade union movement and undermine any attempt to strengthen them.

#### *Costs awards*

The bill seeks to give CCMA commissioners the power to order a party or his/her representative to pay costs. The grounds for issuing such costs orders are so general that virtually all unrepresented workers and most shopstewards will not escape falling victim to these proposed new provisions. This provision will intimidate a large number of would-be claimants from referring their matters to the CCMA. This goes against the founding philosophy behind the formation of the CCMA, namely, accessibility. Furthermore, giving CCMA commissioners the discretion to determine such costs and make the orders maximises the potential for abuse.

#### **BCEA**

The Basic Conditions of Employment Bill, 2000 (the BCEA bill) proposes to amend the law regarding Sunday work and paying for it. The position at present is that an employee:

- can work on Sundays only by agreement;

- must be paid double the ordinary wage for Sunday work, or one and a half times if he/she ordinarily works on a Sunday.
- In terms of the proposed amendments, an agreement will no longer be required for an employee to work on Sundays and they will only be paid their ordinary wages. If the government should go ahead with these two amendments, they will have gone too far and will be selling out workers who voted them into power.

#### *Determinations and variations*

A disturbing and distasteful proposed amendment grants the minister unrestricted powers to vary all the conditions of employment (including core rights that are currently protected). He/she can do this by sectoral determination and/or variation determinations. The hardships that will result from this amendment need not be mentioned, save to say that the most vulnerable of workers will lose their protection against abuse they currently enjoy. There is no doubt that employers will take advantage of this lack of protection.

The memorandum to the bill claims that there are sufficient safeguards in the Act to protect core rights, since the minister 'must consult with the Employment Conditions Commission before issuing a sectoral determination - as well as the fact that all determinations are subject to review by the Labour Court'. What the memorandum conveniently omits to mention is that workers who are not happy with a variation or determination have to apply at considerable cost for a review. One cannot imagine unorganised farmworkers affording this, especially since our litigation-prone government is certain to oppose any application for review.

Also not mentioned is the fact that the said Commission can only advise the



*'The definition of section 213 is so broad that an employer can retrench for any reason on earth'*

minister, who may or may not follow the advice, and probably will not. Once government has made up its mind with regard to any issue, consultation becomes a mere formality

### **Insolvency Act**

The Insolvency Amendment Bill seeks to amend certain provisions of the Insolvency Act. The bill's purported intention is to 'regulate the substantive consequences of insolvency for employees in a more equitable manner'. We do not see how this intention will be achieved with the proposed amendments as they stand. The proposed amendments are confined largely to procedural issues without conferring any substantive relief to the affected employees. For example, sections 1, 2 and 3 of the bill give workers and trade unions the right to be notified in advance of any impending sequestration. This is clearly a procedural issue and nothing else. It gives little comfort to those workers who are faced with job losses without any compensation. Furthermore,

there is no penalty for failure to comply with these requirements, which renders the proposed provisions toothless.

In addition, the requirements for consultation will give rise to the same problem as is experienced with regard to dismissals for operational requirements under the 1995 LRA – consultation does not confer any rights or powers on workers or their trade unions. As with retrenchments, workers are not given any power regarding the substance of sequestrations/liquidations.

### **Conclusion**

It is clear from the above that some of the proposed amendments represent an abdication of responsibility by government, and a reversal of the hard earned rights of South Africa's workers. It would be a very sad day for this country if these amendments were passed. ★

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## Understanding regionalism in post-apartheid Southern Africa

A breath of expectation could almost be heard across Africa when South Africa crossed the boundary to post-apartheid. The spectre of Mandela towered as large over the African continent as did the spectre of globalisation. When the apartheid state gave way to democratic elections, a new moment for the Southern African region thus opened. One of the offspring of this new moment was the embrace of a unified region in Southern Africa.

There was now a greater expectation that the countries of the Southern African Development Community (SADC), a group of 14 member-states, would work together to strengthen the region. An expectation was that greater regional co-operation could assist member countries to survive the new global order, what some call 'globalisation'. With the threat of Africa being pushed to the margins of this new global order, stronger regionalism has been seen as one defensive strategy. With this renewed regional awareness comes the possibility for different social claims to the region, a new space of openness into which a variety of contenders can step.

Global changes have also contributed to regional awareness, making regionalism a sub-narrative or junior partner of globalisation. Cut-throat globalisation has seen nations turn to regional blocs as a means of survival. This kind of Darwinian regionalism sees a global system of

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*Bethuel Maserumule and Darlene Miller argue that institutional and state-led analyses of regionalism are inadequate, and propose a society-centred approach.*

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winners and losers, the survival of those who are fittest to play by new global rules. In the global order, trading blocs pivot around a powerful Triad or threesome - the US, Japan and Europe. This hegemonic Triad captures most of the world's capital flows. Less developed countries cluster around this Triad and attract some of these flows of money and commodities. Regional trading blocs have formed around these economic clusters. Amongst these are:

- NAFTA (North American Free Trade Agreement), a new formation with the US at the helm;
- the EC (European Community), revived in the 1990s with the Maastricht Agreement;
- the ASEAN (Association of Southeast Asian Nations), where Japan is a leading member.

Looking over their shoulders at these regional alliances, less developed countries have rushed to emulate this trend, with

the revival of blocs such as MERCOSUR (Southern Cone Common Market) in Latin America and SADC and COMESA (Common Market in Eastern and Southern Africa) in Southern Africa. Dominant understandings of globalisation as the only reality percolated down into approaches to regionalism in the 1990s.

## History

Taking a longer look over the 20th century shows how different phases of regionalism have gone alongside cycles of global capitalism. Integration fever often gripped Europe, giving rise to different customs unions and inter-state alliances since the 1800s. These regionalist schemes had mixed levels of success, often coming to nothing. One of the key Eurocentric policies was regional integration, based on the functional interaction of states. Inter-state activities involved some level of interdependence because of the cross-border movements of people and goods.

This interdependence and interconnectedness necessitated forms of interaction between states, impelling states towards regional integration arrangements. Southern Africa too became integrated through the urbanised regional economies of mines and men, and the agricultural labour of the women who subsidise the mineworkers' families back in the rural areas. While the mining houses politically consolidate their regional economic activities, white settler communities also constitute racialised regional blocs in Southern Africa. Regional integration is thus more about *regional reintegration* when one examines the history of the last century.

Hegemonic regionalisms were also challenged in the past by counter-hegemonic regionalisms. Less developed countries went through moods of global acquiescence and resistance to hegemonic

regional schemes. In the 1950s and early 1960s Eurocentric models of customs unions and modernisation dominated groupings such as the IATTA (Latin American Free Trade Association) and the Caribbean Free Trade Association (CARIFTA). But growing awareness of the inequalities between nation-states at the global level and relations of dependency between rich and poor countries led to the desire to de-link or lessen reliance on the wealthy nations. More protectionist forms of regionalism arose with 'collective self-reliance' becoming a model for economically weaker regions. Economic transformation, redistribution of global wealth, increased employment and challenging the exploitative cross-border activities of trans-national corporations inform a vision of an NIEO (New International Economic Order).

Regionalism in Latin America thus took on counter-hegemonic overtones. In Southern Africa, the Third Worldist regionalism of SADCC (Southern African Development Co-operation Community) hoped for a 'Trade union of the poor'. These hopes floundered against the pull of the apartheid state's economic power in the region.

State-led regionalism thus sees regional co-operation as a way of making economies at different levels of development work together. This requires some level of harmonisation and integration of trade and investment, institutions that organise this co-operation, currency and banking systems, and regional transport and infrastructure systems. Issues raised are how goods and capital flow in and out of countries, whether there should be limits on these flows, how these flows come from outside the region into the region, who inside the region trades with whom and what tariffs are charged for these cross-border

activities. These are the some of the regional questions that give South African Trade and Industry Minister, Alec Erwin, and his deputies sleepless nights

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*These state-led policies are shaping the agenda of regional trade unions...*

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These state-led policies are shaping the agenda of regional trade unions and evolving into a set of related concerns about harmonisation of regional labour markets. Some of the regional trade union headaches are regional bargaining systems, state-capital-labour alliances or social compacts at the regional level, regional organisations for trade unions and the fractious question of a 'social clause' for the region where trade and investment activities will be limited by regional agreements on labour standards. Trade union strategies are driven by these national economic comparisons. If the countries of the region become integrated, how will workers in the region be integrated? Should regional institutions such as SADC be used to force member states to comply with regional minimum regulations?

### **Societal relations**

Suspending this focus on institutional regulation for a moment, let us look at broader societal relations in the region. A regulatory focus limits the discussion of labour's alternatives to state-led and trade union-led institutions. While such regulatory concerns are valid, they frame the discussion of alternative or counter-hegemonic regionalisms within Eurocentric notions of economic integration. State-led structures and trade unions become the pivot of these analyses,

excluding the dynamic regional processes unfolding around newly proletarianised and unorganised workers, informal systems of commodity production and distribution in the region and the vast unemployed and contingent African workforces that are the regional reality today. Institutional regionalism thus runs the risk of not only being state-centred but also of being a set of formal models that do not capture the reality of regional processes. Such institutionalism needs to be prised open to allow more expansive, society-centred approaches to regionalism.

We would like to suggest the concepts of 'regional perceptions' and 'regional identities' as two takes on society-centred regionalism. Regional perceptions may be understood as a way of organising, thinking about and acting on regional society. We often think of society as constructed at the local and national levels. But society is also constructed at the regional level. Institutional structures enforce a way of thinking about the region. Regional structures such as SADC and SATUCC (Southern African Trade Union Co-ordinating Committee) give institutional expression to regional power relations. SADC and COMESA, for example, advocate free trade and investment areas as the route to economic growth and development. SATUCC, on the other hand, ventures that workers should have regional solidarity policies and support each other in their demands for better conditions.

These institutions are one level at which regional perceptions are consolidated. Geometries of power govern who has the most institutional clout to back up these perceptions and objectives. Regional identities are the collectivities that cohere around these regional perceptions and objectives. Social groups form and make claims on the basis of their



perceived interests, at the local, national or regional levels. In this sense the region is also a space of claims in which competing regionalisms vie for dominance, but not on an equitable basis. In other words, some regionalisms are more important than others, and regional perceptions are more likely to be shaped by those who wield economic or social power. SATUCC's imitations, then, are not only about resources and organisational capacity. An unclear approach to regional perceptions, regional identities and the processes of regionalisation that shape and make these identities and perceptions will be a fundamental source of political weakness.

Beyond the institutional forms of power are regional perceptions about xenophobia and national chauvinism, about who should lead in the region and who should follow. Such regional perceptions continue to be framed in terms of national states and demonstrate the continued importance of the nation-state in the region today. Such regional perceptions still focus on the nation-state. But the social, economic and cultural interactions and interdependencies of workers, managers, consumers, informal traders and a host of other social agents at the regional level shape regional geometries of power.

### Regional perceptions

Perceptions of regional geometries of power are critical in trade union alliances. If COSATU appears to dominate regional trade union relations, the environment for regional solidarity could be very fractious, with other trade unions distrusting the leadership of the most coherent labour movement regionally. If unions of other member-states fear that the South African trade union movement will perpetuate apartheid inherited geometries of power, they may play dead in regional solidarity

attempts, without actually coming out and challenging COSATU. South African unions enjoy the advantage of numerical strength, financial self-sufficiency, research capacity and international stature. This enables COSATU to be tempestuous and confident in labour issues, making them vulnerable to perceptions of arrogance, pride and trade union sub-imperialism, the 'Americans of Africa'.

Regional perceptions about the desirability of state-labour alliances can also divide unions of the region into those who are independent of the state, and

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### *Regional perceptions about the desirability of state-labour alliances can also divide unions of the region...*

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those who are closely tied into the state. This may be understood as the extent of post-national sensibilities in the region. Those countries such as Zambia and Zimbabwe that have gone through independence and social compacts with the ruling party, and who have since gone into opposition to the state may have one vision of regionalism. Trade unions such as COSATU and the OTM (Organisation of Mozambican Workers) that are institutionalised into state-labour compacts may have very different perceptions of regionalism.

Analysing the contours of these post-national sensibilities may be more fruitful in finding the material and political bases for regional solidarity than a long list of what resources a functioning regional office requires. The ties of COSATU to the ANC government has led to a strong regional perception or feeling that the South African labour movement is a conduit for propagating the hegemonic regional

interests of the South African government. The commonality of position between COSATU and the state on the social clause is one instance of the regional effects of this alliance. Similarly, resistance to opening up South African markets to imports from the rest of the region also lends credence to this perception.

These regional power relations and social interactions are sometimes less visible than institutional processes, but no less important. Institutional regionalism produces a silence around the voices of women, rural peasants, unorganised and informal workers and other segments of working class life that are reduced to the fuzzy category of civil society. Such state-centred regionalism also limits the way we understand trade unions in the region, and the importance of regional perceptions in allowing the development of a coherent regional identity. A productive, counter-hegemonic regionalism will need to be based on far-reaching concessions to the small economies of the region.

### Challenge for unions

As the labour movement of the region's superpower, South African trade unions will need to show a simultaneous commitment to regional and national working class interests. South African unions will need to do more to show that their top priority is commitment to the interests of the regional working people by exploiting their organisational and material resources to strengthen their counterparts in the region to become effective representatives of their constituencies. While this holds truer for South Africa, it also applies to other trade unions within the region. Collective identities of trade unions need to be extended beyond the national level, and notions of regional citizenship should be explored. Regional standards can then be understood in terms of regional rights and

regional claims, rather than only in terms of what national economies can afford, and what national governments may regulate. Trade union membership may also be understood in regional rather than only national terms. Analysing the shifting geometries of power and regionalisation processes may help to foster broader regional alliances and widen the social claims to the region. Regionalism may then not follow the script of globalisation, and lead to counter-hegemonic regional alternatives.

On the ground are the concentrations of newly proletarianised workers at South African multinationals that create a material basis for solidarity amongst workers at these multinationals, in the same way that regional solidarity has emerged in NAFTA. New grassroots movements are emerging such as COLETU (Congress of Lesotho Trade Unions) in Lesotho and the transformation in Botswana of the public service associations into fully-fledged trade unions. High levels of militancy in Zimbabwe and Swaziland are fuelling a working class challenge to the state. Even in Mozambique the mobilisation for a fight for a national wage increase in 2000 suggests a restive working class. These developments should auger well for the emergence of labour organisations that can build co-operation and solidarity work in Southern Africa and foment a counter-hegemonic regional identity. ★

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# Ungovernability in the union

There were two strikes at Highveld Steel during 1994 in which the strikers rejected the shopstewards and their union, NUMSA. In both strikes workers in a particular division went out on strike alone, making no effort to seek solidarity from other divisions. And in both cases, the strikes were led by groups of workers who set themselves up in opposition to the shopstewards' committee. The union itself seemed to be suffering from ungovernability and the fragmentation of worker solidarity.

What was actually happening within the union over this period? What were the causes of ungovernability within the organisation?

Analysis of these events suggests that new forces and pressures were affecting the shopstewards as individuals and as a committee. The involvement of shopstewards in democratisation and reconstruction was providing them with new opportunities both inside and beyond the workplace – opportunities for political careers, opportunities for promotion. The involvement of the shopsteward leadership in the ANC and in political campaigns in the community also made them less visible inside the company.

These new developments left many members discontented, and suspicious that their shopstewards were less committed to representing them. Others noted the new opportunities available to

*Karl von Holdt continues his series on Highveld Steel. In this article he analyses the new and destructive forces unleashed within the trade union at Highveld Steel by new opportunities and pressures affecting shopstewards.*

shopstewards, and became determined to gain access to such opportunities themselves, even if it meant mobilising against the shopstewards in an attempt to oust them.

Liberation and democracy, the very freedom that the unions had engaged in such bitter struggles to win, unleashed new and destructive forces within union organisation. This article describes the challenges to the shopstewards' committee at Highveld Steel in an attempt to understand these new forces.

## Challenges

During the first democratic elections in South Africa, the workers of the iron plant division launched a two-day stayaway, breaking the agreement reached between the union and the company that there would be no work stoppage. The majority

of workers in the iron plant are migrants. They felt that the company had not addressed their anxieties about voting at their rural homes, and decided that a two-day stayaway from work was necessary to ensure they could cast their votes.

Only one senior shopsteward was left at the steelworks over the election period, the rest of the leadership being involved in mobilising the electorate and monitoring the elections.

When the iron plant manager at Highveld Steel suggested that NUMSA should be called, the organisers of the stayaway told him, 'We are not representing the union, we are just workers here'. After the elections, the secretary of the shopstewards' committee asked the iron plant workers to explain their action. They answered that 'this thing has got nothing to do with the union, it is our thing of the iron plant'.

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*Over time it emerged that there were actually two groups in the iron plant mobilising against the shopstewards.*

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Over time it emerged that there were actually two groups in the iron plant mobilising against the shopstewards.

### **The concerned group**

One of these groups mobilising against the shopstewards called itself 'the concerned group'. According to the chairperson of this group, they were dissatisfied with the shopstewards and concerned about the future of the union at Highveld Steel. They suspected that the shopsteward leadership had sold out to management because:

- there were few report backs from meetings with management;
- they were no longer mobilising workers

- for wage negotiations;
- they were not achieving anything through negotiations.

They also accused the shopstewards of using their positions as 'a platform for their own political gain'. The absence of senior shopstewards from the workplace on political and union tasks was paralysing the union because ordinary shopstewards did not have the authority to negotiate major issues with management.

As a result, the concerned group decided to stop recognising the shopstewards: 'We said from now onwards we are members of the union, but we don't recognise our leaders. If we have a problem, we will nominate people to talk with our divisional management. That is why, when the shopstewards wanted to intervene in our stayaway at the iron plant, we said no, this is our own thing. We chased them away'.

The concerned group was centred in the iron plant, but it also had a network of members across the steelworks. According to the shopstewards and union officials it was not clear what the agenda of the concerned group actually was. At times they claimed their intention was not to attack the shopstewards but to consolidate the union.

At other times they argued that the shopsteward office-bearers lacked credibility and had to be removed. They claimed to represent the masses and demanded a general meeting to discuss their concerns, but when the shopstewards offered to call a meeting they backed down.

Several meetings were held between the shopstewards' committee and the concerned group. The shopstewards pointed out that there were very few active shopstewards, and invited the concerned group to stand as shopstewards in their constituencies in order to



*Highveld Steel hostel kitchen. ungovernability in the union brought out tensions between migrant workers and township residents.*

strengthen the committee. The concerned group demanded that the office-bearers stand down first

Two general meetings were held to discuss the conflict. In the first, the majority of members, led by migrant workers, rejected the criticisms of the concerned group and threatened to beat them for undermining the union. The second meeting was very tense, taking place as it did at the same time as a protracted wildcat strike in the flat products division (see p42). At this meeting the concerned group gained more support. But after every attack on the behaviour of the office-bearers, their constituencies would rise and defend them.

Eventually the meeting agreed to elect five members of the concerned group to monitor the shopstewards by attending shopsteward meetings and negotiations with management.

When by-elections were held in some constituencies, several members of the concerned group were elected as shopstewards. However, they soon stopped attending shopsteward meetings. It became clear to the shopstewards that some of the leading members of the concerned group were motivated by their belief that the shopstewards had access to opportunities to become small business contractors to the company. When they discovered that this was not the case, they lost interest.

Some members of the concerned group were genuinely concerned about problems in the union. Others were disgruntled individuals. One was jealous because he had not been chosen for training, another was in danger of dismissal for absenteeism and was looking for ways to protect himself, a third had always quarrelled with shopstewards. Some were former shopstewards who had

failed to perform and had been rejected by their constituencies. Others were happy to attack the shopstewards, but always refused to stand for elections.

Over time, the concerned group faded away. Its chairperson was eventually successful in becoming a small business contractor to the company.

### The action committee

The action committee on the tap floor of the iron plant emerged out of similar concerns and at the same time as the concerned group, but it was a much more localised group. Its base was the unskilled, illiterate and predominantly migrant workers on the tap floor. It was a response to their experience of marginalisation and disempowerment in the workplace and in the union.

Members of the action committee expressed frustration that the shopsteward leadership were not addressing their problems. They also felt that the shopstewards in the iron plant were not strong enough to face management. They decided to elect their own committee 'who will be able to face management', as well as 'go to the office-bearers and tell them what we as workers want'.

The action committee grew out of the culture of militant solidarity that characterised the tappers in the iron plant (see Part 2 of this series, vol 24 no 2). This culture was described by one of the shopstewards: 'They have their own strategy of showing management that their demands must be conceded. If they want a manager they leave their work and call him to come. Sometimes they don't even involve the shopstewards. It's not good, there are procedures that should be followed'.

One of the tappers put it differently: 'I wanted to work there because they are highly unionised, it was not easy to be

victimised because one always had the support of the other workers. They know the struggle, they suffered a lot under apartheid. They are willing to fight to ensure that the changes that they have won are not taken away from them.'

The action committee and the concerned group converged in organising the election stayaway, and rejecting intervention by the shopstewards. But most of the time the two groups were remote from each other.

The migrant workers of the action committee had little in common with the personal ambitions and grievances of the operators and artisans, all township residents, in the concerned group. As described above, when they felt that the concerned group was threatening the structures of the union, they were quick to come to the defence of the shopstewards. For the migrant workers at the bottom of the workplace hierarchy the union was their most important defence against management.

For the migrants on the tap floor, the action committee was simultaneously an expression of workers' solidarity and a vehicle to contest their marginalisation within the union. Thus the action committee sometimes ignored the shopstewards, sometimes challenged them and sometimes supported them. Often they were instructed by union officials to disband the committee they did so, although they were sad to see it go.

### Wildcat strike

About three months after the elections stayaway in the iron plant, workers in the flat products division downed tools complaining about unfair wages and racial discrimination.

On the day that the strike started, neither of the two NUMSA shopstewards was present, and a group of workers



*Unity is not a given, but has constantly to be built and rebuilt. Here organiser Bunny Mahlangu (left) and shopsteward chair Mosi Nhlapo (middle) discuss with a second shopsteward in the early '90s*

belonging to a splinter union managed to take control of the strike. They persuaded workers that the strike should be an action of the flat products workers alone, and that union shopstewards and officials should be kept out of it. Few of the workers knew that those leading the strike were actually activists of the splinter union

The strikers elected a delegation of workers to meet management, but they were under strict instructions not to negotiate. They were to bring the managers to flat products to negotiate directly with the strikers. When their managers arrived, they told the workers that they had not followed the correct procedures, and that NUMSA and the splinter union should negotiate for them. The response of the flat products strikers

echoed the words of the iron plant workers three months before. They said that they do not belong to any unions now. They are there as the employees, not as union members, so management must not now involve the unions. They must come and solve the workers' problems.'

When one of the NUMSA shopstewards arrived for his shift, he was told not to interfere because he was not trusted. The workers then settled in for a sleep-in strike.

Some of the strikers explained why they were so easily persuaded to marginalise their shopstewards. They were frustrated by long, fruitless negotiations, and the lack of results led to suspicions that their shopstewards might have been bought by management. 'We wanted management to respond to us directly,

without the unions, because the shopstewards used to come back saying that management refuses to give us an increase, and we thought that somehow, somewhere, there might be something, you see?

The NUMSA officials and shopstewards decided not to interfere. They expected that the strikers would 'burn their fingers - and once their fingers were burning they would return to us as the union'.

The stalemate at flat products lasted for several days. Eventually management issued an ultimatum and then announced that the strikers had been dismissed. A contingent of police moved onto the company premises to prepare for the eviction of the strikers.

Inside the plant, workers started to turn to the NUMSA shopstewards for advice: 'They started to see now was the time to go to our union. They came to me straight and said we realise what we have done is wrong. Let's sit down like men and talk, because now we are losing our jobs. Go in now, and talk to management.'

After lengthy negotiations, NUMSA succeeded in having all the strikers reinstated. It emerged from the strike strengthened, while the splinter union was described by the shopstewards as 'the living dead'.

The wildcat strike at flat products was very similar to the stayaway at iron plant. Strikers rejected the union and its leadership. They took action as employees of a specific division, making no effort to link their action to the wider solidarity of NUMSA at the steelworks as a whole. They were led by a group of disaffected workers who were able to mobilise workers' suspicions against the shopstewards. The splinter union was led by workers who had been dismissed for intimidation after a massive strike in 1987.

Most of the dismissed workers were

migrants, and the splinter union itself was based in the hostels. Thus an underlying tension between migrant workers and township residents was present both in the iron plant and in the flat products division.

### The shopstewards' committee

All three of the groups that challenged the NUMSA shopstewards - the concerned group, the action committee and the splinter union - were able to mobilise the dissatisfaction and suspicion of significant groups of union members at Highveld Steel. This had become a more important factor because of the new opportunities facing shopstewards. The shopsteward leadership was deeply involved in ANC structures and campaigns. Two of them became city councillors in 1995. One became a civil servant in the provincial government. The NUMSA regional organiser - a former chairperson of the Highveld Steel shopstewards - became a manager at another metal company. Several of the shopstewards were exploring promotion possibilities at Highveld Steel.

Shopstewards experienced family and peer pressure to join the upwardly mobile post-colonial elite. One shopsteward explained: 'The politics of today is about how much money you have, how beautiful your car is. It's no longer about how you develop the economy and how you look at the interests of the poorest. It's about yourself. I also want to be myself. I've been a shopsteward for a long time and I have gained nothing from it except the politics and experience that I have.'

Another shopsteward was pessimistic about the impact of this on the union: 'Most of our shopstewards are on line to government. The poor guys are sitting down there on the shopfloor, seeing the shopstewards working too much outside. We



have lost the capable guys. Everyone is looking at green pastures, you see. And when they leave to government or to promotion, there is no one to close the gap, because they have all the information. In future we will become weaker and weaker.

The union's members were aware of these new opportunities and pressures. The shopstewards' committee was beginning to take on a new meaning. It was no longer only the representative voice of the workers – it was also a platform which shopstewards could use to pursue promotion or new careers. The result was rumours and mistrust.

A further factor at Highveld Steel was the particularly intransigent attitude of its management. Shopstewards were unable to deliver significant bargaining breakthroughs to their members, with the result that there was a history of dissatisfaction with shopstewards. Indeed, one of the reasons why ungovernability was so dramatic in 1991 was that it was a year of very high expectations of change. In later years expectations were not as high, and workers were less inclined to take dramatic actions in the quest for dramatic change.

At Highveld Steel there were two different kinds of responses to this among members. Among the more highly skilled and educated workers there were some who themselves had ambitions to gain access to the opportunities that shopstewards had. They tried to mobilise against shopstewards in order to replace them. This was the motivation of several in the concerned group.

The less skilled and often illiterate migrant workers had a different response. It was clear to them that the new opportunities promised them very little. Rather, their suspicion that the shopstewards were no longer representing them very effectively led them to establish

their own structures – like the action committee – and rely on their own capacity for direct action and solidarity to defend themselves against management.

These pressures and the formation of new interests among workers, undermined and fragmented the solidarity of the union. Ultimately, the challenges failed and the shopstewards' committee retained control. Nonetheless, all the pressures described in this article remained and continued to weaken the union. The fragmentation of solidarity, and the weakening of the shopstewards' committee, made the union less able to defend and advance workers' interests.

These developments were not unique to Highveld Steel. Most unions in most workplaces are experiencing similar problems. This will continue as long as broader social change creates new opportunities for shopstewards and other skilled black workers to join the new middle class. The danger is that it will continue to generate conflict, undermine unity and weaken the unions at their foundations – in the workplace.

There are two possible strategies for combating this trend. Firstly, developing workplace campaigns and programmes would help to unify shopstewards and members and provide direction, thus overcoming division and conflict. Secondly, shopsteward education programmes should aim to equip shopstewards with the skills to manage much more complex organisational dynamics than in the past. ★

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*Karl von Holdt's articles are based on his PhD research, undertaken while he was based at SWOP at the University of the Witwatersrand. He currently heads the Workplace Transformation Programme at Naledi and is currently a member of the Labour Bulletin board.*

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Apart from unions, Naledi has been commissioned to conduct research for government and many sectors of the democratic movement. While all Naledi publications adopt a pro-labour perspective, its findings do not represent the policies of COSATU.

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# Mergers and acquisitions

*prepare yourself to engage*

In the last three editions of the Bulletin, the Competition Commission has run a series of articles on mergers and acquisitions, the role of labour and how the Competition Commission assists trade union participation. The focus of this article is the manner in which the trade unions have participated in merger transactions/proceedings. It also raises issues on the role of labour in relation to merger transactions.

## Commission's role

The Competition Commission is responsible for:

- making decisions on intermediate mergers,
- making recommendations to the tribunal on large mergers.

When it receives a merger notice from companies, the Competition Commission will first do the economic analysis of the transaction by defining the relevant market, to determine whether a merger is likely to prevent or lessen competition.

## Public interest

No matter what it decides in the economic analysis, the Competition Commission must then determine the extent to which the transaction will impact on public interest issues. The Competition Commission must assess a

merger on the following public interest grounds

- employment,
- a particular industrial sector or region;
- the ability of small businesses or firms controlled by previously disadvantaged persons to become competitive,
- the ability of national industries to compete in international markets.

It is here that labour can play a key role by participating in the proceedings of the Competition Commission in assessing mergers. Labour's participation can ensure that issues are raised before the Competition Commission and some of the issues may be issues that the Competition Commission may not necessarily have foreseen. It also assists the Competition Commission in checking the correctness of the information submitted by the filing companies – specifically information related to employment. Lastly, it provides the Competition Commission with insight and more understanding of issues arising in each sector as the result of a merger.

## Labour's participation

How far does labour's participation go? In the past ten months, we have seen an increased number of trade unions participating in merger proceedings and requests for training workshops. Although

A joint project between the Competition Commission and the Labour Bulletin

we have seen an increase, it has not been easy for everyone to participate fully due to a number of issues.

In order to ensure effective participation, trade unions should know what information they should expect from the merging companies in terms of the Competition Act.

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*...it is important for trade unions to keep in constant contact with the Competition Commission.*

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Companies should provide the trade union with a copy of the notice form, which states the names and addresses of the parties

In addition to this information, the Act requires that the companies provide the trade unions with the Statement of Merger Information Form. This information entails the company's state of assets/turnover and products/services and description of the merger indicating any relevant facts

concerning the impact of the merger on employment, or other public interest issues.

The Intention to Participate Form CC5(1) that the trade union must submit does not require them to indicate whether they are in favour of or against a merger. Because the companies are required to inform the Competition Commission within seven days of proposing a merger, their (employers') submission on employment is not always a true reflection of what is happening during the process and what will happen after the merger

Therefore, it is important for trade unions to keep in constant contact with the Competition Commission. They can do so through meetings and giving written motivation on how they think the transaction will impact on employment and the processes they are engaged in with management

The Competition Authorities can examine the information they have received from the companies and compare it to the information they have received from the union.

### Short checklist

1. Merging parties must notify the Competition Commission within seven days after either the signing of the merger agreement, the public announcement of the merger, or the acquisition or leasing of a controlling interest by one party over the other.
2. The filing party must deliver a copy of the notice and the statement of information to a representative trade union representing the employees of the merging firms.
3. The party that notifies the union or employees of the intention to merge/acquire must provide proof to the Competition Commission that it did notify the union or employees.
4. If the union wants to make a submission to the Competition Commission it must file a Notice of Intention to Participate in form CC5 (1) with the Competition Commission within seven days of receiving the notice from the merging parties.
5. The Competition Commission has only 30 days within which to finalise its assessment and analysis on intermediate mergers. However, the Tribunal can grant the Competition Commission an extension of up to 60 days.

## Experiences

The Competition Act states that companies should not implement the merger until it is approved. The Competition Act does also not apply to certain economic activities such as collective bargaining within the meaning of section 23 of the Constitution, and the LRA. Some companies use these provisions as delaying tactics not to engage unions. They say they cannot engage the union until a decision is taken, knowing that by that time the company structure would have changed or the company bought or operating under new management.

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*...the Competition Act has strict time frames and all the parties including trade unions are expected to adhere to them.*

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At times, even before a decision is taken, some companies will engage in restructuring without engaging the trade union. In most cases, benefits for the workers are not the same in merging companies, making it difficult for the trade union to negotiate for better offers. This is clearly not a competition issue but is very often used as an excuse for not engaging the union. Unlike other relevant legislation, such as the LRA, the Competition Act has strict time frames and all the parties including trade unions are expected to adhere to them.

The Competition Commission may approve a merger with conditions attached. Sometimes what the companies promise in their filings is not necessarily what they do after the merger. Where this has taken place, trade unions were able to come back to the Competition Authorities to complain that the company is

contradicting what they have promised to do after the merger. Because the trade union had filed their intention to participate in merger proceedings, they were able to file a complaint with the Competition Commission to investigate the company's anti-merger approval activities.

## Approaching issues

It is important for every union official and shop steward to understand and know the procedures followed to finalise a merger. If the union has not registered to participate within the given time frames, it can be impossible for them to contest any decision taken by the Competition Authorities. It will not even be able to access the information related to that merger.

As representative bodies of the workers, it is understandable that trade unions would like to save every job that may be lost as a result of restructuring or any other means. In fact, the Competition Act does not give everything to any one of the stakeholders – but it does give space to engage, like any other legislation.

## Training

In the previous articles, we offered training assistance to all trade unions, a number of trade unions responded and were all given training.

Our training workshops are held for one day only. If you would like us to keep your organisation on our mailing list or would like to arrange a training session, please forward the contact person's name and details to the following address: Labour liaison officer, Competition Commission, Private Bag X23, Lynnwood Ridge, 0040. Tel: (012) 482-9069. Fax: (012) 482-9120. e-mail: RHORHO@compcom.co.za. Website: <http://www.compcom.co.za>

# Beyond the workplace, into the community

The current statistics for HIV infection in this country speak for themselves. No one can question the necessity for employers and trade unions to play a part in alerting South African workers to the dangers of HIV/AIDS. Similarly, policies guaranteeing the fullest protection against discrimination in the workplace are vital, as is the availability of the best possible medical benefits to HIV positive employees.

But where to from there? The scale of the pandemic surely places a responsibility on South African employers to take the message further afield – out of the workplace, and into the community. A ground-breaking HIV/AIDS awareness programme set up by NUMSA and the Ford Motor Company of Southern Africa (previously SAMCOR) aims to inform, educate and assist workers, as well as their families and the communities in which they live.

The commitment and effectiveness of this programme was recognised at a conference convened in September 2000 by the Center for Disease Control and Prevention (CDC) in Washington, aimed at fostering and facilitating HIV/AIDS programmes in the workplace. At the conference, Ford South Africa was the only company outside the US to be given one

*NUMSA and Ford Motor Company of Southern Africa have implemented a ground-breaking AIDS awareness programme that sets new standards for the industry. Joanne Bloch investigates.*

of eight awards commending its HIV/AIDS workplace programme.

The programme, which to date has cost R238 000, was initiated in mid-1999. Before this time, there was no policy in place. 'Until then, our attitude was similar to one that you unfortunately still see all around us in industry, commerce and even in trade unions – people talk about AIDS, but it is still somewhere 'out there', says Johan Strydom, manager of personnel services at the Ford plant in Silverton. In Ford at least, these attitudes have now changed for good.

From the start, says Strydom, this programme sought to address the issues of HIV/AIDS in the company holistically and in depth. 'We asked the managed health care division of our head office in the US for guidance and help,' explains Strydom.

**A joint project between SA Labour Bulletin and the American Center for International Labor Solidarity (ACILS) and sponsored by ACILS**

'They sent experts out here to survey the situation as regards HIV/AIDS. They looked at it from all angles - medical aid services, retirement benefits, the whole spectrum. With the help of their projections and input from a local expert, we then sought to sensitise all the stakeholders to the seriousness and the reality of HIV - that you can no longer look at it and say it's government's problem, it's somebody else's problem. That attitude is short-sighted and really unwise.'

The next move was to set up a steering committee on which all stakeholders were represented, including NUMSA, white-collar personnel, senior manufacturing management, as well as the public affairs and human resources departments. It is chaired by our chief executive officer (CEO) Marcos Oliveira.'

### Policy

The steering committee developed a formal company policy document, which was published in the Ford in-house magazine and also widely displayed as a laminated poster in the company.

The policy document included photographs of the steering committee and the two co-ordinators of the AIDS programme.

'We wanted to show the employees the people dealing with this matter,' explains Strydom. 'We felt our AIDS policy has to be a live document, not just words that will soon be forgotten. That's why it's still prominently displayed throughout the company, where employees and visitors can see it. We wanted to make sure that if management says, "we will have a zero tolerance for any form of discrimination or harassment", the presence of the document where everyone can see it daily will give employees confidence and assurance that those are not just words, they must know that their supervisors

have to abide by the policy too, or face the consequences.'

### Education and training

Next, training and educational materials were developed. A peer educator manual and a manual for employees were designed in such a way that semi-literate people could access them. Twenty peer educators were then trained for the Silverton plant and 20 for the plant in Port Elizabeth in four-day workshops. Included in this figure were members of contractual staff involved in areas such as gardening and catering.

'At the end of October 1999, we hosted an HIV/AIDS seminar for the entire South African automobile manufacturing industry,' says Strydom. 'Senior human resources people were present from Toyota, Mercedes, Delta, Volkswagen, Nissan and BMW. We informed them of what we had done so far, and what our plans were, offering resources, guidance and so on. We have the same trade union in this industry, we all do the same work at different places. It makes sense for us all to focus on the important issues affecting us in a similar kind of way.'

Strydom feels that the approach taken by Ford in educating the workforce about HIV/AIDS got off to an excellent start. 'Many companies have been raising awareness about HIV/AIDS, but the way we went about it was unique,' says Strydom. 'We switched off the lights, called every single employee and shut this entire company down for an afternoon. We had hired 3 000 chairs and built a massive podium in the factory with spotlights and a sound system.'

At the awareness-raising event, the CEO addressed the employees, declaring his commitment to the fight against AIDS. Each peer educator was introduced to the work force, and the audience was called

upon to support him or her and consult them.

The mayor of Mamelodi, representatives from the Gauteng Health Department, as well as people living with AIDS addressed the audience. After an industrial theatre play covering the issues, all employees were issued with a handbook designed as both a reference for employees as well as a resource to be shared with family members.

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*The peer education programme is now well underway! From top management right down, at Ford everyone, including the union, is involved in the programme*

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The peer education programme is now well underway. 'From top management right down, at Ford everyone, including the union, is involved in the programme,' says Collen Bonnecwe, co-ordinator of the AIDS programme at the Silverton plant. 'We work as a team. For everything we do, we come together and look at what we're trying to achieve.'

I think the programme is effective because we recognise that you can't deal with HIV/AIDS in a one-sided way. Two-way communication is vital and we have the mechanisms in place for it to work effectively.

We have weekly communication breaks in the factory, 20 minute periods where the area comes to a halt and the team leaders use the opportunity to discuss various issues with the teams,' explains Bonnecwe. 'At least once a month, our peer educators are given the opportunity to deal with an AIDS-related topic during these periods, using bulletins put out by

the AIDS committee.'

The peer educators meet weekly with their co-ordinator, reporting back on responses from the work floor, sharing information and making recommendations on the basis of the workers' responses to the education they have received.

'These meetings are vital,' says Bonnecwe. 'We are basing our education and awareness programmes on information that comes through from the workers themselves. It is not imposed from the top.'

The peer educators are supplied with new information regularly, and are often sent on workshops to update them on developments in HIV/AIDS. On weekends, they are provided with a company car to visit hospices, clinics, home-care centres and private homes, so they can familiarise themselves with the realities of the disease. They are equipped in this way to deal with questions in the workplace on the basis of practical as well as theoretical knowledge.

'For those employees who don't want to come forward in front of their colleagues, we have a system of communication boxes in place. They can put questions or suggestions for us into the box, and can request that we speak about any issue that they are not clear about. Of course they can remain anonymous if they prefer. We look at these suggestions and requests as a team and decide how best to handle them.'

According to Jimmy Khumalo, a NUMSA shopsteward and a peer educator at the Ford plant in Silverton, the Ford programme is 'streaks ahead of any similar campaign operating in the motor industry, if not industry as a whole.' 'The policy that we have in place in this company conforms to the guidelines laid out in the COSATU policy,' says Khumalo. 'Earlier this year, three peer educators from Ford





*Peer education is an important approach.*

attended a series of HIV/AIDS workshops run by the American Center for Labor Solidarity aimed at increasing awareness in the trade union movement. Two of us were NUMSA shopstewards. We took copies of the Ford policy along with us and discussed it and the programme operating here in Ford with the other participants. We found that Ford is the only company in this industry providing HIV/AIDS support to this extent. The participants all agreed that the policy is excellent. We also found that we have been well educated on all aspects of the disease and we were able to contribute a lot to the discussion.

### **Other efforts**

As well as the peer education programme, other efforts have been made to keep awareness of the issues of HIV/AIDS high for employees in the workplace.

One strategy has been to alter the method of condom distribution this year.

This change has had astounding results. Once additional condom dispensers made condoms freely available all over the premises, instead of only in the company clinics, the number of condoms distributed increased from 700 to over 17 000 per month.

Another equally important approach has been the recognition of the link between sexually transmitted diseases (STDs) and the spread of HIV. To reduce the risk to employees on this front, the Ford programme ensures that medical staff in the company clinics have access to the latest, most up-to-date information on the identification and treatment of STDs.

At the same time, a scheme making it possible for HIV infected individuals to declare their status privately through their own personal doctor, and secure additional medical aid cover without involving the company in any way, has

been put in place.

'It is our position not to encourage employees to declare their status at work if they are HIV positive,' says Bonnetwe. 'We respect confidentiality in the workplace, to ensure that there is no possibility of discrimination. At the same time, though, we do encourage employees to go for tests, and if they find out that they are infected, to access programmes with the best possible treatment.'

### Into the community

While its workplace programme seeks to ensure a high level of understanding and awareness amongst all Ford employees, the company and union make every effort to take the message to families and the community. A week after the initial HIV awareness-raising event at the factory, a

HIV/AIDS Family Awareness day attended by more than 3 000 people was held at Ford's on-site sports ground.

As the Ford Company's progressive stance on HIV/AIDS became common knowledge, the company began to receive requests from schools, technical colleges and other community-based organisations in Manelodi and other local communities to sponsor and be represented at AIDS-related events. It is now common for a team including peer educators and representatives from NUMSA to make their skills and resources available at these events. Often counsellors from AIDS organisations are invited to join the team and provide further input.

While once-off activities can be useful in raising awareness, more intensive and far-reaching programmes are also required to

### NUMSA's response to HIV/AIDS in the motor industry

'We are 100% behind the Ford programme, and other HIV/AIDS initiatives in the motor industry,' says Dumisane Ntuli, national spokesperson for NUMSA. 'On our side, we have put plenty of human and other resources into making sure that the disease is fought - for instance we have written many educational materials and conducted HIV/AIDS workshops in Ford and other companies.'

'We had meetings with the various managements requesting their input, and the majority of companies in the motor industry are putting money, time and resources into the fight against AIDS. They are taking the pandemic very seriously. For example, Toyota has put money towards research into a vaccine, and both Daimler Chrysler and Volkswagen have awareness programmes in place.'

'So we're doing fairly well in the Motor Industry, although it would be good if we could follow the example of the mining industry, where they have opened special HIV/AIDS clinics on most of the mines.'

'I think what now needs to be done is for us to get beyond talking, and make sure that those who are HIV positive come out into the open and talk about it in the workplace - because there's still a strong stigma in the workplace. This stigma will only be overcome if infected people come to the fore and discuss their status openly.'

'We also need to make sure that medicine is freely available to HIV positive workers,' says Ntuli. 'We in the unions need to meet with the companies about this - perhaps we need to find a system where we can make an AIDS pool, with the companies setting aside money for the purpose of treatment and the union also paying in a percentage.'

'All COSATU unions work together with the national labour department to support the government AIDS campaign. We are also affiliated to the Treatment Action Campaign. Here we combine our efforts to try to pressurise the government to provide the medication that our people require.'

challenge and change entrenched attitudes

In partnership with the CDC, and the Center for Labor Solidarity, Ford and NUMSA are now designing and developing new programmes aimed at reaching out to the communities where company employees are resident, in Port Elizabeth and Silvertown. The funding for all of these projects comes via CDC from Ford US.

A six-month pilot project planned for the Port Elizabeth region involves life skills training, focusing on HIV/AIDS, for grade six and seven learners in 10 primary schools. The project is due to commence in February 2001. It will be intersectoral, involving the University of Port Elizabeth, the Port Elizabeth City Council, the Eastern Cape Department of Education, and local NGOs.

In Pretoria, three projects are planned for early 2001. One of these projects will engage local NGOs to provide family education on HIV/AIDS. 'The families are predominantly the families of our employees, although we might even reach further,' says Strydom. 'In each family household there are teenagers. While we deliver a strong message to our employees, there's no way of knowing if it reaches the children, or whether it reaches them in an appropriate way. A particular individual might just not have

the personality to speak to his children about these things. We are hoping that this programme can fill in the gaps.'

The other two projects are designed to provide care and support both for people living with AIDS (PWAs) and for AIDS orphans. 'We would like to assist in the funding and co-ordinating of income-generating projects started by PWAs,' explains Strydom. 'We are determined not only to talk workplace. There is an important role for us to play in the community.' ★

*Joanne Bloch is a freelance journalist and photographer. This article was written as part of the Mediaworkers Project of the Beyond Awareness Campaign.*



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# *Code of good practice: HIV/AIDS and employment*

**I**t is becoming increasingly clear that the impact of the HIV/AIDS epidemic will become greater and the effects of the epidemic will be felt more and more on virtually all aspects of life in South Africa.

This impact will not leave workplaces untouched. Factors such as prolonged staff illness, absenteeism, and death will impact on productivity, employee benefits, occupational health and safety, production costs and workplace morale.

Workplaces continue to demonstrate ignorance, prejudice, discrimination and stigmatisation towards HIV/AIDS and those infected and affected by it, which further exacerbates the impact on the workplace.

In order to provide guidance to employers, trade unions, employees, government and other stakeholders as they face the challenge of addressing aspects of HIV/AIDS in the workplace, Nedlac and the Commission for Employment Equity (CEE) are in the process of finalising a revised *Code of good practice on key aspects of HIV/AIDS and employment*.

## **Process**

The draft Code was referred to Nedlac by the Minister of Labour on 5 April 2000, and was published in the *Government Gazette*

on 25 April 2000 for public comment. A task team was established under the auspices of the Labour Market Chamber to make a recommendation on the draft Code.

The task team has had extensive negotiations in order to seek agreement on a revised Code that will accommodate the needs of all constituencies and provide effective guidance to all stakeholders in workplaces.

It is expected that the revised Code will be published by the end of 2000. It will be published in terms of the Employment Equity Act and the LRA.

The Code will be accompanied by *Technical assistance guidelines on managing HIV/AIDS in the workplace*. It is envisaged that these will be published during 2001.

The guidelines will provide more detail on the implementation of potential policies and programmes to address these impacts, including strategies to accommodate the needs of small businesses and the informal sector.

## **Code content**

While the Code does not impose any legal obligations beyond those set out in the existing legislative framework, it seeks to provide clarity for stakeholders in the workplace on their rights and

responsibilities with regard to HIV/AIDS and its impacts

In addition, the Code seeks to provide guidance to a broader range of 'workplaces' than the definition provided in the LRA, including persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed

This is in recognition of the likelihood that HIV/AIDS will also impact on such working environments and people in those work environments will consequently also need some guidance

The Code's primary objective is to eliminate unfair discrimination in the workplace based on HIV status, while its secondary objective is to provide guidelines on how to manage HIV/AIDS. The Code recommends a holistic approach to addressing HIV/AIDS in the workplace

In order to facilitate this, the Code includes sections that address the following interrelated areas.

**□ The legal framework which provides the context within which aspects of HIV/AIDS in the workplace need to be addressed.**

The Code identifies all sections of the following legislation that need to be taken into account when dealing with HIV/AIDS:

- the Constitution,
- the LRA;
- the Employment Equity Act,
- the Occupational Health and Safety Act Mine Health and Safety Act;
- the Compensation for Occupational Injuries and Diseases Act,
- the BCEA;
- the Medical Schemes Act;
- the Promotion of Equality and Prevention of Unfair Discrimination Act

**□ Promoting a non-discriminatory work environment**

A non-discriminatory environment is seen as a crucial aspect of ensuring that people's rights not to be unfairly discriminated against are not violated. In addition, a non-discriminatory environment can encourage disclosure of HIV status which will enable more effective assessment of and responses to HIV/AIDS

**□ HIV testing, confidentiality and disclosure.**

This was one of the most contested sections of the Code during the negotiations, especially related to the interpretation of Section 7(2) of the Employment Equity Act and how best to address the ambiguity in its interpretation. However, progress has been made in reaching an agreement on this

**□ Promoting a safe workplace.**

**□ Compensation for occupationally acquired HIV.**

**□ Employee benefits.**

**□ Dismissal.**

**□ Grievance procedures.**

**□ Management of HIV in the workplace.**

**□ Assessing the impact of HIV/AIDS on the workplace.**

Both those infected and affected

**□ Measures to deal with HIV/AIDS within the workplace, including the development of policies and programmes.**

**□ Information and education.**

The Code takes note of the particular burden that is likely to be carried by women in relation to HIV/AIDS, and therefore pays particular attention to this group

Further information can be obtained from the Nedlac offices by calling (011) 482-2511.



## NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL

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# Responding to externalisation: Part I

The Loots family run a taxi business in Atlantis. It comprises a fleet of eight taxis owned by a close corporation. The members of the corporation are Mrs Loots, Mr Loots, and their eldest son. The other son Percy is not. He is regarded as the manager of the fleet, but is not paid a salary. He operates in the same way as all the drivers working for Loots' taxis. He has the use of a mini-bus for the working day. That is as long as the hours he chooses to work. What he takes in fares he keeps for himself.

But unlike the other drivers, Percy does not pay for use of the mini-bus. That is his equivalent of a manager's salary. It amounts to R1 100 a week. R1 100 a week is what each of the other drivers pays for the use of a mini-bus. Their other important obligation toward the corporation is to ensure that the vehicle is parked in a safe place at night. The corporation in turn is responsible for servicing and maintaining the vehicle. Mr Loots senior is the mechanic who does so.

One of the drivers was Percy's friend Apollus. He was once counted as a friend of the family. The terms on which Apollus was engaged were no different from any other driver, except insofar as he was responsible for fulfilling certain contracts the corporation had with local factories, transporting workers to and from work. Apollus was paid 30% of the corporation's fee each month for doing so.

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*Jan Tberon's first part of a two-part article explores 'atypical' work and how companies are implementing it.*

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According to Apollus, the cause of his problems with the Loots was the vehicle they provided him with. It was mechanically unsound. As a result, he was not able to make the target of R1 100 for two months in a row. The next thing he knew, Percy had engaged a driver to replace him. Percy had a different version. The only reason he engaged a new driver was because Apollus had told him he was resigning.

Apollus then referred a dispute to the CCMA, alleging he had been dismissed. But was he dismissed by the Loots? Was he indeed ever employed? An employee, as defined in the LRA, is differentiated from an independent contractor. But the proposed amendments to both LRA and the BCEA provide that someone who is 'economically dependant' on the person for whom he or she works or provides services is presumed to be an employee. So too is someone who is provided with his or her tools of trade or work equipment by another person.

What can the CCMA do about it, should it find that Apollus was unfairly dismissed?

The CCMA has powers in terms of the LRA to reinstate or compensate dismissed workers. Could it ever be practicable to 'reinstate' him as a taxi driver? Suppose the CCMA considered it was, on the grounds that the relationship between a driver and owner is not close. What will then happen, if Apollus is again not able to make his monthly payment of R1 100? Can he continue to be a driver without doing so? Is the owner, or employer, precluded from terminating the relationship for this reason?

The other remedy for unfair dismissal is compensation. Suppose that the CCMA were to order the Loots to compensate him. How would compensation be calculated if he did not earn a salary? Some would argue compensation must be calculated according to the average 'earned' over the period 'employed.' But no one apart from Apollus is likely to know how much this was. Whatever it was, it is a virtual certainty he did not pay tax on it. It would be ironic if a body funded by the South African taxpayer were to come to his relief in these circumstances.

But there is a more fundamental question at issue. Is it appropriate to use labour legislation to regulate this kind of relationship? Are we not straining the notion of 'employment' by seeking to extend legislative protection to persons it was not intended to cover? To address this question, it is first necessary to place the relationship between Apollus and the Loots' family business in a broader context.

### Survey of 'atypical work'

Earlier this year the Labour and Enterprise Project at the University of Cape Town was asked to undertake a study of the extent of 'atypical employment' in South Africa for the Department of Labour. Interviews were conducted with some 45 individuals associated with nine different

sectors. The sectors chosen were those in which it was believed atypical 'employment' was significant. These were as follows: retail, mining, manufacturing (food, clothing, metal and engineering), agriculture (deciduous fruit), catering and accommodation, construction and transport. Where possible, both employer and union parties in a sector were interviewed, as well as representatives of any significant bargaining councils, as well as researchers.

The object of the interviews was to obtain an overview of changes in each sector since 1990 in two respects. Firstly, to what extent economic or business restructuring had resulted in a decrease in permanent jobs, and an increase in the number of persons who depended on the sector, but who were not in employment. Secondly, to what extent the make-up of the workforce in each sector had changed or was changing, resulting in the increased employment of part-time and temporary workers. The object was also to determine how unions, employers and bargaining councils were responding to these changes, if at all.

More detailed studies of specific sectors and specific businesses are needed than could be undertaken in the time available. Even so, there have clearly been profound changes in each sector. This is especially so since 1995, and even more so over the past few years. There are now fewer workers in formal employment (and in sectors such as mining and metal far fewer). The make-up of the workforce in each sector has also changed. There are now proportionally more part-time and temporary workers employed.

The proportional increase of part-time and temporary workers in employment is regarded here as casualisation. However, it is only in the retail sector that casualisation in the workplace can be said



to have been dramatic. The extent of casualisation in the retail sector can be gauged from the example of a major chain store. Ten years ago 70% of its workforce were permanent and 30% casual. Today the ratio is reversed. A range of part-time workers, some of whom are so-called 'permanent casuals', account for 70% of the workforce. It is therefore noteworthy that retail is the sector in which overall employment (permanent and non-permanent) has diminished least.

In sectors other than retail, the dramatic change has not been as a result of casualisation as much as restructuring. This was most evident in the number of goods and services that had been outsourced. The rationale for outsourcing is that a business should concentrate on its core functions, namely those operations or activities where it has expertise, or where it has established a competitive advantage.

Cleaning, security, canteens or catering and maintenance are readily identifiable as non-core operations, even though their content varies considerably from sector to sector. In all sectors they had generally been outsourced.

However, one cannot explain the extent of outsourcing in terms of this rationale. It has included operations that cannot be construed as non-core on any sensible application of this doctrine: the production line in a food factory, for example, or core mining operations. One can also not explain the extent of restructuring in terms of outsourcing alone. Outsourcing occurs when an employer retrenches workers and engages a contractor to do their job. However, the same outcome, characterised here as externalisation, can be achieved in less obvious ways. A new business can elect to engage outside contractors from the



*Casualisation has been dramatic in the retail sector*

outset, rather than employ. Existing businesses can do so, without having to make their decision to do so explicit. A retrenchment may be separated in space and time from the decision to externalise. In which event the extent of externalisation may only be apparent in a reduction in the numbers employed and a growing number of contractors supplying goods and services in a sector. The construction sector is one such example. It has long been the practice to 'outsource' painting, joinery, installation of ceilings, and so on, because these are functions best performed by persons with specialist skills. Thus, by the way, goes to show that neither outsourcing nor the rationale in terms of which it is justified is new. Now functions that do not require persons with specialist skills are increasingly being sub-

contracted. As a result the industry now differentiates between specialist subcontracting and the 'labour-only' contractors.

The 'labour-only' contractor is paid per completed task, does not supply any materials, has no specialist skills, and exercises no discretion in how the job is carried out. Although estimates vary, it seems safe to say that between 40 and 50% of labour employed in the industry is now being performed by 'labour only' contractors. It has been relatively easy to make this change, because workers are employed on specific projects.

The growth of 'labour only' contractors in construction is matched by a proliferation of labour brokers, subcontractors and small enterprises that perform essentially the same function in all other sectors. Some may be new or existing enterprises responding to a perceived gap in the market and be more or less viable. But some are no more than satellite enterprises, existing only to service the core business that set them up in the first place.

### What has changed?

The terms in which a phenomenon or trend is described is not just a matter for academic debate. It concerns how we respond to it. The point of departure in the above study was that what 'atypical employment' seeks to describe encompasses a spectrum of relationships. Some of these are not new, such as part-time or casual employment. To the extent that these forms of employment are increasingly prevalent, 'atypical' seems an inappropriate term to describe them. If 'typical' employment refers in essence to employment in a permanent job, the converse increasingly applies.

More importantly, it is misleading to characterise the outcome of restructuring

as 'employment'. To do so narrows our focus to changes in the arena of employment, the workplace. It also invites us to regard these new relationships as a form of disguised employment.

It is perhaps appropriate to speak of disguised employment, where workers have entered into agreements in which they are described as 'independent contractors'. But the matter is not simple. In the case of clothing manufacturers in Durban, one could say they have done so under duress, for fear of being retrenched. But in metal and engineering skilled workers have done so in droves, for short-term material gain. As 'independent contractors' they do not have to contribute to benefit funds or bargaining councils. Probably they are also hoping not to pay tax.

It is also not only changes in the workplace that are contributing to externalisation. In food manufacturing, for example, hawkers and street vendors have become an important distribution channel for certain foodstuffs. The same is true of flea markets in the clothing sector. Many things have contributed to the growth of these informal enterprises, amongst them government policy. The role of government's development policy in restructuring is most apparent in the transport sector. It was the apartheid government that sponsored the growth of taxis, while at the same time cutting back on subsidies for other forms of transport. This was not only because it regarded taxis as a viable means of transport. It was consistent with its promotion of small business and entrepreneurship to do so.

The case of a taxi driver such as Apollus is relevant, not simply because there are thousands or tens of thousands in his position. Notwithstanding attempts to organise taxi drivers, it is through government and its enterprise

development policy that the relative imbalance of power between Apollus and the Loots can best be addressed

Given the range of forms it can take, is externalisation a coherent concept? The trend that seems to drive all forms of externalisation, is for businesses to focus on the marketing of their product. Functions formerly fulfilled by employees within the enterprise are now being fulfilled by contractors (or entrepreneurs), external to the enterprise. What is significant about externalisation, is the flight from the employment relationship it represents. In its stead, a new contractual relationship is constituted between the core business and the contractors who serve it.

The difference between casualisation and externalisation needs to be highlighted. In the case of casualisation, although the status of employees in the enterprise changes, their status as employees does not change. While regulation of the employment relationship may be made more difficult, it nevertheless remains susceptible to regulation. In the case of externalisation, goods or services are supplied in terms of a commercial contract rather than in terms of an employment relationship. The scope for all forms of regulation premised on an employment relationship is correspondingly reduced.

The consequences of the two processes are also different. Externalisation is creating a new layer of entrepreneurs. Some of these will be employers. Some of them are drawn from the ranks of those who were formerly employed, and from the unions. At the same time externalisation is generating casualisation. Although one of the effects of externalisation is that the conditions of employment of the workers of the enterprise supplying the service become

opaque, all indications are that they are in the most casualised form of employment possible. As a rule of thumb (according to one employer) an outsourced operation employs two-thirds of the workers at two-thirds of the rate: permanents were once paid. Needless to say this has far-reaching consequences for the cause of workers' organisation. It is therefore significant that trade unions have been party to externalisation, under the umbrella of 'empowerment'.

### Externalisation and empowerment

A leading hotel chain provides one instance of how externalisation has been effected under the umbrella of empowerment. It did not introduce externalisation in the hospitality sector. A competitor did. This competitor did not have to do so through outsourcing. It was a new business to start with. From the outset, it chose to employ as few people as possible, through what is referred to as the limited services concept. To the extent that this gave the new comer competitive advantage, it constrained its competitors to match its cost structure.

Functions such as garden services and security were soon identified as not part of the core business, and outsourced. Then it decided food and beverages were not part of its core business as well. It defined its core business as taking a booking and providing accommodation. Providing accommodation, one might suppose, must make the function of keeping the accommodation clean and presentable a core one. Yet housekeeping has also been outsourced. The reasons for outsourcing this function really have no relation to the distinction between core and non-core functions. Rather they concern how work is structured, and the introduction of what is in effect a task-based system of payment.

instead of a wage. This is done by setting up the workers involved in housekeeping as an external enterprise. The hotel chain then contracts the enterprise to do the job on a task basis.

By contracting an enterprise to do the job, the company has contracted out of its obligations as an employer. This is not only the obligation to pay a wage that bears some relation to the cost of living, but also to provide social benefits such as a pension and medical scheme.

There are still workers employed, but they are employed by the newly-created enterprise. The form of enterprise the company has chosen to establish is a close corporation. The members of the close corporation were once employees of the hotel chain. If they did not occupy leadership positions then, they do so now. They are now responsible for managing and directing their former colleagues. In effect they are their employers, although the company speaks of the employees as associates of the corporation.

The company has thus achieved a triple objective. First, it has cut its labour costs, in the form of wages and benefit fund contributions. This it has done by outsourcing to the newly established enterprise. But the term outsourcing does not describe all that it has achieved. A new system of payment is provided for in the agreement between the company and the enterprise.

If the rooms are occupied, there is work for the close corporation. The company then pays the agreed rate per room. If not, the company pays nothing, and the workers of the enterprise are also not paid. The second objective is achieved thus. Its labour costs (which have now been converted to service fees) are no longer fixed, but variable. Third, it has effected a transformation of social relations in the workplace, in terms of

which certain ex-employees are elevated to the status of employers of the other employees.

### Transfer of assets

The enterprises established by the hotel chain are economically wholly dependent on the core business, and exist to service the enterprise. Accordingly they are characterised here as satellite enterprises. Even more radical forms of externalisation have been attempted, where assets have been transferred to satellite enterprises established by its employees. The best known example is where truck drivers buy their trucks from the employer, and employ their own crew to do deliveries.

The pattern at one major food company is probably typical. The truck driver borrows from the bank to buy his truck. The employer stands surety for the loan. To all and intents and purposes it is an ordinary agreement of purchase and sale. The employer and the company in turn enter into an agreement whereby the driver undertakes to deliver for the company, and is paid for tonnage delivered. In effect this is a productivity payment, akin to payment on a piece-work or task work system, but cast in the form of a commercial contract. The driver is also beholden to the company for the duration of the agreement. Ten years is probably a typical period. After all, the truck he drives bears the company logo.

Before the trucks were sold two or three workers were employed on each to assist the driver. After buying the truck, the driver will make do with one assistant, usually a family member, or none at all. Through this arrangement the company achieves the same objectives as the hotel chain. Not only are labour costs cut, but the costs of delivery now vary according to sales. As a result the company claims

significant increases in productivity. The reason productivity increases, as articulated by the company, is that the driver is 'incentivised'. In contrast to a driver who is paid an hourly rate, who will spin out a delivery for as long as possible, he (it is not likely to be she) is working for his own profit. As a result the tonnage moved at some plants tripled. Overall it is 20 to 30% higher than it was.

The transfer of physical assets to an enterprise is significant for a number of reasons. For one thing, it is difficult to see how a transfer of physical assets could not also constitute a transfer of a whole or part of the business. This is precisely the kind of transfer the LRA seeks to regulate, yet in a unionised workplace the LRA was not invoked. When the trucks were sold, workers that could not be accommodated elsewhere in the company were retrenched. The union did not contest the retrenchments.

This must surely be because the owner-drivers perceive they have benefited from their new status. But the benefits may be of a short-term kind. It is therefore probably too soon to assess the extent to which this is really so. Such an assessment will have to include an appraisal of the assets they have acquired, and an appraisal of the benefits they have forfeited, including pension and medical benefits. The extent to which owner-drivers are able to provide for the depreciation of their trucks will in many cases determine whether their enterprise is sustainable in the longer term.

The case of the owner-drivers is not unique. There were instances of assets being transferred to satellite enterprises in construction, engineering and food manufacturing. However, the category of persons most often 'empowered' is former managers. It is management or someone with management support that is most

likely to be aware of an opportunity to outsource, and to have the resources to tender.

A food manufacturing company sold 13 poultry farms to its employees, including the management. Each lot of employees, through companies they had formed, entered into a 20 year agreement with the parent company. In terms of this agreement, they undertake to supply the parent company with 80% of what they produce. The balance they may sell as they like. The objective, again, is to 'incentivise' the employees. The mundane and repetitive nature of this particular farming operation makes it all the more desirable to do so.

A parallel objective is to transform this part of the company's business from manufacturing to marketing. There is an incentive for it to do so. By disposing of assets, it is presumably also diminishing risk. At the same time it is improving its ratio of the return on investments to assets, making it a more attractive investment. Yet it is also not all the farms that have been sold. The parent company will retain the 'high-tech' breeding farm. It also retains the right to enforce hygiene and quality standards.

Through its ownership and control of technology that is essential to the operation, it retains control. When all is said and done what is core may be no more than the right to certain brand names, by virtue of franchise agreements, or by virtue of the law of intellectual property. Provided the rights to those intellectual property rights or franchises are not compromised, virtually every operation can be outsourced. ★

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*Jan Theron is co-ordinator of the Small Enterprise Project at the Institute of Development and Labour Law and a practising attorney.*

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# Trade union education

## key challenges

**T**rade union education in South Africa has made a major contribution to the growth and development of the South African trade union movement

The most important providers of trade union education have been the unions and federations themselves, supported by labour service organisations, worker colleges and in the past four years by Ditsela.

Trade union education encompasses 'formal' training programmes and workshops, as well as the range of informal, on-the-job and other forms of experiential learning that takes place in a union environment

Trade union education's primary aim is to build a strong trade union movement. It has a tradition of collective, participatory and active learning, embedded in union values and principles. It has focused on ensuring that unionists in their various roles are effective in delivering on their purpose and mandate

### Change

In the changing political and economic climate nationally and internationally, trade union education cannot escape the pressures facing the union movement as a whole

Although the greater part of the movement generally maintains a socialist vision, the political discourse in the

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*At the end of its fourth year, Ditsela looks at some of the challenges facing trade union education in South Africa, and explores ideas for meeting the challenges. Chris Bonner reports.*

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environment has shifted radically. The language, ideology and practices of the 'market' have entered trade unions in both overt and subtle ways

Changes in the global and national economic terrain mean that unionists are struggling to adapt to a situation of greater complexity. They have an ever-increasing need for more in-depth knowledge and skills, as well as creative strategies and approaches that can balance national imperatives with immediate worker interests

With changes of such magnitude, it is not surprising that union culture and unionists themselves are changing. This includes a changing understanding of the purpose and functioning of unions, and changing attitudes and practices. It includes the more rapid turnover of union staff, linked to the opening up of career opportunities and a generally more individual orientation

## Challenges

These broad changes affecting, and being affected by, the trade union movement, present challenges for trade union education. These challenges include what type, level and form of provision there should be, and how it would be sustained. It includes deciding who the providers are and what contents should be covered. Learners' and their unions' attitudes and expectations towards education would also have to be dealt with. They begin to question the purpose and value of union education, including the principles, values and collective ethos on which it has traditionally been based.

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*Trade union education that encourages critical, creative thinking and questioning helps build people's capacity to deal with these challenges. Yet this may itself pose its own challenges to the movement.*

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Trade union education that encourages critical, creative thinking and questioning helps build people's capacity to deal with these challenges. Yet this may itself pose its own challenges to the movement.

Whilst many fear the challenges will have negative consequences, they force those of us involved in union education to constantly reflect on purpose and practice, and to come up with innovative ideas and activities.

## Challenge of sustainability

Over the past four years, Ditsela has had a significant impact on the level of provision and quality of trade union education. It has helped to shore up a generally shrinking

resource base. This is due largely to substantial core funding provided by the Department of Labour. However, within unions and federations provision is patchy and often funding (and funder) driven. Whilst a union or federation in one year may provide extensive programmes, the opposite may be true in the next year should a funded project end. Similarly, with a limited number of skilled union educators – and with high turnover – the loss of a central figure in a union/federation can dramatically affect the ability to run programmes. In a 1998 survey by Ditsela, both unions and labour service organisations cited lack of funds as a major inhibiting factor in sustainable and quality provision.

Where funds are available, there is an increasing trend for unions to 'contract' out their education and training to commercial providers, consultants and higher education institutions. They sometimes condone provision by management of key programmes such as basic shop steward training. This results from the shortage of union educators, the shrinking of traditional labour service organisations, the consultancy culture invading society and the increasing value placed on formal institutions, certificates, glossy presentations and the like.

Whilst an adequate supply of 'strings-free' funding, with non-bureaucratic procedures for access and reporting, appropriate to the union environment would enhance development and sustainability, major challenges would remain.

In the confusing and complex political and economic environment, it is crucial to clarify a common co-ordinated vision and purpose for trade union education, and for leadership to reaffirm its value.

Coupled with this is the need to attract, quickly build the capacity of, and then retain, a cadre of skilled and committed





*Many unionists want trade union courses to be formally accredited.*

trade union educators – within and close to the union movement. Ditsela has this as one of its most important tasks. It is also experimenting with new strategies to support educators in their work. However, despite these efforts, the numbers and skill levels required to make a significant and sustainable impact remain a major challenge

### **To formalise or not?**

'The legacy of apartheid education has left several generations of black workers with little or no access to education and training, or qualifications of any marketable value. Workers are now turning to their own organisations to address these needs? [There are] heightened demands for access to training, certificates and career paths.'

The legitimate concern for redress through qualifications, together with rising career and salary expectations, and the promise contained in the new skills and

education legislation, pose enormous challenges for trade union education. Unionists are requesting that the trade union courses be formally accredited. This has raised a number of concerns and debates within the movement.

Some of the concerns are political and ideological. Others are practical and resource based. For example, concern has been expressed that formalising and accrediting trade union education will undermine its very purpose – to build strong unions – as well as change its collective and transformative agenda. Individual trade unionists will use scarce resources to build their own careers (often out of the movement), and the democratic process will be undermined. Unions and management will begin to demand only formally qualified officials and shop stewards, and those whose formal education is limited will exclude themselves from training for fear of failure.

Practically, it has become clear that

developing qualifications, the necessary systems for assessment and record-keeping, as well as suitably qualified unionist educators to do the work within and close to the unions, requires massive initial and ongoing resources. The alternative seems to be to hand over trade union education to outside providers, whose motives, commitment and ideological orientation may be very

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*Practically, it has become clear that developing qualifications, the necessary systems for assessment and record-keeping, as well as suitably qualified unionist educators to do the work within and close to the unions, requires massive initial and ongoing resources.*

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different from that of the trade union movement

There are, however, compelling arguments that have led Ditsela, with the federations, to take a decision to move cautiously towards accrediting some of its courses, particularly the courses in the Ditsela Advanced Series which involve 20 days contact time, arranged in four blocks. This will include working with the Education, Training and Development Practitioners (SETA) covering trade union staff. It will include developing more formal certification processes with its current university partners as well as increasing the pace of development work on a home-grown trade unionist qualification linked to the national qualifications framework (NQF).

This decision recognises that such a move may contribute to the securing of

sustainable funding, providing for career development in the unions and thus motivating and retaining staff, as well as forcing an improvement in the quality of union education. A recent study carried out by the British Trades Union Council (TUC) on its accredited shopsteward training programmes, showed that fears of negative outcomes were unfounded. However, caution should be exercised in making assumptions from international comparisons. In this example, the material and human resources available are in an altogether different league.

### Changing context

With the changing union context, comes a need for new content, new skills and new approaches to union education. In a recent Ditsela study on the roles and competencies of union organisers, we found that although traditional activities were still important in organiser jobs, the approach to these was changing. In addition, they had to deal with a range of complex issues, which they felt ill equipped to handle. These ranged from applying new laws effectively; to negotiating on economic policy, industrial restructuring and workplace change. They included issues as diverse as counselling workers on HIV/AIDS, and advising workers on financial problems and the setting up of small businesses.

This need for new knowledge, skills, approaches, and strategies is to be found at all levels in the unions. There is a perceived need for more in-depth and specialist training programmes for specific roles and functions – for example, legal specialisation, specialisation in health and safety or retirement funds, and for union leadership to acquire skills to manage unions effectively. Training in the use of technology and in communication skills is high on the agenda. Women leadership



*Ditsela constantly reflects on union education's purpose and practice and comes up with innovative ideas and activities.*

development and gender awareness programmes have become important. At the same time, there is a recognition that political education must be stepped up to counter the negative and pervasive effects of neo-liberalism, globalisation and technicism.

The challenges facing union educators and institutions like Ditsela, with this changing agenda are enormous. There has to be constant development based on experimentation, as well as the creative use of international and local experience. In this climate, it is not surprising that unions seek outside assistance from consultancies and higher education institutions to plug perceived gaps in our own education, educators and institutions.

It is clearly important that we find a way to make maximum use of scarce resources and expertise through building local networks of 'union-friendly' providers, developing appropriate

partnerships and linking with trade union educators in other countries.

### **Methods and approaches**

Linked to the challenges around content, are challenges around methodology and broad approach. For example, in the area of economics, there is an ongoing debate around the most appropriate teaching and learning methodologies. Should we use an approach that is primarily experiential, or do we focus on giving new knowledge directly? Or is it something in between? How far should we be using new technology in our education programmes? Is it appropriate to focus resources on developing and using technology, including developing distance education by computer – as is increasingly happening in the north? Or should we focus on simple, understandable and basic methodologies which grassroots educators can easily apply?

On a broader level, there is a question

as to whether trade union education, with its focus on courses and workshops, is capable of effectively achieving its challenging objectives

Trade union education depends to a large extent on the capacity of unions to take advantage of available funding to run programmes or to take advantage of programmes offered. Often the better resourced and organised unions are the ones who do so, and the unions who most need assistance do not.

A look at the Ditsela records or the funds allocated but not expended in the South African Labour Development Trust - a funding organisation set up to disburse European Union money confirms this observation.

It has been noted on numerous occasions that education and training courses alone are not enough. The concept of collective learning for organisation-building implies that the individual learner must apply skills and knowledge acquired on return to the union. However, learners often report that they are not able to do so due to lack of support or opportunity. Interestingly, despite this many are able to make their contribution in a number of ways that perhaps we had not thought of. Our current research on the impact of the Ditsela Administrator Development Programme, 1999 is revealing in this regard.

Ditsela is taking up the challenge and is experimenting with participant follow up, support for education development, women leadership support, as well as requests for advice and assistance on a range of organisational change and development issues. This work, however, is dependent on skilled and experienced staff members, flexibility in funding and an ability to deal with frustration and unpredictability.

## The global challenge

Globalisation and the increasing power of multi-national companies, international financial institutions and financial speculation requires a global response from labour. In South Africa, solidarity with African countries is recognised by the federations as vital. Trade union education has an important role to play in the process of building solidarity. One way is the sharing of ideas on methodology, another is by building links and common programmes through new technology. An example of this is the International Study Circle Project of the International Federation of Worker Education Associations (IFWEA). In Africa provision of direct support becomes important.

The latter is a particular challenge for South African federations and institutions as our own lack of capacity becomes even more stretched. Ditsela is taking up these challenges in a measured way through encouraging participation on our courses, and providing for extended visits by key African educators.

## Crossroads?

Whilst some of the challenges seem daunting in an environment of shrinking financial and people resources, trade union education continues to be a vital and integral part of trade union life. It is an exciting and rewarding field in which to work.

Both COSATU and FEDUSA have recently reaffirmed its importance in strengthening the movement. However, its role and future direction is uncertain given the changes and challenges facing unions, and the particular challenges facing trade union education. ★

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*Chris Banner is the director of Ditsela and a member of the South African Labour Bulletin editorial board.*

# COSATU congress

## *progress for gender equality?*

**T**he COSATU congress in September 2000 was resolute in its rejection of labour law amendments and outspoken on the impact of job losses, poverty and unemployment. But was it as steadfast in its commitment to gender equality?

### **Participation of women**

On the positive side, the 2000 congress made advances on the previous two congresses – firstly there were slightly more women delegates and secondly there were noticeably more women speakers. This is important because it challenges the notion of trade unions as male-dominated organisations (especially since some unions have a majority of women members). In addition, when women stand up to address congress it challenges traditional gendered stereotypes of leadership being a 'male terrain'. It also partially creates conditions for greater participation of women in debates and in deciding on policy for COSATU (but the extent to which this happens is a test of trade union democracy).

Despite the progress mentioned above, men still largely dominated the debates and discussions, and there was very little discussion of gender issues in political and socioeconomic debates. There are still implicit assumptions in debates in COSATU, as well as in other organisations: that gender issues are separate from 'real' political issues,

*Liesl Orr outlines COSATU's new gender policy and its adoption at Congress.*

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and that women are not political thinkers and leaders. It must be said, however, that those affiliates that ensured women delegates did speak on various issues were playing an important role in beginning to challenge these assumptions.

### **New gender policy**

The COSATU congress was preceded by the National Gender Conference, held in July 2000, where a draft COSATU gender policy was adopted. This was put forward for adoption at the COSATU congress. The gender policy was drawn up with the objective of consolidating COSATU's resolutions on gender. The policy covers a range of issues, and looks specifically at promoting gender equality within unions and within the labour market. The key areas of focus are:

- building women's leadership,
- electing women as shopstewards,
- building gender structures,
- eliminating the gender division of labour in trade unions and the workplace,
- education and empowerment,
- eliminating sexual harassment;
- engendering collective bargaining

- (including a range of issues);
- fighting discrimination on the basis of sexual orientation,
  - building the national women's movement.

The gender policy also deals with developing implementation and monitoring processes

Since there were no specific resolutions on gender issues, the discussion on the gender policy was to be the key gender debate of the congress. The debate would be assessed on the basis of whether there was a sense of seriousness and commitment about genuine and constructive engagement.

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*Past experiences of debates on gender issues have tended to be characterised by two extremes: policies and proposals being passed without any real debate, or heated and thorny debates that threaten to be resolved only by the ballot.*

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Past experiences of debates on gender issues have tended to be characterised by two extremes: policies and proposals being passed without any real debate (a case of 'adopted, next issue'), or heated and thorny debates that threaten to be resolved only by the ballot. Because the gender policy had already been discussed by affiliates in preparation for the Gender Conference in July, it was expected that this would not be a controversial issue. Sadly, there were attempts by some affiliates to water down the gender policy, despite the fact that they had been party to recommending its adoption. This raises questions about mandate and accountability in unions and the fact that gender structures are often so

compartmentalised that constitutional structures are not party to gender debates until formal decisions need to be taken in the federation

Although these unsettling interventions came from only two affiliates that had no support from other unions, it still reflected continued resistance by some to real change on the gender front.

One of the arguments presented was against the setting of targets for women's leadership. This is essentially a *laissez-faire* approach to dealing with an issue that requires conscious efforts of redress. The logic of this argument runs counter to the interventionist approach of trade unions in dealing with the market economy, for example.

There was another input on the rejection of quotas, which simply repeated the tired arguments that were presented at the 1997 congress, suggesting that women should be elected on merit because quotas are seen as tokenism

Despite the problematic content of the input it was redundant and unwarranted in any event, since quotas were put forward as only one option amongst many. The gender policy had taken an accommodating approach, suggesting that affiliates should commit themselves to reach certain targets for women's leadership (based on the level of employment of women in each sector) and that affiliates themselves should decide how to reach those targets. So whether they decide to use quotas, reserved or additional seats, or any other strategy will depend on their own assessment of their particular conditions. This requires, significantly, a real and practical engagement with the process of building women's leadership, not the simple adoption of one mechanism or another, nor the passing of lofty (but unimplementable and unmeasurable) resolutions.

Another concern raised was about a



*'The gender issue is fundamentally about democracy and full participation . '*

reference in the gender policy to women being treated as sex objects rather than equals - this sentence was deemed unnecessary and inappropriate. One wonders who really felt that it was inappropriate - surely not women who have lived through such experiences.

Ironically, minutes after having heard the pronouncements on the irrelevance of sexual harassment of women, an entire delegation erupted in whistles as a female delegate walked to the microphone to address the congress. Of course, some may see it as simply cheering her on - but the tone of the whistling told a different story.

An even more disturbing feature of these debates was a sobering repeat of an element of the 1997 quota debate - where male leaders manoeuvred women in their delegation to speak against the issue under the guise of a union mandate. These experiences beg important questions about the practice of democracy and control in trade unions when it comes to dealing with

gender issues. Why are men in leadership shy about putting women forward to speak on the so-called 'big political issues', yet they are only too ready to send women to the podium to thrash proposals that are intended to advance gender equality?

### **The challenges ahead**

Despite the fact that the congress debate itself was marred by these developments, the outcome was overwhelmingly positive. The gender policy was adopted and the federation thus committed itself to clear and concrete strategies to advancing gender equality. These include adopting targets for women's leadership that should be reached by affiliates within specific time frames.

This should be achieved through comprehensive strategies to be developed by each affiliate, including

- specific mechanisms to ensure women are elected to leadership positions,
- elimination of barriers,
- leadership development programmes;

- focused campaigns and activism on key gender issues and demands in the workplace, such as parental rights;
- campaigns to elect women as shopstewards.

The gender policy poses a challenge to affiliates to be proactive and concrete in their programmes and campaigns for gender equality. It also poses a challenge to gender activists within affiliates to be focused and resolute in their objectives.

Another important challenge that arises out of the experience of the congress debate is to highlight the positive experiences of affiliates that are taking significant steps to constructively engage with gender issues and build women's leadership.

The survival of trade unions depends on drawing on the untapped strength and energies of their members, particularly women. Leaders who are only concerned

with power and control ultimately destroy organisations. The gender issue is fundamentally about democracy and full participation – lessons that are all too pertinent in the current political conjuncture.

Thus, COSATU still faces a major challenge if it is to take its rightful place as a leading force in the transformation of gender relations and of society as a whole. Fundamental to this challenge is the transformation of individuals to become conscious gender activists. This means that women must refuse to be bullied and harassed by men; they must act on the power they already have; and where they are marginalised they must demand their space and take their place. It also means that men must internalise the rhetoric of gender equality – starting in their own lives. ★

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*Liesel Orr is a researcher at Naledi*

# SOUTH AFRICAN LABOUR BULLETIN

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# Undoing 1924

## *bargaining in the mining industry*

**Y**ou would have to go back to the 1922 miners' strike to trace the roots of centralised bargaining in the mining industry. The strike led to the Industrial Conciliation Act of 1924, which introduced centralised industrial councils to promote dispute resolution.

Since the 1980s, bargaining levels have been a major issue in local labour relations. Most unions want centralised bargaining, while most employers insist on decentralised bargaining. This is the story of one union's move to decentralised bargaining.

### **Fight for centralised bargaining**

In the early 1980s the independent trade unions were suspicious of industrial councils, seeing them as part of the apartheid system.

These unions were new and recognised that they were not powerful enough to negotiate in industrial councils. They preferred to first face employers individually and gain recognition and negotiating rights at decentralised or company level. Management, however, insisted the unions join industrial councils.

As the unions grew, they could reap the benefits of industrial councils and so started negotiating there. Many employers reacted to the strength of the unions by trying to withdraw or withdrawing from

*Etienne Vlok finds out why UASA is moving to decentralised bargaining for its official and supervisory level members and assesses the implications of this move.*

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industrial councils, choosing to negotiate at decentralised level.

When the ANC came to power, it promulgated the LRA of 1995, which reinforces centralised bargaining. This law provides for bargaining councils – a development from the old industrial council system.

A bargaining council consists of registered trade unions and employer organisations, adopts a constitution and registers with the Department of Labour. Bargaining councils:

- negotiate collective agreements concerning wages and working conditions;
- administer and enforce these agreements;
- prevent and resolve disputes;
- establish training schemes.

At its 2000 congress, COSATU resolved to 'continue to advance its objective on centralised bargaining, and commit to wage a relentless struggle until bargaining

councils are established in all sectors of the economy'.

### Why centralised?

Parties want to bargain at the level where they are the strongest. For strong unions that level is central. But what are the advantages of centralised bargaining? Trade unions claim it:

- protects non-unionised workers;
- stops standards being lowered,
- allows them to use their skilled negotiators better,
- sets common conditions for an industry such as a minimum wage.

Employers criticise centralised bargaining as it establishes minimum wages and conditions. They believe it stops them from competing internationally as they cannot adapt wages and conditions of employment to their organisations' needs, or link pay and productivity.

In 1996 Finnemore and van der Merve predicted that the state would provide legislation in favour of decentralised bargaining if it regarded bargaining councils as hampering economic growth and small businesses. This may happen now.

The proposed labour law amendments mean that bargaining council agreements may not be extended to non-parties as easily as before.

### The mining industry

The mining industry has been bargaining centrally since 1924. As it does not have a bargaining council, parties negotiate based on convention and practice under the auspices of the Chamber of Mines. As the employers' organisation, the Chamber bargains for employers.

Anglogold's head of labour relations, Abe Bardin, explains the absence of a bargaining council. 'The process has worked so well that there has been no

need to formalise it into a bargaining council.'

The mining companies and unions negotiate in three bargaining units:

- category 2-8, which is for labourers;
- union men unit, which is for artisans, technicians and miners;
- officials unit, which is for officials and supervisors.

NUM is the dominant union in category 2-8, the National Employees Trade Union (NETU) and the Mineworkers Union (MWU) are dominant in the union men unit and UASA in the officials unit. UASA is the second strongest mining union after NUM with about 33 000 active members.

UASA, traditionally a union for supervisory levels, is the only union recognised for collective bargaining purposes in all three units. UASA bargained in the union men unit and category 2-8 for the first time in 1999 when the parties signed a two-year agreement at the Chamber. UASA is recognised in category 2-8 as some NUM members at Buffelsfontein Mine apparently defected to UASA.

Although category 2-8 and the union men unit still bargain centrally, 1997 was the last year that the officials unit did so. When the officials unit's three-year agreement ended this year, UASA negotiated directly with the individual mining groups. So the mining industry negotiated wages at decentralised level for the first time.

### Decentralised bargaining

In December 1999, UASA informed the Chamber of Mines that it agreed to negotiate with each mining group separately.

The Chamber and the mining houses agreed and so decentralised negotiations started in March 2000. UASA's divisional

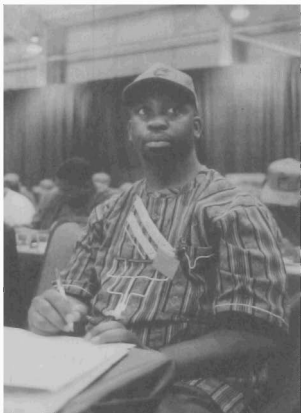
manager north, Tim Kruger, cannot contain his excitement 'We are leading the rest of the unions into a new era. We chose the decentralised route, as centralised bargaining is not successful anymore. The poorer companies cannot afford the increases of Anglo and Goldfields. Yet they have no choice. Soon they will retrench our members.'

Kruger admits that decentralised bargaining is a huge process concerning human resources and time, especially for himself and Manie de Kock, the divisional manager south, who attended 95 wage negotiation meetings. 'We developed our own process. Each branch nominated three members to serve on a mandating committee for each mining group. The mandating committee then nominated a negotiating team to join de Kock, the regional manager and myself,' explains Kruger.

Kruger and de Kock met with the mandating committee who got mandates from members. From this the mandating committee drew up a single mandate for each mining group.

After negotiating, the negotiators reported back to the mandating committee or to members. If necessary, the mandating committee got alternative mandates and returned to the negotiating team.

Kruger is proud of this process. 'The information we, as negotiators, received from the mandating committees was first-hand, not second-hand. Members knew what was happening and that they could influence the process. So, as negotiator, what I agreed on, was always what the majority of members wanted.'



NUM's deputy general secretary, Archie Pelane.

### An employer's response

Why did the employers agree to decentralised bargaining for the officials unit? Bardin explains. 'The merits of collective bargaining through the Chamber are no longer evident. The industry has changed with coal and gold going through difficult times and small mines and empowerment groups entering the Chamber. The unity at central level on bargaining issues has disappeared. Different employers have different agendas. Some smaller mines do not necessarily believe in the same things as AngloGold does. We are not only cost-driven. We have socioeconomic objectives too.'

AngloGold proposed decentralised

bargaining as it wants to individualise the officials' contracts, adds Bardin. 'Collective bargaining means only doing the best deal on average for the lowest paid. It mitigates the possibility of looking at each official individually. We want to award them with merit-based increases and can only do it by considering the individual.' AngloGold also regards decentralised bargaining as providing flexibility on wages and organisational issues, which one does not get at central level. Decentralised bargaining will mean a better deal for everybody,' proclaims Bardin. 'We believe that if AngloGold makes a profit everybody will receive fair wage increases and will be happy.'

### The results

At the gold mines where UASA negotiated they received wage increases of between 8 and 9% with mostly one year and some multi-year agreements. At the coal mines the increases ranged from 6 to 7% with mostly two year agreements

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*'...the decentralised negotiations with UASA went well. Both sides put realistic wage offers on the table and managed to restructure the wage package.'*

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In UASA's newspaper, Kruger and de Kock analysed the results: 'With each group we have had to weigh cost increases against the possibility of further retrenchments. The results have therefore been relatively conservative in monetary terms but healthy when job security and inflation are taken into account. In the long term the new system will reflect positively on productivity, job retention and earnings.'

According to Bardin, the decentralised negotiations with UASA went well. Both sides put realistic wage offers on the table and managed to restructure the wage package. He describes decentralised negotiations as more efficient, quicker and without bunfights.

### The implications

Centralised bargaining only involved Chamber and trade union officials, according to Kruger. It meant poor mandating and no involvement of individual mines. 'However,' claims Kruger, 'with decentralised negotiations people from the ground level participated and got exposed to negotiations and acquired new skills and experience.'

UASA believes members will benefit from decentralised bargaining as it only addresses issues specific to each group. This translates into realistic wage increases. It also means negotiators can address operation-specific issues such as remuneration structures or medical schemes, which would never get a hearing at central level. Parties can also address the differences between gold and coal, which have lower profit levels.

NUM's deputy general secretary, Archie Pelane, believes centralised bargaining will address remuneration structures and benefits if the industry moves to a package system. 'We bought into the idea of a package system, as recommended by UASA. It means all allowances and benefits increase by the same percentage as wages.'

So is UASA not concerned about losing the benefits of centralised bargaining? 'Not at all,' says Kruger. 'See it in this light: we are sole agents in the officials unit. The union men unit, however, has five unions. If we negotiated at decentralised level, we would lose collective power.'

2001 sees negotiations for the union men

unit and category 2-8 UASA must decide what to do if the other unions stick with centralised bargaining. If NUM chooses centralised bargaining in category 2-8, UASA will not negotiate at company level. Yet, if UASA and the management of a mine where it has sole recognition decide to negotiate at company level, the LRA allows them to do it. In such a case, other unions might urge UASA to stay if they have some members there. 'We will not fall for that,' says Kruger, 'because the LRA allows us, as the majority union at those operations, to decide.'

Anglogold would prefer the other two units to bargain at decentralised level also, as it would be more efficient. Bardin realises that the chance of that happening is small. 'Those units are different. NUM will not allow it and the smaller mines might also want to stay in the Chamber.'

NUM does not foresee the union men unit or category 2-8 bargaining at company level. Pelane explains 'We bargain for all members. It does not make sense to have different forums and demand 8% in one and 6% in another. If management wanted to create conflict, they just have to offer different percentages to different groups.'

Bardin believes UASA wants to bargain at company level in the other units also because it is in a difficult situation. It fears being swallowed up by the bigger NUM. 'NUM is like a big frog sitting patiently, waiting for the bug. The smaller unions' concerns are not addressed and NUM's agenda prevails. UASA does not even feature as NUM brings 70 delegates.'

NUM also cites a move to individual contracts as a danger of decentralised



*UASA's divisional manager north, Tim Kruger.*

bargaining. 'As a global player, we see mining moving that way. We see it in Rio Tinto. The local situation differs but with mechanisation increasing we could be moving to individual bargaining.'

Pelane sees UASA's move as temporary as it will not influence industry policy by negotiating separately. He does not agree with UASA that decentralised bargaining will save mines and lessen retrenchments. 'In the mining industry companies retrench based on economic, not financial reasons like wage demands. The industry can afford wage increases.'

### **A bargaining council**

At its congress, NUM decided on a bargaining council. It believes the industry

still represents an old style of operations. NUM sees a bargaining council.

- shaping the industry in terms of policy and minimum standards;
- enabling the industry to influence legislation, productivity and investments,
- providing a more co-operative approach

The proposed bargaining council will consist of an industry chamber that deals with policy and minimum standards. Below it will be sector chambers for the different minerals. These can improve on the industry standards if possible. Mines who can improve even further on the sector chambers will have their own negotiations. The bargaining council will consist of only one bargaining forum binding everyone from officials to category 2. 'We want to see centralised bargaining in the true sense, not based on past practices,' says Pelane.

With only one bargaining forum, a bargaining council will ensure that management cannot divide the workers by offering different wage increases to different unions. Or that different unions settle with different mining houses, which means unions lose the solidarity element.

A bargaining council can focus also on health and safety and training. It will recognise training across the industry and ensure workers are not disadvantaged when transferred. A council will also deal with issues that the unions and individual mining companies should discuss but do not always do, such as housing and the restructuring of hostels. Pelane believes only strict rules will stop mining houses doing as they please.

NUM has lobbied on the bargaining council and reports that the principle has been well accepted by the different parties. However, the practicalities and the

setting-up of it will be difficult. Pelane warns: 'Our members will fight for it as it is more positive than the Chamber of Mines.' He only expects to have a bargaining council in place in two years as the industry cannot tamper with the current two-year agreements.

Pelane believes that if the industry can sort out the practicalities of a bargaining council it will silence the fears of unions who want to bargain at company level. NUM has negotiated with UASA who voiced their support for a bargaining council. 'We need to bring them on board. Such a council will address UASA's fears of being unable to address specific issues with each mining group,' continues Pelane.

### Stay or go?

Clearly UASA is not happy negotiating at the Chamber. It feels decentralised bargaining will secure its members' jobs and allow them to address specific issues with specific companies. It has pointed to a strategic decision to bargain at decentralised level for its 'more' skilled workers in supervisory positions. It has also pointed to improved democratic practices being developed with new ways of negotiating. Yet decentralised bargaining holds dangers. As AngloGold suggests, mining houses would want to move to individualised contracts. Maybe it is acceptable to UASA's members, who are mostly in supervisory positions, but it could also mean the end of the union as they know it.

So, can a bargaining council address UASA's problems? From what NUM says, it seems so. A bargaining council can ensure parties address specifics, such as the restructuring of hostels or medical schemes. By helping establish a bargaining council UASA could ensure the bargaining council addresses its fears. The chance of UASA surviving intact might be better ★

# Power through publishing

## *SACCAWU and parental rights*

**S**ACCAWU has been in the forefront of the struggle for parental rights. In the 1980s and early 1990s the union won a host of agreements with some of South Africa's largest companies: Pick 'n Pay, OK Bazaars, Clicks, 3M and Diskom.

The Pick 'n Pay agreement of 1987 still stands out as a landmark in this field – 12 months of maternity leave with job guarantees. But many of those who played a leading role in those struggles have left the union. In light of this situation, there is the danger that these agreements remain pieces of paper, the contents of which remain a best kept secret from union members.

According to Patricia Appolis, SACCAWU's national gender co-ordinator, the situation became 'quite urgent as negotiators were nearly all male' and the very few women negotiators 'weren't necessarily gender sensitive'.

### Research and writing

To address this problem SACCAWU began a process of producing educational materials for negotiators and shopstewards in 1997.

As former SACCAWU negotiator Jeremy Daphne noted, 'Due to staff turnover, particularly after the first democratic elections there was a need to put SACCAWU's experiences down in writing'. The materials had two aims:

- to provide support for the arguments

*John Pape outlines how SACCAWU has built organisation and advanced parental rights by researching and producing publications on parental rights.*

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negotiators would have to make with employers,

- to promote general awareness within the union of parental rights as an essential element of the struggle for gender equality.

The union received funding from the Bernard van Leer Foundation and the South African Labour Development Trust (SALDT) to carry out this project. However, SACCAWU lacked the dedicated staff to produce the manual. In Appolis' words 'When we strategised on how we were going to produce the manual we acknowledged that we did not have the capacity. We thought the best thing would be to work with a labour service organisation (LSO), but the process should be driven by the union'.

Daphne concurred, noting that production of the manual would be 'a process of empowerment of shopsteward negotiators as well'.

As a result, SACCAWU approached an

LSO, ILRIG, where Daphne was director. ILRIG and SACCANWU had a series of meetings and agreed on a process to produce the materials. The model was to be one of 'participatory research' where workers would be actively involved in each step of the process.

While such participatory approaches aim to promote democracy, they often get bogged down in an endless series of meetings that fail to take key decisions. The union had to work carefully to avoid such pitfalls.

### Building organisation

Appolis also saw the development of the materials as more than just a production process. She used the work on the publication as a way to bring together members of the gender structure and focus their work on a specific project. To this end, she decided to allocate responsibility for the project to one region: the Western Cape.

Despite these good intentions, people remained apprehensive about the project. Although the national leadership was supportive, the regional office bearers were not so keen. 'You had to convince them,' recalls present Western Cape gender co-ordinator Tihliwe Lusu.

Gender structure member Brenita Cloete says a typical response from male leaders was 'it's you guys again'. Jan Kotze, current chairperson in the Western Cape recalls similar attitudes. 'A woman would come and say: "I want you to have a gender committee." We would say "why do I need a gender committee? I've got an education committee, a finance committee..."

But the apprehension even extended to the members of the reference group. The first two designed groups failed to meet. Cloete: 'I was sceptical about a reference group and it was also held on a Saturday.'

By late 1997 the union finalised a plan for developing the manual and members like Cloete were 'converted': 'The first meeting went okay. I couldn't wait for the next meeting to take place. From there I really started encouraging people to participate in the gender structures'. Implementing the plan provided some surprises for reference group members and ILRIG researchers. Workers were now expected to go out and do research, not simply be part of a rubber stamping structure.

Lusu interviewed about 50 workers in a range of companies around the Western Cape. Her research became a good form of performance assessment for the union. She uncovered a number of companies where shopstewards did not even know there was an agreement about parental rights.

But the impact of pulling together the manual went far beyond simply gathering information. Rhoda Brazier, former Western Cape gender co-ordinator, also used the interviews as a process of encouraging workers to exercise their rights: 'One worker who was pregnant phoned the office and I called the worker in to be part of the interview.'

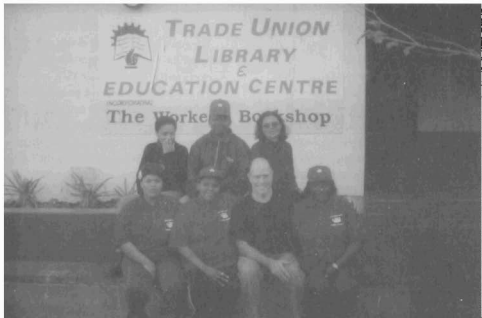
Moreover, the activity around the parental rights manual sparked a new round of debate within the union around gender issues.

### Manuals and booklets

Finally after nearly two years' work (and many meetings), a 134 page manual was produced. Six hundred copies were distributed to negotiators throughout the union. According to reference group members the manual impacted on both the workers and the bosses.

Manny Jacobs, a reference group member, said that before the manual 'the perception of men was that we must run this organisation. By educating this





*SACCAWU reference group members and IIRIG researchers ensured a successful project*

leadership the shift began – slowly the start was made. Kotze noted that the manual ‘made bosses aware that they need to make the changes in their own structures – like the chief executive officers here are all men’.

Then came the next phase of the project – producing a short popular booklet. While workers had taken an active part in researching the manual, most of the conceptualising and design was left to IIRIG researchers – Daphne and later Palesa Morudu.

But having overseen the manual, the reference group members took an even more active role from the outset with the booklet. In the initial brainstorming session, the reference group members completely reshaped the IIRIG researcher’s ideas about the structure and design of the booklet. Some members of the reference group even brought their own material to meetings to illustrate what they had in mind. As a result, the

booklet became much more interactive and had more lively material than the manual. The device of using fictional SACCAWU members as tour guides for the booklet made the information more accessible to workers.

Moreover, unlike the early stages of the manual, the plan to produce the booklet went like clockwork. Every meeting quorated, all deadlines were met. SACCAWU launched the booklet in Cape Town on South African Women’s Day, 2000. Since then over 9 000 copies have been distributed throughout SACCAWU structures as well as within other unions and NGOs.

### Changes

The process of producing these materials has done more than increase SACCAWU’s profile in the area of parental rights. The individuals involved in the process have been changed as well. Two reference group members, Lusu and Cloete have

become far more active union members as well as parental rights advocates. Lusu, an administrator, is now regional gender co-ordinator and is often called upon by other unions to speak on parental rights. Cloete is currently regional treasurer.

Apart from helping to empower women leaders, producing the booklet has also won over some men to becoming strong supporters of parental rights and gender equality. Kotze considers himself one of these: 'What will further the issue of gender in the union? If we want to be champions of gender we must put it high on the agenda. . . you'll find that we put it on the last day and we're leaving. When we have a COSATU region there will be only two lines at the end of the report'

### Challenges

The first challenge is to ensure that membership and officials engage with the publications: 'We might say we've done a very good job publishing all this, but are they really utilised to the fullest? Have the shopstewards and membership we have targeted to read the booklet really read it? Do they understand exactly what it means and do they extract areas that may assist them? How do we monitor to see that this has been a very successful exercise?' (Luise Thijs, first deputy president of SACCWU)

Still, while the production of the manual and booklet is viewed as a success, many challenges around parental rights remain. In a union where the majority of members are women, most negotiators and leaders are men. At times this is reflected in the bargaining with employers. As Lusu observed 'negotiators are mostly men. When they come back they don't care about parental rights.'

So giving the negotiators a manual is a step, but more education and political pressure may be needed to get them to, as

Lusu put it, 'put gender at least number three on the agenda instead of last'.

A further key challenge is the gaps in the parental rights gains amongst different workers in the sector. While Pick 'n Pay may have a comprehensive programme of parental rights, workers in smaller companies often lag far behind - often they may be lucky if management offers them the minimal benefits in the BCEA. An additional gap is also emerging with the increasing casualisation in the retail sector. In companies like Woolworths and Shoprite, casuals are now the majority of the workforce. For the most part, SACCWU has yet to succeed in winning casuals over to becoming loyal union members, let alone guaranteeing their parental rights.

Perhaps the last frontier to be conquered is child-care. Not a single company where SACCWU organises has yet agreed to provide child-care facilities for their workers. With increasing casualisation this may remain a difficult aim to achieve.

In other companies forms of gender discrimination remain. Reference group member Manny Jacobs noted that in his company women who are on maternity leave do not get the pay increases until they return to work: 'This is an issue I feel strongly about.' Thijs noted what she called 'cultural differences': 'According to the bosses, the father should be a person who is married. We always have a problem with this.'

Ultimately the manual and the booklet, as well as the members of the reference group, are powerful tools to take up these challenges. But in an era of globalisation and casualisation, the struggle for parental rights will likely remain a contested area for some time to come. ★

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*John Pope is projects co-ordinator for Itrig.*

# We are strong, we are mobilising

*Bulletin: What is COSATU's membership and how has it changed?*

**Ntsabalintzali:** Nineteen unions are affiliated to COSATU and we have over 1.8 million members. COSATU membership has been rising steadily - in 1991 we had 1 258 853 members compared to the 1 805 054 we have today. We have seen large increases in membership in the public sector unions. For example, NEHAWU had 18 110 members in 1991 and it now has 234 607. SAMWU had 60 304 members in 1991 and it now has 119 792. Manufacturing unions have been under pressure from retrenchments. SACTWU lost 65 810 members from 1991 to today and NUMSA lost 73 241 in the same time period. The largest affiliates are NUM with 290 070 members, NEHAWU with 234 607, SADTU with 218 747 and NUMSA with 200 000.

*Bulletin: COSATU has run recruitment campaigns in the past and congress this year resolved to run an annual recruitment campaign. While the Autumn offensive was regarded as successful in recruiting over 50 000 new members, the September campaign in 1999 was regarded as a disaster. What lessons have you learned from past campaigns?*

**Ntsabalintzali:** A few important issues pertain to 1999. The first is that we did not

*Tanya van Meelis interviews  
Bheki Ntsabalintzali,  
COSATU's deputy general  
secretary.*

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devote a lot in preparation for the campaign because we were putting energy into the general election. People also thought that because the first recruitment campaign was so successful they would get the same enthusiasm again. But unions had failed to follow up after the Autumn offensive - workers who had been recruited were then not exposed to the union and served. This left workers open to victimisation from management. Workers were therefore not so keen to rejoin the same unions in 1999.

The Autumn campaign was also very high profile. When it was launched it was the first of its kind as then deputy president Mbeki, COSATU national office bearers and national leadership of affiliates were there. People joined because they saw joining as part of a political alliance.

Planning was poor as there was a lack of time and a lack of resources for the 1999 campaign. However, we still achieved a lot - we recruited 20 000 workers in four weeks. It's only when we compare that amount to the 50 000 recruited in 1998, that we can say performance was poor.

**Bulletin:** *What does COSATU offer members?*

**Ntshalintshali:** We offer three main things to members. Firstly, we engage on socioeconomic issues to improve their living standards. We do this through co-ordinating affiliates through the living wage campaign. COSATU also protects workers at work and fights for their job security.

We have massive campaigns such as the jobs campaign and our focus on changing the LRA to make it more difficult for employers to retrench. Workers are offered legal protection through the COSATU engagement on the law formulation. They also benefit from the legal advice given to COSATU by our lawyers. The third area where workers benefit is through education and advancing their knowledge on how to tackle daily issues in the workplace such as negotiations and arbitration. They also receive political education, which is as important. They gain skills through our involvement with other organisations such as Ditsela, which we tap into to train our members.

**Bulletin:** *How is COSATU staffed?*

**Ntshalintshali:** We employ a total of 63 people. We have nine different units – the secretariat department, administration, the education unit, the organising unit, the policy co-ordinating unit, the parliamentary office, the international unit, the publicity and information unit, the finance unit and the eight regions. We have been restructuring based on the knowledge that we wanted to translate victories in parliament, Nedlac etc into practice and the need to build capacity. We increased staffing in the secretariat to help ensure that we could monitor how

decisions were being carried out and developments in key forums. We also established a policy co-ordinating unit to manage COSATU's engagement in key forums and institutions.

We are also examining skills development and performance appraisal systems to ensure that we retain staff and define career paths.

**Bulletin:** *COSATU has, by its own admission, still to undertake considerable work to improve the strength of women leaders in the labour movement. What has hampered progress in this regard?*

**Ntshalintshali:** Unions are not putting enough resources and commitment to advancing our policies on gender – they are not doing enough to sensitise male comrades and the like. The federation has failed to come up with a strategy that all affiliates can adopt – for example the quota debate. COSATU's work has been hampered because we have been without a gender co-ordinator since the promotion of Rose Makwane to administrative secretary. This will change now because we have recently appointed a gender co-ordinator. We now have a gender policy that was developed in the gender conference and adopted at our last congress. We now need to put in place strategies and tactics to ensure we implement the policies. We are hoping to get commitment from affiliates and gender co-ordinators and make progress in the next three years.

**Bulletin:** *Many unions have identified problems regarding their relationship to their investment company. COSATU has also noted problems in this regard, including problems around accountability and where the investment*



*COSATU deputy general secretary, Bheki Ntshalintshali.*

*companies are investing. Can you comment on the problems and identify what you will be doing to address them?*

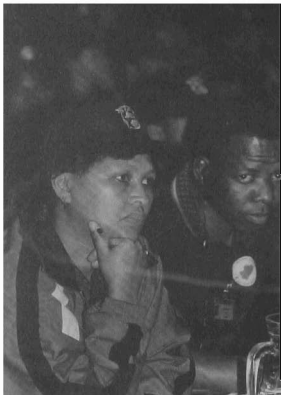
**Ntshalintshali:** We had taken resolutions that the investment companies must meet the needs of members. But in the functioning of the investment companies there has been a loose arrangement – chief executive officers (CEO) divorced the running of the companies from the federation's objectives. CEOs wanted to maximise profits and often competed on tenders where tenders resulted in destroying jobs.

We now say that we must work closely with the CEO and as a result have mandated our retirement funds co-ordinator to co-ordinate the investment council where all union investment companies sit. We must show them where they went wrong, give them a new mandate and monitor them closely.

*Bulletin: What are COSATU's strengths and weaknesses?*

**Ntshalintshali:** Our strength is that we are able to attract members. We are also attracting new members that you would not find in the unions in older times – for example footballers, workers in the performing arts and increasingly white and white-collar workers. These are new kinds of workers who are attracted to COSATU and are coming to us without our going to them. We also got another three independent unions coming to join us on their own initiative. This shows us that we are able to accommodate and attract a wide range of workers who see us as their home. We are moving in the direction of one federation, one industry.

We are also strong on policy formulation. Our parliamentary office has done a lot of excellent work and has put forward many submissions on a range of



*'We will take forward gender issues...'*

issues. We have also intervened in Nedlac. We have advanced workers' benefits and fared fairly well in bargaining councils.

Our weakness is transforming gains that we have made from Nedlac and parliament into practical gains. For example, while the legislation promotes centralised bargaining, many sectors are not in centralised bargaining. We have established a policy desk - its intention is to bridge the gap between policy formulation and implementation.

Another weakness is the poaching of membership that still takes place between unions because of a lack of clear demarcation. We took resolutions regarding handing over membership in our 1996 congress but the resolutions have not been implemented. Some

sensitive unions are shrinking in membership and don't want to hand members over to other unions. Sometimes, members don't want to move to another union either. We see establishing cartels as the answer - unions will merge and thus not lose members. For example, CWIU and PPWAWU merged to form CEPPWAWU. CAWU has integrated to NUM.

Another weakness we must address is taking forward gender issues in a manner that will make a big difference by our next congress.

*Bulletin:* What is your assessment of the congress you held in September?

*Ntsballintso:* We held vigorous and honest debate and did not shy away from the difficult issues such as the workings of the alliance. We

were able to discuss the issues openly. We were also pleased with the media coverage we got weeks before the congress, the live coverage during the congress and the coverage we got after the congress. It showed that people still believe that COSATU is still a force to be reckoned with.

We discussed resolutions well and now are faced with the task of developing programmes - for example, we need to develop a programme in the alliance. We still need to keep debating and challenging ourselves on key issues such as - what's our role in the National Democratic Revolution? How will we engage strategically in Nedlac, the President's Working Group and the Millennium Labour Council?

What came out clearly was the need for us to deal with job losses, racism and corruption. We came out with clear resolutions on these issues. We need to develop a strategy to implement them.

The congress also marked a vast improvement from the past - people did not just debate for the sake of debating. Good preparation before the congress (through affiliates having their own congresses and circulation, in time, of the COSATU political discussion paper) made people aware of the issues - people focused on the issues and not the wording.

*Bulletin: What campaigns will you be prioritising for 2001?*

**Ntsalintsbali:** We'll be vigorously pursuing a number of areas. We will again have our recruitment campaign and we will be taking up violence against women, HIV/AIDS, building of stronger union, cartels etc. It's also our 15-year anniversary and we will be celebrating it. We will focus on job losses and the sector job summits. Part of our campaign against job loss and for job creation will involve continuing to challenge the law - specifically section 189 on retrenchments and the insolvency laws.

We will also challenge government on reducing tariffs more quickly than required by the WTO. We are mobilising for a general strike on the labour law review specifically relating to retrenchments, Sunday premium, and the extension of centralised bargaining agreements. We'll mobilise our full force for a three-day strike unless government compromises. The strike will take place on 28-30 March 2001.

*Bulletin: What is your message to government?*

**Ntsalintsbali:** Implement the RDP as you agreed in 1999. Government should be open and transparent and engage us on different issues - we should discuss and engage on issues and government should implement what was agreed. Government should realise that if certain policies fail, it should change those policies. It should not be married to policy. Government should also implement the jobs summit resolutions because we are facing a jobs crisis. It should also realise that it must address HIV/AIDS and not take a political stance on it. We need more discussion in the alliance where we can discuss issues and isolate the problems. There are definitely solutions to the problems - we just have to crack our heads together to find them.

*Bulletin: What is your message to business?*

**Ntsalintsbali:** Labour's agenda is open. We are hoping to come up with positive solutions in the Millennium Labour Council. However, we need you to develop trust and the will to address problems. Unemployment and job creation are areas where business has the ability to address adequately. In our engagement, business should consider labour as a partner in addressing labour concerns around the labour law review.

*Bulletin: What is your message to members?*

**Ntsalintsbali:** Participate in decision-making - give mandates and receive report-backs. You can only do that if you participate in the federation's structures. Check that your leaders are following your mandates and follow developments. Your leaders are supposed to speak on your behalf and you need to influence them to help them do so. ★

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# Reply to: 'the end of innocence'

McKinley's article (The end of 'innocence', the alliance and the left, *SA Labour Bulletin* vol 24 no 5, October 2000)

cannot go unchallenged. This is done not because McKinley's views are profound, but because it is necessary to expose the shallowness of his main arguments. If anything this article shows precisely why it was indeed correct to expel him from the SACP.

In retrospect, McKinley's joining of the SACP was not an act of commitment to the goals and ideals of the SACP, but classic ultra-left entryism to try and influence existing organisations towards their narrow and political self-interests. The ultra-left has always done this precisely because it knows it cannot stand on its own and build its own strong organisation and influence amongst the masses. This is because the ultra-left does not and has never had a concrete political programme to offer to the working class anywhere in the world, not least in our own country.

McKinley's article claims that yesterday's freedom fighters have been transformed into 'today's ideological and organisational gatekeepers' leaving the 'liberation movement increasingly dominated by members who are organisationally cowed, ideologically confused and politically unprincipled'. McKinley needs to be truthful. He in fact has never believed that the ANC, as leader

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*Simiso Nkwanyana responds to an article by Dale McKinley, published in vol 24 no 5.*

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of the liberation movement, has ever been a revolutionary organisation at any stage of its history, as is shown in his doctoral thesis and book on the ANC.

It is therefore disingenuous for him to write in his article as if the ANC, according to him, has just been transformed only now into a 'sell-out' organisation. One can only sense that this contradiction reflects an attempt to justify his seven-year flirtation with the SACP, an organisation allied to the ANC. McKinley has yet to clarify why he joined an organisation allied to a 'petty bourgeoisie, reactionary organisation'. The only plausible reason is entryism.

The fact that the ANC is historically frozen in the minds of the ultra-left is the most obvious ideological and intellectual *cui-de-sac* of the likes of McKinley. To adopt such a position is thoroughly ahistorical, unrevolutionary and undialectical. This reveals the moribund nature of ultra-left politics which approaches politics purely from an 'opponentist' stance irrespective of the issues at hand. Interestingly enough the thrust of this opponentist stance is not

against the capitalist class and its political representatives but the ANC and the alliance

### Denying the national question

Underlying the type of politics and attitude of the likes of McKinley is fundamentally the denial of the centrality of the national question in our revolution, and the need to organise in such a manner that this is tackled. It is an un-Marxist denial of the national question as a reality in our country. In fact, in our circumstances the very class struggle that the likes of McKinley retort about has essentially to be fought on a terrain of fighting gender inequality, racism and the struggle for the resolution of the national question. Whilst the language used by the likes of McKinley might sound different and revolutionary, it is essentially the recycling of the same old ultra-left, workerist arguments which have never inspired our working class nor taken our struggle beyond the intellectual idiosyncrasies of these highly factionalist

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*...as Lenin always reminded us, those who are looking for a pure class struggle, unconnected to the national realities within which it is waged, will never live to see it. Instead they will marginalise themselves and in the process become the worst enemies of the working class.*

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forces.

Unless one has a proper grasp of the centrality of the national question in the very class struggle of the working class, the ANC becomes an unimportant

organisation which can only be characterised as a 'sell-out' organisation. In fact, as Lenin always reminded us, those who are looking for a pure class struggle, unconnected to the national realities within which it is waged, will never live to see it. Instead they will marginalise themselves and in the process become the worst enemies of the working class.

It is well worth reminding these forces that the importance of the national question is not only in relation to 'petty bourgeois nationalist forces', but that national oppression and its legacy is a living reality for the overwhelming majority of our people – the black working class. To deny the importance and material reality of racism, gender oppression and the national dynamic for the working class is precisely to fail to understand the class struggle in our context.

### Alliances

McKinley's contradictory stance is confirmed in his own article that his biggest political bugbear is the unity of the alliance, which he holds responsible for 'weakening' the working class: 'The glue that has held the working class forces in check' has been the constant propagation of the need for 'unity within the alliance'. Is this not an interesting revelation? Was McKinley in the SACP in order to break the alliance, in direct contradiction to the policies of the SACP? And thus he had no principled commitment to the SACP and its programme in the first place. Why is he not taking his expulsion as 'freedom' to break out of the alliance that he does not believe in rather than blaming the SACP? Why would a 'revolutionary communist' be in an organisation pursuing unity with 'reactionary allies'?

Related to this is the failure of McKinley to grasp the necessity and the nature of

the alliances that the working class needs to forge in the current period. No working class struggle has ever been won without this class forging a revolutionary alliance with other progressive class forces. McKinley's argument reflects a failure to understand the dialectical relationship between the working class struggle and the need for alliances. To him there is an irreconcilable contradiction between waging a working class struggle for socialism and the forging of alliances with potentially progressive class forces other than the working class. Most importantly, in any alliance, precisely because it involves class forces other than the working class, there are bound to be tensions, contradictions and even contestations about the direction of the transformation struggles. True revolutionaries understand that the existence of such contradictions is inevitable and are no reason to want to flee such alliances. Rather the task of working class

revolutionaries is to assert working class hegemony in the context of such alliances. It is indeed possible that at particular moments in time the working class might not be hegemonic. But that is precisely the task and challenge of the working class to build its forces in order to assert its hegemony within such alliances. McKinley, like the rest of mostly defunct ultra-left in South Africa, believes that there is no need for alliances at all. This is the most infantile of ultra-left politics.

### **Working class struggles now**

Turning to the question of the working class struggles in the current period, McKinley asserts that Gear has become a non-debate and that the working class has



*The SACP believes that macroeconomic policy must be aligned to industrial strategy*

been completely sidelined by advocates of this policy. What characterises McKinley's entire article is a kind of male intellectual arrogance that what is not in line with his highly sectarian view does not constitute working class struggles.

It is simply a lie that Gear is now 'firmly embedded in the realm of non-debate'. The SACP's strategy conference dealt with this question extensively, arguing that the task of the SACP and all progressive forces is to take forward the economic debate by locating it within the struggle for the development of an overarching and co-ordinated industrial strategy. One of the resolutions of that conference was that any macroeconomic policy has to be aligned to an industrial strategy, and that is

how we need to take forward the economic debate in the alliance. Similarly the ANC's National General Council took an important resolution to the effect that macroeconomic stability is a necessary but not sufficient condition for economic growth and development. The COSATU congress reaffirmed its position on Gear and adopted a far-reaching resolution on an industrial policy as a basis upon which we need to review the current macroeconomic policy. For the SACP this provides an important platform and context within which to pursue the economic debate, without abandoning our critique of Gear. It is only those who are on the political wilderness like McKinley who can claim that Gear has become a

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*The working class in South Africa has embarked on these struggles precisely because it understands that the working class struggle can never be advanced through armchair dissent and debating...*

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non-debate.

Anyone who is awake to South African politics will realise the extent to which the working class has taken up struggles to assert its own interests this year compared to any other period in the recent past. This year opened with massive struggles by COSATU around job losses and for job creation, culminating in massive May Day rallies and a general strike on 10 May 2000. These struggles were critical in repositioning the working class and sending a clear message that the organised workers of this country will not take the negative effects of economic restructuring lying down. For McKinley these struggles are not

important since he regards them as a sop to the working class, but also because he plays no practical role in the revolution. This is typical of his ilk, who instead of throwing their weight behind these struggles will instead, from the comforts of their desks, see all sorts of conspiracies by the working class against itself.

In addition, the SACP has embarked on its second Red October campaign, marked by highly successful national marches and pickets throughout our country to demand the transformation of the banking sector. These struggles are essentially challenging the core of modern global capitalism – the financial sector – and are an important basis for the creation of a public and socialised financial sector. The COSATU job losses campaign and the SACP's financial sector campaign are essentially about asserting working class hegemony in socioeconomic transformation and are the very 'class reference point for socioeconomic transformation' that McKinley purports to believe in. One really wonders which working class has been sidelined in the current period, unless he is talking about the abstract working class in his head and not South Africa's black working class. The working class in South Africa has embarked on these struggles precisely because it understands that the working class struggle can never be advanced through armchair dissent and debating lists but through concrete struggles taking up issues affecting the overwhelming majority of our people.

### **Lack of confidence**

What runs through all of McKinley's writings is a startling lack of confidence in South Africa's working class, which is not unrelated to the failure of his ilk to understand the real challenges facing the working class today. It is also a consequence



*The working class needs to build alliances in the current period*

of his dogmatism and arrogance

Apparently only he can guide and lead the 'dumb masses' who cannot think for themselves. In his article McKinley makes the argument that 'It is partly the ANC leadership's "success" in marketing its narrow class interests' as those of the South African working class that has led to the present state of rotteness in the alliance'. There can be no more an insult to South Africa's working class than the assertion that it has been duped and fooled into an agenda hostile to its own interests

These kinds of assertions are to be found throughout his article. For example he further argues that 'much of the alliance's constituency have become numbed by the sheer intensity of what appear to be the unshakable "headlights" of the liberation movement'. Later on he argues that 'Not surprisingly, organised workers, and to a lesser extent others on the left, are now grappling with the resultant political and organisational confusion as to where their class interests lie'. Really? Are organised workers in South Africa so confused about where their class interests lie or is it McKinley's own

confusion about where real working class interests lie? In essence what McKinley does in his article is to equate correct working class politics with his own 'freelance' and personal views, and that is why the article is actually about his own expulsion, which he equates with almost the death of 'revolutionary' politics in our party

### **McKinley's expulsion**

Ironically, one positive thing about McKinley's article is that it is the best motivation ever for why he had to be expelled from the SACP. He claims that he was expelled for writing articles in his capacity as a 'freelance journalist', thus projecting his expulsion as the suppression of freedom of expression. Any dedicated and truly revolutionary communist would know that protection of one's organisation is of paramount importance. You cannot be a 'freelance journalist' today and be a communist tomorrow, particularly where one uses the former position to attack one's own organisation, without any structured mandate. He argues that if we were

elected to represent working class interests it then is impossible to comprehend why he was expelled. Apart from this obvious arrogance that he personifies the interests of the working class and the socialist struggle in our country, McKinley needs to be reminded that the central committee was also elected to protect the SACP from being abused by people who pursue 'freelance, idiosyncratic' interests at the expense of basic policies and programmes of our party. We are a communist party that seeks to represent the political interests of the working class and not some kind of 'freelance' debating society formed to protect individual fantasies even if they contradict our policies.

### Attacking everybody else

The shallowness and essentially anti-working class nature of ultra-left and McKinley's politics, despite claims to the contrary, is best illustrated by what he characterises as the 'new left resistance'. One would have expected some contribution to a serious discussion on strategy and tactics for the left, but what does McKinley give us? This task is reduced to three issues for him:

Firstly, 'the political and organisational challenges that have confronted the SACP and COSATU have stemmed directly from the ANC leadership's systematic institutionalisation of a deracialised capitalism', so he tells us. He continues to tell us that robust criticism of the ANC and alliance leaderships constitute 'essential revolutionary work'. In other words, the organisational and political challenges facing the party and COSATU is the ANC and its own alliance and not the capitalist, racial and gender character of South African society.

Not a single word is said in this article about how to concretely mobilise the working class for taking forward the

national, gender and class struggles in the current period. Not a single word is said about the balance of class forces and the challenges these pose for our revolution.

Thirdly, the rest of the article identifies the key 'revolutionary' task of his 'new left', as the struggle for 'critical dissent', not against capitalism, racism and gender oppression, but dissent against the alliance. If these are the revolutionary tasks of the left, McKinley's left might as well fold up even before it starts. Indeed it is necessary to critically reflect on the alliance and its programme and policy, but surely this cannot be the primary task and platform on which to advance the working class struggle in the current period. Instead McKinley's 'revolution' has precisely the same content as the right-wing and neo-liberal programme which is actively pursuing an agenda for breaking the alliance by turning allies against each other.

According to McKinley the main enemy is no longer capitalism, but the alliance leadership. The key challenges of our revolution are no longer the struggle to defeat the legacy of national oppression and struggle for gender equality, but it is now a struggle to turn the left into a debating society based on the paradigm of 'critical dissent'.

No wonder this kind of struggle is only found in the very political wilderness that McKinley has decided to join. In the end the danger of such politics is that practically capitalism, national and gender oppression are left untouched as they do not feature in the strategic considerations and 'revolutionary' programme of the likes of McKinley. What a wonderful 'freelance' service to the capitalist class and its political representatives! Surely Harry Oppenheimer must be smiling in his grave. ★

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*Simiso Nkuvanyana is provincial secretary of the SACP in KwaZulu-Natal*



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The new democratic South African government inherited an incredible number of challenges from the previous apartheid regime. The gap between rich and poor was amongst the largest in the world. Simultaneously, economic growth has been low in the 1990s, and the civil service was in need of major restructuring. Through an assessment of documentation, a survey in three provinces, and in-depth interviews with government officials Fafo has together with Community Agency for Social Enquiry, mapped infrastructure delivery in South Africa. The report was commissioned by the National Economic, Development and Labour Council (R75)

***The Smoking Business: Living and Working Conditions amongst Tobacco Tenants in Malawi.***

The tobacco sector is the major export sector in Malawi, and thereby a major source of income for millions of people. However, it is also characterised by low wages, poor living conditions, tenancy, and child labour.

Fafo has conducted a survey amongst tobacco tenants focussing on living and working conditions of the tenants. The project was conducted for the Malawi Congress of Trade Unions together with the Centre for Social Research at the University of Malawi. The report will be published in December this year. (R100)

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# Trade unions in Tanzania

On 1 July 2000, the implementation of the Tanzanian Trade Union Act of 1998 led to the dissolution of the Tanzanian Federation of Trade Unions (TFTU). The Tanzanian government confiscated all TFTU property and assets, removed its leadership, appointed an administrator and retrenched the staff.

The International Confederation of Free Trade Unions (ICFTU) and other trade unions (including COSATU) in the region sent letters of protest to President Mkapa, expressing outrage at the violation of the right of freedom of association. Delegations from local trade unions, the ICFTU and the Organisation of African Trade Union Unity (OATTU) consulted with the Ministry of Labour on changing the new law. Meanwhile, a committee of general secretaries from ex-TFTU affiliates was formed to facilitate the launch of a new 'free and independent' federation. Most trade unions are now registered under the new law in order to attain legal status.

Activists are questioning the Tanzanian government's motivation to commit such an extreme violation of the right to freedom of association, especially given that Tanzania was traditionally regarded as the 'home of African socialism' under the late President Julius Nyerere. Some argue that dissolving the TFTU was merely a technical consequence of new legislation to create free democratic trade unions.

*Jocelyn R Vass reports on trade unions in Tanzania.*

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Others point to the upcoming general elections (the first since introduction of multi-partyism in 1995) in October 2000. On the whole though, the TFTU dissolution happens in a context of government fast-tracking economic liberalisation policies, including the wide-scale privatisation of state-owned parastatals.

In 1967, Tanzania had declared itself a socialist state. It adopted the Arusha Declaration on the basis of which government nationalised all the means of production in order to become self-reliant, develop domestic capital and reduce dependence on foreign capital. State spending on social services such as education and health was a priority. More than 30 years later, however, after major economic crises and a series of economic structural adjustment and liberalisation policies, Tanzania is now a fully-fledged market economy, as per World Bank and International Monetary Fund (IMF) dictates.

## **Social indicators**

Tanzania mainland is one of the poorest countries in the world. In 1991 (the latest available figure based on the last labour

force survey), 51,1% of Tanzanians lived under the national poverty line. The population is predominantly rural and only 26% of the total population live in urban areas. It occupies the 156th position out of 174 countries on the Human Development Index, and under-performs compared to sub-Saharan countries. Life expectancy dropped from 52 years to 47,9 years and only a third of eligible children are enrolled in education. The average number of AIDS cases is more than two-and-a-half times that in sub-Saharan Africa (111,1 cases per 100 000 persons). The real

*Life expectancy dropped from 52 years to 47,9 years and only a third of eligible children are enrolled in education. The average number of AIDS cases is more than two-and-a-half times that in sub-Saharan Africa (111,1 cases per 100 000 persons).*

income per capita of US\$580 is the third lowest in the world, and only a third of the average per capita income in sub-Saharan Africa. It is still a highly indebted country and the debt per capita exceeds income per capita. On the plus side, as a result of increased spending on education and health in the early 1970s, adult literacy is of the highest in Africa at 71% of the adult population and infant mortality rates is down to 92 per every 1 000 live births. However, given current low levels of school enrolment, future adult literacy levels are set to decline.

### Economic framework

The Tanzanian 'socialist' economy

experienced major crises in the 1970s and 1980s as a result of both internal and external crises. By the 1980s the country was reeling from:

- a serious decline in real Gross Domestic Product (GDP);
- high inflation;
- a huge trade deficit (due to the drop in price of export crops);
- the cost of its war with Uganda (under Idi Amin);
- a serious drought;
- much reduced access to international finance.

The government implemented 'home-grown' and IMF and World Bank funded structural adjustment programmes in the

### Major economic indicators

|  |       |
|--|-------|
| Gross domestic product (\$ mill)                                   | 7,917 |
| Value added as % of GDP.   |       |
| Agriculture  | 46%   |
| Industry (mining, construction, electricity, gas and water supply) | 14%   |
| Manufacturing  | 7%    |
| Services   | 40%   |

1998 World Development Report 2000

1980s and 1990s to achieve 'sustained growth in real incomes and output'.

The overall effect was the re-introduction of free market principles for the first time since 1967. During the crisis years of the 1980s, GDP growth declined drastically to 1,9%, but stood at 3,5% by 1997, just slightly above current population growth at about 2,8%. Agricultural growth, the largest contributor to GDP, however, performed very erratically and by 1994 declined to about 0,4%, its lowest level in 15 years. Inflation fell from high double-digit levels of 35,3% to 12,9% by 1997.

Despite the economic reforms, the economy is largely geared towards

agriculture. The manufacturing share of GDP remains at a dismal 7.4%. Whilst its growth rate increased from -4.9% (1980 to 85) to 4.1% in the mid 1990s, it is still very low. The shift towards export orientation and the lifting of trade tariffs exposed the manufacturing sector's low levels of technology and skills, and its inability to compete internationally. Today, one of the last bastions of the socialism phase is coming to an end as many parastatals have closed or are being privatised. So far, privatisation has impacted negatively on the manufacturing sector's production and export performance as the expected injection of foreign capital and new technology did not always materialise.

Despite a drive towards manufactured exports, most exports are still unprocessed agricultural goods. As a result of fluctuations in the world prices of these goods, the trade deficit remains high. The services sector is the second largest and growing, but besides organised tourism, it consists largely of public sector services and retail and trade in the informal sector.

### Labour market indicators

|   | 1980 | 1990/1 | 1998    |
|---|------|--------|---------|
| Population (millions)                     | 18.6 | 22.7   | 32.1    |
| Labour force (millions)                   | 9    | 11.2   | 16      |
| Formal employment (m)                     | -    | -      | 1.2m    |
| Female % of labour force                  |      |        | 50%-49% |
| Children (10-14 years) % of labour force) |      |        | 43%-38% |

*Labour force survey 1990/1, Torres 1998*

The economically active labour population (labour force) is 16 million strong, about half of the total population. Most are employed in agriculture, specifically traditional small family farms and subsistence agriculture. Formal employment, however, is at very low levels with various estimates at between one and

two million employed.

In the 1980s and 1990s, parastatals provided about 67.5% of manufacturing employment. The privatisation of parastatals resulted in the liquidation and closure of many companies and massive job losses. Thus in manufacturing, employment dropped to nearly half its size between 1991 and 1994. Today, manufacturing provides only 2% of overall employment. The size of the public sector has also been reduced as government tries to rein in public spending.

Technically, unemployment is very low, but employment in subsistence agriculture masks the inability of the formal sector to be a significant generator of employment. Child labour is a significant feature of the labour force especially on family farms. This is despite government's commitments to eradicate child labour. Whilst women form half the labour force, they are still discriminated against in terms of conditions of employment and are restricted to certain jobs or hours of employment. For instance, in the public sector women are generally not allowed to work at night between 10pm and 6am due to cultural norms. Education levels are generally lower, which restricts them to lower levels of employment.

### Trade unions

Historically, there has been a close association between trade unions and government. Before independence, workers organised through the Tanganyika Federation of Labour (TFL), established in 1955. It fought for independence from Britain, with TANU (which became the ruling political party). In 1976, the TFL was abolished and replaced by a single trade union - the National Union of Tanganyika (NUTA) - established by government. NUTA acted

more like a government department, rather than an independent trade union structure.

Government appointed the general secretaries of trade unions and curtailed union activities through legislation. Government effectively banned strikes on the basis of protecting the 'national interest'. In 1977, with the formation of the ruling party Chama Cha Mapinduzi (CCM), NUTA was replaced by JUWATA (for workers), one of five mass organisations, the others being youth, women, co-operatives and parents.

In 1991, under the Organisation of Tanzania Trade Unions Act (OTTU), a trade union called OTTU was established as the sole representative of all employees. OTTU acted as both a trade union and federation as individual workers as well as trade unions could join. Thus, 11 industrial trade unions were established under OTTU. One of the main consequences of the legislation was that OTTU could collect membership dues

Workers kept advocating for free trade unions and by 1995, 11 free trade unions formed the Tanzanian Federation of Trade Unions (TFTU). However, whilst the TFTU and its affiliates operated as de facto trade unions (with the exception of the

teachers' union), they were not legally registered in terms of the OTTU Act. Thus, the repeal of the OTTU Act, automatically dissolved the TFTU. At the same time, the new Trade Union Act 1998 no 10, requires both the federation and all other trade unions to register as legal entities. The history of union development in Tanzania thus suggests a monopolistic top-down, rather than a bottom-up grassroots approach.

The latest figures indicate that TFTU membership declined from 404 547 (1996) to about 360 000 members in 2000. About 10 to 15% of the country's 2 million wage earners are unionised now. Most of the TFTU membership is in the public sector. It has about 40 000 members on small family farms. Membership of individual unions has been hit hard by constant retrenchments

### New trade union act

One of the enduring features of the Tanzanian labour relations framework is that whilst workers enjoy all the basic labour rights through the Security of Employment Act, Minimum Wage Act and others, in practice, these only exist on paper.

In April 2000 the government ratified

### TFTU affiliates (2000)

| Affiliate  | Abbreviation | Membership |
|--|--------------|------------|
| Tanzanian Federation of Trade Unions                   | TFTU         | 360 000    |
| Tanzanian Union of Government and Health Employees     | TUGHE        | 31 430     |
| Tanzanian Local Government Workers' Union              | TALGWU       | 43 093     |
| Tanzanian Mines and Construction Union                 | TAMICO       | 14 526     |
| Tanzanian Seamen's Union                               | TASU         | 12 642     |
| Tanzanian Teachers' Union                              | TTU          | 110 000    |
| Researchers, Academics and Allied Workers' Union       | RAAWU        | 10 253     |
| Tanzanian Plantation and Agricultural Workers' Union   | TPAWU        | 50 642     |
| Conservation, Hotel, Domestic and Allied Workers Union | CHODAWU      | 22 459     |
| Communication, Transport Workers Union                 | COTWU        | 12 494     |
| Tanzanian Union for Industrial and Commercial <WHAT>   | TUICO        | 40 065     |
| Tanzanian Railways' Workers' Union                     | TRAWU        | 9 723      |

Source: Interim General Secretaries Committee

ILO convention no 87 on Freedom of association and the right to organise, Article 4. Up until now whilst workers could join unions, the trade unions themselves were not legally recognised. Whilst basic trade union rights such as stop order facilities, company access were recognised, in practice management (especially in privately owned companies) can intimidate workers from joining the union. Local labour offices do not always act on these infringements.

Further, in terms of the new Trade Union Act, all trade unions and federations must register and government must approve their constitution and rules. Failure to register and any other contravention of the law are subject to fines, terms of imprisonment, or both. Only one official, not employed directly in a particular sector, may work full-time for a trade union.

All other elected officials must work full time in the industry or sector that the union represents. Further, trade union officials must have a certain level of literacy and may not serve for longer than three years.

The bill originally intended banning public sector workers from union membership, but this was changed after trade union protests. However, defence and intelligence force workers are still not allowed to become union members.

The registrar's powers are excessive and wide-ranging and allow it to

- de-register the smaller of two trade unions in multi-union workplaces;
- suspend union branches for contravening their own rules or the Act;
- suspend a trade union for six months in the interest of public order or security;
- approve or invalidate international trade union affiliation unless certain internal union procedures are abided by, or if in his/her opinion, its objectives

include matters other than the relations between employer and employees. The Act also provides for the formation of more than one federation. The interim Committee of General Secretaries interprets this as an intention to undermine trade union unity. They argue that instead of using the democratic process to resolve internal disagreements, unions may form rival federations.

Formally all workers enjoy the right to collective bargaining. However, there is no formal public sector bargaining and public sector minimum wages are set by the state. However, at an individual public institutional level, unions do negotiate actual wages (above the legal minimum) and other conditions of employment. In the private sector, collective bargaining largely takes place at plant level.

Unions cannot conclude voluntary agreements with employers as all collective agreements must be registered by the Industrial Court, on condition they are in line with government economic policy. Failure to meet these requirements could nullify their implementation, with the result that most agreements are unregistered. Authorities may impose compulsory arbitration in a dispute on a collective agreement.

Government can nullify what it regards as 'excessive' increases agreed upon between unions and employers. This interferes with the right to freely negotiate and gives more bargaining leverage to employers wanting to keep their labour costs as low as possible. Foreign investors are also pressurising government to reduce the number of compulsory employee benefits.

The right to strike exists, but complex and lengthy procedures make a legal strike very difficult to achieve. Failure to comply may result in the union or its members being fined for loss of production. Most

unions do not have a militant tradition. This can partly be attributed to the traditional loyalty towards government, although workers are now increasingly employed by private business. However, when strikes do occur, they are largely spontaneous and 'illegal'.

The trade union movement's marginalisation in influencing government policy is especially visible in the main tripartite structures. These structures are largely consultative, do not function efficiently and lack financial resources. For instance, the Labour Advisory Board discusses employment policy, reviews labour laws and any other issues affecting the partners. Yet, government forced the new Trade Union Act through despite protestations by the unions.

The Minimum Wage Board sets an annual national minimum wage and other conditions of employment. However, trade unions report that government does not seriously consider their proposals. Trade unionists often feel that their participation is limited to attending policy seminars to rubber stamp government decisions, rather than actively engaging government policy.

The trade union response to the impact of privatisation has been defensive, and limited to one TTTU representative on the Presidential Parastatal Sector Restructuring Commission, which oversees privatisation. One trade union leader describes the current response as one of 'complaining' rather than directly confronting the issue. Most unions negotiate retrenchment agreements to reduce job losses and secure some retrenchment benefits.

## Challenges

Privatisation of parastatals and the resulting job losses is the single biggest challenge for trade unions in mainland Tanzania. Tanzania and its assets are

literally up for sale as, in the words of its privatisation web site, it offers the investor 'one-stop shopping' and new investment opportunities that 'only come once'.

The new Trade Union Act is a clear attempt by government to neutralise and control trade union activity and ensure it does not become an obstacle to increased labour market flexibility. If further serves government's purposes to maintain a weak and submissive trade union movement. This is especially relevant in southern Africa, given that strong and well-mobilised trade unions, as was the case in Zimbabwe, and more recently in Swaziland, can become a potential destabilising threat to governments. Trade unions need to re-assert themselves in shaping government policy in terms of trade, investment and broader labour market policy.

## Concluding remarks

Whilst the interim Committee of General Secretaries criticised parts of the new Act as a contradiction of fundamental human and trade union rights, they have largely accepted it, subject to some amendments through the parliamentary process. It also seems to accept the dissolution of the TTTU and now seeks to establish a new 'strong single federation'. However, at the moment, the balance of power is clearly in favour of a liberalising government. Thus, the manner in which this battle is resolved could define whether Tanzanian trade unions can transform themselves to become genuine defenders of workers' rights.

## References

- Interview with chairperson of the Interim General Secretaries Committee in September 2000.*  
 ICIU (2000) *Tanzania Report on Core Labour Standards*

*Jocelyn R Vass is a researcher at FAFO*

# Employee assistance programmes: building South Africa's productive capacity

By Stanford Mamoshito Malatji

There is no single commonly agreed upon definition of employee assistance programme (EAP) because various types of EAPs exist. However, all focus on the human element, performance, productivity, and the quality of personal life-styles. EAPs refer to a set of policies and procedures by which organisations legitimately intervene to

- identify and deal with a variety of employee problems impacting on job performance,
- influence working relationships and worker morale

## Why EAPs?

If serious political, social and economic challenges are left unattended, they have the potential to erode our promising but fragile future. EAPs aim to develop South Africa's productive capacity by preventing the impact of such political, social and economic malaise on the individual, the organisation and the economy.

These ills manifest themselves in the form of a decline in employee performance and productivity. The ultimate consequences include increased absenteeism, tardiness, poor productivity and decision-making, damage to equipment, safety violations, increased attitude and behaviour difficulties, poor interpersonal relationships, family alienation, marital disintegration, abuse, higher recruitment and training costs, loss of skilled people, increased stress, potential labour relations breakdowns and exorbitant litigation costs.

Examples would highlight the need for EAPs in organisations

- The HIV/AIDS pandemic poses a threat to economic development in Southern

Africa. Gloomy figures include average life expectancy being reduced by 20 years and HIV/AIDS causing a 2% drop in economic growth. Over the next ten years, many South African organisations will lose close on 4% of their employees to AIDS each year.

- Excessive substance and alcohol consumption and abuse have adverse effects on individuals, their families and their job performance. Research indicates that every worker who is dependent on alcohol will cost an extra quarter of his or her salary per year in terms of absenteeism, occupational accidents, and loss of productivity. This amounts to a total cost to the economy of well over R1-billion per year.
- Harassment manifests itself in many forms. Given our history, sexual and racial harassment is most common in South Africa. Sexual harassment costs companies money because it affects productivity, morale and motivation. Companies may lose valuable staff or incur legal costs if the problem is not handled positively. A survey found that 76% of South African career women have been subjected to some form of sexual harassment during their working lives and most would rather resign than 'make a fuss'.
- Violence, and domestic violence in particular, is a business as well as a personal problem. Its impact spills over into the workplace in the form of increased absenteeism, high insurance costs for medical claims, lower productivity and risk to other employees.

should the perpetrator decide to attack his/her partner/victim at work. Murder and violence in the workplace are becoming common in South Africa

### **Critical success factors**

#### *Standards and principles*

Guidelines and codes of ethics serve to ensure viable EAPs. When an EAP is designed, it should encompass certain elements to ensure an effective, smoothly operating and comprehensive programme. The Employee Assistance Professional Association of South Africa (EAPA-SA) has developed standards for EAPs. Although these standards are non-regulatory, they aim to help all stakeholders to establish high-quality EAPs.

When an EAP is designed, implemented or evaluated, the organisation should apply standards and guidelines that are appropriate to its unique culture and operation. Certain basic principles underpin successful EAPs: creating a neutral space between management and labour, making assistance and services accessible and available to all employees (and their families); keeping all employee information confidential, removing all chances of victimisation or dismissal; allowing employees to use the programmes voluntarily; preferring the EAP referral system to terminating an employee's service; collectively agreeing on a policy statement that guarantees survival of the EAP, and ensuring quality service delivery.

### **Approach and positioning**

The strategic positioning of EAP infrastructure in an organisation is essential. Introducing EAPs as an integral part of human resources management is an ideal means of delivering employee assistance services. It makes it possible to manage the impact of EAP-related issues on employees' functioning and productivity in pursuing business objectives.

Over the years EAPs harnessed a broad-brush approach. This new focus meant that employee assistance extended beyond substance abuse and alcohol dependence to a wide range of personal problems that affect job

performance. It reflects the complex problems facing today's workforce, including blended families, stepchildren, elderly care, gambling, HIV/AIDS, violence, harassment, trauma, finances etc.

Some EAP interventions and strategies are reactive, addressing troubled employees. Other EAPs are proactive, offering education, life-skills training, promotion and awareness to ensure the prevention of problems.

#### *Legislative imperatives*

Managing and administering EAPs is sometimes a challenging and daunting task. Certain legislative requirements have to be considered in view of the legal risks facing EAP practitioners and employers.

The most common mistakes organisations make in their EAPs that provide sufficient reason for a lawsuit, include prejudicial or discriminatory practices; violation of employee privacy; improper assessment, failure to obtain informed employee consent; and conflict of interest. Few cases in South Africa are based on EAP legalities. This could be attributed to the fact that most employees are apathetic and unaware of their rights in terms of EAPs. The situation could improve as people become more aware of their mainstream legislative rights.

Some EAP practitioners pointed out that current legislation is implicit about EAP issues. There is, therefore, a great need for the formulation and development of an explicit legislative framework, specifically for EAPs. However, such a framework has to be integrated with the relevant legislation.

### **NPI's contribution**

The NPI would like to establish strategic alliances and build public/private partnerships with other organisations that see EAPs as a strategy to achieve sustained improvement towards world competitiveness.

The initial plans for 2001 include workshops country-wide. The long-term goals would revolve around lobbying for the formulation and development of a legislative framework for EAPs.



## Accounting for the union

I was born in 1961 in Diepkloof, Soweto. I grew up there and attended Naledi High School. I dreamt of becoming an accountant because I enjoyed maths and accounting. However, with subjects being taught in Afrikaans, it was difficult to do well.

I did not complete school due to financial problems. My father passed away and I was forced to seek employment. The idea was to accumulate funds to pursue my studies. I never knew that I would become involved in trade unions as I was not into politics.

### My first job

In 1979 I joined Metro Cash & Carry (Metcash) as a casual, working Fridays after school and Saturdays and earning R90 per month. In 1983 I became a full-time employee. My first job was as a mark-up-and-down clerk responsible for prices.

When I started at Metcash it was not organised. Some unions attempted to organise us but we did not think anything of it as these unions first spoke to management and then came to speak to us with management. We regarded them as sweetheart unions.

### Organising workers

In 1983 Makhulu Ledwaba approached us to join the Commercial, Catering and Allied Workers Union of South Africa (CCAWUSA). At that stage he was at

*Etienne Vlok and William Matlala interview Amos Motbapo, SACCAWU president and Metro Cash & Carry shopsteward.*

Metcash head office and chairperson of CCAWUSA-Johannesburg. I was given the responsibility of organising members in my workplace. For CCAWUSA to be recognised, I had to organise 50% plus one of the workers. I did that and was elected shopsteward in 1983.

Later Makhulu would become COSATU and CCAWUSA president.

Whereas some people had problems understanding trade unions it was easy organising workers in Metcash because of the low wages and exploitation at the time. Workers felt trade unions could be their saviour. With CCAWUSA's introduction at Metcash the workers started engaging management. In 1984 we signed a recognition agreement and in 1985 we signed a maternity agreement.

### Strong backing

The training CCAWUSA gave us was tough but very good. It meant we, as shopstewards, could deal with grievances and disciplinary actions. CCAWUSA also

taught us the role of trade unions and about the working class struggle. The officials then were Kaiser Thebedi, Jeremy Daphne, Oscar Malgas and Vivin Masina

This training laid the basis for me and I occupied many positions after that. Within a year of being elected shopsteward I was elected branch treasurer for the Johannesburg branch

CCAWUSA was the most militant union in the commercial and distributive trade. It organised mostly the youth and had an average membership of between 25 and 30 years old. Most of these were former 1976 students and this gave the union its militancy.

This militancy was evident in the three-month OK Bazaars strike of 1986. For the union this was a political strike which dealt with the arrogance of the OK management and strengthened the unity of the CCAWUSA members. We galvanised resources to ensure a successful strike. Other union members brought mealie meal and meat in solidarity. We also negotiated with the furniture companies not to repossess the furniture of the strikers who could not pay.

### Split in CCAWUSA

In 1986 CCAWUSA split due to political differences. It happened because part of the union's leaders wanted it to adopt the Freedom Charter, a second part wanted it to adopt a socialist programme and a third part felt that it should not align itself to any political programme. The latter two groups believed the union was an omnibus accommodating all political affiliations and that the adoption of the Freedom Charter, which they viewed as the ANC's political document, could be divisive.

The split happened at a merger congress with the Hotel and Restaurant Workers Union and the Cape Liquor

Workers Union. The merger congress was adjourned because the affiliates could not reach consensus on the credentials. The Western Cape and Johannesburg branches then left the venue with the understanding that it had adjourned. However, the rest of the congress reconvened later, elected new leadership for the new union and adopted the Freedom Charter.

The Johannesburg and Western Cape branches got the news from the media and were not comfortable with it. They aligned themselves with the former general secretary and were called the Mtwa group. The other group elected Papi Ganare as its general secretary.

For three years two CCAWUSA groupings existed. The COSATU executive committee then made an intervention and brought the two groups together. At that time both groups decided to put the unity of members before their individual and political interests. A technical committee was established and all the issues that were supposed to be adopted at the launching congress of the new union were agreed upfront. A congress was called and SACCWU was launched in 1989.

### State of the industry

Ours is probably the most unorganised industry after the domestic and farm workers. The industry is very decentralised, ranging from restaurants employing three workers to large employers such as Pick 'n Pay. Employers are also not organised. We tried to establish a centralised bargaining forum but this failed due to resistance from employers.

Our problem is that most of SACCWU's resources are used to engage companies in negotiations from January to December each year. This has made it difficult to concentrate on strategic

political and economic issues confronting SACCAWU

SACCAWU is growing but we are grappling with restructuring and organising in tourism. The central executive committee will be adopting an aggressive recruitment campaign that might see us being the second biggest affiliate in COSATU at its eighth congress. This

needs a lot of work and discipline among officials

### Shopstewards, then and now

The struggle of the shopstewards of the eighties was also political. We dealt with shopfloor, political and economic issues. Now we have a democracy so shopstewards do not deal with the same issues. Most of them think they are only shopstewards at the company and the commitment is not there. They do not always attend shopsteward council meetings and are not involved in the community and broader debates.

SACCAWU is engaging the SACP leadership to organise a political school for shopstewards. We believe this will empower and educate our members about the struggles of the working class.

### My union duties

Since becoming branch treasurer in 1985 I have mostly dealt with the finances of the union. Nevertheless I was politically active inside and outside the union. After the CCAWUSA split I became national treasurer of the Mtwaga group. In 1989, I was elected national treasurer of SACCAWU. I occupied that position until 1993. In 1999 I was elected president. I am



based at head office full time while my salary is paid by Metcash.

As president I have to report on the activities of the union and do the overall supervision of administration, finances and organisational issues in consultation with the secretariat. When necessary, I make interventions at companies. I also lead a team on policies and am part of the national negotiating team and co-ordinator for Metcash.

### My life now

I still live in Soweto but have moved to Orlando. I am married and have three children. My wife works for SACCAWU as a regional administrator. We are advising our children not to take the trade union direction. I don't spend as much time with my family as I would like to due to union activities. I don't think this will lead to divorce.

I have no time for relaxing. I read but do not regard it as relaxation – it is usually Marxist-Leninist literature. I relax by watching videos on economic and political struggles and listening to jazz, especially American, African Contemporary and fusion. My favourite artists are Keith Jarrett at international level and Spho Gumede locally. ★

# *glossary*

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|        |   |
|--------|---|
| BCEA   | Basic Conditions of Employment Act                    |
| CCMA   | Commission of Conciliation, Mediation and Arbitration |
| COSATU | Congress of South African Trade Union                 |
| FEDUSA | Federation of Unions of South Africa                  |
| GLAR   | Growth, Employment and Redistribution strategy        |
| LRA    | Labour Relations Act                                  |
| NALEDI | National Labour and Economic Development Institute    |
| NACTU  | National Council of Trade Union                       |
| NEDLAC | National Economic Development and Labour Council      |
| SMME   | Small, Medium and Micro Enterprise                    |

## *COSATU-affiliated unions*

|          |   |
|----------|---|
| CAWU     | Construction and Allied Workers Union                             |
| CEPPWAWU | Chemical, Energy, Paper, Printing, Wood and Allied Worker's Union |
| CWU      | Communication Workers Union                                       |
| FAWU     | Food and Allied Workers Union                                     |
| NELAWU   | National Education Health and Allied Workers Union                |
| NUM      | National Union of Mineworkers                                     |
| NUMSA    | National Union of Metalworkers of South Africa                    |
| PAWE     | Performing Arts Workers' Equity                                   |
| POPCRU   | Police and Prisons' Civil Rights Union                            |
| RAPWU    | Retail and Agricultural Processing Workers Union                  |
| SAAPAWU  | South Africa in Agricultural Plantation and Allied Workers Union  |
| SACCAWU  | South African Commercial, Catering and Allied Workers Union       |
| SACTWU   | South African Clothing and Textile Workers Union                  |
| SADNU    | South African Democratic Nurses' Union                            |
| SADTU    | South African Democratic Teachers' Union                          |
| SAMWU    | South African Municipal Workers Union                             |
| SAPSA WU | South African Public Servants Association                         |
| SARHAWU  | South African Railway and Harbour Workers Union                   |
| SATWU    | South African Transport and Allied Workers Union                  |
| SANBO    | The Finance Union   |
| TGWU     | Transport and General Workers Union                               |

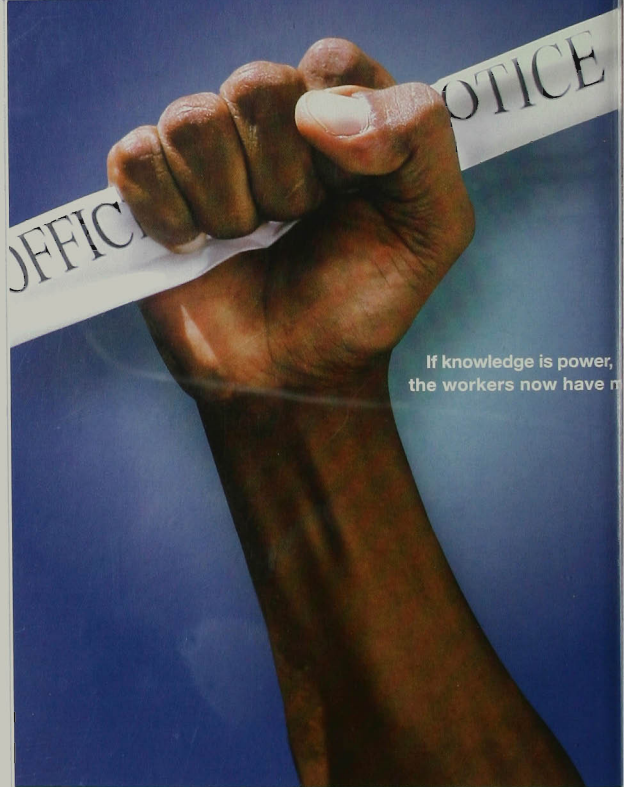
## *FEDUSA-affiliated unions*

|          |   |
|----------|---|
| AIPA SA  | Airline Pilot's Association of South Africa |
| GATCCA   | Guild of Air Traffic Controllers            |
| IGWU     | Food and General Workers Union              |
| HAGTU    | Hairstylists & Cosmetologists Trade Union   |
| HOSPTRSA | Hospital Personnel Trade Union of SA        |
| IBSA     | Insurance & Banking Staff Association       |

|          |  |
|----------|--|
| IMATU    | Independent Municipal and Allied Trade Union           |
| IPATU    | Independent Performing Arts Trade Union                |
| MISA     | Motor and Industry Staff Association                   |
| MTWU     | Motor Transport Workers Union                          |
| NULAW    | National Union of Leather Allied Workers               |
| NUPSA    | National Union of Prosecutors of South Africa          |
| P&T      | Post and Telkom Association of SA                      |
| PAWUSA   | Public and Allied Workers Unions of SA                 |
| PHOSA    | Professional Health Organisation of SA                 |
| PSA      | Public Servants Association of SA                      |
| SAATEA   | South African Airways Flight Engineers Association     |
| SACU     | South African Communication Union                      |
| SADWU    | South African Diamond Workers Union                    |
| SAFSA SA | Footplate Staff Association                            |
| SAMRI    | Staff Association for the Motor and Related Industries |
| SAID&AWU | South African Independent & Allied Workers Union       |
| SAPTU SA | Parastatal and Tertiary Institutions Union             |
| SATU     | South African Typographical Union                      |
| SWU      | Sweet Worker's Union                                   |
| TWU      | Technical Workers Union                                |
| UASA     | United Association of South Africa                     |
| UNPSA    | United National Public Servants Association of SA      |
| WUSA     | Workmen's Union Van Suid Afrika                        |

## *NACTU-affiliated unions*

|          |   |
|----------|---|
| BCAWU    | Building, Construction and Allied Workers Union                 |
| BIFAWU   | Banking, Insurance, Finance and Assurance Workers Union         |
| HLAWU    | Hospitality, Industries and Allied Workers Union                |
| HOTLJCCA | Hotel, Liquor, Catering, Commercial and Allied Workers of SA    |
| MESAWU   | Municipality, Education, State, Health and Allied Workers Union |
| MH WUSA  | Metal Electrical and Allied Workers Union                       |
| NACTWUSA | National Clothing and Textile Workers Union of SA               |
| NAMPSWU  | National, Municipal, Public, Service Workers Union              |
| NASAWU   | National Security Workers Union                                 |
| NPSWU    | National Public Sector Workers Union                            |
| NUF      | National Union of Farmworkers                                   |
| NUTAW    | National Union of Furniture and Allied Workers                  |
| NUFISAW  | National Union of Food, Beverages, Spirit and Wine              |
| PSU      | Parliamentary Staff Union                                       |
| SACWU    | South African Chemical Workers Union                            |
| TAWU     | Transport and Allied Workers Union                              |
| TOWU     | Transport and Omnibus Workers Union                             |



If knowledge is power,  
the workers now have n

According to the new Competition Act, a company that plans a merger is now required to notify the Competition Commission and, at the same time, provide a copy of that notice to a trade union

representing the employees of any of the merging firms. This is just one of the mechanisms incorporated into the Competition Act that tries to balance the interests of workers, owners and consumers.

***Towards a fair and efficient economy for all.***



**competition commis**  
south africa

**COSATU, representing 1.8 million workers,  
congratulates the *SA Labour Bulletin*  
on 25 years of continuous publication.**

**You have helped to educate generations of labour  
activists and steadfastly resisted all attempts to  
silence the workers' voice. You continue to provide  
a platform for the very necessary debates that  
help the labour movement to solve its problems  
and fight more effectively for the workers.**

**COSATU will be commemorating its own 15<sup>th</sup>  
anniversary on 1 December and looks forward to  
many more years of collaboration between the  
Federation and the Bulletin.**

**Viva the *SA Labour Bulletin*, Viva!**

