

Employment  
Equity: An  
Introductory  
Workshop for  
Trade Unionists  
Organised by the  
COSATU  
Education  
Department

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National Education Officer

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## Employment Equity: An Introductory Workshop for Trade Unionists Organised by the COSATU Education Department

### Introduction

This workshop is designed to give you a reliable introduction to the Employment Equity Act. It is based on hard information and on ACTIVITIES or discussion exercises that will help you to understand how the Act works, who it covers, and what the implications are for trade unionists.

Each of the Activities is complemented with information that will help you to understand the Act in more detail. Sections have been added to help you find further information, and to understand the terms that are used in the Act itself.

In a two day programme, you are not going to be an 'expert' on the Employment Equity Act, but we hope that you will feel more confident about using the Act, especially in ensuring that it is used to address a wide range of discriminatory practices at the workplace.

As with most legislation, the more that you begin to use it, the more its strengths and weaknesses will emerge. It is very important that any weaknesses in the practical application of the Act are reported through your Union to the Federation. This will help the Federation to campaign for improvements in the legislation, and to close any loopholes that allow employers to avoid their responsibilities.

All Labour Legislation, including the new Employment Equity Act should serve as a 'base-line' or minimum standard. Employer and Union observance of the minimum standards as laid down in law should be our starting point. Through collective bargaining and improved Union organisation, we aim to improve upon the standards set by the law, and

increase the protection of our members. This is a real challenge. It is especially important for us all to recognise that as we enter into a period where employers are demanding more 'flexibility', the introduction of a new law to correct the legacy of imbalances left by apartheid at the workplace deserves our special attention. We hope this workshop is the first in a series of educational events that will cover this vital new area.

The main aim of this workshop is to help you to understand the basic workings of the law, and how best it can be implemented. We also hope this programme encourages you to find out more about Employment Equity issues, and contribute positively to the struggle for the eradication of inequality.

This pack is designed for a series of two-day introductory workshops that are being sponsored by COSATU in each region. A workshop of COSATU Educators held in September 1999 helped to assemble the material, and to test its appropriateness. As a result there are a considerable number of educators who can advise, and facilitate this workshop and who can be contacted via COSATU Education Department.

We would also be very interested to hear how the pack has been used, and in particular how it can be improved to meet the needs of trade unionists who want to tackle discrimination using the tool of the Employment Equity Act, as well as other organisational means. If you use this pack, feedback would be most welcome.

Many thanks,

Shele Papane  
National Education Officer  
COSATU

# The Aims of this Pack

## The Aims of this Pack

This pack has been designed to achieve the following:

- To help you to understand the Employment Equity Act and how it can be used to tackle discrimination at the workplace.
- To gain an understanding of how the Act works, and the key areas it is supposed to address.
- To practice preparing for the full implementation of the Employment Equity Act, and to identify a Union approach to it
- To identify where the basic minimum's in the Act can be strengthened through Collective Bargaining.
- To help you begin to prepare your membership and the Union as a whole for implementation of the Act, and where you can get further help and information.

# Model Programme

Below is a Model Programme that we hope regions can use as a basis for their educational activity on the Employment Equity Act. It can be adapted for longer or shorter workshops, and if you need advice please contact your national educator or COSATU.

## Two Day Model Programme

### Day 1

#### Session 1    Introductory Session

This session will help you to get to know everyone else on the workshop, to be clear about what the workshop is hoping to achieve, and to begin to share recent experiences of discrimination and affirmative action.

#### Session 2    Why Employment Equity is a Trade Union Issue

This session will help you to explore the thinking behind the Employment Equity Act, and to think through what a Union approach to discrimination and affirmative action should be. It will also help participants to begin to clarify their arguments in favour of an effective employment equity policy at work.

#### Session 3    Understanding the Basics

This session will help you to discover the main areas covered by the Act, how it is to be implemented, and to begin to think about the implications for Unions.

#### Session 4    Getting to Grips with Discrimination.

This session will help you to understand how the Act might work in practise, and through a typical case study, provide you with an opportunity to understand key definitions used in the Act, and how as a union representative you can best approach the issue.

At the end of the day, you will be given an **Overnight Activity** to complete to help consolidate your learnings of today, and to prepare for Day Two.



## Day Two

### Session 5 Affirmative Action.

This session will help you to understand the main definitions, and especially what is meant by affirmative action. It will help you to think about how to explain these definitions to your members.

### Session 6 The Duties on Employers, and Unions.

This session will help you to understand the duties that the law places on both Employers and Unions. It will also help you to identify what the concerns of the employers are in relation to Employment Equity, and introduce to you to the idea of an Employment Equity Plan.

### Session 7 The Next Steps

This session will help you to identify the continuing concerns of the employers and Unions on Employment Equity issues, and how these might be raised in your own workplace. It will also help you to identify how best your Union and Federation can support you and others in making sure that we tackle inequalities effectively.

### Session 8 Workshop Evaluation

This session will help to give the Federation and your facilitator's feedback on the workshop, and will help to improve it for other participants. Many thanks.

## Activity 1

### Introductory Session

#### Aims

To help us to

- Get to know everyone else on the workshop.
- Be clear about what we want to try and achieve over the next two days.
- Share recent experiences of discrimination at the workplace.

#### Task

You will be placed in a small group with comrades that you do not know very well.

Elect a reporter to take a few notes, and then undertake the following:

1. Introduce yourselves to one another giving your union, workplace and job, position in the Union, and why you have come to this workshop.
2. Look at the Aims and the Programme for the Workshop. Are they clear? Do you need any clarifications? Are they relevant to your needs?
3. Share any recent experiences you have had of discrimination or affirmative action in your workplace. Make a note of them. Choose ONE that you would like to share with the rest of the workshop and be ready to describe it.

## ACTIVITY 2

### Why Employment Equity is a Key Trade Union Issue

#### AIMS

To help us to:

- Examine some of the prevailing attitudes about discrimination and how best it can be tackled.

- Think through what a trade union approach to addressing inequality should be.
- Familiarise ourselves with the thinking behind the Employment Equity Act.

## TASK

In your group, look at the statements and questions below, and note down what your group thinks about them.

### Challenging Attitudes:

1. There will always be discrimination. Its natural and it will always exist, even though we now have a government that is opposed to it.
2. The issue of sexual orientation is a side issue for trade unionists. We should concentrate on the big issues, job creation, and wages and job security.

### Understanding the EEA:

3. Read through the notes on how the Act came into being. (Where Does the Employment Equity Act come from)? How would you explain this to your members? Make a few key points to share with the rest of the workshop.
4. Are there any terms or words that are unfamiliar to you? Make a note and add them to the Jargon Chart.

Elect a reporter.

Where does the Employment Equity Act (EEA) come from?

- Constitution set our rights in the Bill of Rights to the fleshed out in legislation - see s. 9 , especially s. 9 (2) on equality
- The new Department of Labour in 1994 issued a five year plan for reforming labour legislation and institutions
- Part of this plan included the issuing of a Green Paper on Employment Equity.
- A reference group including representative of interested groups like Disabled Person of SA met at interval to make comments.
- Some of the issues included:
  - Targets vs quotas,
  - Monitoring of arbitrary actions,
  - Recruitment,
  - The need for a flexible or prescriptive law,
  - Who could benefit and should there be a rating of who is the most disadvantages,
  - Fines, penalties and monitoring,
  - Threshold to apply affirmative action, and
  - The need for Code of Good Practice.
- A draft Act or Bill on 1 December 1997

- Labour, the government and business debated the Bill in Nedlac from February to May 1998
- In July 1998, the Bill was discussed by the parliamentary portfolio committee on Labour.
- There was a strong call from COSATU to ban wage discrimination, in other words:
  - Equal pay for equal work and
  - Wage gaps must close.
 As a result, the income differential clause and the "suitably qualified" definition were added.
- The redrafted Act was passed by parliament and signed by the State President on 12 October 1998
- On 14 May 1999 chapter 4 of the Employment Equity Act (EEA) took effect. This set up the commission for Employment Equity, which began to draft regulation and Codes of Practice.
- On the woman's Day, 9 August 1999, chapter 2 of the EEA took effect. This now covers all areas of unfair discrimination in the workplace, while the Labour Relations Act covers unfair discrimination dismissals.
- The official target for implementing the rest of the EEA is December 1999.
- The Department of Labour and the Commission for Employment Equity are presently drafting Codes of

Good Practice related to the EEA. Potential Codes conclude:

- Code on preparing employment equity plans
  - Code on advertising, recruitment procedures and selection criteria,
  - Code on special measures for the people with disabilities, especially related to benefit schemes,
  - Code on special measures on people with family responsibilities ( workers' responsibilities in relation to their partners, children or family members needing care and support)
- 
- But it seems more likely that Chapter 3 of the EEA on affirmative action measure sand employment equity plans may only come into force in January/February 2000.
- 
- The provisions of the EEA relating to state contracts seem set to come into force in September 2000.

### ACTIVITY 3

### Understanding the Basics

Aims

To help us to:

- Begin to build an understanding of the main provisions of the Employment Equity Act, and familiarise the terms that are used in it.
- Explore how the Act will work in practice, and what the role of Unions is in ensuring that the Act is properly implemented.

## Task

In your group, look at the attached 'What is the Employment Equity Act?' and the Act itself, and try and answer the following points:

- What do you think the Act is aiming to do?
- What different forms of discrimination does the Act seek to address?
- Who are the main players in making sure that the Act is implemented?
- What is the procedure for ensuring that the Act is properly implemented, and especially, what is the role of the Union?

Elect a reporter



## What is the Employment Equity Act?

- Workers have struggled over racism, sexism and other discrimination in the workplace
- The democratically elected government in 1994 drew up a new constitution entrenching rights to equality, human dignity
- We need to recognise that factors including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth should not usually be relevant in the workplace.
- We need to recognise that in workplaces:
  - A worker should not be kept out of a job or fail to be promoted because of one of the factors above.
  - All workers should be treated with respect and dignity.
  - More workers from different backgrounds make for a better workplace.
  - Employers should be prepared to make reasonable changes to jobs or the work environment so everyone can do them.
  - Workplace should reflect the kind of workers who live in that region, in all level and categories of workplace.



- Workers should have access to training through a Sectoral Education and training Authority or the National Skills Authority to achieve the above balance.

#### ACTIVITY 4

#### Getting to Grips with Discrimination

##### Aims

To help us to:

- Analyse a typical problem of discrimination.
- Practice reading and applying the Law.
- Think about how unions respond to cases of discrimination.
- Devise a practical plan of action to deal with a discrimination issue

##### Task

In your small group, carefully read the attached case study on sexual harassment.

1. Refer to the supporting information 'Examples of Sexual Harassment' and the material we have used in previous activities.

2. Go through the case study together and note down what you think are the key facts and issues.
3. Now as the union representative who has been asked to represent Ms Jacobs. Note down the advice that would give her, and the practical steps that you would take to address this issue.
4. Use a chart to make your presentation to the rest of the workshop.  
At the end of the activity read through the section on Sexual Harassment in the Appendix.

## SEXUAL HARASSMENT CASE STUDY

You have to deal with a worker's complaint around sexual harassment.

This complaint comes from one of the union members, Ms Pinkie Jacobs. Ms Jacobs is alleging that she was harassed by her supervisor, Mr Abednego Radebe.

Ms Jacobs says that the previous Friday she was approached in the morning by Mr Radebe as she passed him in the corridor. He greeted her and stopped her. There was nobody else about. He backed her against the wall of the corridor with his body, putting his outstretched hands against the wall on either side of her. He said he would not release her until she agreed to go out with him that Friday night.

When she refused, he stared at her rudely and said: "I see you are still Daddy's little girl". He then walked off and left shaking with fright and embarrassment.

She said that before this incident, Mr Radebe had made her uncomfortable by frequently remarking on her physical appearance and by standing very close to her when she was working or when he was speaking to her.

She said that she had once told him that she was married and that she liked her work and she liked to be treated with respect in the workplace. But she was too shy of Mr Radebe and his authority to complain to him more directly until the incident happened.

She came to the union office and the organiser raised her problem in a meeting with the area manager Mr Will Stevens. He said this was not a serious issue and refused to address the grievance.

### Example of Sexual Harassment

Example of sexual harassment may include the following but are not limited to the listed examples:

#### Verbal Forms

Sexual innuendo, persistence requests for unwanted dates, requests for sexual favours, unwelcome sexual jokes, unwelcome questions about a

person's sex life, comments about a person's body, telephone calls with sexual overtones.

### Physical Forms

Fondling, Grabbing or rubbing against someone, unwelcome patting, touching, pinching, strip-search by a member of the opposite sex, exposing one's self, attempted rape or rape.

### Non-verbal Forms

Leering whistling, offensive pin-ups or posters, winking, rude gestures.

### Secondary Harassment

Secondary harassment occurs when a grievance reports a case of sexual harassment, and other employees then start harassing her/ him because of the grievance filed.

### Quid Pro Quo Harassment

Quid pro quo harassment is an abuse of authority by an employer including all levels of management or co-workers who has power or can influence the process of employment, dismissal, promotion, salary increment or any other employment decisions. This can be done by suggestions of sex in return for a job, salary increase or other benefit.

## Overnight Activity    Crosswords or Cross Words!

### Aims

To help you to:

- Further familiarise yourself with the content of the Employment Equity Act.
- Get used to the language used in the legislation.
- Start to tackle legal 'jargon' and make it understandable!

### Task

Working in pairs, small groups or individually (small groups is best!) fill in the Crossword puzzle on Employment Equity which is attached.

In addition to the crossword puzzle, you will be allocated a phrase or term that is used in the EEA or which is on the Jargon Sheet. Find a place where the term is used in the Act (note the page and paragraph number reference), and then describe it in simple, understandable language that members could understand. Put your definition on a card ready for display in the morning. Sleep well!

In the morning we will check the puzzle together, and share our definitions.

## Affirmative action crossword puzzle

### ACROSS

1. The EEA provides in Chapter Three that a person may be ----- (8) qualified for the job because of their formal qualifications, prior learning, relevant experience or their capacity to acquire, within a reasonable time, the ability to do the job
2. Fair and equal treatment for all at work is the theme of the Employment----- (5) Act (EEA)
3. Disproportionate (too big) ----- (13) in income between different job categories should be made smaller by designated employers under the EEA
4. Actions by employers to ensure equal employment opportunities for groups disadvantaged in the past may be called -----(11) action
5. Affirmative actions measures in equity plan should not make an absolute barriers to the continuity employment of non-designated groups or in other words, force the -----(10) of e.g white men
6. Designated groups under the EEA include people who are black, disabled or -----(5)

### DOWN

1. Affirmative action under the EEA is designed primarily to include people who are black, women or -----(8)
2. The EEA aims to redress the disadvantages suffered by, amongst others, -----(5) people in the Apartheid past.
3. The EEA provides in Chapter Three that a person may be suitably ----- (9) for the job because of their formal qualifications, prior learning, relevant experience or their capacity to acquire, within a reasonable time, the ability to do the job
4. Affirmative action measures aim to address the workplace problems workers suffer in the present and suffered in the -----(4)

5. All designated employers must submit information on their affirmative action measures to come, to the Department of Labour, in the form of an employment equity -----(4)
6. Affirmative action measures approved by the EEA include preferential treatment and numerical goals but exclude----- (6)

## Activity 5

## Affirmative Action

### Aims

To help you to:

- ☐ Understand what is meant by Affirmative Action
- ☐ Think about the arguments you can use to ensure that Affirmative Action is taken up properly by the employer.
- ☐ Identify the range of Affirmative Action measures available.
- ☐ Think through how Unions can organise for Affirmative Action Measures.

### Task

In your group you will be given one or more of the following cases. Using your knowledge of the Act so far, and the notes in their appendix 'Affirmative Action in the Employment Equity Act' and 'Unfair Discrimination in the Employment Equity Act, decide what possible

Affirmative Action Measures, if any, could be taken to tackle these cases.

In addition, briefly describe what the Union can do to encourage the employer to respond positively.

Elect a reporter



1. A member employed by the Metropolitan Council was injured in a work-related accident, and is now unable to lift heavy loads. The employer has said that the member will have to leave because functioning as before is no longer possible.
2. In the bank office, black people occupy all the minor positions, and white people occupy all the senior positions. When a senior vacancy arises, the employer disregards internal applicants from the lower grades even though they often do large parts of the work required. The employer has to date, always appointed a white person explaining that only white people have the skills and are sufficiently educated to do the job.
3. At the foundry, three workers have been refused places on a training programme that would normally lead to promotion because it has become known that they are HIV+ and the employer says that the training will be a waste of money.
4. A woman ticket office worker has applied to become a trainee train driver, but has been told by her supervisor that there is a long waiting list of male trainees who applied before she did, and that there is little chance of her becoming a driver and therefore to withdraw.

Elect a reporter.

## ACTIVITY 6

## The Duties on Employers and Unions

### Aims

To help you to:

- Be clear about the role of the employer in implementing the provisions of the EEA
- Identify the role of the union in tackling inequalities at the workplace, and begin to understand what an Employment Equity Plan is.

### Task

In your group, using the information we have already looked at, and the 'The Features of an Employment Equity Plan in the appendix, note down what you think about the following:

### The Right to be Consulted

1. Does an employer have to consult the Union on Employment Equity? How and when? What can be done if the employer refuses to consult? What happens if not all the workers are members of the Union or are in different unions?
2. How are Affirmative Action Measures assessed to check if they are working? What can unions do to monitor progress?
3. Can an employer refuse to give you information relating to Employment Equity? What is the legal position on the disclosure of information?

### Towards an Employment Equity Plan

4. How would you explain what an Employment Equity Plan (EEP) is to workers?
5. Who is responsible for drawing up an Employment Equity Plan and how can Unions influence the process?
6. Given the guidelines on drawing up an EE Plan, what do you think are the most important areas to include for workers?

## ACTIVITY 7

### The Next Steps

#### Aims

To help you to:

- Analyse the longer-term position of the Employers and Unions in regard to Employment Equity.
- Think through how your Union and Federation can give workplace representatives and members support to ensure that inequalities in the workplace are tackled successfully.

#### Task

In your group, read through the two checklists on *Employers and Unions Concerns* about the *Employment Equity Act* in the appendix.

1. Think about your own workplace, or the sectors you cover, and identify any concerns that have already been raised or are likely to be raised by the employer. What arguments can you use to respond to your employers concerns?
2. Note down any suggestions for making sure that your Union and Federation are able to give on going and longer term practical support to Union representatives on Employment Equity.

Elect a reporter.

## ACTIVITY 8

## Workshop Evaluation

### Aims

To help us to:

- Identify the usefulness of this workshop and how it might be improved.
- Evaluate the way the workshop was structured and conducted.

### Task

In your group,

1. Look back at the Aims and the Programme of the Workshop. Have the Aims been met? Please explain. Was the programme manageable?
2. Which parts of the programme did you think were useful, and which less so? Please be frank.
3. Please comment on the organisation of the workshop, and the educational methods used to facilitate it.
4. How do you think the workshop could have been improved?
5. Any other comments? Many thanks.

WORKERS'  
GLOSSARY ON  
EMPLOYMENT  
EQUITY

## Introduction to the Workers Glossary

This Workers Glossary has been written to help you to understand a range of the terms used in the Employment Equity Act, and also in the Skills Development Act. It is divided up into three sections covering **Unfair Discrimination**, **Affirmative Action**, and the beginnings of a Workers Glossary of terms used in the **Skills Development Act**. It is hoped that as you work through the workshop programme you will be able to refer to the terms that are most often used in the section you are dealing with. Although we are not covering in detail the Skills Development Act, it is closely linked to the Employment Equity Act, and so familiarising yourself with the terms used in the SDA should help at a later stage.

Please feel free to add to the Glossary if you develop or find a useful definition yourself, and pass it on to your Federation for inclusion in this list. Thanks.

### UNFAIR DISCRIMINATION

- **Belief** - a system of acceptance without proof, involving traditions, religion, customs or culture, e.g. to shave one's head during a mourning period
- **Birth** - refers to the place, region or country where a worker was born, e.g. the EEA forbids discrimination against a worker born in Nigeria, on the basis that the person was born in Nigeria
- **CCMA** - the Commission for Conciliation, Mediation, and Arbitration which attempts to settle and if this is not successful, later rules on the majority of labour disputes (others go on to the Labour Court) [*as set up by s. 112 of the Labour Relations Act no. 66 of 1995*]
- **Collective agreement** - a written agreement between two or more parties, including an employer or group of organised employers and one or more registered trade unions that regulates one or more aspects of the relationship between the parties [*see s.1 of the EEA*]
- **Colour** - an arbitrary and unscientific term suggesting that people with different skin "colour" or hair or eyes etc linked to family descent are

somehow different in any way other than through their historical experience, e.g. people who are "black" or "white"

- **Conscience** - state of awareness with the capability to act rightly or wrongly. Discrimination against someone who is taking a stand according to their own personal conscience is not acceptable, e.g. taking disciplinary action against a union legal officer who refused to defend a member charged with rape may be forcing them to act against their conscience.
- **Direct unfair discrimination** - is an evident or clear discrimination in terms of gender, colour, creed or sexual orientation etc e.g. gays are not allowed to become union members
- **Ethnic or social origin** - Discrimination against a worker because of where they come from, or what class they are, is not acceptable; unless this is affirmative action or based on the requirements of the job, e.g. it would not be unfair to choose Chinese man above a black woman for a manager in a Taiwanese firm if the firm receives a large volume of documents written in Chinese
- **Family responsibility** - is that kind of support given by workers to their immediate family members who need care or support, that is, their spouse, partner, dependent children and other members of their immediate family, e.g. taking time off to deal with deaths, child care, birth, adoption [*see s.1 of EEA*]
- **Gender** - refers to the different behaviour expected from women and men in society e.g. women wear skirts and do most of the household cooking and men wear trousers and fix the car
- **Harassment** - is a form of discrimination or victimisation meted out to individuals or groups by those with power; it means annoying, troubling or making repeated attacks on people. This could be interpreted as including, for instance, racist or sexist speech. Other examples of harassment would be sexual harassment, or the harassment of a woman on the basis that she is pregnant. [*see s. 6(3) of the EEA and Code of Good Practice on the Handling of Sexual Harassment Cases, general notice 1367 in Government Gazette 19049 of 17 July 1998*]



- **HIV status** - determining whether or not the Human Immunodeficiency Virus has entered a person's body, meaning that they could live for some considerable time before they suffer from the fatal Acquired Immuno Deficiency Syndrome (AIDS) *[see s.1 and s. 6 and 7 of the EEA]*
- **Indirect unfair discrimination** - a hidden or subtle discrimination, not as evident as direct discrimination. This occurs where "criteria, conditions or policies are applied which appear to be neutral, but which adversely affect a disproportionate number of a certain ... group in circumstances where they are not justifiable..." For example, a supermarket chain which only offers a pension after a certain number of years of full time work, is discriminatory against part-time workers. As most of the part-time workers are women, and this provision is indirectly discriminatory against women.
- **Language** - a common tongue used as a medium of communication between two people. Using the same language promotes relationships and interaction. Being able to use your own language helps someone to express herself. For example, speaking Chirwa as a Malawian person should not be a reason for being victimised in a workplace
- **Marital status** - this used to be a test of whether people were legally married or not. Now SA law has begun to recognise life partnerships including same-sex partners ... generally this should not be relevant in the workplace but employers may not discriminate against partners and in favour of legal spouses e.g. a policewoman recently won the right to have her lesbian partner recognised by the provident fund.
- **Medical testing** - is usually done when you are going to be employed, e.g. testing to see whether a worker is HIV+ - this is now strictly forbidden under the EEA unless the employer has an order from the Labour Court *[see s.1 and s.7 of the EEA - note that this "testing" could be indirect, e.g. asking whether a worker has been refused for an insurance policy that provides disability cover relating to certain illnesses]*
- **Political opinion** - one of the opinions held by a member of the community on a burning issue in a community; could reflect the understanding of a whole grouping in a community on an issue about

how the community is governed e.g. a member of the Vryheidsfront thinks there should be a "white homeland"

- **Pregnancy** - when a woman has a child developing in her womb, and including "intended pregnancy, termination of pregnancy and any medical circumstances related to pregnancy" e.g. a woman should not be discriminated against if she cannot stand for long periods because she is pregnant [*see s. 1 of the EEA*]
- **Psychological testing** - refers to a situation where an employer checks your intelligence. Sometimes you are asked about things which have nothing to do with your work, e.g. made to do arithmetic [*see s.8 of the EEA; such tests must be scientific, fair and unbiased towards any group*]
- **Race** - means all kinds of people in respect of their "colour" or family descent e.g. a South African with a straight nose, brown skin and long straight black hair will be arbitrarily called an "Indian" by some people
- **Religion** - to worship God, or having faith in a supernatural being or power, e.g. Islam or Christianity
- **Sex** - refers to the biological characteristics that mark a person as male or female e.g. usually women have bigger breasts
- **Sexual orientation** - whether you have a sexual preference for people of the same sex or the opposite sex or both sexes e.g. gay or lesbian or trans-sexual people

## AFFIRMATIVE ACTION

- **Affirmative action** - refers to special measures used in the workplace, which are designed to ensure equality of opportunities by eliminating historical imbalances, e.g. black women should be targeted for training to ensure that they are able to obtain the same levels of skill as white fellow workers [*see s.15(1) - (4) of the EEA .... "measures ... to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer"*].

- **Black people** - before 1994 in South Africa, means all people who do not have a "white" skin colour and includes so-called Africans, Coloureds and Indians [*see s.1 of the EEA*]
- **Commission for Employment Equity** - is a commission appointed by the Minister of Labour to hold office on a part-time basis. It consists of representatives from labour, business, the government, communities and development organisations [*see Chapter IV of the EEA and the attached list of short CV's of the current CEE*]
- **Designated employer** - A "designated employer" includes an employer with 50 or more workers, an employer with a high turnover (see schedule 4 at the back of the EEA), a municipality, an "organ of state", including any state department or provincial and national administration, local government department or administration, any person or institution functioning according to the national or provincial constitution, any person or institution exercising a public power (except a court or a judicial officer), and an employer who agrees, in a collective agreement, to become a "designated employer" [*see s.1 of the EEA*]
- **Designated groups** - black people, women (any race) and people with disabilities (any race); that is, people who were disadvantaged in the past [*see s.1 of the EEA*]
- **Employment equity plan** - a plan to achieve a fair and equal environment in the workplace e.g. the promotion of a black "tea lady" to the position of wages clerk and receiving the necessary training and support for her to succeed [*s.20(1) and (2) of the EEA ... a plan to achieve "equitable representation of suitably qualified people from designated groups within each occupational category and level in the workforce"*]
- **Employment policy or practice** - policy and practice in a workplace that guides and defines how a person is recruited, advertised for and selected for a job, appointed, how their job is classified and graded, how they are paid, what benefits they get and other terms and conditions of employment, what work they are assigned to do, the working environment, workplace facilities, training, development, performance evaluation systems, promotion, transfer, demotion, disciplinary measures, dismissals and others [*see s.1 of the EEA*]

- **Formal equality** - Equal treatment for all individuals no matter what their circumstances are, e.g. saying that men and women will be promoted on the basis of how many hours overtime they work, regardless of family responsibilities
- **Income differential** - the wage gap, or the anomalies between one group of workers' income and another group, e.g. between the wages of artisans and the wages of trained operators, or the differences between the wages of supervisors in different departments [*see s.27 of the EEA*]
- **People with disabilities** - people who have long-term mental or physical damage which makes it definitely more difficult for them to get a job or to get promotion [*see s. 1 of the EEA*]
- **Reasonable accommodation** - means changing a job or a workplace or facilities or processes so that it will be easier for a black, woman or person with disabilities to get a job or get promotion e.g. making a ramp so that someone with a wheelchair will be able to get up the stairs by themselves and reorganising an office so that the person can work in it [*see s. 1 of the EEA*]
- **Substantive equality** - A positive recognition of the need to redress past disadvantages by the redistribution of social and economic power and the provision of opportunities for each worker to develop themselves to their full creative potential, e.g. making sure that black women clerks in a company get proper training to ensure that they are able to be promoted to the same higher-paid positions as white women may presently occupy, because the white women had easier access to training in the past [*see how this is different from "formal equality" above*]
- **Suitably qualified person** - a person who should get a job because she has formal qualifications, or because she has done this job before, or because she has done a similar job before, or because she will be able to learn to do the job within a reasonable space of time [*see s.20(3) of the EEA*]

Workers Glossary of definitions used in the Skills Development Act (SDA)



- **Employment services/Labour centres** - it is a service centre that renders services to job seekers and students in the community for career orientation, advising about job opportunities and offering training. For example, the labour centres run by the Department of Labour can refer community members to training centres to learn skills like brick-laying, cooking and so on. These centres also keep data about vacancies and provide names of workers to companies who are recruiting or advise companies who are retrenching about developing social plans [*see s.1 of the EEA and ss.23-26 of the EEA*]
- **Learnership** - replaces the apprentice system. A learnership must have systematic training, include practical work experience, lead to a recognised SAQA-linked qualification and be registered with the Department of Labour [*see sections 16 to 19 of the SDA*]
- **National Skills Authority** - a body in charge of skills development implementation. It consists of organised labour, business, community development, the state, educators, employment agencies, designated groups and someone from SAQA (see below). It must advise the Department of Labour, help to target and finance key groups for skills development and link with the Sectoral Education and Training Authorities [*see s.4 of the SDA*]
- **National skills development policy** - a plan of action for the development of skills in South Africa, developed by the Department of Labour on the advice of the National Skills Authority [*see s.5 of the SDA*]
- **National skills development strategy** - the way the above plan of action would be undertaken [*see above and s.5 of the SDA*]
- **National Skills Fund** - collect money (levy) from all employers to finance the work of the National Skills Authority (see above). The national skills fund collects 20% of the levy from employers where there is a Sectoral Education and Training Authority or SETA, and all of the levy for employers who do not fall under a SETA. [*see sections 27 to 30 of the SDA*]
- **Sector skills plan** - plan to develop the range of skills needed by learners and workers in workplaces in a certain sector, and outlining targets for such a plan [*see section 10(1)(a) and (b) of the SDA*]

- **SETA** - is a Sector Education and Training Authority, to be established in agreed sectors by unions and employers to develop a sector skills development plan, monitoring workplace training, allocating grants to employers for training, collecting levies from employers, and promoting learnerships *[see sections 9-15 of the SDA, especially s.9(1)]*
- **Skills development levy** - is a levy that is paid for skills development programmes and the administration of a SETA (see below). This levy is paid by employers. For most employers, it will be first 0,5% of the employer's payroll (from 1 April 2000), then 1% of the employer's payroll (from 1 April 2001) *[see s.3 of the Skills Development Levies Act]*.
- **Skills Development Planning Unit** - a department or section of the Department of Labour to look at the skills needs of workplaces or sectors or national priorities *[see section 22 of the SDA]*
- **Skills programme** - is a training programme designed to train employed workers, or the working class more broadly, on skills they would be expected to perform at work. The programme could also be to train workers to be able to perform the jobs that they are doing, better. On completion of such a programme, a nationally recognised certificate is issued *[see sections 20 and 21 of the SDA]*
- **South African Qualifications Authority** - means the national education body set up to link education and training standards to a national qualifications framework, to make it easier for workers to move jobs and get recognition for previous experience *[see s.3 of the SA Qualifications Authority Act no 58 of 1995]*

## Who must implement affirmative action?

The Employment Equity Act (EEA) says that a "designated employer" must make an affirmative action plan in their workplace.

A "designated employer" includes:

- An employer with 50 or more workers
- An employer with a high turnover  
( see schedule at the back of EEA)
- A municipality
- An "organ of state", including
- Any state department or administration  
- provincial and national
- Local government department or administration
- Any person or institution exercising a public power
- ( except a court or a judicial officer)

- an employer who agrees, on a collective agreement, to become a "designated employer"

### Who is affirmative action for?

The EEA says affirmative action is for "designated groups".

So far the EEA defines "designated groups" as:

- black people ( including Africans, "coloureds" and "Indians" )
- women
- people with disabilities:
  - long term or recurring
  - mental or physical impairment (damage or weakening)
- which limits their prospects of jobs or promotion

### What are affirmative action measures?

1. Measures designed to ensure:

- Equal job opportunities for
  - People from designated groups



- Who are "suitably qualified" due to
  - Formal qualifications
  - Prior learning
  - Relevant experience
  - Capacity to learn/ become able to do the job, within a reasonable time
- Equitable representation in all job categories/  
Levels for:
  - People from designated groups
  - Who are "suitably qualified" due to
    - Formal qualifications
    - Prior learning
    - Relevant experience
    - Capacity to learn/ become able to do the job, within a reasonable time

2. Measures to retain and develop people from designated groups:

- Including appropriate training
- Especial using the new Skills Development Act

NB - These above measures:

- Include numerical goals
- Include preferential treatment
- Exclude quotas

- Exclude " absolute barriers" to non-designated groups

3. Measures to make "reasonable accommodation", defined as:

- Modification or adjustment,
- To a job or to be working environment,
- To enable someone from a designated group,
- To have access to, participate in or advance in, employment

4. Measures to identify and remove barriers to employment of blacks, women and people with disabilities ( including unfair discrimination)

5. Measures to make workplaces more diverse, because all people deserve equal respect and dignity

How will the success of affirmative action measures be assessed?

Compliance by an employer with the EEA will be measured by relating that workplace to the:

- Demography of that region, or nationally  
(demography = statistics on people in communities)

- Pool of suitably qualified people available, from which employer could be reasonably expected to draw,

e.g labour pool in that sector or region

- Economic and financial factors relevant to the sector

e.g mental sector is 80:20 men: women  
and mining sector ratio is worse, so  
what is reasonable progress?

- Present and anticipated economic and financial circumstances of the employer
- Vacancies in different categories and levels and labour turnover
- Progress compared to similar companies in the same sector
- Reasonable efforts in dealing with unfair discrimination  
("eliminating employment barriers")
- Any other factor

Who must a designated employer consult?

- Consult with workers, including:

- workers in all job categories and levels,
- designated workers, and
- non-designated workers
- If there is a representative trade union, the employer will consult with the union and shop stewards in the workplace, provided that the union represents all the types of workers listed above
- If there is no representative union, or the union does not cover all the types of workers listed above, the employer must consult with representative chosen by the unorganised workers

#### **The designated employer must consult workers on:**

1. How to prepared a workplace analysis including:
  - Employer barriers for designated groups, looking at factors including recruitment, selection, job grading, pay and benefits, training + development, promotions, demotions, transfers, workplace + facilities
  - Skills profile for all job categories and levels, to check where blacks, women and people with disabilities are not well represented
2. Preparing and implementing an employment equity plan for the workplace

3. Reporting on the employment equity plan to the  
Department of  
Labour

## STEPS TOWARDS AN EMPLOYMENT EQUITY PLAN

1. Discuss with the shop stewards committee/ trade representative in a workplace:
  - what affirmative action means and
  - what affirmative measures are suggested in the Employment Equity Act (EEA) S. 55 and
  - what process the EEA for an employment equity plan.
2. Find out what the union policy is on these issues. Plan how to get a mandate from workers on these issues.
3. Check whether you employer is a "designated employer"; or negotiate from you employer to volunteer to become a designated employer.
4. Set a date for employer to consult with the shop stewards committee and a union organiser on affirmative action in the workplace.
5. Prepare this meeting with the management by getting together proposals on:

- how to conduct the workplace analysis;
- what demands the union has to go into the employment equity plan; and
- how the union will monitor the employer's progress report to the Department of Labour.

6. To do the analysis, the employer must collect the information on:

- employment policies ( e.g only matriculants),
- employment practices ( e.g no night shift work for a women),
- employment procedures ( e.g white male HR does all interviews),
- the working environment ( e.g are there protective screens on the VDU terminals?) and
- a profile of each job category ( and all levels on each categories) explaining how many black, women and disabled workers are in each category and level.

The union needs to have demands on how they will monitor and intervene in this process of collecting information and analysing it. The employer must consult with the union on this.

7. An employment equity plan must cover the following items. The union needs a mandate for negotiating each one:

- affirmative action measures including
  - Eliminating unfair discrimination against blacks, women and the disabled.
  - Promoting diversity based on equal dignity and

respect for all workers,

- moving towards equal opportunities and equitable representation for blacks, women and the disabled,
- retaining and developing women, blacks and disabled (including skills development),
- provided that there are no quotas and no absolute bars against able white men ( people not from designated groups);

- the objective for each year of the plan;
- the numerical goals for affirmative action and a timetable

and a strategy in each category (e.g 5 women out of ten workers in the dispatch department, after a suitable training and filling the vacancies left as workers leave);

- other plans ( other the above; for example, desegregating the canteen) and a timetable for them;
- how long the plan will take ( must be between one and five years);
- how the plan will be carried out and monitored;
- internal procedures to resolve the disputes about understanding the plan or putting it into practice;
- who in the workforce will be responsible for monitoring and implementing the plan.

The union needs to have its demands ready on each of these items, or to propose a process for working on these items. The employer must consult with the union on this.

8. The EEA sets out a timetable for reporting to the Department of Labour on this plan and how it is going. Such reports are public documents. The time within which an employer must do this depends on the size of workplace. An employer with a workforce or less than 150 workers must get its first report to the Department of Labour within 12



months of the date when the EEA commences and then report again at least by the beginning of October every two years after that.

The employer must consult the union about this report before they submit it to the Department of Labour. So the union must have its demands ready.

### **General duty of employer on unfair discrimination:**

- The employer must:
  - take steps to provide equal opportunity,
  - by eliminating unfair discrimination,
  - in any employment policy or practice.
- An employment policy or practice includes:
  - Recruitment procedures, advertising and selection criteria,
  - Appointments and the appointments process,
  - Job classification and grading,
  - Remuneration, employment benefits and terms and Conditions of employment,
  - Job assignments,
  - The working environment and facilities,
  - Training and development,
  - Performance and evaluation systems,
  - Promotion,



- Transfer,
- Demotion,
- Disciplinary measures other than dismissal, and
- Dismissal.

### Types of unfair discrimination:

#### • DIRECT DISCRIMINATION-

This is when an employer treats a worker or a group of workers differently because of some characteristic or choice that is not related to the workplace.

This can include:

- race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.

This can also include other forms of discrimination where the employer's action is arbitrary.

#### • INDIRECT DISCRIMINATION-

This is when an employer applies criteria, conditions or policies which appear to be Neutral, but which adversely affects a disproportional number of a certain group in circumstances where they are not justifiable.

- For example, if an employer says any applicant for a job as a factory general assistant, doing cleaning

and maintenance, must have a Matric certificate, this seems to be neutral. But such a requirement will adversely affect more black workers because of their previous unequal access to better quality education. And it would be hard for an employer to justify the need for a general assistant to have a Matric certificate.

### Unfair discrimination includes harassment:

- Harassment of a worker is a form of unfair discrimination. This can involve troubling, annoying or making repeated attacks on a worker.
- Employers and their workers should respect one another's integrity, dignity, privacy and right to equity in the workplace.
- A worker may not be harassed on any of the grounds below, or any combination of these grounds:
  - race,
  - gender,
  - sex,
  - pregnancy.
  - Marital status,
  - family responsibility,
  - ethnic or social origin,
  - colour,
  - sexual orientation,
  - age,
  - disability,

- religion,
- HIV status,
- conscience,
- belief,
- political opinion,
- culture,
- language and
- birth.

Who is affected by what the EEA says about unfair discrimination?

- The Employment Equity Act (EEA) talks about:
  - an employer,
  - an employee, or any person who:
    - is not an independent contractor,
    - who works for another person, or the state (remember "person" can include companies, close corporations, organisations etc with legal personality),
    - who receives or is entitled to receive remuneration (money usually, or shares or benefits like housing),
    - who assists in the employer's business.
    - A job applicant (s. 9 of the EEA).

The NEDLAC Code on sexual harassment goes wider.  
It includes:

- Owners, employers, managers, supervisors, employees, job applicants, clients, suppliers, contractors, and others having dealings with the business/ workplace.

A trade union could negotiate to include others like those above in any grievance procedure or procedure on unfair discrimination through a collective agreement.

When can discrimination be "fair"?

The employment Equity Act (EEA) gives two possibilities.

- Affirmative action measures do not amount to unfair discrimination

In other words, measures to address the injustices and inequalities of the past for groups of people, are not giving them unfair advantages.

- Choosing, excluding or making differences between people at work because of a job's "inherent requirement" do not amount to unfair discrimination

For example, only an attorney who is admitted to practice may sign certain court papers on behalf of clients. This would be an "inherent requirement" for a litigation job in a legal practice.

When does testing workers amount to unfair discrimination?

## MEDICAL TESTING

THE EEA BANS MEDICAL TESTING OF WORKERS UNLESS:

- A law requires workers in a workplace to be tested, e.g recruits to the army , or
- The employer can show that testing is justifiable because of:
  - Medical facts,
  - Employment conditions,
  - Social policy,
  - fair distribution of employee benefits, or the
  - Inherent requirements of the job.

HIV testing:

An employer may not test any worker for HIV unless s/he gets an order from the Labour Court that such a test is justifiable.

The Labour Court will look at the factors above. The Labour Court may make conditions for such test, for example:

- Employers must provide counselling,
- The test and result must be confidential,
- The time period for such tests may be limited,

- The categories of workers who may be tested, may be limited,
- PSYCHOLOGICAL TESTING

The EEA bans psychological testing or psychological assessments of a Worker,

Unless:

- The test is scientifically valid and reliable,
- The test does not discriminate against some workers and can be applied fairly to all workers,
- The test is not biased against any worker or group.

The procedure for making an unfair discrimination dispute:

- DISMISSAL DISPUTES
  - Referral to the CCMA or Bargaining Council for conciliation, within 30 days of the dismissal
  - If conciliation does not succeed, referral to the Labour Court for adjudication
  - If both parties agrees, the dispute could be referred to arbitration
- OTHER DISPUTES

- The union or worker referring a dispute must show that they made a reasonable attempt to settle it first
- If this fails, the dispute may be referred to the CCMA for conciliation. This must be done within six months of the act, or failure to act, that constituted the unfair discrimination
- If conciliation does not succeed, refer to the Labour Court for adjudication
- If all parties agree, the dispute could be referred to arbitration

Pitfalls and potential gains for unions around the Employment Equity Act (EEA), especially around employment equity plans

ISSUES	UNIONS	EMPLOYERS
NEED TO CHANGE	<ul style="list-style-type: none"> <li>• Unions have always struggling against racism and discrimination; more recently, most unions have pushed for gains for women</li> <li>• Unions need more internal education on sexism, discrimination against people with disabilities etc</li> </ul>	<ul style="list-style-type: none"> <li>• Employers do not selecting, promoting</li> </ul>
DESIGNATED EMPLOYERS	<ul style="list-style-type: none"> <li>• Some unions are calling on all companies in their sector to agree to become "designated employers"</li> <li>• Unions may need to do research on some companies to determine their actual structure and turnover, considering off-shore assets etc to assess whether employers fall within the turnover thresholds in the EEA's Schedule 4</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are out-sourcing, leading to turnover, to</li> <li>• Some large employers way to unleash Skills Development</li> </ul>



TIME PERIOD FOR CHANGE	<ul style="list-style-type: none"> <li>• Unions need to show concrete gains to members</li> <li>• Unions want transformation in workplaces, not only some level of worker participation in decision-making</li> <li>• Unions have been campaigning for a better deal for black workers, and more recently, for women workers and workers with disabilities.</li> <li>• "Reasonable progress" in employment equity should become negotiated agreed point(s) which are practical but constantly advancing</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are targets to be measured against competitive edge</li> <li>• Employers can compromise on training grants</li> <li>• Employers are "progress" to "equality" for people in relation</li> </ul>
PREJUDICE  PRIOR LEARNING  "SUITABLY QUALIFIED"	<ul style="list-style-type: none"> <li>• Unions want an end to discrimination.</li> <li>• Another long-term union demand is the recognition of prior learning and experience, and opportunities for workers to advance or have a "career path".</li> <li>• Unions will need to push for a union-friendly meaning for "suitably qualified" workers; and</li> <li>• be prepared to contest the application and interpretation of "suitably qualified" and other definitions in the Labour Court; and</li> <li>• be prepared to reinforce these in collective agreements</li> </ul>	<ul style="list-style-type: none"> <li>• Employers were blacks, women - prejudices behind slightly happier employ those who highly contested decision on who hands by section employer must suitably qualified</li> </ul>
RETRENCH  PROMOTIONS	<ul style="list-style-type: none"> <li>• Unions do not have to be concerned about members losing jobs in forced retrenchments to make new spaces</li> <li>• While waiting for jobs to open up, unions can focus on promotions in line with the EEA obligation for employers to "retain and develop" members of designated groups [Eskom case]</li> <li>• Unions should try to protect the positions of all members, especially older ones, under the "retain and develop" provision</li> <li>• Unions should beware of attempts by employers to promote black, women, disabled workers to jobs and then reduce the wages and benefits attached to the same jobs, arguing recession and the need to retrench</li> </ul>	<ul style="list-style-type: none"> <li>• Employers were workers to make</li> <li>• Employers who from designate employing/provisions 15(4) of the EEA "an absolute bar to employment of designated groups"</li> <li>• Employers are numerical goals</li> </ul>
PERFORMANCE STANDARDS	<ul style="list-style-type: none"> <li>• Unions need to be aware that some employers will be very tough on performance now, and try to protect members by pushing for full job descriptions and transparent and simpler grading systems</li> </ul>	<ul style="list-style-type: none"> <li>• Employers have if they have to name of integrity be tougher on route in the Labour Court</li> </ul>
MORE ADMINISTRATION	<ul style="list-style-type: none"> <li>• Unions should try to wean employers away from expensive consultants and token EEA appointments towards a joint approach to unleashing creativity</li> <li>• if unions are well-prepared and energetic, this will help employers to see the EEA as more than simply another legally imposed administrative/accounting procedure</li> <li>• Unions should examine the role of "equity officers" employed by management to see that the union is fully involved</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are administrative</li> <li>• Employers are</li> </ul>



<p>AVOIDING UNFAIR DISCRIMINATION</p> <p>CHECK POLICIES AND PRACTICES</p> <p>SEXUAL HARASSMENT POLICY</p> <p>MEDICAL (HIV) AND OTHER TESTING</p> <p>DISPUTE RESOLUTION</p> <p>RECORDS TO FIGHT CASES</p>	<ul style="list-style-type: none"> <li>• Unions should brief shop stewards to check for potential unfair discrimination issues and on how to take up unfair discrimination cases</li> <li>• Unions should look to play a role in negotiating real gains for members as employers do the following to avoid potential unfair discrimination cases: <ul style="list-style-type: none"> <li>• Check employment policies and practices for discrimination,</li> <li>• Analyse workplace recruitment and selection procedures for hidden discrimination,</li> <li>• Set up a company sexual harassment policy,</li> <li>• Employers must justify any medical or psychological testing, (especially HIV testing which they can only do with a Labour Court order) and unions should research and monitor any ground rules established for such tests</li> <li>• Set up a dispute resolution path to look at resolving unfair discrimination cases before they get to the CCMA,</li> <li>• Organise themselves to keep very detailed records on any allegations of unfair discrimination, as the duty to prove that their actions were fair or non-discriminatory will fall on them, after the union has made out a case for unfair discrimination on the face of it</li> </ul> </li> <li>• Unions need to set up a way of keeping their own records to use to challenge employers</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are following prevent discrimination <ul style="list-style-type: none"> <li>• Checking all discrimination</li> <li>• Analysing work for hidden</li> <li>• Setting up</li> <li>• Done their psychological can only do</li> <li>• Setting up unfair discrimination</li> <li>• Organising any allegations prove that will fall on unfair discrimination</li> </ul> </li> </ul>
<p>DEADLINES FOR AFFIRMATIVE ACTION</p>	<ul style="list-style-type: none"> <li>• Unions and employers are under pressure as the affirmative action section of the EEA is likely to come into force in December or early next year</li> <li>• This means that the first reports on an employment equity plan will probably be due between June/July 2000 and December 2000 (depending on the size of the workforce)</li> </ul>	<ul style="list-style-type: none"> <li>• Unions and employment equity action section in December or early</li> <li>• This means the plan will probably be due by December 2000</li> </ul>
<p>PREPARATIONS FOR AFFIRMATIVE ACTION BY END OF 1999</p> <p>RESEARCH</p> <p>PROFILE OF WORKFORCE</p>	<ul style="list-style-type: none"> <li>• Unions need to be aware that consultants are suggesting the following to employers, and begin to prepare to put a union position on these issues: <ul style="list-style-type: none"> <li>• Setting up a consultation with unions and other workers,</li> <li>• Researching the statistics on workers in their area and sector, drawing on UNISA and regional technikons, or the HSRC,</li> <li>• Drafting a profile of their workplace(s) covering all job categories and levels (regulations and Codes on this are not out yet),</li> <li>• Appointing a senior manager to manage the employment equity plan (monitoring procedure, disputes, goals etc)</li> <li>• Checking on the new regulations as they come out</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Consultants are <ul style="list-style-type: none"> <li>• Setting up</li> <li>• Researching in the sector, drawing on HSRC,</li> <li>• Drafting a categories not out yet</li> <li>• Appointing equity plan</li> <li>• Checking on available year</li> <li>• Preparing</li> <li>• An outline</li> <li>• Report</li> </ul> </li> </ul>

NEW REGULATIONS AND CODES	(not available yet) on:	<ul style="list-style-type: none"> <li>• Summa</li> <li>• Keeping</li> <li>• Income</li> <li>• Checkin</li> <li>employ</li> <li>• Other</li> <li>forms</li> </ul>
EXEMPTIONS	<ul style="list-style-type: none"> <li>• Preparing an analysis (s.19 of the EEA),</li> <li>• An outline for an employment equity plan (s.20),</li> <li>• Reporting to the Dept of Labour (s.21),</li> <li>• Summarising the EEA for display (s.25),</li> <li>• Keeping records (s.26),</li> <li>• Income statements to check for wage gaps (s.27),</li> <li>• Checking for relaxations/exemptions for businesses employing less than 150 workers (s.55),</li> <li>• Other administrative and procedural regulations, forms etc (s.55),</li> <li>• Checking out Codes of Good Practice as they are issued (s.50 (4) - footnote gives list or see summary earlier).</li> </ul>	
CONSULTATION OR NEGOTIATION	<ul style="list-style-type: none"> <li>• Unions are calling on employers to negotiate employment equity plans, not merely "consult" over them</li> <li>• Unions need to intervene and start dealing with management on these issues to pre-empt divisive and greedy consultants</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are</li> </ul>
AFFIRMATIVE ACTION TASKS FOR 2000	<ul style="list-style-type: none"> <li>• If the above tasks are completed in 1999 in workplaces, then the tasks for unions in most workplaces in 2000 will be: <ul style="list-style-type: none"> <li>• Consultation and drafting a workplace analysis, employment equity plan and report,</li> <li>• Preparing the first equity plan,</li> <li>• Preparing the first report for the Department of Labour</li> </ul> </li> <li>• Unions should develop a framework or model agreement for all workplaces inside the union to use</li> </ul>	<ul style="list-style-type: none"> <li>• If the above to the tasks for e</li> <li>• Consultatio</li> <li>employem</li> <li>• Preparing t</li> <li>• Preparing t</li> </ul>
PENALTIES FOR LACK OF AFFIRMATIVE ACTION	<ul style="list-style-type: none"> <li>• Unions can help the Dept of Labour to monitor employers who do not comply with the EEA, by reporting the lack of compliance to the labour inspectors and assisting the labour inspectors in the process of getting undertakings, compliance orders, review by the Director General of Labour, fines by the Labour Court</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are compliance with These range fr</li> <li>• Only the Lc process of issuing com</li> <li>General of</li> <li>• The fines c</li> </ul>
MONITORING	<ul style="list-style-type: none"> <li>• Where the employment equity plan requires a senior manager to monitor it, perhaps unions should call for a joint union/employer monitoring committee instead?</li> <li>• Unions will probably bear the primary practical responsibility for monitoring employment equity plans for the first few years and need to set up mechanisms to achieve this</li> <li>• If unions leave the assessment of "reasonable progress" on employment equity issues in workplaces to</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are monitoring cap to see union ac autonomy in wo</li> </ul>

	employers or to the state, this could become as watered-down as the economic trickle-down theory?	
CREATING NEW JOBS	<ul style="list-style-type: none"> <li>Unions need to monitor all new jobs through shop stewards in the workplace to assess the possibilities for employing a person from a designated group</li> </ul>	<ul style="list-style-type: none"> <li>Some consultation to create additional jobs makes it clear that "present and planned" should lead to...</li> </ul>
LABOUR POOL DEMOGRAPHIC STATISTICS NUMERICAL GOALS SOCIAL GOALS	<ul style="list-style-type: none"> <li>The EEA requires employers to match their workforce to the numbers of blacks, women and disabled persons in the relevant labour pool ...</li> <li>unions may be demanding that the pool considered should be the biggest possible and get the relevant statistics, and</li> <li>unions will demand that the social composition of the pool should change to accommodate those workers who did not previously have access to those kinds of jobs, e.g. because of job reservation in favour of whites</li> <li>Unions need to push that employment equity means a break with the past. If there are only 20% women in the metal sector, must it stay that way forever? Progress, even if gradual, must be the aim of the EEA; not just saying that "society" prefers this!</li> </ul>	<ul style="list-style-type: none"> <li>Employers are narrowing the size of the pool to match or draw from</li> <li>Employers are concentrating on restrictions with its preponderance of "Coloured labour" in the Western Cape</li> <li>Employers are following trends in society, lack of women, and are obliged to look at it</li> </ul>
SMALL BUSINESSES	<ul style="list-style-type: none"> <li>Unions aim to use mass power and labour laws to establish a floor of rights so that conditions of organised workers will not be undermined by hungry unorganised workers, and that the value of labour power will be increased</li> <li>Unions want small employers also to be covered by the EEA discrimination protections, affirmative action provisions and other labour laws</li> <li>Unions should monitor this and intervene and respond vigorously to proposals for new laws/amendments</li> </ul>	<ul style="list-style-type: none"> <li>Employers are small businesses under s.55</li> <li>Business believes under 150 workers are small concerns</li> </ul>
OUTSOURCING	<ul style="list-style-type: none"> <li>Unions are particularly concerned that more and more big businesses are out-sourcing "non-core" departments or functions where workers lack basic protections and solidarity is hard as the workplaces are so small</li> <li>Unions should call for a moratorium on outsourcing which is intended to free employers from the EEA</li> <li>Unions need to intensify their present campaigns on outsourcing or at least monitor and record changes in the workplace to prepare towards a legal challenge that the employer is seeking to avoid their EEA (and BCEA, LRA) obligations.</li> <li>Where tendering/out-sourcing is taking place - build into collective bargaining that only "affirmed employers" are used</li> </ul>	<ul style="list-style-type: none"> <li>Employers are outsourcing and are trying to change their</li> </ul>
INCOME DIFFERENTIALS	<ul style="list-style-type: none"> <li>Unions have fought for a provision in the EEA to assist in long-running union campaigns in some sectors to</li> </ul>	<ul style="list-style-type: none"> <li>Business is aiming at and the obligation</li> </ul>

	<p>reduce wage gaps</p> <ul style="list-style-type: none"> <li>• The EEA has a provision on confidential reporting by employers to the Dept Labour on wages at all levels and job categories, s.27; this includes employers having a plan to reduce any wage gaps</li> <li>• If employers argue that s.27 limits union access to income differential statistics, unions can argue their rights to relevant information under the Labour Relations Act for consultations and bargaining</li> <li>• Wage differentials were linked to job reservation (long outlawed) and now forbidden as a discriminatory policy or practice</li> </ul>	<p>employment eq confidential mc Labour,</p> <ul style="list-style-type: none"> <li>• Business does r unions on any w</li> </ul>
LABOUR COURT JURISDICTION	<ul style="list-style-type: none"> <li>• It seems as if the Labour Court will have exclusive jurisdiction to deal with matters arising from the EEA (except for appeals to the Constitutional Court). The composition of the Labour Court, its leadership and the stances taken by it will thus become very significant to unions.</li> </ul>	<ul style="list-style-type: none"> <li>• Employers have can be inclined implementation</li> </ul>

## SUGGESTED SOLUTION SHEET FOR SEXUAL HARASSMENT CASE

The union could take the following steps to address this as sexual harassment, which is a form of unfair discrimination.

1. If you want to refer any unfair discrimination dispute to the labour dispute resolution bodies, you must be able to show that you have made a "reasonable attempt" to resolve this dispute.

In this case, you could argue that raising the case with the area manager and saying it should be treated as a grievance would have given management and the alleged harasser a chance to respond to the problem and offer to try to resolve it.

2. If there are any agreed procedures in the workplace on harassment or in collective agreement, including a Bargaining Council agreement, you should follow those.

In this case, there is no indication of any company or council agreement or policy.

3. Nedlac has issued a Code of Good Practice on the Handling of Sexual Harassment Cases, published in Government Gazette 19049 of 17 July 1998. This gives general guidelines to follow. It suggest that if a potential dispute is not resolved according to any existing internal procedures, either the worker or any other party involved may refer a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) within 30 days of the "dispute having arisen".

The general procedure for unfair discrimination case is set out more fully in section 10 of the EEA. This suggest that any dispute must referred to the CCMA within 6 months of the act or failure to act that cause a problem.

This referral (the CCMA has a form for this - "7.11" form) should also be brought to attention of the company by registered post, delivering it by hand or faxing/e-mailing a copy. The key is being able to prove



that the union has done so, and when (see section 1 of the EEA on "serve" or "submit").

In this case the union must then refer the dispute to the CCMA within six months of the incident, but also within 30 days of the meeting with the area manager. If not, the union will have to show "good cause" for being late. This means explaining how late the referral is, why it is late and showing the good that you have a good case and it is worth proceeding with the dispute. CCMA commissioners are becoming more strict about this as the workload pressure increase.

4. The CCMA will then try to resolve the dispute by calling both parties to a conciliation meeting. If this meeting is not successful, then the referring party may refer the dispute to the Labour Court within 90 days of the CCMA conciliator's Certification of Outcome.

If both parties agree, then the CCMA may arbitrate this dispute instead of the dispute going to the Labour Court.

In this case, the union would probably try to get the company to agree to go to arbitration if the conciliation fails, as this is simpler and cheaper and (in some regions) faster. If the company will not agree, this matter could go to the Labour Court. To prepare for all of this, the union would look up recent cases and try to work out how the arbitrators and judges would view this case.

5. When you are taking such cases to arbitration or to the Labour Court, the principle in the Code on Sexual Harassment (see point 3. Above ) will help you to know how good your case is.

In this case, sections 3 (Definition of sexual harassment and 4 (Forms of sexual harassment) and 6 (Policy statements) and 7 ( Procedure) will help you to select and weigh the relevant facts.

6. Another important part of preparing you case, is understanding what you have prove. Section 11 of the Employment Equity Act explains that the worker has to show that the unfair discrimination happened. Then the employer has to try to show that what happened was fair. If the worker shows that there was discrimination, and the employer

cannot show that the discrimination was fair, then the union will have proved a case of unfair discrimination.

In this case, the worker has show that there was sexual harassment in terms of the Code (see 5. above) and you have no facts for the employer to show that it was fair.

7. A further important part of taking an unfair discrimination is knowing what outcome you want for your case or dispute. Being well prepared on this and looking at all the issues involved for the union, will often help you to win this dispute long before it is necessary to go to arbitration or to the Labour Court.

In this case, you might ask for some form of discipline against Mr Radebe or an undertaking that he will refrain from the unacceptable behaviour or face sanctions. You might also try to negotiate some policy on sexual harassment based on the Code to try to protect your member in future.

## Steps to resolve sexual harassment

### STEP 1

Exhaust all internal grievance and disciplinary procedures. The internal grievance and disciplinary procedures in the collective agreement override the Labour Relations Act.

Workplace that do not have internal grievance and disciplinary procedures in place, grievance have the right to directly contact CCMA. In a situation of a dismissal dispute, the dispute must referred to the CCMA within 30 days of the dismissal.

### STEP 2

If the outcome is not satisfactory, refer the dispute in writing to the Commission for Conciliation, Mediation and Arbitration or bargaining council.



Conciliation will take at CCMA's office, statutory or bargaining councils.

Conciliation must be concluded within 30 days.

After 30 days parties will receive a certificate whether or not the dispute as resolved.

### STEP 3

If the dispute is not resolved at conciliation, it may be referred to the Labour Court.

(Steps to resolve the dispute as published by the Dept. of Labour, Sowetan, November 1996- drawn the Nedlac Code on Sexual Harassment)

Before behavior can be classified as sexual harassment, the following element must be present:

- ☐ the behaviour is unwanted by the recipient
- ☐ the behaviour is of a sexual nature
- ☐ the behaviour is as expressed in verbal, physical or non-verbal ways.

### ADDITIONAL READINGS ON SEXUAL HARASSMENT

(From the Sexual Harassment Education Project-SHEP)

What is Sexual Harassment?

Although South Africa women has experience sexual harassment at work for a long time, few cases have made to the labour courts. A common law definition was finally made in 1989 by well-known J v M case, heard in the Industrial Court by the President Officer, Arthur de Kock.

Judge de Kock in his judgement defines sexual harassment as occurring when:

" a woman or man is expected to engage in sexual activity in order to obtain or keep employment or obtain promotion or other favourable working conditions. In its wider view it is, however, any unwanted sexual behaviour or comment which has a negative effect on the recipient.

Conduct which can constitute sexual harassment ranges from innuendo, inappropriate gestures, suggestions or hints of fondling without consent or by force to its worst form, namely rape. It is my opinion also not necessary that the conduct must be repeated. A single act can constitute sexual harassment".

In this ruling judge de Kock captures the notion of sexual harassment as a continuum, ranging from unwanted and offensive comments, through to its most extreme manifestation: sexual assault or rape. He also sets out both a narrow and broad approach to defining sexual harassment.

According to this ruling, there is both a narrow and a broad way of defining sexual harassment:

A narrow view recognises behaviour as sexual harassment when someone is coerced into sexual activity in order to get a job, be promoted, or enjoy favourable working conditions. The narrow view would also recognise sexual assault.

A broad view describes sexual harassment as any unwanted sexual behaviour or comment that negatively affects the recipient.

## What are the features of an employment equity plan

- At least one year -> 5 years
- Objectives for each year
- Affirmative action measures
- Changes in number of blacks, women and people with disabilities at all relevant job categories and levels
- Timetable to reach this goals
- Strategies and procedures to implement this goals
- Chose people to monitor the plan and evaluate if progress is reasonable
- Report a prescribe intervals on progress to the Director General of the Department of Labour
- Dispute procedure if there are differences on implementing and interpreting the plan
- Any other issue (as practice develops around the new EEA)

## Income differential and the EEA

- When reporting to the Employment Equity Plan, a designated employer must report the levels of wages and benefits in each job category or level.

- Where there is a wage gap, the designated employer must take steps to reduce this over time, including:
  - Through collective bargaining,
  - Through sectoral determinations under the new Basic Condition of Employment Act( replacing former wage determinations for sectors)
  - Through playing a standards set by the Employment Conditions Commission (EEA)
  - Through improving skills of workers using the Skills Development Act
  - Through others measures
- The EEA must research on appropriate differentials between job categories and levels, and advise the Minister of Labour on ways to reduce wage gaps. Information on specific workplace will be confidential.
- Workers are entitled to disclosure of information by employers to negotiate reducing wage gaps
- Workers have a general right to information under the Labour Relations Act for any consultations needed in terms of the EEA, including consultations about drawing and monitoring an Employment Equity Plan.

## What is the Commission for Employment Equity?

- It consists of part-time representative from labour, bussiness, government and community and development organisations. They sit up to five years.
- This commission is supposed to advise the Minister of Labour on policy, regulations and Codes, following research and public hearing open to all.
- One particular task is advise the Minister on the distribution of the population and reasonable goals to acheve more in each sector.

## Monitoring and enforcement of employment equity plans

- Designated employers must report to the Director General of the Dept of Labour on their EE plan:
  - < 150 workers, the employer reports within 12 months of Chapter 3 of the EEA coming into force (? Jan/ Feb 2001) and thereafter at intervals of 2 years,
  - > 150 workers, the employer reports within 6 months of Chapter 3 of the EEA coming into force (Aug/ Sept 2000) and thereafter at intervals of 1 year.
- Report on employment equity plans is available to employer, employee, Director General of the

## Department of Labour, Commission for Employment Equity

- Workers can:
  - complain to a Labour inspector if there is no EE plan or if there are problem and delays
  - Labour inspector can:
    - inspect/ investigate complaint,
    - discuss with employer and get an undertaking, or
    - issue a compliance order,
    - if the employer still does not comply or even appeal,
    - the Director General can ask the Labour Court to make the compliance order of the Labour Court.
- The Director General of the Department of Labour can:
  - review employment equity plans,
  - make recommendations
  - go to the Labour Court and get an order
- The employer can:
  - Give an undertaking
  - Object to a compliance order
  - Appeal to the Labour Court against a compliance order
- The EEA makes provision for the Department of Labour to review employment equity plans. But as this is unlikely for a few years, the focus will be on



trade unions to complain and investigate and initiate the process to challenge discrimination

## Background to the Skills Development Act

- COSATU/ANC/SACP alliance develops Reconstruction and Development Plan (RDP)
- ANC sets up democratic government in 1994 but unilaterally shift policy to Growth, Employment and Redistribution (GEAR)
- Business and the government agree to focus on economic growth and increased production, also agree this requires a more skilled workforce, more focus on training youth
- Long-term union campaigns for more access to training and promotions, recognition of on-the-job learning/ experience, and affirmative action from below
- Tripartite "social partners" at Nedlac/Parliament pass a package of skills Development Act and Skills Development Levy Act to boost individual performance, productivity and individual access to jobs
- Challenge for unions is to use this to build organization, and use gains to shift balance of power from capitalist orientation



- Remember to take into account that this challenge occurs in the current period of:
  - tension within the Alliance on policy and expenditure,
  - Worldwide job insecurity, cost-cutting and investment strike not economic growth

### How will the national skills development plan work?

This plan consists of:

- A national skills authority
- A national skills fund
- A skills development planning unit in the department of Labour
- Employment centres set up by the Department of Labour

### Purpose of the Skills Development Act (SDA):

#### FOR WORKERS-

- To encourage workers to learn,
- to better their quality of life, and
- to improve their chances to become self-employed

#### FOR EMPLOYERS-

- to improve productivity and competitiveness,
- to encourage employers to spend more on training and
- to see the workplace as a place for ongoing training

# The COMMISSION FOR EMPLOYMENT EQUITY (CEE)

(Who is who? Abridged CV's drawn from  
Dept of Labour handout)

**Professor Mapule Francis Ramashala**, chairperson of the Commission - prize-winning academic, government consultant, university vice-chancellor at the University of Durban-Westville and TRC commissioner

1. **Mr Karl von Holdt** - co-founder of Adult Literacy Project, editor of the SA Labour Bulletin, NALEDI researcher, board member of the SA Post Office and labour representative on the CEE
2. **Mr Tefo Raditapole** - attorney, IMSSA member, CCMA commissioner, consultant to the International Institute for Democracy and Electoral Assistance (IIDEA), the Electoral Institute of SA and Workplace Solutions and labour representative on the CEE
3. **Dr Frans Barker** - academic, holder of positions at the SA Reserve Bank, SA Breweries, and the Central Economic Advisory Service. He was chairperson of the former National Manpower Commission, before Nedlac replaced it. He is an advisor to the Chamber of Mines, member of the Labour Market Chamber at Nedlac and is a representative for organised business on the CEE
4. **Mr Tom Boya** - has held positions at Ellerines, African Life, Rockoil, and Firechem. He has been Mayor of Daveyton and holds various positions including in NAFCOC, and as chairperson of the Daveyton Adult Centre and of the Northern Province Community College. He is currently managing director of TS Marketing and is a representative for organised business on the CEE
5. **Ms Crecentia Mofokeng** - holder of various certificates, formerly employed by the Urban Training Project and Advance Laundries, is currently Education Co-ordinator for the National Council of Trade Unions (Nactu) and she is a representative nominated by the community constituency of Nedlac
6. **Mr Kgotso Charles Tau** - has a degree and certificate and has worked for the SABC and the Free State Development Corporation where he is currently Public Relations Manager and Corporate Secretary. He has been nominated by the community constituency of Nedlac
7. **Ms Thuli Madonsela** - is an arbitrator, a mediator, was a former researcher and part-time lecturer with the Centre for Applied Legal

Studies (CALS) and is a government consultant. She currently serves in a team responsible for developing equality legislation in compliance with the equality clauses in the Constitution. She is currently Chief Director Transformation and Equality at the Department of Justice.

8. **Mr Meko Ernest Magida** - is an attorney, former project consultant for an engineering firm, former deputy director of the Western Cape Provincial Office of the Department of Labour and currently Director, Equal Opportunities of the national Department of Labour in Pretoria.

# Additional Information on Sexual Harrassment

# Affirmative Action in the Employment Equity Act

# Unfair Discrimination in the Employment Equity Act



# Employer and Union Concerns about the Employment Equity Act

# The Features of an Employment Equity Plan

# Brief Background to the Skills Development Act

# APPENDIX

# Acknowledgements

Thanks are due to many people for their help in putting this pack together, but special mention must be made of Dan Pretorius of the Centre for Applied Legal Studies, all the educators who participated in the special COSATU Pilot Workshop held in September 1999, the Education Department of COSATU and staff at Ditsela.

Apologies are humbly offered for any oversights. Please don't complain too much, help us improve it!

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Employment  
Equity: An  
Introductory  
Workshop for  
Trade Unionists  
Organised by the  
COSATU  
Education  
Department

## Contents of this pack

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National Education Officer

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4. Employer and Union Concerns and the EEA

5. Additional Information on Sexual Harassment

6. The Features of an Employment Equity Plan

7. Brief Background to the Skills Development Act

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9. Acknowledgements



## Employment Equity: An Introductory Workshop for Trade Unionists Organised by the COSATU Education Department

### Introduction

This workshop is designed to give you a reliable introduction to the Employment Equity Act. It is based on hard information and on ACTIVITIES or discussion exercises that will help you to understand how the Act works, who it covers, and what the implications are for trade unionists.

Each of the Activities is complemented with information that will help you to understand the Act in more detail. Sections have been added to help you find further information, and to understand the terms that are used in the Act itself.

In a two day programme, you are not going to be an 'expert' on the Employment Equity Act, but we hope that you will feel more confident about using the Act, especially in ensuring that it is used to address a wide range of discriminatory practices at the workplace.

As with most legislation, the more that you begin to use it, the more its strengths and weaknesses will emerge. It is very important that any weaknesses in the practical application of the Act are reported through your Union to the Federation. This will help the Federation to campaign for improvements in the legislation, and to close any loopholes that allow employers to avoid their responsibilities.

All Labour Legislation, including the new Employment Equity Act should serve as a 'base-line' or minimum standard. Employer and Union observance of the minimum standards as laid down in law should be our starting point. Through collective bargaining and improved Union organisation, we aim to improve upon the standards set by the law, and

increase the protection of our members. This is a real challenge. It is especially important for us all to recognise that as we enter into a period where employers are demanding more 'flexibility', the introduction of a new law to correct the legacy of imbalances left by apartheid at the workplace deserves our special attention. We hope this workshop is the first in a series of educational events that will cover this vital new area.

The main aim of this workshop is to help you to understand the basic workings of the law, and how best it can be implemented. We also hope this programme encourages you to find out more about Employment Equity issues, and contribute positively to the struggle for the eradication of inequality.

This pack is designed for a series of two-day introductory workshops that are being sponsored by COSATU in each region. A workshop of COSATU Educators held in September 1999 helped to assemble the material, and to test its appropriateness. As a result there are a considerable number of educators who can advise, and facilitate this workshop and who can be contacted via COSATU Education Department.

We would also be very interested to hear how the pack has been used, and in particular how it can be improved to meet the needs of trade unionists who want to tackle discrimination using the tool of the Employment Equity Act, as well as other organisational means. If you use this pack, feedback would be most welcome.

Many thanks,

Shele Papane  
National Education Officer  
COSATU

# Model Programme

Below is a Model Programme that we hope regions can use as a basis for their educational activity on the Employment Equity Act. It can be adapted for longer or shorter workshops, and if you need advice please contact your national educator or COSATU.

## The Aims of this Pack

This pack has been designed to achieve the following:

- To help you to understand the Employment Equity Act and how it can be used to tackle discrimination at the workplace.
- To gain an understanding of how the Act works, and the key areas it is supposed to address.
- To practice preparing for the full implementation of the Employment Equity Act, and to identify a Union approach to it
- To identify where the basic minimum's in the Act can be strengthened through Collective Bargaining.
- To help you begin to prepare your membership and the Union as a whole for implementation of the Act, and where you can get further help and information.

## Two Day Model Programme

### Day 1

#### Session 1    Introductory Session

This session will help you to get to know everyone else on the workshop, to be clear about what the workshop is hoping to achieve, and to begin to share recent experiences of discrimination and affirmative action.

#### Session 2    Why Employment Equity is a Trade Union Issue

This session will help you to explore the thinking behind the Employment Equity Act, and to think through what a Union approach to discrimination and affirmative action should be. It will also help participants to begin to clarify their arguments in favour of an effective employment equity policy at work.

#### Session 3    Understanding the Basics

This session will help you to discover the main areas covered by the Act, how it is to be implemented, and to begin to think about the implications for Unions.

#### Session 4    Getting to Grips with Discrimination.

This session will help you to understand how the Act might work in practise, and through a typical case study, provide you with an opportunity to understand key definitions used in the Act, and how as a union representative you can best approach the issue.

At the end of the day, you will be given an **Overnight Activity** to complete to help consolidate your learnings of today, and to prepare for Day Two.

## Day Two

### Session 5 Affirmative Action.

This session will help you to understand the main definitions, and especially what is meant by affirmative action. It will help you to think about how to explain these definitions to your members.

### Session 6 The Duties on Employers, and Unions.

This session will help you to understand the duties that the law places on both Employers and Unions. It will also help you to identify what the concerns of the employers are in relation to Employment Equity, and introduce to you to the idea of an Employment Equity Plan.

### Session 7 The Next Steps

This session will help you to identify the continuing concerns of the employers and Unions on Employment Equity issues, and how these might be raised in your own workplace. It will also help you to identify how best your Union and Federation can support you and others in making sure that we tackle inequalities effectively.

### Session 8 Workshop Evaluation

This session will help to give the Federation and your facilitator's feedback on the workshop, and will help to improve it for other participants. Many thanks.

## Activity 1

### Introductory Session

#### Aims

To help us to

- Get to know everyone else on the workshop.
- Be clear about what we want to try and achieve over the next two days.
- Share recent experiences of discrimination at the workplace.

#### Task

You will be placed in a small group with comrades that you do not know very well.

Elect a reporter to take a few notes, and then undertake the following:

1. Introduce yourselves to one another giving your union, workplace and job, position in the Union, and why you have come to this workshop.
2. Look at the Aims and the Programme for the Workshop. Are they clear? Do you need any clarifications? Are they relevant to your needs?
3. Share any recent experiences you have had of discrimination or affirmative action in your workplace. Make a note of them. Choose ONE that you would like to share with the rest of the workshop and be ready to describe it.

## ACTIVITY 2      Why Employment Equity is a Key Trade Union Issue

#### AIMS

To help us to:

- Examine some of the prevailing attitudes about discrimination and how best it can be tackled.



- Think through what a trade union approach to addressing inequality should be.
- Familiarise ourselves with the thinking behind the Employment Equity Act.

## TASK

In your group, look at the statements and questions below, and note down what your group thinks about them.

### Challenging Attitudes:

1. There will always be discrimination. Its natural and it will always exist, even though we now have a government that is opposed to it.
2. The issue of sexual orientation is a side issue for trade unionists. We should concentrate on the big issues, job creation, and wages and job security.

### Understanding the EEA:

3. Read through the notes on how the Act came into being. (Where Does the Employment Equity Act come from)? How would you explain this to your members? Make a few key points to share with the rest of the workshop.
4. Are there any terms or words that are unfamiliar to you? Make a note and add them to the Jargon Chart.

Elect a reporter.

## Where does the Employment Equity Act (EEA) come from?

- Constitution set our rights in the Bill of Rights to the fleshed out in legislation - see s. 9 , especially s. 9 (2) on equality
- The new Department of Labour in 1994 issued a five year plan for reforming labour legislation and institutions
- Part of this plan included the issuing of a Green Paper on Employment Equity.
- A reference group including representative of interested groups like Disabled Person of SA met at interval to make comments.
- Some of the issues included:
  - Targets vs quotas,
  - Monitoring of arbitrary actions,
  - Recruitment,
  - The need for a flexible or prescriptive law,
  - Who could benefit and should there be a rating of who is the most disadvantages,
  - Fines, penalties and monitoring,
  - Threshold to apply affirmative action, and
  - The need for Code of Good Practice.
- A draft Act or Bill on 1 December 1997

- Labour, the government and business debated the Bill in Nedlac from February to May 1998
- In July 1998, the Bill was discussed by the parliamentary portfolio committee on Labour.
  
- There was a strong call from COSATU to ban wage discrimination, in other words:
  - Equal pay for equal work and
  - Wage gaps must close.As a result, the income differential clause and the "suitably qualified" definition were added.
  
- The redrafted Act was passed by parliament and signed by the State President on 12 October 1998
  
- On 14 May 1999 chapter 4 of the Employment Equity Act (EEA) took effect. This set up the commission for Employment Equity, which began to draft regulation and Codes of Practice.
  
- On the woman's Day, 9 August 1999, chapter 2 of the EEA took effect. This now covers all areas of unfair discrimination in the workplace, while the Labour Relations Act covers unfair discrimination dismissals.
  
- The official target for implementing the rest of the EEA is December 1999.
  
- The Department of Labour and the Commission for Employment Equity are presently drafting Codes of

Good Practice related to the EEA. Potential Codes conclude:

- Code on preparing employment equity plans
  - Code on advertising, recruitment procedures and selection criteria,
  - Code on special measures for the people with disabilities, especially related to benefit schemes,
  - Code on special measures on people with family responsibilities ( workers' responsibilities in relation to their partners, children or family members needing care and support)
- 
- But it seems more likely that Chapter 3 of the EEA on affirmative action measure sand employment equity plans may only come into force in January/February 2000.
- 
- The provisions of the EEA relating to state contracts seem set to come into force in September 2000.

### ACTIVITY 3

### Understanding the Basics

Aims

To help us to:

- Begin to build an understanding of the main provisions of the Employment Equity Act, and familiarise the terms that are used in it.
- Explore how the Act will work in practice, and what the role of Unions is in ensuring that the Act is properly implemented.

### Task

In your group, look at the attached 'What is the Employment Equity Act?' and the Act itself, and try and answer the following points:

- What do you think the Act is aiming to do?
- What different forms of discrimination does the Act seek to address?
- Who are the main players in making sure that the Act is implemented?
- What is the procedure for ensuring that the Act is properly implemented, and especially, what is the role of the Union?

Elect a reporter

## What is the Employment Equity Act?

- Workers have struggled over racism, sexism and other discrimination in the workplace
- The democratically elected government in 1994 drew up a new constitution entrenching rights to equality, human dignity
- We need to recognise that factors including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth should not usually be relevant in the workplace.
- We need to recognise that in workplaces:
  - A worker should not be kept out of a job or fail to be promoted because of one of the factors above.
  - All workers should be treated with respect and dignity.
  - More workers from different backgrounds make for a better workplace.
  - Employers should be prepared to make reasonable changes to jobs or the work environment so everyone can do them.
  - Workplace should reflect the kind of workers who live in that region, in all level and categories of workplace.

- Workers should have access to training through a Sectoral Education and training Authority or the National Skills Authority to achieve the above balance.

#### ACTIVITY 4

#### Getting to Grips with Discrimination

##### Aims

To help us to:

- Analyse a typical problem of discrimination.
- Practice reading and applying the Law.
- Think about how unions respond to cases of discrimination.
- Devise a practical plan of action to deal with a discrimination issue

##### Task

In your small group, carefully read the attached case study on sexual harassment.

1. Refer to the supporting information 'Examples of Sexual Harassment' and the material we have used in previous activities.



2. Go through the case study together and note down what you think are the key facts and issues.
3. Now as the union representative who has been asked to represent Ms Jacobs. Note down the advice that would give her, and the practical steps that you would take to address this issue.
4. Use a chart to make your presentation to the rest of the workshop.  
At the end of the activity read through the section on Sexual Harassment in the Appendix.

## SEXUAL HARASSMENT CASE STUDY

You have to deal with a worker's complaint around sexual harassment.

This complaint comes from one of the union members, Ms Pinkie Jacobs. Ms Jacobs is alleging that she was harassed by her supervisor, Mr Abednego Radebe.

Ms Jacobs says that the previous Friday she was approached in the morning by Mr Radebe as she passed him in the corridor. He greeted her and stopped her. There was nobody else about. He backed her against the wall of the corridor with his body, putting his outstretched hands against the wall on either side of her. He said he would not release her until she agreed to go out with him that Friday night.

When she refused, he stared at her rudely and said: "I see you are still Daddy's little girl". He then walked off and left shaking with fright and embarrassment.

She said that before this incident, Mr Radebe had made her uncomfortable by frequently remarking on her physical appearance and by standing very close to her when she was working or when he was speaking to her.

She said that she had once told him that she was married and that she liked her work and she liked to be treated with respect in the workplace. But she was too shy of Mr Radebe and his authority to complain to him more directly until the incident happened.

She came to the union office and the organiser raised her problem in a meeting with the area manager Mr Will Stevens. He said this was not a serious issue and refused to address the grievance.

### Example of Sexual Harassment

Example of sexual harassment may include the following but are not limited to the listed examples:

#### Verbal Forms

Sexual innuendo, persistence requests for unwanted dates, requests for sexual favours, unwelcome sexual jokes, unwelcome questions about a

person's sex life, comments about a person's body, telephone calls with sexual overtones.

### Physical Forms

Fondling, Grabbing or rubbing against someone, unwelcome patting, touching, pinching, strip-search by a member of the opposite sex, exposing one's self, attempted rape or rape.

### Non-verbal Forms

Leering whistling, offensive pin-ups or posters, winking, rude gestures.

### Secondary Harassment

Secondary harassment occurs when a grievance reports a case of sexual harassment, and other employees then start harassing her/ him because of the grievance filed.

### Quid Pro Quo Harassment

Quid pro quo harassment is an abuse of authority by an employer including all levels of management or co-workers who has power or can influence the process of employment, dismissal, promotion, salary increment or any other employment decisions. This can be done by suggestions of sex in return for a job, salary increase or other benefit.

## Overnight Activity    Crosswords or Cross Words!

### Aims

To help you to:

- Further familiarise yourself with the content of the Employment Equity Act.
- Get used to the language used in the legislation.
- Start to tackle legal 'jargon' and make it understandable!

### Task

Working in pairs, small groups or individually (small groups is best!) fill in the Crossword puzzle on Employment Equity which is attached.

In addition to the crossword puzzle, you will be allocated a phrase or term that is used in the EEA or which is on the Jargon Sheet. Find a place where the term is used in the Act (note the page and paragraph number reference), and then describe it in simple, understandable language that members could understand. Put your definition on a card ready for display in the morning. Sleep well!

In the morning we will check the puzzle together, and share our definitions.

## Affirmative action crossword puzzle

### ACROSS

1. The EEA provides in Chapter Three that a person may be ----- (8) qualified for the job because of their formal qualifications, prior learning, relevant experience or their capacity to acquire, within a reasonable time, the ability to do the job
2. Fair and equal treatment for all at work is the theme of the Employment----- (5) Act (EEA)
3. Disproportionate (too big) ----- (13) in income between different job categories should be made smaller by designated employers under the EEA
4. Actions by employers to ensure equal employment opportunities for groups disadvantaged in the past may be called -----(11) action
5. Affirmative actions measures in equity plan should not make an absolute barriers to the continuity employment of non-designated groups or in other words, force the -----(10) of e.g white men
6. Designated groups under the EEA include people who are black, disabled or -----(5)

### DOWN

1. Affirmative action under the EEA is designed primarily to include people who are black, women or -----(8)
2. The EEA aims to redress the disadvantages suffered by, amongst others, -----(5) people in the Apartheid past.
3. The EEA provides in Chapter Three that a person may be suitably ----- (9) for the job because of their formal qualifications, prior learning, relevant experience or their capacity to acquire, within a reasonable time, the ability to do the job
4. Affirmative action measures aim to address the workplace problems workers suffer in the present and suffered in the -----(4)

5. All designated employers must submit information on their affirmative action measures to come, to the Department of Labour, in the form of an employment equity -----(4)
6. Affirmative action measures approved by the EEA include preferential treatment and numerical goals but exclude----- (6)

## Activity 5

## Affirmative Action

### Aims

To help you to:

- ☐ Understand what is meant by Affirmative Action
- ☐ Think about the arguments you can use to ensure that Affirmative Action is taken up properly by the employer.
- ☐ Identify the range of Affirmative Action measures available.
- ☐ Think through how Unions can organise for Affirmative Action Measures.

### Task

In your group you will be given one or more of the following cases. Using your knowledge of the Act so far, and the notes in their appendix 'Affirmative Action in the Employment Equity Act' and 'Unfair Discrimination in the Employment Equity Act, decide what possible

**Affirmative Action Measures**, if any, could be taken to tackle these cases.

In addition, briefly describe what the Union can do to encourage the employer to respond positively.

Elect a reporter



1. A member employed by the Metropolitan Council was injured in a work-related accident, and is now unable to lift heavy loads. The employer has said that the member will have to leave because functioning as before is no longer possible.
2. In the bank office, black people occupy all the minor positions, and white people occupy all the senior positions. When a senior vacancy arises, the employer disregards internal applicants from the lower grades even though they often do large parts of the work required. The employer has to date, always appointed a white person explaining that only white people have the skills and are sufficiently educated to do the job.
3. At the foundry, three workers have been refused places on a training programme that would normally lead to promotion because it has become known that they are HIV+ and the employer says that the training will be a waste of money.
4. A woman ticket office worker has applied to become a trainee train driver, but has been told by her supervisor that there is a long waiting list of male trainees who applied before she did, and that there is little chance of her becoming a driver and therefore to withdraw.

Elect a reporter.

# HOURS OF WORK ON THE LONG ROAD

Nic Henwood\*

Do you know the pressure, turmoil, worry in our work? There is nothing good about this job. We are forced to do this for money. We are two experienced long distance drivers (working together in one truck) with 30 years between us. It is very dangerous. I hate it. We have no recreation. We lost our family life. We are slaves on the road. We work a 22 hour shift at a time, 4 hours driving, 4 hours sleeping. No stopping. No proper rest. Sometimes we talk about the drivers we know who have died on this road. We know the places. We know their stories. There are times when we drive that we cry together about this life on the long road. (Interview 39)

## INTRODUCTION

Deregulation and the "free market" in South Africa's road freight sector are creating the conditions for an unregulated industry which threatens the health and family life of long distance truck drivers, and the safety of all road users. The transformation of the industry is driven by transport operators' competition for profits. Central to this competition is the issue of long distance truck drivers' working time. Increasing productivity is pursued in an attack on drivers' working conditions, and particularly their working time. There are fewer permanent jobs with either longer hours or more intensive work, on a growing but ageing fleet of vehicles with increased carrying capacity. Existing legislation is inadequate, unenforced and unenforceable. Road traffic speed and maximum axle mass legislation, as well as existing working time legislation are contravened by both transport operators and drivers.

This research report investigates the existing hours of work of ultra-heavy duty long distance truck drivers in South Africa, and their related conditions of work.<sup>1</sup> We identify the factors influencing working time in the road freight industry and the need to regulate working, driving and resting time. This research report explores how workers need to take account of these factors in reducing working time.

The research was undertaken in the context of a) the growing importance of the transportation of goods by road in South Africa as a result of the country's increasing participation in both regional and international trade, and b) the changes taking place in the wake of deregulation in the industry. The research is also developed in the context of a number of significant processes affecting the labour movement in general, and the road transport industry in particular. They include: the COSATU campaign and NEDLAC negotiations around the Basic Conditions of Employment Bill (BCEB), and particularly the demand for a 40 hour week; the International Transport Workers' Federation campaign on hours of work and safety of road transport workers; and the annual centralised bargaining in the transport industry's National Bargaining Council.

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Both the Bargaining Council substantive negotiations and the development of a working time policy for long distance truck drivers must be informed by an understanding of the current hours of work in the industry, as well as the conditions in which these hours are worked.

The voice and experience of truck drivers have not been heard, and where workers have organised and have been able to speak on a collective basis, they have not been listened to. As one worker said, "We did a strike in Colesberg. The transport board sent out the army, they did not listen. Nobody listens to us in SA." (Interview 51) By contrast, the starting point of this research was to record hours and conditions directly from those workers who turn the wheels of goods transport on our country's roads. We thus interviewed 87 ultra-heavy duty truck drivers hauling loads between the industrial centres of southern Africa (along the N1 and N3) between 24 April and 1 May 1996.<sup>2</sup> We used a standardised questionnaire and recorded their answers and other contributions.

South African ultra-heavy duty long distance truckers are working and driving dangerously long hours. Yet legislation reducing the working time of truckers will not in itself address the factors which contribute to this problem. In fact such legislation will likely exacerbate the trend, fuelled by competition, towards unregulated working and driving time in the industry. What is required is a combination of road traffic and labour legislation to regulate the driving time of all ultra-heavy duty truck drivers on South African roads. Labour legislation regulating drivers' working time must simultaneously address the definitions of different categories of working time and the conditions in which this time is spent. The collective voice of drivers participating in the process of formulating this legislation is critical to its success.

This research contributes towards informing other workers about what we have heard on the long road. More specifically, it is a contribution towards building on the collective experience and knowledge of long distance truck drivers who annually transport nearly 4 million tons of goods over 487,000 kms of roads in South Africa. In documenting the current hours of work and conditions of truck drivers, this research report holds up a mirror and invites those involved in trucking - bosses, workers, family members, as well as policy makers, union organisers, legislators, and road commuters - to have a look at their contribution to life on our "long road".

## **1. A PROFILE OF THE ROAD FREIGHT TRANSPORT INDUSTRY**

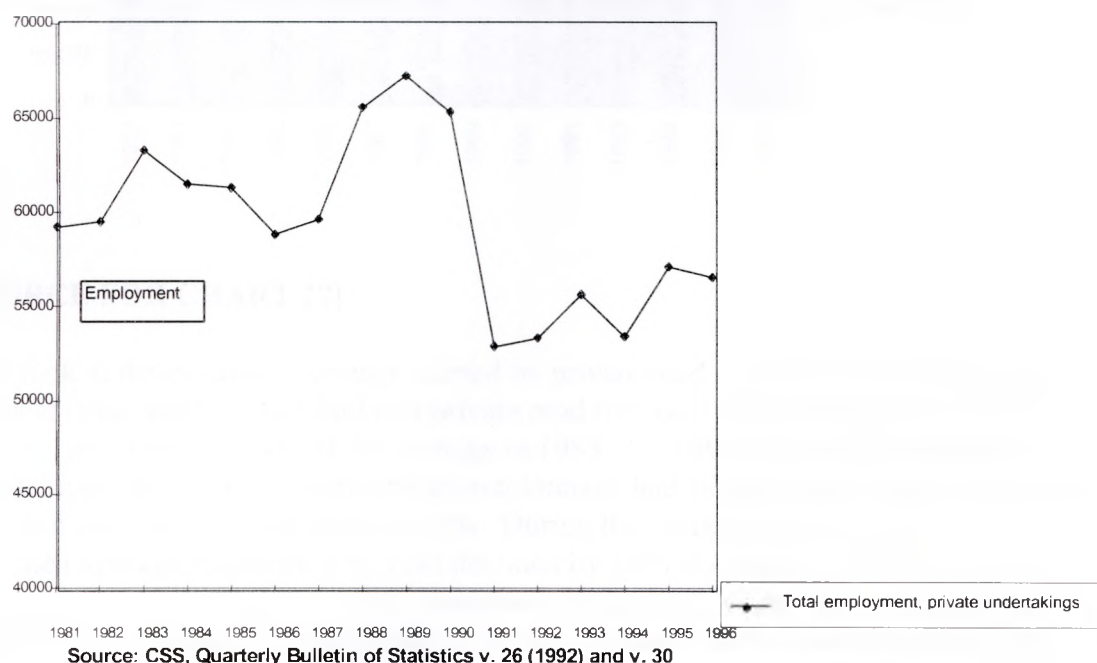
The road transport industry's daily working activities extend alongside public and private commuters through the arteries of our road networks. What do we know about this high-profile sector which services our society? What is currently happening in the road freight transport industry? This section outlines the prevailing trends unlocked by the state and driven by transport operators. We look at key indicators of employment, tonnage and productivity, the establishment of a National Bargaining Council and transport operators' initiatives to improve their competitiveness.



## EMPLOYMENT IN THE INDUSTRY

Permanent employment in the road transport industry (private undertakings) has declined by 15.2% from the highest employment level for 23 years in 1989 (67,326 employees) to 57,093 in 1995, a loss of more than 10,000 jobs. (See Chart 1)

**Chart 1. Total employment, goods road transport, private undertakings (excluding private in-house transport employees, driver-owners and Autonet)**

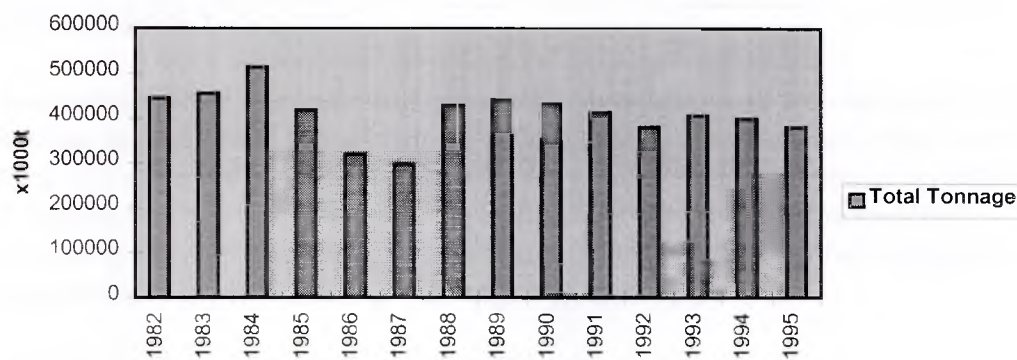


There are no statistics available on the numbers of casual workers and driver-owners working in the industry, nor are there statistics available on the number of transport workers employed in other industries. However, the 1994 October Household Survey found that there were 259,607 people working in the informal sector of the transport, storage and communication industrial sectors. (OHS, 1994)

## TONNAGE CARRIED BY PRIVATE ROAD TRANSPORT UNDERTAKINGS FOR REWARD

Figures quoted by the Central Statistical Service (CSS) do not reflect the total tonnage of goods transported by road, since those companies with ancillary transport services transporting their own goods (in-house transport), are not recorded. If we examine the figures of the total annual tonnage carried by private transport undertakings for the years 1982 to 1995, we find a dramatic decline of 15% from 446,059,000 tons in 1982 to 380,914,000 tons in 1995. (Chart 2)

**Table 1. Goods Road Transportation (Private Undertakings).  
Annual Tonnage Carried (1982-1995).**



[SOURCE FOR CHART 2?]

If we look at the combined tonnage carried by private road transport undertakings and Transnet (road and rail), we find that private road transport undertakings accounted for 76%, and Transnet 24% of the tonnage in 1985. By 1995, private road transport undertakings' share of the combined annual tonnage had slipped to 68%, and Transnet (road and rail) increased its share to 32%. During this same period, the total combined tonnage transported by road declined by 18% from 682,658,000 tons in 1984, to 563,143,000 tons in 1995. Therefore, the annual tonnage of the private road transport undertakings declined, while Transnet increased its total annual tonnage by 7.5%, thereby maintaining between 29% and 32% share of the combined annual road and rail tonnage.

In taking this analysis further, we find that total annual tonnage transported by Transnet's road transport division (Autonet) declined in relation to that carried by the private road transport undertakings. Between 1982 and 1986 the road transport division of SATS (now Autonet) increased its share of annual tonnage transported by itself and private road transport undertakings from 0.8% to 1.3%. Between 1985 to 1995 this decreased by 47.5% when Autonet accounted for only 0.6%. (Table 1)

**Table 1. Goods road transportation, comparison of annual tonnage carried by private undertakings and Autonet, 1982-1986 and 1993-1995 (x1000 tons)**

Year	Road transport private undertakings, annual tonnage	Autonet (road), annual tonnage	Total combined annual tonnage	Autonet as % of combined total tonnage
1982	446059	3672	449731	0.8
1983	455652	4103	459755	0.9
1984	514195	4158	518353	0.8
1985	418320	4406	422726	1.0
1986	319128	4141	323269	1.3
No data available between 1987-1992				

1993	406807	2338	409145	0.6
1994	398877	2205	401082	0.5
1995	380914	2315	383229	0.6

[SOURCE FOR TABLE 2?]

In conclusion both the private road transport undertakings and Autonet saw a 26% combined decline in the annual tonnage transported by road between 1984 and 1995. During this same period Spoornet's (rail) total annual tonnage increased by 9.5%. The decline in the recorded tonnage transported by road was not the result of competition with rail transport. The increased tonnage carried by rail during this period accounts for only 11.6% of tonnage lost by road haulage.

It is clear that the annual tonnage of goods transported in South Africa has increased. One simply has to drive on our roads to notice the increasing number of ultra-heavy duty vehicles in use. The increase is a result of political transformation, the lifting of sanctions and the growing participation of the South African economy in both regional and international trade. The question is why this is not reflected in an increase in the total annual tonnage transported by private road transport undertakings and Autonet?

There are two possible explanations. Either an increasing number of companies are transporting their own goods. Or there is the growth of an "informal" transport sector of sub-contracting driver-owners and/or small transport companies, which transport a growing tonnage of goods which are not recorded in the Central Statistical Services data.

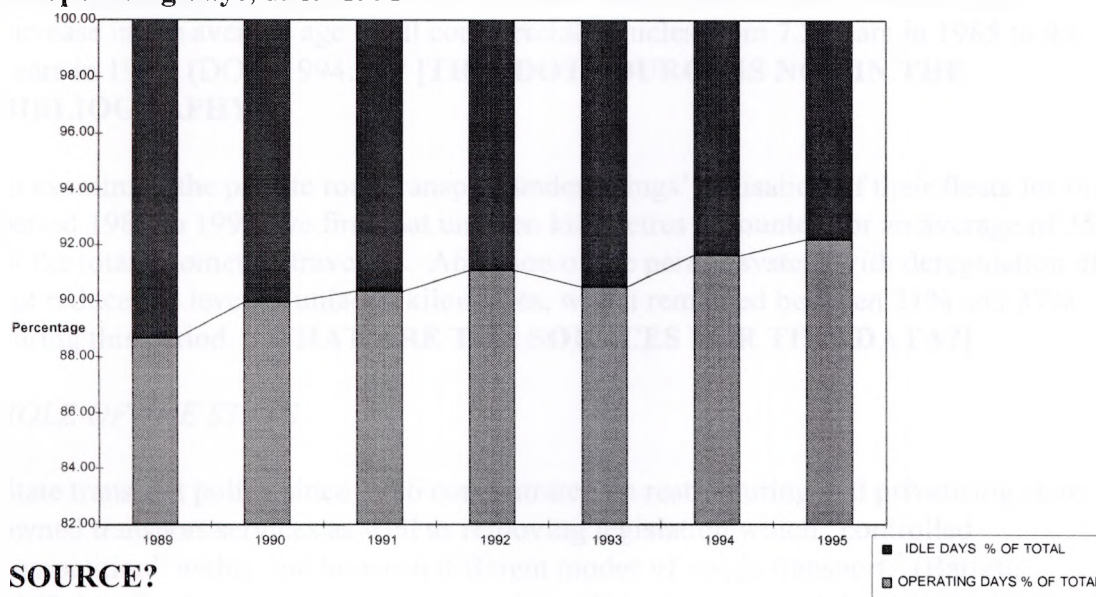
#### *PRIVATE ROAD TRANSPORTATION UNDERTAKINGS' PRODUCTIVITY*

From 1989 to 1995, the number of carrier units operated by private undertakings in the goods road transport industry decreased by 15%. In 1991 alone, the number of carrier units decreased by 8%. [SOURCES?] This decline in the number of carrier units can be partially attributed to the implementation of Regulation 351(f) (October 1991) of the Road Traffic Act which increased the maximum allowable overall length of a combination of interlinking vehicles by 2 metres to 22 metres. This regulation improved productivity as fewer truck tractors, drivers and truck assistants were required to transport an increased number of tons per trip. During the period 1990 to 1991, employment in the private road transport undertakings declined by 19% with the loss of 12,419 jobs in one year alone. (see Chart 1 above)

Between 1989 and 1995, the total number of operating days decreased. During this period, the idle operating days decreased from 13% to 9% of the total operating days. (see Chart 3 below) This decline of 4% in idle operating days could be attributed to the decline in the total number of carrier units.



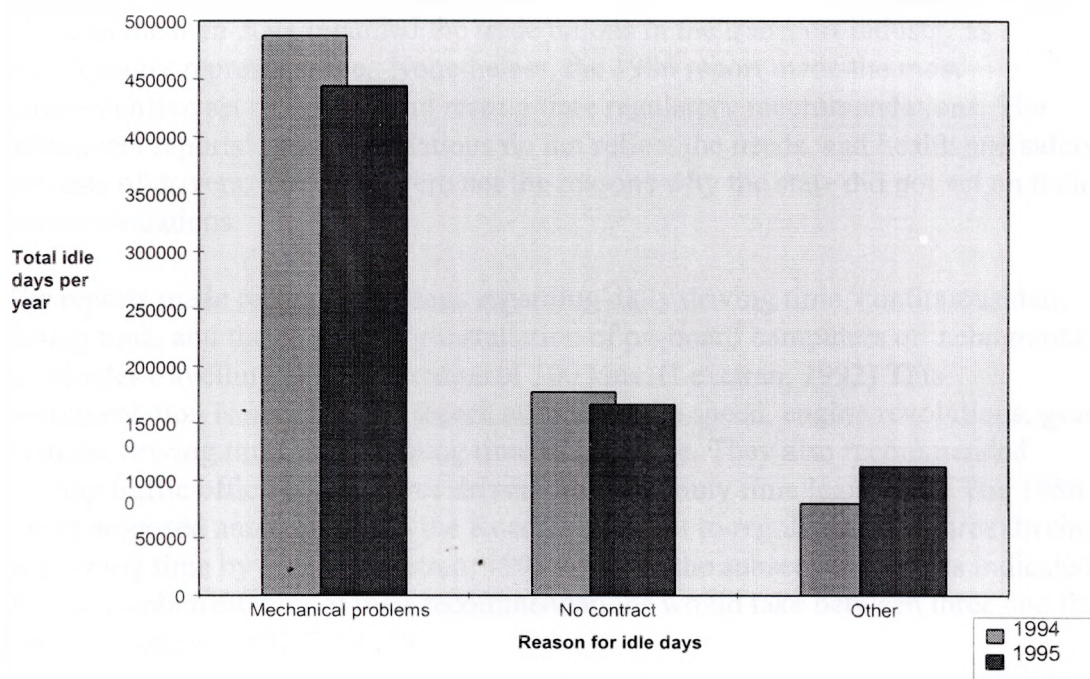
**Chart 3. Private goods road transport undertakings, ratio of idle to operating days, 1989-1995**



**SOURCE?**

Central Statistical Services figures for private road transport undertakings show that between 1994 and February 1996, operating time lost due to mechanical/servicing failures accounted for an average 5% of the total operating days, and an average of 56% of the total idle operating days. (See Chart 4 below) (CSS, Feb. 1996)<sup>3</sup> [WHAT IS THIS SOURCE?]

**Chart 4. Private goods road transport undertakings, recorded reasons for idle days, 1994-1995**



**SOURCE?**



Further research reveals that the cost of maintenance increased from 14% of the total operating costs in 1985 to 24% in 1992. This must be seen in the context of the increase in the average age of all commercial vehicles from 7.3 years in 1985 to 9.6 years in 1992. (DOT, 1994:28)<sup>4</sup> **[THIS DOT SOURCE IS NOT IN THE BIBLIOGRAPHY]**

In examining the private road transport undertakings' utilisation of their fleets for the period 1985 to 1995, we find that unladen kilometres accounted for an average of 35% of the total kilometres travelled. Abolition of the permit system with deregulation did not reduce the level of unladen kilometres, which remained between 31% and 37% during this period. **[WHAT ARE THE SOURCES FOR THIS DATA?]**

### *ROLE OF THE STATE*

State transport policy since 1986 concentrated on restructuring and privatising state-owned transport services as well as removing legislation which "controlled competition" within and between different modes of goods transport.<sup>5</sup> (Barrett, 1992:54) Further research is necessary to analyse the impact of deregulation on ownership, productivity, wages, employment, hours of driving, health and safety in the transportation of goods by road. However, in the absence of road safety legislation regulating driving and resting time, deregulation has exacerbated the pressure on drivers working in an increasingly unregulated industry.<sup>6</sup>

The state identifies drivers' hours of work as a labour matter for negotiation in the Bargaining Council. This is demonstrated by the National Department of Transport's (NDOT) decision to set aside recommendations from three commissioned reports in 1986, 1990 and 1992. These reports were not representative of the industry as a whole as the then-state regarded the trade unions in the transport industry as insufficiently representative. Nonetheless, the 1986 report made the most comprehensive set of driving and resting time regulatory recommendations. The subsequent reports' recommendations do not reflect the needs, and health and safety interests of drivers. But these were not the reasons why the state did not act on their recommendations.

The reports made recommendations regarding daily driving time, continuous daily resting time, and the compulsory installation of on-board computers or tachographs<sup>7</sup> to vehicles travelling beyond a radius of 100 kms. (Lexetran, 1992) This instrumentation is necessary to record accurately the speed, engine revolutions, gear changes, driving time, and stopping time of a vehicle. They also recommended training traffic officials to enforce driving time and duty time legislation. The 1986 report proposed amendments to the Road Traffic Act to regulate and enforce driving and resting time by 1990, (Lexetran, 1992:4) while the subsequent reports indicated that the implementation of their recommendations would take between three and five years. (Lexetran, 1992:7, 14, 19)

Sections 50 and 53 of the Road Traffic Act (Act 29 of 1989) which began to make provision for regulating driving hours are not in force. In 1996, the Director General of the NDOT wrote a letter to the editor of *Traffic Digest* in response to criticisms that

the NDOT was avoiding the responsibility of passing legislation governing the hours of driving. (*Traffic Digest*, 1996) He stated that legislation regarding the regulation of driving and related hours should fall under labour legislation and not the Traffic Act. He argued that:

- the solution to driver fatigue was the “training of drivers and promoting awareness amongst drivers of the dangers of driving whilst tired”;
- the cost to the transport industry of installing on-board recording devices would be R400 million, which would be irresponsible considering the turmoil in the taxi industry;
- drivers’ resting time cannot be monitored;
- law enforcement does not have the capabilities to enforce such a law.

He concluded that “the effectiveness of the controlling of driving hours is thus questionable” (1996:16) and that it should be remembered that provincial legislatures have the powers to introduce such legislation.

The NDOT letter quoted above demonstrates serious misconceptions. These include:

- drivers drive excessive hours because they are ignorant of the dangers;
- the cost of installing tachometers exceeds the economic, social and human costs arising from excessive working hours and traffic accidents;<sup>8</sup>
- regulation of driving hours in the road freight industry can only take place if/when driving hours are regulated in the road passenger industry, and that this is dependent on progress in negotiations with the taxi industry;
- there are no means to monitor drivers’ resting periods;
- there is no need to improve the country’s road traffic law enforcement capacity.

The NDOT’s position raises a range of issues underpinning the state’s approach to long distance truck drivers’ hours at work. In general transport policy avoids the issue of hours of driving and rest,<sup>9</sup> and fails to identify that the duty, driving and resting hours of long distance truck drivers are central to public road safety. It assumes that in the context of state deregulation, hours of driving and rest are issues left to collective bargaining and free market competition. Yet it mistakenly assumes that all drivers either have access to collective bargaining or are covered by the Bargaining Council’s agreements. Finally, reference to the powers of provincial legislatures signals the NDOT’s commitment to a decentralised and fragmented transport policy. Provincial variations in traffic safety legislation would compound the current crisis of public safety created by the unregulated road transport industry.

#### *UNIONISATION AND ESTABLISHMENT OF THE BARGAINING COUNCIL*

The National Bargaining Council (BC) for the Road Transport Industry (Goods)<sup>10</sup> was established in 1995 following the 1994 national truckers’ strike and road blockades. Despite the fact that the BC was not registered, two national agreements were negotiated in 1995 and 1996 covering workers in different geographical areas. The employers were represented by the Road Freight Association, and employees by six

trade unions, the largest of which was the Transport and General Workers Union (TGWU) with 24,000 members in this sector. (Forrest, 1997:27)

The progress made by permanently employed workers through industrial action and unionisation<sup>11</sup> to secure centralised bargaining in an industry Bargaining Council has taken place in the context of trends towards an increasingly unregulated road transport industry. BC agreements and even the prospects of minimum standards in a Basic Conditions of Employment Act would not cover a growing number of drivers including driver-owners, drivers employed by small transporters (who are exempted from the BC Agreement) and drivers employed by companies operating outside South Africa's borders.

#### *TRENDS AND CHANGES IN THE INDUSTRY: RESPONSES BY PRIVATE ROAD TRANSPORT UNDERTAKINGS' BOSSES*

Private road transport undertakings' employers have promoted the restructuring and deregulation of the industry since the late 1980s. Major unilateral changes have transformed the face of the industry. On the one hand a few major transport companies moved to reinforce their dominance in the industry, and on the other hand an increasing number of small transporters and driver-owners now compete in the market. Representatives of the large trucking companies Trencor, Imperial and Laser claim that it has become increasingly difficult to compete in the flatbed freight transport market as a result of deregulation and the growth of small transporters, driver-owners and transport brokers. The large transporters were previously protected by the permit system and either costed the return trip into their quote, or were guaranteed a return trip. They argue that with deregulation, they are unable to compete with the smaller operators who are often prepared to charge the cost of fuel alone in order to secure a load.

These developments were accompanied by increases in the cost of vehicles, tyres, fuel, parts and labour which exceeded transport tariff increases.<sup>12</sup> Ebersohn argues that unproductive labour, as well as higher vehicle, fuel and parts prices in South Africa resulted in one unidentified South African company stating that it "found that the local operations cannot compete with...(its)...branches on the other side of the Limpopo." (Ebersohn, 1995:10)

The major transport companies' response has varied. Some moved to capture the "niche" markets in specialised transport services, including:

- routine express "full truck load" (FTL) freight services between the major centres;
- dedicated regular contracts requiring shift systems for daily scheduled trips (as with the national postal contract);
- refrigerated transport; and
- tanker services.

These types of services are possible only for fixed long-term contracts because they involve capital investment in transport equipment required for the specific contracts.



Meanwhile, small transport operators and driver-owners relying on transport brokers for contracts have successfully broken into the flatbed sector which constitutes approximately 60% of the road transport industry. Flatbed trailers are less expensive and readily operational for the transportation of a wide range of freight, and established transport companies have lost major contracts to transport operators working through transport brokers. As the South African manufacturing industry moved to require materials and components "Just-In-Time", so the larger transport companies struggled to carry their overhead costs. The NDOT claims that overloading of vehicles is at "an unacceptably high level, varying between 15 and 40 percent in some areas" and as high as "60 % on certain routes." (1996:64)

In this context large transport companies have developed a number of strategies. These focused on:

- introducing specialised equipment for the transportation of specific goods;
- increasing the carrying-capacity of rigs;
- reducing the number of permanent jobs for drivers and truck assistants;
- exploring sub-contracting and driver-owner schemes.

Increasingly transport company management looked to contract out certain maintenance functions, such as tyre management and vehicle maintenance, cleaning services, and even engage in full-maintenance lease agreements. Some companies, such as Imperial, bought out a number of transport companies, and simultaneously diversified, by competing with the smaller operators for the flatbed market, specialising in tanker transportation, and providing full-maintenance lease vehicles to the industry.

Transport companies also entered into driver-owner agreements with their drivers.<sup>13</sup> Through these schemes, transport employers seek to shift the capital expense, the responsibility and the risk of the purchase of new vehicles to the driver and his relationship with finance capital. It also enables a company to circumvent unionisation and BC agreements by engaging transport services in a contract which is freed from the constraints of the Labour Relations Act. At the same time, the driver-owner "cannot freelance", but is dependent on either the transport company or the broker for contracts.<sup>14</sup>

It is crucial to register the impact of these changes on working time. Working for their own account, driver-operators have a clear incentive to work as many hours as possible to maximise their profits. As one driver put it, driver-owner schemes are good,

but they (driver-owners) drive 24 hours to survive. In Laingsburg one of them asked me to buy him a packet of stay-awake tablets because he said he could not go back into the same apteek for a second packet. (Interview 3)

Where driver-owners employ other workers, they are predominantly casuals, and are not covered by the BC agreement. The growth of this informal sector of unregulated driver-owner transporters intensifies competition in the road transport industry. This

trend is strengthened by truck drivers' aspirations to own their trucks, a goal held by 92% of the drivers in our survey.<sup>15</sup>

## *CONCLUSION*

Reductions in down time (whether resting time, layovers, breakdowns or maintenance) and the number of unladen kilometres travelled by vehicles are critical to transport owners' competition for contracts in the industry. The private road transportation undertakings' initiatives to improve productivity primarily focused on cutting labour costs. Fewer permanently employed workers are operating fewer carrier units which have an increased carrying capacity. Idle operating days as a percentage of the total operating days were reduced while the total number of kilometres travelled increased. However, whilst the percentage of unladen kilometres travelled has been reduced between 1988 and 1995, it is .5% higher than it was in 1985. The high percentage of unladen kilometres travelled by private undertakings is accompanied by an alarming decline in the recorded total tonnage transported by this sector. Furthermore, the South African fleet is ageing and there is a decline in the total number of operating days. Further research needs to establish the actual tonnage of goods transported by road, and how it is distributed between in-house transport and freight transport companies including the emerging informal sector.

Whilst permanently employed workers in the industry won the struggle for a national bargaining forum in which they could collectively secure their needs and intervene in the development of the industry, these gains are eroded by state deregulation policy, restructuring and employment trends. The drive by road transport employers for increased productivity in the 1990s has not only seen the specialised application of their unit carriers, but also the reorganisation and flexible utilisation of labour in the road transport work process. Section 2 examines the organisation of work, and management's control over the work process in maximising profits under conditions of increasing competition. The focus of Sections 3 and 4 will be to identify how these changes and developments in the road transport industry have affected the hours of work of long distance truck drivers.

## **2. THE WORK PROCESS**

This section describes the work process of long distance drivers, and demonstrates how it is continuous for the duration of the trip. It examines the organisation of drivers in shift systems and identifies the centrality of productivity-based wage systems in management control over drivers.

### *CONTRADICTIONARY FORCES IN THE WORK PROCESS*

A long distance truck driver has both incredible power and independence in providing a transport service, and at the same time complete vulnerability and weakness in exercising any control over his or her conditions of employment and remuneration.<sup>16</sup> The truck driver's power is vested in his absolute control over the machinery he drives, its speed and location. It is located further in his responsibility on the open

A driver's work process is determined by the nature of the goods transported; the contract with the client; the type and combination of vehicles assembled to transport the goods. The combination of these factors, together with the cost of labour and levels of union organisation determine whether the driver works in a shift system, alone, with a co-driver or with a truck assistant.

We identified five different categories of work organisation in our survey of 87 drivers:

- single driver;
- single driver with truck assistant;
- double crew driver;
- double crew driver working shift system.

79% of the drivers interviewed worked as single drivers, and 21% as double crew drivers. Just over half the single drivers were accompanied by truck assistants. 16% of the drivers interviewed worked in a shift system according to a fixed shift roster, whilst the balance (84%) were non-shift drivers who worked no fixed hours or roster system. 53% of the drivers interviewed worked alone without co-drivers or truck assistants. **[I DON'T SEE WHERE THIS 53% FIGURE COULD COME FROM]**

The work responsibilities and tasks of drivers remain the same whether they are accompanied by another driver, or by a truck assistant. However, the degree of independence or supervision varies according to both direct and indirect pressures on the drivers.

#### *THE TASKS AND RESPONSIBILITIES OF LONG DISTANCE TRUCK DRIVERS AT WORK*

The ultra-heavy duty drivers' work includes full responsibility for the truck and trailers, and the goods being transported, as well as for all machinery, tools, and spare equipment. The responsibility continues from the time the driver is despatched to the time he returns the vehicle to his depot and includes those times when he is resting or sleeping. Thus the driver is "at work" for the full duration of his trip from his depot until his return.

The driver's work further includes driving, and maintaining a logbook of movements and stops for the duration of the trip. In addition, the driver must ensure that a card is kept and replaced daily in the tachograph. The driver is responsible for checking the tyres, oil, and water of his vehicle, doing minor repairs and changing tyres. He is responsible for operating any auxiliary machinery, such as pumps, burners, fridges and hydraulic equipment, and ensuring that they are kept functioning.

Drivers' responsibility for the service and safe passage of the client's goods including their loading, continual securing, and unloading. This work is determined by the nature of the goods being transported, the type of trailer (open flat bed trailer, closed trailer, shipping container, tanker, refrigerated container), the changing conditions on



road for goods and equipment valued up to R2.5 million. This power is enhanced by his professional skills, alertness and endurance in ensuring the safe passage of himself, the load, and all other road users he passes on the way.

However, these attributes are insufficient in shifting the balance of power in his favour against the employer who alone benefits from his exploitation. It is the work process itself in long distance trucking which both creates the conditions for this power and simultaneously destroys it by denying to long distance truckers the daily opportunities and experiences of collective life, work and struggle.

Discussions with truck drivers revealed a widely common experience of day-to-day life on the long roads of southern Africa. Their working lives consist of: long driving hours, excessively long unpaid hours at work away from families and communities, a dangerous working environment on the move at 90kph, resting up alongside the road, isolation, pressure, exhaustion, frustration and pain. Interviews also identified a fierce independent pride, mixed with an emerging collective identity that drivers have nurtured since their national industrial actions at the road blockades in 1994. Since that time there has been further united action consolidating these strengths in a collective tradition of worker democracy and mobilisation within their working environment on the long road.

These developments are countered by low basic wages, methods of payment, management pressures, changing forms of work organisation, and the aspirations of drivers isolated at work, all of which tend to individualise their struggles. Furthermore, the difficulties involved in organising long distance drivers, disillusionment in the new transport ministry, and the desperate need to find different experiences to survive the loneliness of the long road, have eroded the collective memory of truckers' recent struggles.

#### *ORGANISING WORK: A SENSE OF INDEPENDENCE AND FREEDOM*

I like this job. Nobody behind you. You get the orders for the day or week. Then you do it. You're in control. Nobody pushes me. I don't want to work under direct supervision. (Interview 51)

The driver's sense of independence on the long road grows out of the very work process itself: the individual nature of the work, responsibility for the rig, flexibility in determining when to work or rest and for how long to work per day. On the other hand, the absence of collective power, and the deadlines to reach destinations combine with the transport owners' direct and indirect means of control to limit long distance truck drivers' independence in the work process. Whilst long distance truck drivers are physically independent of direct supervision, their working time, movement, stops, driving performance (gear changes, engine revolutions, braking), and productivity can be strictly monitored for each second of the trip by onboard tachographic equipment.<sup>17</sup> In this section we identify the drivers' tasks and responsibilities, as well as the employers' indirect and direct control in the work process.



the road, as well as the facilities and assistance provided at the place of loading or unloading. A driver must account for any missing goods, and in the case of a pre-loaded container, for the loss of goods where a seal has been broken. The driver is also responsible for how the load is stored and secured should it be damaged, or come loose and result in an accident. Throughout the trip, a driver must regularly check to ensure the load is properly secured. Drivers must also maintain the documentation for the collection and delivery of their goods. They are also responsible for communicating with their management and submitting records of the trips and deliveries on return from their trips. The co-driver or truck assistant shares the tasks mentioned above, but in the event of loss, damage, or accidents the driver is responsible.

Many drivers are also either employers or supervisors. In cases where a driver works with a truck assistant, supervisory tasks are added to the drivers' job description. Truck assistants perform menial tasks and often survive on the long road by performing domestic duties for drivers. Over and above the supervisory role of the driver, the casualisation of truck assistants' work has heightened the antagonisms in this relationship. We did not generally assess interview truck assistants, but did record the following view which illustrates the underlying conflict:

I am three years working casual (truck assistant) on the long distance trucks. They pay us R300.00 per week. That is a straight wage, there is no overtime payment and no night out allowance. I must use R70.00 per week for my trip (R10.00 per day) and that leaves R230.00 per week for my family of five. We are casuals with no rights and no protection from the dangers on the long road. I am four weeks on the road now. Sometimes when I go home I feel like crying because I go with nothing in my pocket for my children. We are facing many problems on the road. Something is oppressing us. I sat down and thought about this, and can see that it is the drivers who want to use others' skills and powers to buy their own trucks. (Interview with Truck Assistant for Interviewee 13)

Where there is no truck assistant, but there is a need for labour to assist with loading, securing or "tarping"<sup>18</sup> the load, the driver assumes the role of an employer in employing and paying casual workers to perform specific tasks. According to the drivers of Highway Carriers (Imperial), drivers are paid an amount to employ a permanent casual truck assistant of their choice:

As drivers we must employ the truck assistants because the owners do not want to have permanent truck assistants. We are given R300.00 per week to pay them. (Interview 13)

Drivers are also responsible for attending to their own domestic labour on the road. They must buy and/or prepare their own meals and wash their own clothes. The purchase of provisions, cooking utensils, bedding, music centres and security are the driver's responsibility. When there is more than one worker per vehicle the cab itself must be shared for these activities. Truck stops do provide some of the amenities required by drivers. (See below)

The truck cab is thus the workspace, kitchen, washroom, recreational centre, sleeping place and refuge throughout the trip.

### *THE EMPLOYERS' CONTROL OVER THE WORK PROCESS*

As we have shown, all long distance drivers are free of direct physical supervision. However the degree of flexibility allowed to the drivers' daily planning and organisation of work differs markedly between shift and non-shift drivers. In the case of non-shift drivers, hours at work are unregulated and employers' control is indirect. Drivers' tasks do not necessarily have fixed times when they must be performed. Daily planning and organisation of work are ongoing responsibilities which, in most cases, are left to the discretion of the driver. This may vary as the time and circumstances demand. A particular trip might have an expected/determined duration where delivery of a particular load might be required at a specific time. But in the case of non-shift single crew drivers, organisation of work and utilisation of the time allocated for the trip largely rests with the driver. Flexibility on when to drive and when to rest places a greater responsibility on drivers to organise their working time themselves. It also contributes to a greater sense of independence and control of their work.<sup>19</sup> For these drivers systems of payment play an indirect, but central role in management's control.

In the case of double crew shift system drivers, the fixed times of departure and arrival, rotation of driving and continual motion all constitute direct and immediate pressures regulating their working time. The shift system does not allow for flexibility except in the event of unforeseen breakdowns and delays. Double driver crews<sup>20</sup> vehicles are expected to remain on the move from point-of-departure to destination, except for driver change-overs, refuelling and vehicle checks.

A variation of the shift system involves the co-ordination of vehicle movements from opposite centres to meet in a relay system at a central point. These vehicles meet at fixed times to exchange trailers. The drivers return with the new load to their home depot rather than completing the second leg of the journey to the goods' destination. Double crew drivers rest and take meal breaks whilst their vehicles are in motion under the control of the co-driver. Drivers work the same daily routes on fixed time schedules, through a rotational shift. Routes from the same depot could vary. However drivers work according to fixed timetables and hours.

This re-organisation of the work process is the transport employers' response to the requirements of niche markets for regular dedicated transport services on fixed routes. Double crewing (shift work on dedicated contracts) enables employers to maximise the time over which machinery works and to minimise unladen kilometres.

### *SYSTEMS OF PAYMENT*

The systems of payment constitute the central mechanism of both direct and indirect control over long distance drivers. Low basic wages, a high proportion of unremunerated time at work, and a high proportion of gross wages tied to productivity

directly pressurise drivers to organise their working time to maximise take home wages and therefore meet employers' demands for productivity.

The majority of drivers (48) in the survey were paid for their driving time only. For these drivers, higher take home wages come from longer driving hours and not for the number of hours spent at work.<sup>21</sup> 15 drivers were paid for the actual time that they were at work.<sup>22</sup>

Drivers' wage packages are made up by their basic wage, plus either overtime or kilometre bonus, the night out allowance, and other bonuses. The average take home wage<sup>23</sup> of all the drivers in our survey was more than two times their average basic wage.

**Basic wages** are linked to the statutory maximum normal time of 46 hours per week. This is an arbitrary time which has no bearing on the real time drivers spend either at work (on a trip) performing tasks or actually driving.

**Overtime wages** are fixed to the statutory maximum overtime hours per week, and also bear no relation to the actual time (over and above the 46 hour week) during which the driver is at the disposal of the employer.

**Night out allowances** are paid to drivers and truck assistants who are absent from their homes or depot on any day between the hours of 23h00 and 04h00.<sup>24</sup> There is no correlation between the amount paid in this allowance and the amount of time (five hours) in this period. This allowance is a tax-free payment that covers three meals a day and compensates the driver for sleeping away from home.<sup>25</sup> The portion of the allowance allocated to meals has no bearing on the price of meals. The amount allocated for sleeping out also does not correlate with the cost of alternative accommodation, nor the inconvenience of sleeping away from home in a truck. Night out allowances are rather a means by which many drivers attempt to subsidise their low wages.

**Bonus systems.** Drivers work harder and longer to increase their wage package with productivity bonuses. The **kilometre bonus** continuously imposes self-regulation on the non-shift driver who is compelled by the relative weight of bonuses in the take home wage to drive more kilometres. This maximises the utilisation of labour and machinery over the duration of the trip, and can contribute to reducing the overall duration of the trip. The productivity-based wages also minimise labour costs when there is no work, and reduce the base-wage on which employers' contributions to workers' social benefits are calculated.<sup>26</sup>

We found that the kilometre bonus was also paid to seven double-crew shift drivers even though their trip times were scheduled, and the distance of their trips fixed. This means they are paid for the kilometres completed in a shift, but not for time spent in excess of the shift due to any delays. The kilometre bonus is an incentive for shift drivers to complete the trip *before* the end of the shift for which they would receive both the basic wage for the full shift, as well as the additional kilometre bonus. Payment of the kilometre bonus to shift workers enables the transport employer to



work with a fixed wage cost linked to kilometres travelled irrespective of the duration of the trip which could be lengthened due to delays, mechanical breakdowns or accidents.

The kilometre bonus has different applications; indeed, in our interviews we found nine different systems for calculating it. In general, however, the kilometre bonus is an incentive for the driver to accumulate kilometres. This bonus is paid as cents per kilometre travelled, in lieu of all overtime, Sunday double time and public holidays double time payment. 81% of the drivers working on the kilometre bonus system rejected this form of payment:

The kilometre bonus system is bad. If I don't drive, I don't get money. This kilometre bonus system is the reason for chasing money and accidents.  
(Interview 33)

The drivers identified other productivity linked bonus systems including the trip bonus, load bonus, and production bonus:

We are paid per trip. No trip then no pay. We also have no security that we will be paid when we are away at work, because there is no pay if we stand with a breakdown. (Interview 3)

We have no basic wage. I am paid per load. If there is no load, then there is no pay. (Interview 69)

I don't support the bonus system. We lose if there is no load or if we have a breakdown on the road. (Interview 56)

Other bonus systems identified, such as the accident free bonus, tyre bonus, maintenance bonus, and general bonus exist as a means of penalising drivers with fines or deductions from a fixed amount per month when the driver fails to perform according to certain criteria.

These different bonus systems vary from company to company and are applied according to rules drawn up and administered by management. Drivers showed little interest in or understanding of how these bonuses originated and were administered. However, of 36 drivers who responded to the question, 25 opposed the bonus system of payment.

## *CONCLUSION*

The long distance road transport work process centrally depends on the driver, whose daily decision-making responsibilities and individualised work experience contribute to a sense of independence and power. Long distance truck drivers collectively realised their power, as exemplified in the national industrial actions since 1994.<sup>27</sup> However, the continuous nature of the work process, the pressures to meet destination deadlines, the driver's isolation, and the employers' direct and indirect control (exercised through shift systems and productivity-based wage systems) individualise

and erode this power. The daily working reality for drivers is their individual location within a continuous work process. Section 3 demonstrates the labour law's accommodation to the continuous work process, and the subsequent failure of legislation to regulate drivers' hours.

### **3. LONG DISTANCE TRUCK DRIVERS' CURRENT HOURS OF WORK**

South African road transport labour legislation fails to regulate long distance truck drivers' hours of work and rest. The law governing hours is not enforced, neither is it enforceable, as a result of contradictory definitions, the law's failure to require reliable recording mechanisms and the absence of effective means of enforcement. The failure is also the result of competition unleashed by "free market" forces demanding flexibility in an increasingly unregulated industry. This section examines the impact on the working and resting time of long distance truck drivers.

#### *DEFINING WORKING TIME ON THE LONG ROAD*

Transport employers and workers have conflicting definitions of working time on the long road. The conflicting definitions hinge on determining the period for which drivers are remunerated.

Drivers define working time, or duty time, as time spent on a trip: the entire time spent away from the home depot when the driver is at the employer's disposal.

The employers' and the BC agreement's definition of "driving a vehicle" is contradicted by their definition of working time. According to them, working time excludes a crucial period of every day when they expect the driver to continue performing work responsibilities. The employers and the BC agreements define "driving a motor vehicle" as:

all periods of driving, all periods during which...(a driver)...is obliged to remain at his post in readiness to drive and any time spent by a driver connected with the vehicle or the load. (NBCRTI, 1996:4)

However they define "hours of work" as all periods during which "a driver...is engaged in driving....and...on other work connected with the vehicle or load", but then specifically exclude any period of each day when the driver is responsible for the vehicle and load, but is paid a "subsistence allowance." (NBCRTI, 1996:8)

An analysis of drivers' working hours must grapple with this antagonistic relationship between drivers and employers over the issue of working time. These research findings highlight the need to analyse the impact that both the definition of hours of work and the systems of remuneration have on drivers' actual hours at work. This conflict, whilst essentially a health and safety issue, is in fact fought out between drivers and employers as a substantive issue.

Employers who tender for a transport contract know the fixed distance over which the goods must be transported. The speed of the vehicle is governed by law, and if transgressed, is ultimately constrained by both the practical limitations of mechanical power and safety. Therefore, the transport employer knows - from the formula  $TIME = DISTANCE / SPEED$  - how many driving hours are required to transport the goods over a fixed distance at an estimated speed. Thus, due to the constraints imposed by the distance that the driver and the vehicle must travel, the employer is faced with the problem of how to limit the cost of the "unproductive" time of the journey when the driver rests. This is accomplished through a variety of means:

- expecting that the driver continues to perform duties during rest periods and outside the hours of work definition;
- limiting the portion of wages which is linked to hours of work, and maximising the portion of the gross wage which is linked to productivity bonuses;
- ignoring driving, resting and working time regulation.

Inevitably, substantive negotiations at both company and industry level confront the issue of hours of work either for the purpose of increasing productivity and profits for employers, or maximising take home wages to meet the material needs of workers and their families.<sup>28</sup> This is exacerbated by the BC agreement to negotiate actual wage increases and not minimums. BC negotiations are thus addressing the smaller - and shrinking - portion of drivers' take home wages. Therefore drivers look to second tier negotiations at company level to increase their take home pay. The second tier negotiations, where workers are prevented from addressing basic wages, therefore focus on the implementation of new bonus systems, or increases to existing productivity bonuses.

#### *WHAT ARE THE HOURS THAT DRIVERS SPEND AT WORK?*

The owner uses the tacho to measure and check everything that we do, but we are not paid for all the time that tacho is monitoring us away on the trip.  
(Interview 68)

Management push us, but if we work 14 hours they only pay us for 12 hours. Our standing hours are not paid. The management looks at the tacho and want to know why were you standing. (Interview 13)

Many drivers' working time is rigorously monitored for the duration of their trip away from their home depot by tachographic recording equipment.<sup>29</sup> However, many employers ignore the recording equipment for the purpose of monitoring and regulating the drivers' driving and resting time.

The information on the breakdown of drivers' working time gathered in this research is based on interviews with drivers. We were unable to check their information against tacho cards or log sheets. Not all drivers interviewed could recall exactly how many hours they had either driven, been at work, or rested.<sup>30</sup> We also found that the tacho was not a useful instrument for providing the driver with an easily accessible means of monitoring his own driving and working time on the job: whereas the tacho warns



drivers when their engine is over-revving, it does not warn them when they have exceeded the maximum driving time for the day! Most drivers also kept log sheets, which they did not actively administer.

The 87 drivers interviewed spent an average of 632 hours and 30 minutes per month at work.<sup>31</sup> This was not necessarily continuous time at work,<sup>32</sup> but was made up of an average 3.5 trips per month.<sup>33</sup> The longest time at work per month for individual drivers was 730.1 hours (full month), the shortest time was 443.6 hours. The median was 638.8 hours.

The average number of hours spent at work per month varied according to the category of driver (see Table 2 below). The shift system drivers worked the lowest average (570.8) hours per month. By comparison, non-shift drivers were at work on average 73 hours per month longer. Single crew drivers were at work on average 51 hours longer per month than double crew drivers. However, double crew drivers who did not work a shift system had the longest average hours at work for all categories of drivers (655 hours per month).

It is significant to note that the survey found that kilometre bonus system drivers spent on average 32 hours less per month at work than the drivers paid both normal time and overtime wages. This supports the view that kilometre bonus drivers are responsible for the highest degree of self-regulation among non-shift drivers.

#### *REMUNERATION AND HOURS AT WORK PER MONTH*

Table 2 below records both the basic monthly wage, and the average take home wage of the different categories of driver interviewed in the survey. The hourly rate<sup>34</sup> has been calculated for the different categories of driver, to make comparisons between their earnings. In addition, Table 2 records the average number of years experience and the average length of service with the current employer to assess whether these factors influence the varying wage rates and working time of the drivers.

**Table 2: Average basic wages, take home wages and hours at work per month for different categories of drivers**

Type driver	No. in survey	Av. years experience	Av. length of service, current employer	Av. basic wage per month	Av. take home wage per month	Av. hours at work per month	Av. take home hourly wage per month <sup>35</sup>
All drivers	87	15.4	5.7	R1757.37	R3602.10	632.5	R6.00
Single drivers	45	16	5.2	R1775.39	R3854.79	647	R6.10
Single drivers with assistant	22	15.1	6.1	R1568.35	R3927.08	637.4	R6.13
All single drivers	67	15.7	5.5	R1716.76	R3877.68	643.7	R6.11



Non-shift double drivers	6	15.5	2.1	R2049.59	R2580.65	655	R3.91
Double drivers (shifts)	14	14.3	8.2	R1848.08	R3630.86	570.8	R6.44
All double crew drivers	20	16.3 [THIS LOOKS ODD]	7.1	R1892.86	R3684.22	596	R5.68
All non-shift drivers	73	15.7	5.2	R1737.53	R3759.77	644.7	R5.90
Km bonus drivers	31	13.9	5	R1582.50	R3507.95	612.1	R5.92
Non-Km bonus drivers	54	16.2	6.1	R1853.62	R3859.89	644.4	R6.03

The information in Table 2 reveals that there is no career structure linking drivers' wages to years experience in the industry. Neither the length of service with the current employer, nor the years of experience as drivers, appear to influence their basic wages.

Further, monthly take home remuneration is not related to the time spent on a trip away from home, but rather to the different productivity-linked payment systems. This research found that drivers spending longer hours per month at work are not necessarily paid higher take home wages. In fact we found **that the drivers with the longest hours at work per month were paid the lowest take home wage.** Non-shift double drivers worked 84.2 hours longer than the double crew shift drivers, but they took home R1050.21 less on average per month, despite the fact that they earned R201.51 more basic wage per month. This difference can be attributed to a range of factors:

- the most productive drivers are the shift drivers who are spending the shortest period at work;
- drivers earning higher basic wages have a lower proportion of productivity bonus payments;
- double crew shift drivers are paid for the duration of the trip even whilst their co-driver is driving, while the non-shift double crew drivers are only paid for the time that they drive.

To summarise our findings of the comparisons of the different categories of drivers' hours of work, basic and take home wages:

**Shift system drivers** work the lowest hours on average per month. All the shift system drivers in our survey were double crew drivers, therefore their work process is more intensive than the non-shift drivers. Their basic wages are higher on average

than non-shift single drivers and they are paid the highest rate per hour. But their monthly take home wages are lower than the non-shift single drivers because they are working fewer hours as the shift system drivers' hours and tasks are rostered and fixed. Therefore, unlike the non-shift drivers, shift drivers do not have the independence and opportunities to increase take home wages.

**Non-shift drivers'** basic wages are lower than shift workers, but they are able to earn higher take home wages since their hours at work per month and the kilometres they might travel are **not** limited by a shift roster.

The **double crew shift system** offers the attraction of less hours at work per month, higher basic wages, regulated working time and rest time, shared driving responsibilities with a co-driver, and the possibility of planning social life given a known roster. However, the take home wage is less. The work is more intensive and the conditions of rest less favourable than single drivers (see Section 4 below). The driver also has less independence on the road since he must work according to a strict schedule.

**Single drivers with truck assistants** are earning low basic wages and the highest take home wages. Yet these drivers are spending on average less hours at work per month than the single drivers who work without truck assistants. This could be partially attributed to the labour of truck assistants who change tyres and check vehicles and loads.

**Kilometre bonus drivers'** average take home wage is lower than that of **non-kilometre bonus drivers**. This confirms the views of drivers who argue that they are paid less on the kilometre bonus system than if they were paid for overtime. The reason for this is not necessarily that the kilometre bonus does not adequately compensate for the overtime, Sunday time and public holiday time for which they are not paid. It is more likely to be found in the fact, revealed in this survey, that the average number of hours per month at work of the kilometre bonus drivers is lower than non-kilometre bonus drivers.

This research has found that there are differences in the nature of the work process, systems of payment, remuneration, conditions and hours of work of different categories of drivers. But the extent of these differences and detailed comparative analyses requires further research specific to the categories of drivers.

#### *TIME ON A TRIP*

Drivers defined a trip as the period that they spent away from the home depot.<sup>36</sup> The average number of trips per month undertaken by drivers in the survey was 3.5, and the average trip was 14.5 days (348 hours) long with the shortest trip being 18 hours long and the longest trip 105 days (2520 hours).

While the length of some trips may seem extraordinary to an outsider, to many drivers it is a routine part of the job:

I cannot say that I see my family in a month. A trip can have no end. We are despatched for 6 to 7 weeks all over, to places and climates that we do not know. (Interview 14)

Both the number of trips per month and the duration of the trips can vary according to the seasons. For example, tanker drivers transporting bulk bitumen spend longer away on trips in the summer, when they can be on the road for one to three months at a time. (Interview 48)

Some drivers' trips were routine routes, whilst others involved transporting different loads to different destinations, until they were given a load which returned them to their home depot. Drivers must adjust to this variability:

I never know for sure how long my trip or rest at home is. They just phone and change the programme that they just told me. (Interview 36)

#### *WORKING TIME PER DAY*

This research adopts the view that drivers are "at work" for the duration of their trip away from their home depot. Yet it is important to distinguish between time at work, working time (referred to internationally as duty time), and resting time at work in order to analyse how drivers spend this time. The working time analysed below includes all time spent driving, loading, unloading, liaising with clients, checking the vehicle and load, refuelling, attending to maintenance, tyre changes and breakdowns.

On this basis, **the average daily working time of drivers in the survey was 17.9 hours** (see Table 3 below).<sup>37</sup> This corresponds with the drivers' answers to a different question where they estimated that they spent an average of 6 hours a day resting.

**Table 3. Drivers' daily working hours**

<b>Av. working hours per day</b>	17.9
<b>Maximum</b>	24
<b>Median</b>	18
<b>Minimum</b>	9.5
<b>% Response</b>	41.4

The A-Agreement (ex-ICMTU) provides for a maximum of 15 hours duty time per day, while the B-Agreement (ex-Wage Determination) provides for a maximum of 14 hours duty time per day. Thus the average driver in the survey worked three to four hours more per day than the legislated maximum (including overtime) daily duty time in the BC agreements. As such agreements are gazetted in law by the Minister of Labour, long distance truck drivers work daily hours in contravention of the labour law.



The three Department of Transport reports (Lexetran, 1992) did not propose any maximum daily duty time for single drivers, but the 1990 report did propose a 30 hour day for double crew drivers. This formulation involves two drivers working in the same truck each being expected to work a maximum of 15 hours within a 24 hour period. Both drivers are expected to spend their resting time with the moving vehicle. The maximum combined duty and resting time for the two drivers in one continuous period is 30 hours. This was endorsed by the South African Bureau of Standards Code of Practice for the transportation of dangerous goods (1992).

#### *TIME AT WORK PER WEEK*

Whether one approaches the definition of working time as time spent on duty at the disposal of the employer, or as non-resting time only, drivers in the survey worked weekly hours in contravention of the law.

When questioned about how many hours they spent at work the previous week, the drivers claimed they spent an average of 108 hours and 54 minutes at work in that particular week. The maximum number of hours spent at work for that particular week was 168 hours and the minimum was 16 hours. However, drivers in the survey spent an average 146 hours at work per week.<sup>38</sup> Based on the average resting time of 6 hours per day, drivers working an 18 hour day for 7 days would therefore work 125 hours per week.

Approached in yet another way, if a driver was to take the 9 hours per day continuous rest period legislated for in the A-Agreement, then he could conceivably work a 105 hour (7 day) week.

The average weekly time at work of drivers in the survey, and the examples above, all contravene the BC agreements. The agreements do not define the maximum weekly (7 day) duty time, however, by interpretation, the B-Agreement would allow 75 hours per week for local drivers and 98 hours per 7 day week for long distance drivers. The A-Agreement allows for a maximum duty time of 86 hours per 7 day week for local drivers and 101 hours for those long distance truck drivers whose employers have been exempted from the BC agreements.<sup>39</sup>

#### *WHAT ARE THE HOURS THAT THE DRIVERS SPEND DRIVING?*

##### **Driving Time Per Week And Per Day**

Drivers could not accurately recall the number of hours that they had spent driving the previous week. 13.8% responded to this question by giving an estimated average driving time for that week as 57.3 hours. However, they claimed to have driven 14 hours 42 minutes on average in the previous 24 hour period.<sup>40</sup>

**Table 4. Average hours driving**

<b>Av. hours driven in last 24 hours</b>	14.7 hours
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<b>Maximum</b>	22.5
<b>Median</b>	15
<b>Minimum</b>	2
<b>% Response</b>	100

One driver claimed to cover an average of 15,000 kms per month. (Interview 1) With a speed limit of 80 kph, and an estimated average speed of 60kph, this driver would have to spend 250 hours per month driving. This is equivalent to driving 8 hours per day without a day off, for every day of the month. Another driver said:

I drive 5,000 km every week. We are not all the same [drivers]. Drivers are like sportsmen and must be fit for this kind of work. Last week I drove from Sunday to Wednesday with no sleep. (Interview 69)

At an average speed of 60 kph he would have to drive 11 hours and 54 minutes continuously for 7 days.

A third driver (Interview 7) said that to increase his basic wage from R1,600.00 per month to a take home wage of R5,000.00, he had to drive 20,000 km per month. This would require him to cover a distance of 657.5 kms per day at an average speed of 60 kph for 10 hours 58 minutes every day of the month.

The first Report to the Department of Transport (1986) proposed a maximum of 10 hours driving per 24 hours and 48 hours driving in a 7 day period. (Lexetran, 1992:3) Neither the A nor the B Bargaining Council agreements stipulate the maximum daily driving time. By implication maximum daily driving time is equivalent to the maximum daily hours of work. This interpretation is supported by the 1990 Report which proposed a maximum of 14 hours daily driving time. The 1992 report made no proposal on daily driving time. The SABS Code of Practice for the transportation of dangerous goods (1992) [SOURCE?] proposed a maximum of 14 hours driving time per day.

Legislation on daily driving time must take account of the fact that driving is one of many responsibilities in the drivers' work process. A breakdown of the working day of a "European international truck driver" calculated that actual driving time made up 57% of the 12.2 hours working period per day. (van Ouwerkerk, 1987:14) Research by Hamelin in 1981 found that driving time comprised 55% of working time. (van Ouwerkerk, 1987:14).<sup>41</sup>

#### *ARE DRIVERS WILLING TO WORK LONGER HOURS?*

When asked whether they are willing to work longer hours, 72% of the drivers stated that they were unwilling to do so, or that it was impossible to find more hours in a day in which they could work. When we then asked drivers under what circumstances they were willing to work longer hours, 40% were willing to work longer hours if they were paid more money:

I am prepared to work longer hours if there is money/wages for every hour that you are out there on the road. (Interview 5)

I work 14 hours a day, and I am prepared to work more hours because I am chasing kilometres for money (Interview 63)

91% of the drivers supported the need to limit weekly working hours, but only 16% could propose means for reducing hours. This reflects a reluctance on the part of drivers to tie themselves into regulated working time. This interpretation is reinforced by a majority response stating that drivers should decide for themselves how to regulate their individual working time.

#### *DRIVERS' PROPOSALS LIMITING DAILY DRIVING HOURS*

If the government can make a law to set wages for drivers then there must be a law to limit the number of hours that we work. (Interview 59)

The drivers were more responsive in proposing a maximum number of daily driving hours, an idea supported by 85% of those interviewed. Here, 15% proposed a maximum of 12 hours driving per day, 7% 14 hours and 22% 16 to 17 hours driving per day.

These proposals for maximum driving time were surprisingly high given the drivers' attitudes to the issues of work pressure, fatigue and accidents. However, this response makes more sense if we consider the extent to which drivers' attitudes to driving time are shaped by their productivity-linked wages. Drivers thus linked the reduction of working time to increases in basic wages:

I can be glad if there is a law [limiting maximum driving hours], but I would fear to lose [money] from such a law. (Interview 7)

Legislating for shorter hours will make a problem with our money. (Interview 9)

We can talk about limiting the hours of long distance truck drivers if the money is also there. (Interview 15)

Those drivers who argued it was possible to regulate hours, proposed three basic methods: tachographic equipment; union agreements, and government legislation (including the adequate provision of traffic officers).

But the development of working/driving time policies and legislation must take account of the following:

- drivers paid productivity-linked wages will prioritise remuneration over safety;
- drivers will oppose and contravene time regulations that reduce take home wages;
- regulation of working/driving time must address the role of productivity-linked wage systems.



## *WHAT ARE THE HOURS THAT THE DRIVERS SPEND RESTING?*

### **Defining Resting Time**

Drivers' resting time at work includes rests between driving stints, meal breaks, as well as daily continuous rest periods for sleeping.

These rest periods have different implications for the drivers and the transport owners. For the drivers all rest periods on a trip are taken at work. The driver might have a rest from driving or other work functions, but since the driver remains responsible for the vehicle and load, his rest does not constitute a break from work. Drivers have also pointed to the need for flexibility as to when rest periods at work are taken, since these should take into account the drivers' own rhythms. The experiences of double crew drivers reveals that resting time is in fact characterised by high stress levels, which raises the serious question as to whether they have adequate rest at work.

For the transport owners, rest periods for drivers directly affect the productive utilisation of machinery (trucks and trailers). Transport employers therefore define resting time according to their operational needs. In the view of an employer, daily resting time for the co-driver in a double crew is physically possible whilst the machinery continues working under the control of the other driver. In the case of a single driver, daily resting time unproductively occupies machinery.

Neither of the BC agreements defines resting time. The BC A-Agreement makes provision for daily continuous resting time, but it does not define any conditions under which this rest must be taken. The B-Agreement makes no reference to daily continuous resting periods, but does define the conditions under which the rest period must be taken by stipulating that "an employee shall not be required or permitted to work." (NBCRTI, 1996:32) The only resting times referred to in the B-Agreement are rest intervals of not less than 10 minutes in the middle of the first and second five hour work periods of the day.

These provisions for rest periods in both BC agreements are contradicted by the definition of drivers' work which includes "all periods during which he is obliged to remain at his post in readiness to drive and any time spent connected with the vehicle or the load." The agreement defines a driver's work as continuous for the period for which he is responsible for his vehicle. Thus, **during a trip away from the depot, drivers do not have a rest period where they are freed of their responsibilities and are not required to work.**

By contrast, the 1986 DOT report proposed that during the rest "period the driver must be off duty." (Lexetran, 1992:3) While the European Economic Commission's Regulation No 3820/85 defines "rest" as any "uninterrupted period of at least one hour during which the driver may freely dispose of his time." (EEC, 1985: [PAGE NUMBER?]) This research found no drivers who were free to dispose of their resting time whilst on a trip. The next section examines both the different types of rest and the conditions in which drivers rest whilst on a trip.

## **Continuous Daily Rest**

Drivers' average daily resting time in the survey was 6 hours per day. Transport workers in the auto carrier sub-sector, who rested up to 14 hours per day, were the exception. 13 drivers who worked with co-drivers said they rested (free from driving) up to 12 hours per day in a moving truck, but drivers argued that it was impossible to have proper rest in a moving vehicle.

Drivers employed by companies transporting their own goods, and who fell under other Bargaining Council or union agreements (Chemical Workers' Industrial Union and National Union of Metalworkers of South Africa) were resting 9 hours per day. The minimum continuous rest period in the BC A-Agreement is 9 hours in every 24 hours. (ICMTU, 1996:15)

The first report (1986) to the Department of Transport proposed 11 hours rest in 24 hours, and that rest could be reduced to 9 hours not more than once in 7 days. (Lexetran, 1992:3) The 1990 report proposed 9 hours continuous rest period every 24 hours, however the 1992 report reduced this to 8 hours. [SOURCE?] In the European Community, the continuous rest period is 11 hours, which can be broken up so long as at least one part of it is no shorter than 8 hours. [SOURCE?]

Virtually all drivers (95%) supported the need for a regulated daily rest period, though this was often linked to wage issues:

It would be safer if we could stop at about 21h00, but our wages are too low [to reduce working hours]. (Interview 6)

The average daily rest period proposed by drivers was 7 hours, with the highest of 15 hours and the lowest of 2 hours.

## *WHAT ARE THE HOURS THAT A DRIVER SPENDS AT HOME?*

### **Time at home between trips**

The work process and working conditions have invaded and colonised the domestic, personal and social life of the long distance trucker.

33% of drivers in the survey spent between 12 hours and 24 hours at home between trips; 23% spent between 1 and 2 days at home between trips, while 13% spent one night of 8 hours or less at home between trips. This information must be read in conjunction with the average number of trips (3.5) undertaken by the drivers per month, the average length of trip (14.5 days) and the average time spent at home per month.

Drivers said that the time spent at home was inadequate and infrequent.

I have spent no time with my family for the last month. (Interview 8)

I spend one night at home in 3 weeks, and even that time you must fight to be off [from work]. (Interview 52)

We work as a two-driver crew and we have not had a weekend at home for 6 weeks now. (Interview 17)

Drivers spoke at length about working to maximise their income per month, yet as a result, they spend no time with children and partners. They said that time spent at home was predominantly used for sleeping and replenishing provisions for the next trip:

I don't spend a day at home, only sleep at home sometimes. (Interview 51)

73 drivers in the survey were married with an average of 3.4 children and 5.3 dependants each. However, they spent 87% of the time per month away from home. Their absence had a detrimental affect on family and personal relationships:

In this job there is no time for families and children. (Interview 39)

Working like this, one day you will come home and find the wife and children gone and a letter on the TV. (Interview 58)

Ek voel baie sleg, I spend little time with my family. This is my third wife now, and I have not time at home. (Interview 26)

Ons is nooit by die huis. Ek het nie vanaand genoeg tong en lippe om vir my vrou dankie te se dat sy my kinders groot gemaak het, want vir 18 jare was ek weg van die huis. (Interview 46)

Not only the quantity, but also the quality, of the time and social life spent at home between trips was affected:

Ons is uitgeskakel uit die social lewe uit. Ons is mense wat op die beweeg bly. (64)

Drivers spoke of the stresses of work, as well as the unresolved family problems weighing heavily on them whilst away on trips, and adversely affecting their ability to concentrate on their work:

Die job is gevaarlik. Look at the accidents and hijackings, and then there is the pressure like the other driver who was 4 weeks on the road. His brother's wife was dead, but the boss pushed him to go on to Ermelo even though he wanted to leave the truck in the yard to visit his family. Through this push, he drove on and was killed in an accident. How can your mind be with you on the job when your problems travel with you? (Interview 25)



Drivers in the survey had **spent 15.2 hours on average at home in the previous week**. The highest number of hours was 96 hours and the lowest was 0 hours.

Neither the A nor the B Bargaining Council agreements make provision for a minimum continuous weekly resting period. However, the 1986 DOT report proposed "30 hours of continuous rest during any 7 day week." (Lexetran, 1992:4) Yet, neither the subsequent DOT reports nor the SABS Code of Practice for the transportation of dangerous goods proposed any minimum weekly continuous resting period.

### **Monthly Time at Home**

Drivers in the survey were at home an average 97.6 hours per month.<sup>42</sup> Seven drivers did not spend time at home every month. In comparison, a factory worker working a 5 day, 46 hour normal time week, plus 15 hours overtime, and spending 2 hours commuting to and from work every day, could spend 97 hours at home per week.

5% of the drivers who responded stated that they had insufficient time off between their trips, and therefore took parts of their annual leave in order to spend time with their families during the year.

### **Annual Leave**

Drivers in the survey had spent 12.4 months on average at work since their last annual leave. Whilst 38% of the drivers had taken leave in the past 12 months, 36% of the drivers had worked for more than 12 months without taking annual leave. One claimed not to have taken annual leave for 3 years. (Interview 20)

14% of the drivers argued that the fact that annual leave was paid at their low basic wages prevented them from taking leave:

We can say that there is no annual leave in transport (because) there is no money if you stay at home. (Interview 14)

I last took leave 5 years ago. When my leave time comes, I take the money and carry on working. (Interview 40)

In many cases the fact that annual leave was remunerated at basic wage levels contributed to workers returning to work without completing their annual leave:

I can't remember when I last took leave. We are not paid enough, and they call us back to work. (Interview 39)

I started my leave in December. After 4 days they asked me to come back early to drive loads. I needed the money. (Interview 47)

A relatively high percentage of the drivers (25%) were not due for leave because they had less than 12 months service with their employers.

Annual leave is an important component of rest for all workers. Given the nature of working time in long distance trucking, as well as the period of time spent away from home by drivers on trips and the impact this has on family and social life, annual leave assumes even greater significance in the resting and working cycles of long distance truck drivers. The above findings demonstrate a significant contravention of BC agreements and demonstrate that their annual leave clauses are inadequate in ensuring that drivers take leave.

The BC agreements differ markedly regarding annual leave. The A-Agreement stipulates that annual leave cannot be postponed for more than 2 months after the 12 month period (1996:17) and that an employee shall not “engage in his normal occupation during the period of his leave.” (ICMTU, 1996:16) The B-Agreement allows an employee to work up to 24 months before taking leave, and is silent on a driver working during his annual leave. (NBCRTI, 1996:36) Neither of these agreements address the root problem: that annual leave is paid at basic wage rates. Given that basic wages comprise a small proportion of take home wages, the drivers cannot sustain themselves during leave periods on their basic wages alone.

### **Company Policies On Daily Working, Driving And Resting Time**

Examination of transport employers’ policies on working time for long distance drivers reveals either an absence of policy, inadequate policies or an uneven and inconsistent application of existing policy.

Of the 87 drivers interviewed, 38% (who were employed in 49% of the 55 companies identified in the survey) said that their employers had no policy regarding working, driving or resting time. 60% of the drivers (representing 51% of the companies in the survey) identified different company policies on working, driving and resting time.

Looking more closely at these company policies, 20% of the drivers’ company’s policies did not in fact specify any maximum limit on working, driving or resting time. Their policies merely included instructions to drivers to “stop when you are tired,” “stop every 2 or 3 hours for vehicle checks of 15 to 30 minutes duration,” “just come early and keep the customers happy,” and “cover the distance between Johannesburg and Cape Town in 30 hours.” Therefore on closer scrutiny, 58% of drivers from 37 different companies in the survey claimed that their employers had no specific working, driving or resting time policies:

There are no rules in this company about the driving hours and rest hours. That is for the driver to decide. But the destination is fixed and the time of arrival is set. (Interview-45)

The company does not have an open clear policy on driving and resting time. Its policy is indirect. They expect you to cover the trip from Cape Town to Johannesburg in 1.5 days. (Interview-18)

We are expected to cover the road from Cape Town to Johannesburg in 24 hours. (Interview 8)

14% of drivers claimed that their company's policy stipulated the working or resting time, but they were left to determine for themselves when they would drive or rest. 26% of drivers claimed that their resting times were fixed at specific hours in the day with 3 of these drivers being allowed 2 - 3 hours rest per day; 8 were allowed 6 hours per day; and 2 were allowed 9 hours rest per day. Only 15% of the drivers claimed to work under company regulations which prohibited driving between the hours of 00h00 and 03h00, with the majority of this category prohibited from driving between 23h00 and 05h00.

The Laser Transport Holdings employers stated in an interview with the author that they applied different resting time policies in their freight and furniture transport divisions. Furniture transport vehicles were prohibited from night driving, however, due to competition, their freight transport vehicles did "a lot of night time driving." Trencor management, in an interview with the author said that they have a rest time policy of 6 hours continuous rest within a 24 hour period, and no driving between 23h00 and 04h00. Management from Imperial argued in an interview with the author for "flexibility in the application" of the Bargaining Council driving and resting time regulations. Their policy was "trip checks every 2 hours" and "if you're tired, stop and rest." Imperial's approach characterises the interpretations that the majority of drivers gave of their company policies, where 71% of the drivers said they were left to determine for themselves when they should drive, rest, and perform other work functions, so long as they arrived at their destinations on time.

Truck drivers argued that employers prioritise the vehicle and load in the work process:

The company only works the load out in their interest. They don't care about us. They give us too little travelling time. (Interview 51)

Drivers said that employers referred to policies only when it suited them:

Our company has no rules on hours of driving and rest. They just say we must come early at our destination and keep the customer happy. (Interview 17)

There are no regulations about driving and rest. All they say is that you must deliver the load on time. (Interview 49)

It is clear from the above that the vast majority of company policies identified by drivers in the survey did not specify resting time between driving stints. Where company policy called for breaking driving time, it was for the purpose of vehicle and load checks, and not for rest from working responsibilities.

In fact this approach is reinforced by the Road Freight Association's mouthpiece, *Fleetwatch*. Adopting the patronising attitude that drivers need to be educated, they state that:



The most important advice a fleet manager can give his drivers is to stop every two hours or every 200km (or sooner if feeling tired) to check the mechanical condition of the truck as well as the tyres and also to ensure that the load has not shifted....A good way of ensuring that a driver does at least get out of the vehicle is instructing him to call your office from a public telephone to advise of his progress. It may take a couple of minutes, but this procedure will not only boost safety, it will also increase control. (*Fleetwatch*, June 1996:44)

### *INTERNATIONAL COMPARISONS OF WORKING AND RESTING TIME REGULATIONS*

The International Labour Organisation (ILO) report on the 'Hours of Work and Rest Periods in Road Transport' (1974) highlighted both the specific industry and international difficulties in regulating working time in road transport. These included:

- the diverse nature of the work, conditions and journeys;
- the difficulties in "defining exactly what duration of work is to be regulated" (1974:19);
- and the different approaches of countries who did not comply with Convention 67 (1939) and introduced "special standards, more flexible than those established by general regulations" (1974:19).

ILO Convention No. 153 of 1979 records a setback for drivers in the definition of "hours of work". Previously, the 1939 Convention No. 67 defined hours of work as all the time during which drivers were at the disposal of the employer and included periods of mere attendance as well as rest periods. However this definition was overturned by the current Convention No. 153 which states that each country should individually define by collective agreement, or by any other means, whether or not hours of rest and mere attendance are included in the definition of "hours of work". (ILO, 1979:21)

An international comparison of the definition of time at work or duty time reveals the opposing approaches of different countries. (see Table 5 below)

**Table 5. Definitions of duty time**

<b>Duty time: working time = all time driver is at the disposal of employer for purpose of remuneration.</b>	<b>Duty time excludes one or more of the following: waiting time for customs, quarantine/medical formalities; travelling on ferries; sleeping in bunk of moving vehicle; sleeping in specified sleeper cab.</b>
Denmark	Canada
Germany	USA
Norway (except piece work)	Belgium
United Kingdom	Sweden

One can draw on either highly regulated or unregulated international examples to support different views on working time. The ILO leaves the door open for "the competent authority or body in each country" (ILO, 1979:2) to legislate in "accordance with its specific requirement." (ILO, 1974:20)

The importance of international examples, is not simply to make quantitative comparisons of hours. Rather, international comparisons of truck drivers' hours must also look at the definitions, systems of payment, and the full range and combinations of regulations governing daily/weekly/monthly duty, driving and resting time. In comparing South Africa with the 12 countries in Table 6 below, certain important features stand out.

1. Apart from Nigeria and Ghana where there are no regulations governing duty, driving and resting time, South African long distance truck drivers' regulations provide for the longest daily, weekly and monthly working time of the remaining 10 countries.
2. Together with the USA and Ontario (Canada), South Africa has the highest maximum daily duty time. Nigeria and Ghana (outside the state sector) have no limits on either daily duty, or driving, time. But, other countries, such as Kenya, Zambia and Zimbabwe, which have no daily duty hours limits, are covered by the daily maximum driving time hours.
3. South Africa's weekly maximum duty time is 44% longer than Ontario's maximum 70 hours week.
4. While Germany's weekly maximum hours (113 hours) are longer than South Africa's, South African truck drivers can be legally required to work 137.6 hours more per month than in Germany where the monthly maximum duty time is 300 hours (= an average of 69.2 hours per week).
5. Unlike in India, the United Kingdom, Kenya, and in Ghana's state sector, South Africa makes no provision for continuous weekly rest periods.
6. South Africa makes no provision for the prohibition of night-time driving, as is the case in Kenya and Uganda.
7. South Africa does not distinguish between daily duty and driving time, unlike in the USA, Ontario, Ghana's state sector and Uganda where driving time is less than the maximum duty time.
8. Unlike in Germany and the United Kingdom, South Africa does not include all the time at the disposal of the employer in defining working time.
9. Unlike Zimbabwe, South Africa does not automatically include layover time as part of working time.

Table 6. International comparison of duty, driving and resting time.<sup>43</sup>

Country	Min & max daily duty time (hours)	Max daily driving time (hours)	Min & max weekly driving time (x7 days) (hours)	Min & max weekly duty time (x7 days) (hours)	Min & max monthly duty time (hours)	Daily continuous rest time (hours)	Weekly continuous rest time (x7 days) (hours)	Time at disposal of employer = 100% working time
India	8 - 10	None	None	54	None	9	24	
USA	15	10	None	60	None	8	None	
Ontario (Canada)	15	13**	None	70		8	None	
Germany (a)	11			40 - 113	230 - 300			Yes.
Germany (b)	13.5			40 - 113	174 - 244			Yes.
UK	None	9	60	60		11	24	Yes.
Belgium	8 - 11		None	40 - 65	173			No.
Ghana *	10	8	56	56		None	24	
Kenya	No limit	12	72	72		12***	24	
Nigeria	No limit	No limit	No limit	No limit		None	None	
Uganda	12	10	40	40 + 2 hrs per day worked		14***	60	
Zambia	No limit	8	56	No limit		None	24	
Zimbabwe	No limit	11	48	No limit		10****	34	Layover time paid = working time.

\* Information for Ghana refers to the collective agreement in the State sector.

\*\* If rest is taken in a sleeper cab, then the maximum driving time either side of the rest period cannot exceed 13 hours.

\*\*\* Night time driving prohibited.

\*\*\*\* No driver may work more than two nights per week.



## **Why is it difficult to reduce working hours?**

Deregulation and competition have created conditions where a growing number of drivers are not employees, or are foreign-based drivers. These drivers' hours are not regulated, thereby intensifying the conditions of competition for those who are subject to the existing regulations. Time is a critical component in competitiveness, and all drivers are subject to this pressure. In addition, the productivity-based remuneration system pushes drivers to ignore existing working time regulations.

The absence of effective enforcement agencies and penalties for transport operators whose drivers exceed the regulations, enable employers to demand unsafe working hours from their employees. Enforcement of working/driving/resting legislation is extremely difficult even where tachographs are fitted. The ITF has identified the problem in Europe where only 1% of trucks are monitored for driving time per annum.<sup>44</sup> (ITF, 1996:8)

Whilst BC agreements are circumvented and contravened, the present Basic Conditions of Employment Act also makes provision for exempting transport employers from working time regulations. The Minister of Labour can make variations, or exemptions, from minimum standards for certain employers, or categories of work, or even entire sectors. Long distance truck drivers form a category of workers most likely to be exempted. The peculiarities of the sector, efficiency and the practicalities of transporting goods over long distances, as well as the costs of regulating working time all provide grounds favouring exemption.

The definition of "hours of work" is critical. If the definition includes all the hours that a long distance driver spends away from his home depot at the disposal of his employer, then a 40 hour week could be completed in less than two days! This is insufficient time for him to complete even an average-length trip in SA. If the definition of "hours of work" excluded all "non-active" periods (rest periods), then a single driver working a 40 hour week could take 3 days (72 hours) to travel 1360 kms.<sup>45</sup> Either of these definitions of "hours of work", whether linked to an 8 hour day or a 40 hour week, have serious repercussions for the efficient transportation of goods by road. There is no doubt that if the road transport industry were to achieve a legislated 40 hour week, it could result in the accelerated decline in the number of permanent jobs, and severe changes to the present working conditions. This is evident from the restructuring which has already taken place.

Transport bosses might respond in a number of ways:

- Applying to the Minister for exemption of long distance truck drivers from the Basic Conditions of Employment Act;
- Radically re-organising work by introducing double crews, shift systems and continuous movement of vehicles;
- Sub-contracting, driver-owner schemes, and leasing out vehicles for sub-contracting;
- Continued and increased defiance of the law.

South African labour legislation allows for excessive working time by truck drivers. Its content accommodates truck owners' drive for productivity and profitability, and ignores truck drivers' safety and their needs for a social and family life outside of their work. It is unenforceable and contravened by long distance truck drivers themselves. Furthermore, the excessive length of driving hours, working time and periods away from home on trips, as well as the absence of regulated resting periods, constitute unsafe working conditions.

Development of working, driving and resting time policies for long distance drivers must clearly define working and resting time. Remuneration systems that encourage work practices that contravene working time regulations must be prohibited. Regulations should allow drivers to work flexibly within strictly imposed maximum working time and minimum resting time limits. Regulation requires recording devices, means of enforcement and penalties for contravention. Whilst these steps can contribute towards regulating the number of working and resting hours, it is necessary that regulation serves the purpose of ensuring the safety of public roads. Section IV identifies the health and safety issues of truckers' long hours in their working conditions on the public roads.

#### **4. HEALTH AND SAFETY**

##### *THE WORKING CONDITIONS OF TRUCKERS ON THE LONG ROAD*

The company push us, but say one mistake and we fire you. (Interview 13)

I don't know if Workmen's Compensation works. You see people who were involved in accidents sitting on the street corners suffering. (Interview 59)

This job is not speletjies, its dangerous. We have sleepless nights through this work. (Interview 30)

This section explores the conditions in which long distance drivers spend their working time, and answers the questions: why is it "very dangerous" (Interview 39)? For whom is it dangerous? Why is working time a health and safety issue?

Having looked at the actual time spent by drivers at work, it is necessary to analyse the impact that time has on the health and safety of ultra-heavy duty vehicle drivers. The obvious point of focus in examining the impact of working time on health and safety is the issue of driving fatigue and accidents. However, we need to identify all the factors contributing to the "pressure, turmoil, worry in our work" (Interview 39) which influence the quality of the time spent by long haulage drivers on the road.

Drivers regularly referred to "the long road". We want to identify how time and the conditions on the "long road" combine in contributing to their stress and fatigue. Time at work includes both mobile and resting time trapped in a steel working environment, isolated from other people, and cut off for long periods from day-to-day family responsibilities. Whilst working activities vary, and there are different states of



rest, it all happens in and around the same cab and vehicle, with the driver in an unending state of total responsibility for the rig and load.

### *SPEED IS INFLUENCED BY THE TIME AVAILABLE TO DO THE JOB*

Our lives (are) in danger. The employers push us to drive at 100 kph on the Cape Town/PE route, and they victimise the drivers who don't. (Interview 39)

54% of drivers stated that their employers' speed regulations were in excess of the national speed regulation for ultra-heavy duty vehicles of 80kph. 43% of the drivers claimed that their company speed limits exceeded 90 kph, while 4% claimed that their companies had no speed regulations whatsoever.

Die company het nie 'n wet nie. I regularly speed - there is no laws. Sometimes they tell us hurry. (Interview 50)

Drivers identified the unwritten company laws regarding speeding:

We exceed the speed limit. The management say go faster, but not in a written way. (Interview 48)

Drivers stated that management applies pressure which results in speeding to collect or deliver a load:

I exceed the speed limit in catching up time from the pressure to be on site. (Interview 47)

Management pressure on drivers to meet work schedules and deadlines is identified by the drivers as the second major factor contributing to accidents. Some drivers stated that while this pressure is there at the time of the contract to transport the goods, management does not take responsibility for the possible consequences, such as a fine or accident.

[Speeding] yes [on the] open road [with an] urgent load. If you caught, it's your problem. If you work to rules then they [management] cry. (Interview 6)

In addition, 61% of drivers stated that they exceeded both the legislated and the company speed limits.

Ek oorskry die spoedgrens as ek gedruk word om aftelaai. (Interview 67)

Drivers also acknowledged speeding to make up lost time from oversleeping, departing late, or accommodating their social life on the road. Drivers in the survey identified speeding as one of the three major factors contributing to accidents.

### *DRIVERS' VIEWS ON DOUBLE-CREWING*

Double crewing is murder. You can't sleep on a moving vehicle. Every jolt, sway, or braking, and you know about it even in your sleep. (Interview 43)  
Working with a co-driver is not good. The second driver does not get enough rest and this ends in accidents. (Interview 52)

Double crew driving has brought about a fundamental re-organisation of working time, and according to the majority of drivers interviewed, it negatively affects their working conditions. While this research has shown that the average hours at work per month of double crew drivers is lower than that of single drivers, the interviews revealed drivers' opposition to the work intensity introduced by continuous driving.

70% of the drivers stated that they would not like to work with a co-driver, and advanced a number of reasons for this attitude. First, there can be no proper rest as a co-driver cannot sleep when a truck is in motion (39% of drivers). One driver called for an investigation into double crew accidents. He argued that a high percentage of double crew accidents occur shortly (10 to 30 minutes) after the relieving driver has taken over the wheel. Whilst the driving crew member may be too tired to continue, the resting co-driver is under pressure to relieve him even though he is not ready to do so. If there were no pressure to maintain continuous driving, or if the truck had a single driver, then the resting driver would have continued his rest.

2 drivers in one truck is not good. I don't want to kill another driver. You can't sleep whilst the truck is driving. How can you be rested and ready to drive when your co-driver is tired? I would rather leave the job than work with a co-driver. (Interview 53)

Another reason given was the incompatibility of drivers' working rhythms and characters, as well as lack of confidence in another driver's driving skills (39% of drivers):

I don't want to work with a co-driver. When somebody else drives you don't feel safe. I trust only myself. (Interview 51)

26% of the drivers said that co-drivers should be used only to assist a driver in special circumstances:

I would work with a co-driver in emergency only. It's the quickest route to an accident.

They argued that acceptance of co-drivers was conditional on limiting its use to one time or trip; drivers accepting one another; and no continuous driving. Only 6% of drivers supported double crewing, arguing that they believed it paid well.<sup>46</sup> Examination of double crew drivers' responses shows that 78% of them opposed double crewing.

#### *DRIVERS' VIEWS ON TRUCK ASSISTANTS*

Of the 67 single drivers in the survey, 22 worked with truck assistants. The majority of drivers identified the need for assistants. 61% of them stated that they were prepared to work with truck assistants. 7% were prepared to work with a truck assistant only on the flatbed trailers where they would be responsible for "tarping" and securing the load. 23% were not prepared to work with truck assistants at all. Two drivers said that they wanted the truck assistant's wages added onto their basic wages.

### *ACCIDENTS*

Die pad is gevaarlik. Nogal redelik Desembertyd. I saw an accident where the driver died in a fire which took long to reach him in the cab. None of us had firefighting equipment, and it is a long road between Bloemfontein and Colesberg. (Interview 32)

According to the Workmen's Compensation Commissioner's statistics, the transport sector had the highest accident severity rate of all industries in 1989 and 1990 and the second highest disabling injury frequency rate after fishing. **[FULL REFERENCE TO SOURCE]**

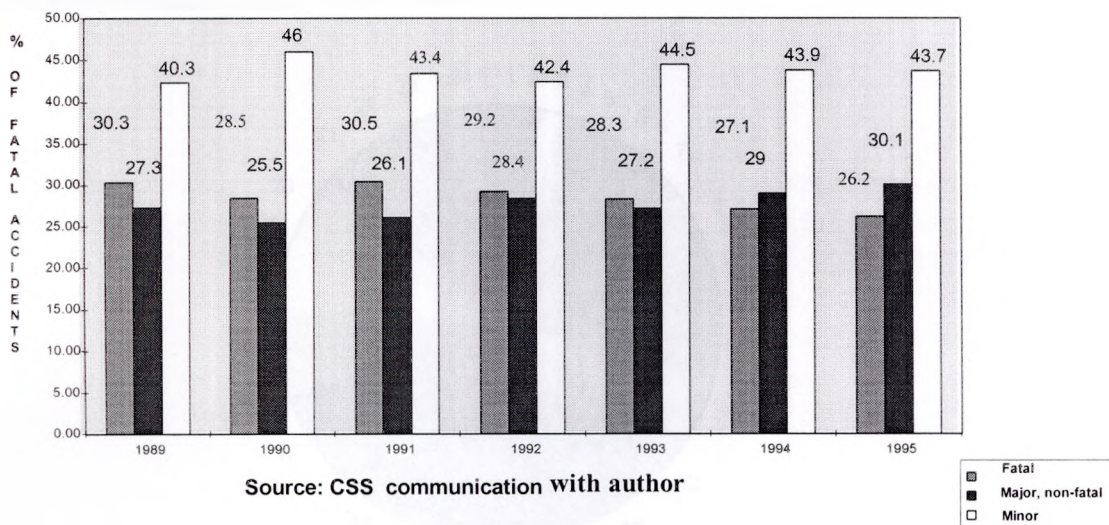
23% of the drivers in our survey had previously been in an ultra-heavy duty vehicle accident. They attributed 47% of these accidents to fatigue, with the driver or co-driver falling asleep at the wheel, 26% to mechanical failures of the vehicle, and 27% due to other road-users.

In 1995, there were 43,899 ultra-heavy duty vehicle accidents on South African roads, (CSS, 1997)<sup>47</sup> an increase of 14% from 1989. The four provinces with the highest number of ultra-heavy vehicle accidents in 1995 are Gauteng (24%), Kwazulu/Natal (22%), W Cape (12%) and Mpumalanga (12%). This is consistent with the distribution of all recorded ultra-heavy duty accidents between 1989 and 1996.

In 1995, just over a quarter (26%) of the ultra-heavy duty vehicle accidents were fatal (see Chart 5 below). During the past 7 years, the number of fatal accidents declined from 30% in 1989, to 26% in 1995. However, the number of major accidents increased.



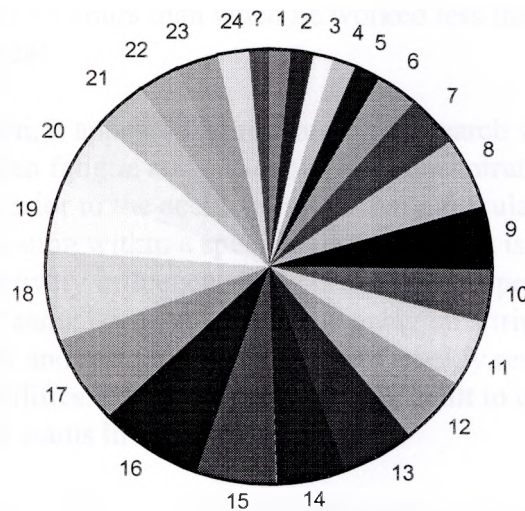
**Chart 5. All heavy-duty road transport vehicles, accidents by severity, 1989-1995**



An analysis of the age of drivers involved in ultra-heavy duty vehicle accidents between 1989 and 1995 reveals that the drivers most frequently involved in accidents are between the ages of 25 and 29 years. Further analysis is needed to determine why this age group is most likely to have accidents and why a significant number of drivers below the age of 18 years are involved in ultra-heavy duty accidents.

Accidents involving ultra-heavy duty vehicles and their drivers do not occur in factories or mines where members of the public are not directly affected. Instead they happen on public roads and thereby directly affect all other road users. Indeed, an analysis of CSS statistics (Chart 6 below) reveals that the highest number of ultra-heavy duty vehicle accidents occur when the roads are at their busiest. Between 1989 and 1995, the highest number of ultra-heavy duty accidents consistently took place between the hours of 15h00 and 18h00.<sup>48</sup>

**Chart 6. Distribution of total ultra heavy duty accidents by time of day(24 hour clock), 1989 - 1995**



Source: CSS communication with author

It is clear that there are many factors which contribute in different sequences and combinations to ultra-heavy duty vehicle accidents. These include all the different causes identified by drivers above. In breaking down the relative weight that the interviewed drivers gave to these causes, we find that, in order of prominence, the most often cited causes of ultra-heavy duty vehicle accidents were: driver fatigue, management pressure and stressful working conditions.

Driver fatigue was identified as the major cause of accidents:

Fatigue is the main cause of ultra-heavy vehicle accidents. Drivers are tired and are pushed too hard. (Interview 1)

Accidents happen because drivers are mentally and physically fatigued, and they can't just pull off and sleep. (Interview 39)

Management pressure to meet work schedules and deadlines was identified as the second major factor:

Accidents happen because the employer is pushing the driver who is afraid to lose his job. (Interview 45)

It is the system of payment which pushes drivers to stay on the move and end up in accidents. (Interview 64)

Driver recklessness, speeding, inexperience and irresponsibility were identified as the third major set of factors contributing to accidents.

van Ouwerkerk (1987) evaluated research on the relationship between professional drivers' hours, and fatigue, health and traffic safety and concluded that "research on



the involvement of trucks in road accidents has not produced consistent results.” (1987:24) However he highlighted research by Hamelin (1981) **[NOT IN BIBLIOGRAPHY]** who found that “the accident risk was 2.5 times higher when a driver worked over 13 hours than when he worked less than 10 hours.” (van Ouwkerk, 1987:24)

From his evaluation, it appears that much of the research which examined the relationship between fatigue and accidents, has concentrated on the driving or resting time immediately prior to the accident, or on that particular day. However, there is not a simple correlation within a specific time frame. It is clear degrees of alertness or fatigue are cumulatively influenced by: a driver's work process and pressure; the daily, weekly and annual time at work; time away on a trip; irregular times and conditions of work and rest; and the absence of weekly rest periods freed from working responsibilities. But it is also clearly difficult to quantify all these factors and give them a causal status in a particular accident.

Lauber and Kayten (1988)<sup>49</sup> identified human error as the major causal factor of accidents in different modes of transport, but argue that it is necessary to identify the cause of the “performance deficiency in the first place.” (1988:504) They stated that “the true incidence of fatigue as a causal or contributory factor is largely unknown” (1988:504) and called on the Association of Professional Sleep Societies to develop “better investigative techniques and unifying concepts...to improve our understanding of the role that sleepiness, fatigue, and circadian factors play in manned system accidents.” (1988:512)

#### *TENSIONS BETWEEN ROAD USERS*

This is our factory, our workplace. We are out here on these roads every hour, every day, 365 days per year. We must work together on these roads with other road users who do not see it this way. We are the professionals and we call them the “weekenders,” “holiday drivers”.

Truck drivers in the interviews claimed the roads as their workplace, and professionalism as their approach to driving. Whilst failing to acknowledge that their approach to other road users might also contribute to bad attitudes and tensions on the road, the truck drivers' comments revealed a growing undercurrent of tensions which they attributed to the attitudes of other road users.

Yet not only can industrial accidents in the road transport industry affect other people using public roads, but so too can the mistakes of road-users result in industrial accidents for ultra-heavy duty vehicle drivers. Interaction and tensions between road-users are identified by the drivers in the survey as significant influences in making their working environment unsafe.

22% of the drivers identified other road-users' recklessness as the 4th major cause of ultra-heavy duty vehicle accidents. Drivers identified both the attitude of other road-users and their ignorance of ultra-heavy duty trucks, as contributing to accidents and

tensions between them on the road. Particular reference was made to combi-taxis and small motor vehicles.

People blame the truckers for the dangers and accidents on the road, but the accidents are seasonal according to the holiday makers whilst the truckers are on the road 24 hours a day 365 days a year. There is no respect for the truckers. These highways are our working place. We are here every day but motorists drive as if we are outsiders. There needs to be a national education programme for motorists, teaching them the rules of the road. Teaching them the dangers of driving with an attitude to the truckers. [Motorists expect] the truckers [to] move over into the yellow line, even if it is unsafe. Overtaking in the face of approaching ultra-heavy 60 ton vehicles travelling at 80-90kph. Not dipping their bright headlights when they see the small green lights on the roof of our cabs, because that is when we are being blinded by their lights. [There are] many things we can teach them. **[WHICH INTERVIEWEE SAID THIS?]**

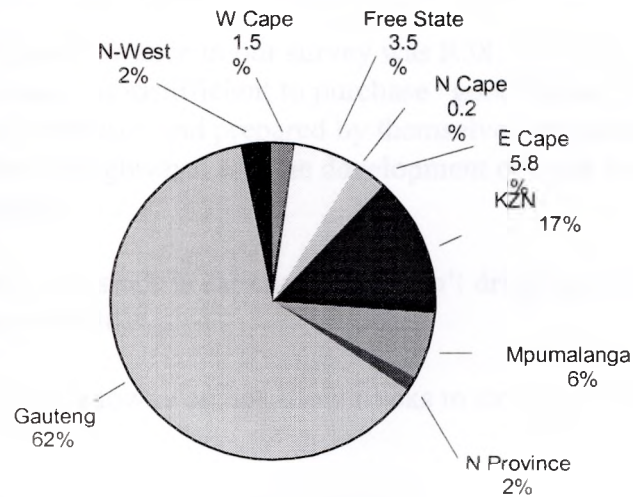
### *HIJACKINGS*

This job is dangerous, [there were] 3 attempts to hijack me. (Interview 7) .

In September 1995 I was driving for Longdistance and I fought (off) hijackers armed with long guns, with my knife. There was traffic and trucks there, but I got no assistance until after the hijackers ran away. The hijackers organise inside the transport companies and the factories where we load. They know our movements. (Interview 34)

The threat of hijackings statistically varies with the road, area, province, month of the year, time of day and day of week. However, a hijacking can take place at any time, and the longer the time that a driver is at work, the greater the risk of being hijacked. During the period 1 January to 31 August 1996, 2,640 trucks were hijacked in South Africa; the majority occurred in Gauteng, Kwazulu-Natal, and Mpumalanga. (SAPS, 1996)<sup>50</sup>

**Chart 7. Truck hijackings, Jan-Aug 1996, RSA, by province**



Source: SAPS, 1996

**[PLEASE REMOVE BOX FROM AROUND CHART 7]**

It is not possible to do a comparative analysis between 1996 figures and those from previous years, as pre-1996 figures do not include hijackings which took place in the ex-TBVC apartheid states. However, a summary of the available data on hijackings of vehicles between 1993 and 1995 shows that while the number of carjackings increased by 50% during this period, the number of trucks hijacked increased by 175%. (SAPS, 1996) Furthermore, the estimated cost of the loss of these vehicles and freight rose during this period by 137% to R310.4 million in 1995.

Although an analysis of the provincial distribution of truck hijackings shows that there are large sections of South African roads where the risks of hijacking are low, it is impossible for long distance truck drivers to complete any trip without passing through areas where the risk is high.

Whilst the risk of hijackings may vary at different stages of the trip, the threat of hijacking is a constant factor in the daily work of drivers and contributes significantly to stress and fatigue:

Accidents happen because drivers fear hijacking - they are tired and they sleep behind the wheel pushing on to find a safe place to sleep. (Interview 34)

There have been two attempts to hijack my truck. After dark we don't stop and not even the truck stops are safe. (Interview 61)

In Gauteng between January and June 1996, 30% of hijackings took place between 20h00 and 07h59. The threat, and real possibility of a hijacking during daily rest periods when the vehicle is stationary is also significantly greater. Hijacking is thus a considerable stress factor during the period when both the employer and the law say that the driver has working responsibilities, but is not paid to work.



## *NIGHT-OUT OR SUBSISTENCE ALLOWANCE*

The average night out allowance in our survey was R38.70. Drivers said that the subsistence allowance was insufficient to purchase "good" food. Drivers are either dependent on food purchased and prepared by themselves, or that sold at truck inns. But the construction of highways, and the development of truck inns resulted in many towns being bypassed:

Food at the truck stops is expensive. We can't drive our rigs into the towns to shop. (Interview 30)

In addition to this, many towns do not allow trucks to stop over within their municipal limits.

## *FACILITIES FOR LONG DISTANCE DRIVERS*

When it comes to facilities for truck drivers, there is still apartheid on the road. (Interview 5)

The health and safety of truck drivers is further affected by the facilities at their disposal both on and off their vehicles. Truck cab facilities vary according to vehicle, age of vehicle and employer. They also vary according to the number of drivers and/or truck assistants travelling on the vehicle.

46% of the drivers felt that their cabs were good to very good. But the majority stated that their cabs were very poor to average, and required improvements.

The truck cab is the work room:

This MAN [truck] is not good. The cab is shaking. (Interview 53)

The truck cab is too hot in summer. The bosses give us an air conditioner after we have driven one million kilometres. (Interview 47)<sup>51</sup>

For the double crew, the truck cab is also the mobile resting place between driving stints:

The cab is not good enough. You feel every brake and movement. We don't sleep well and the body does not get enough rest.

In addition the truck cab is the drivers' kitchen, bedroom, living room:

I can't afford to buy (cooked) food so I must cook for one hour in my cab most days. (Interview 53)

The facilities in the truck cab is not good. There is only one bed. Sometimes we are on the road living in the truck for 3 months. We must provide our own

gas stove. Many times we must cook inside the cab. We are living out of boxes.

49% of drivers felt that the truck stop facilities were inadequate and required improvements. They stated that food was too expensive to purchase, and that whilst the development of the truck inns were an improvement of life on the road, they did not primarily service the needs of truckers.

I am not happy with many truck stops. There is apartheid. The motorists are seasonal and we are regulars, but we must buy food from the windows at the back. The food is expensive and they do not cater for halaal. (Interview 26)

The truck stops are dirty. Kos is baie duur. They must stop those who sell liquor. (Interview 40)

The truck inns are an improvement for us. They are safer than the open road. Before we had to carry our own water to wash and cook. But they are dirty and expensive. (Interview 68)

The truck inns are bad but we depend on them. (Interview 41)

Drivers also felt that the truck inns were not necessarily safe and that there were often insufficient facilities - such as parking space - for the number of trucks that stopped over for daily rest periods.

Drivers found that truck stop facilities vary according to the oil company. An important problem they identified was that different truck inns had different policies on accommodating trucks that did not purchase fuel. Some truck inns charged trucks, and others only allowed trucks that purchased fuel to use the facilities. In the drivers' views, truck inns "benefit from our diesel" purchases throughout the year, however truck drivers' needs are not adequately met. (Interview 7)

In addition to using the truck inns, drivers also rely on their employers' or clients' depots to layover away from home, for weekends or weekdays, waiting to load, or to be despatched on the next leg of the trip. The survey found that 38% of the drivers had no facilities at depots where they loaded and unloaded freight.

There are no depot facilities for resting or cooking, we must stay in our truck cab. If the truck is in the workshop (for repairs), we have nowhere to sleep. (Interview 13)

45% stated that the facilities in the depots needed improvements; 25% said that depot facilities were either very poor or poor.



## *TRAVELLING WITH FAMILY MEMBERS AND PARTNERS*

The vast majority of drivers said that they would like to travel with family members:

Ons voel ongelukkig dat ons kan nie saam met ons mense ry nie. We don't want it every day, but there are times when it would be important to us.  
(Interview 17)

Many felt that by travelling together they could see more of one another, share company, and expose them to their work and the different places to which they travelled. Some felt that by travelling with a partner they would also reduce their risk of exposure to AIDS. A small number were fearful that that family members not be exposed to the dangerous conditions of the work and said that they were not prepared to take family members unless their employers assisted in providing insurance cover for them as passengers.

According to most drivers in our survey, their employers did not allow family members to travel in their trucks.

I would like to travel with members of my family, but they won't allow it. All the white drivers get away with it. (Interview 56)

A minority of the drivers said that their employers allow them to travel with family members, but a small number said they had to sign forms indemnifying the company from any claims of loss of life or injury to family members travelling in the trucks.

## *DRIVERS' VIEWS ON CHANGES TAKING PLACE IN THE ROAD TRANSPORTATION INDUSTRY*

Though there was a low response rate, it is significant to note that all the drivers emphasised how changes in the industry negatively affected their working conditions.

The most important features they identified were:

- deterioration of their working conditions;
- increased responsibilities and pressures to reduce travelling time;
- the increased carrying capacity, power and speed of their vehicles;
- the excessive number of ultra-heavy duty vehicles on the road and particularly an increasing number of unloaded vehicles;
- the increased number of driver owners;
- the improved road networks;
- the deterioration of roads;
- and the establishment of truck stops.

This research report argues that both the working time of ultra-heavy duty long distance drivers, and the conditions in which this time is spent, are detrimental to the drivers' health and safety. Such conditions cannot be automatically improved by the reduction of driving or duty time alone. A quantitative reduction in duty time, and the

regulation of driving and resting time, must be addressed simultaneously with qualitative changes to the conditions in which drivers work on the long road.

## 5. CONCLUSION

The ultra-heavy duty vehicle drivers interviewed are working excessively long, dangerous and unsociable hours. Working and resting time is irregular. These conditions are detrimental to their health and safety, and to the safety of all road users.

Furthermore, these hours are in contravention of the law. The 45 hour week does not exist for long distance truckers. Neither the maximum 98 nor the 101 hours allowed in the Bargaining Council agreements<sup>52</sup> approximate the reality of working time on the long road. The legislated working hours determining remuneration have no realistic bearing on the actual hours that drivers spend at work.

Achieving a 40 hour week for the average truck driver interviewed in our survey would require a 73% decrease in the current hours spent at work per week. As in any industrial sector, there is no magic formula where reduction of the maximum normal hours of work automatically creates additional jobs.

Bosses first measure the cost of shorter hours and more jobs, and see in this a threat to their profits. They are doing business in an increasingly unregulated industry and cannot consider workers' needs. They will fight against demands to shorten the working week unless they can increase workers' productivity.

State policy has allowed the "free market" and competition to dictate the conditions in which ultra-heavy duty vehicles and their drivers navigate South Africa's public roads. The architects of this "free market" are the transport operators who place profit before safety. Their drive for productivity includes sub-contracting, restructuring of ownership, reducing permanent jobs, re-organising the work process, increasing carrying capacity of rigs, overloading, exceeding the speed limits and contravening driving and resting time law. These initiatives have not addressed the unproductive (unladen) kilometres travelled by South Africa's private road freight fleet.

These initiatives amount to unilateral restructuring, manifested in two diverse developments in the industry. On the one hand double crew shift driving and relaying loads in dedicated contracts increases productivity and can reduce unladen kilometres. Yet this double crewing is opposed by drivers.

The second development is the emergence of an informal sector in the industry. This development dovetails with the majority of truck drivers' dream of owning a rig. Yet with it comes further erosion of the gains of collective solidarity in the industry. An unknown, but growing, number of long distance ultra-heavy duty vehicle drivers are either exempted from BC agreements, or are not subject to labour legislation such as the BCEA. Therefore, despite the recent establishment of the National Bargaining Council in the industry, the ability of organised transport workers to reduce their working hours and implement health and safety policies is weakened.

Combined with this, the central role that working time plays in threatening drivers' health and safety, is overshadowed by their prioritisation of remuneration to meet their needs. The demand and arguments of long distance drivers to reduce and regulate their working hours cannot be ignored. Neither can we afford to overlook the ambiguity of their position which is dictated by payment systems based on productivity. This has relegated hours of work, at the expense of health and safety, to a battle over substantive matters.

The claim that the public roads of our country are the workplaces of long distance truckers cannot be disputed. It follows therefore, that working hours are not only an issue of health and safety for drivers, their truck assistants and their families, but also for every other person who is a driver or passenger on the road. The challenge for road transport policy-makers is to recognise that it is in the interests of public road safety to regulate working time for all transporters on the long road.

The establishment of a minimum employment standards law can contribute towards regulation in the industry, but not on its own. Regulation of working time for one part of the industry - while driver-owners and foreign-based drivers remain unregulated - would exacerbate the competitive pressures and trends which have resulted in the circumvention and contravention of existing BC working time agreements. Therefore reducing working hours in labour legislation alone could have the opposite affect to that intended. Secondly the Basic Conditions of Employment Act can accelerate these pressures should the Minister vary or exempt individual drivers, companies and sub-sectors from the minimum standards. Transport employers who are regulated by minimum labour standards, but whose competitors are not, would not survive in the industry without either sub-contracting, establishing driver-owner schemes, seeking exemption for the industry or contravening the law. Thus, in the absence of regulations governing the working time of all drivers in the industry, a BC and a BCEA law for a 40 hour week would exacerbate rather than resolve the fundamental problem of unregulated working time in this industry.

The health and safety of truck drivers, as well as public safety on the roads, depend on the regulation by a combination of both labour and road traffic legislation, of long distance truck drivers' hours of work and systems of remuneration. To secure minimum employment standards in long distance transport, workers should pursue two additional measures.

*Firstly*, the regulation of all long distance commercial vehicle drivers' driving and resting time. This is not merely a labour law but is moreover a road traffic safety law. This is possible through the enactment of Road Traffic legislation for all drivers of long distance commercial vehicles. Such legislation should provide for regulated hours, compulsory installation of on-board recording devices, enforcement by traffic authorities with penalties for contravention.

*Secondly*, industry-wide negotiations for special minimum standards which take account of the peculiarities of long distance truck driving in this sector. Such negotiations should be able to pre-empt Ministerial exemption or variation. Special



standards must not undermine the BCEA minimum standards. They are necessary to formulate definitions of different categories of working and resting time. They are required to formulate more complex regulations of the maximum daily, weekly and monthly working and driving time, as well as the minimum continuous and flexible daily, weekly and monthly resting time. Agreement on a 40 hour driving time week could explore flexibility on when the hours are driven and address the question of other categories of additional working hours required for a driver to complete a trip. In addition, negotiations should focus on:

- the prohibition of productivity-based remuneration systems which encourage unsafe working hours;
- definition of working time and resting time;
- flexibility for drivers to decide when to work, drive or rest subject to the regulations;
- the conditions in which drivers spend their time at work;
- payment for time at work and exploring different rates of pay linked to time spent either driving, working<sup>53</sup> or resting whilst at the disposal of the employer;
- recording, monitoring, enforcement and penalties for contravening BC agreements on time;
- drivers' health and safety, as well as research and training;
- double drivers, continuous driving and shift systems;
- a regional treaty standardising driving and resting time of Southern African countries.

Unless hours and working conditions are regulated, we are faced with continued unsafe working conditions, dangerous public roads, and competition that has the potential to spiral into chaos and conflict similar to the unregulated mini-bus taxi industry. Drivers have the choice to remain the victims of this unregulated industry, or to organise collectively and intervene in the crisis of the employers' "free market".

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## ENDNOTES

<sup>1</sup> An ultra-heavy duty vehicle is defined in the Bargaining Council B-Agreement to mean "a motor vehicle, the gross vehicle mass or gross combination mass of which exceeds 25 000kg". (NBCRTI,1996:13). Long distance work is not defined in the current National Bargaining Council Agreements for the Road Transport Industry (Goods), except where drivers travelling more than 480 km in one direction are exempted from the 15 hours maximum weekly overtime. Department of Transport (DOT) reports refer to 100 and 150 kms. (Lexetran,1992)

<sup>2</sup> The interviewers were Nick Henwood and Olivia van Rooyen.

<sup>3</sup> We do not have comparable data for previous years.

<sup>4</sup> Ebersohn (1995) quotes the RFA on the correlation between the age of vehicles and higher fuel consumption (1995;12).

<sup>5</sup> See Barrett (1992) for a history of state policy, and an analysis of the changes in this policy in the late 1980s.

<sup>6</sup> I have not looked at the Road Transport Quality System (RTQS). **[EXPLAIN WHAT RTQS IS OR DROP THE REFERENCE]**

<sup>7</sup> The reports recommended that this instrumentation should meet the specifications detailed by the South African Bureau of Standards.

<sup>8</sup> Further research is required into the cost of accidents including the loss of loads, equipment, disability and death. Enquiries to the South African Insurance Association reveal that no information-sharing system detailing costs to the industry exists.

<sup>9</sup> This criticism is also articulated by the Transport and General Workers' Union's (TGWU) response to the NDOT's Green Paper on National Transport Policy. (TGWU, 1996:clause 6.4)

<sup>10</sup> The establishment of the National Bargaining Council (BC) for the Road Transport Industry (Goods), resulted in two separate main agreements. The A-Agreement covers employers and employees falling under the geographical area previously covered by the ICMTU **[WHAT IS THIS DESIGNATION? WHAT IS THE GEOGRAPHIC AREA?]**, while the B-Agreement includes those previously covered by the Wage Determination. The BC agreements apply to all members of the six trade unions which are party to the BC and the employers who are members of the Road Freight Association. However they do not apply to following: (i) driver-owners and their employees; (ii) employers who own one truck and employ one driver together with other employees (A-Agreement); (iii) employees employed in a business which is less than 12 months old (B-Agreement); (iv) employers employing less than three drivers and less than six employees in total (B-Agreement).

<sup>11</sup> We do not have data regarding the unionisation of ultra-heavy duty vehicle drivers in South Africa. 44% of the drivers interviewed belonged to a union and 38% of the drivers interviewed were TGWU members. See Table 4.

<sup>12</sup> Interview with Imperial management.

<sup>13</sup> There is limited information and research on the extent of these schemes; see Barrett (1992), Harvey (1992), Ebersohn (1995) and CSIR (1996). **[THERE IS NO REFERENCE TO HARVEY 1992 IN BIBLIOGRAPHY; NO REFERENCE TO CSIR 1996]**

<sup>14</sup> Interview with Trencor management.



<sup>15</sup> The research also revealed that drivers qualified their attitudes to driver-owner schemes. See Tables 5, 6 and 7.

<sup>16</sup> Reference is made here simultaneously to both the female and male gender. Whilst all the drivers interviewed in this research were male, I continue to use the masculine gender in referring to truck drivers only for the purpose of simplifying the text.

<sup>17</sup> Explain work of tachos... **[WELL? DESCRIBE THEM, AND THE DESCRIPTION SHOULD BE PLACED ABOVE, WHEN YOU FIRST INTRODUCE THE TERM]**

<sup>18</sup> Tarping refers to covering loads on open flatbed trailers with canvas or plastic sails or tarpaulins.

<sup>19</sup> Non-shift drivers' flexibility to determine how to utilise daily working time is further accommodated and assisted by these companies' positions on speed limits.

<sup>20</sup> All 14 shift system drivers interviewed worked in double driver crews.

<sup>21</sup> I use the term "at work" to describe the period when the driver is at the disposal of the employer and responsible for the vehicle on a trip.

<sup>22</sup> The majority of drivers interviewed who were paid for their actual time at work were double crew shift workers with fixed hours at work.

<sup>23</sup> This refers to net pay after deductions for tax, medical aid, provident/pension fund, UIF, and union subscriptions.

<sup>24</sup> This period is excluded from the definition of hours of work in the BC Agreement.

<sup>25</sup> The BC agreement for 1997 sets this allowance at R33.80 for an employee who is not provided with a bed, and R32.80 if there is a bed. It is made up of money for three meals ( $R7.27 \times 3 \text{ meals} = R21.81$ ) plus an amount of R9.49 (where no bed is provided) or R8.49 (if a bed is provided), and R2.50 for each night of absence. The allowance at the time of interviewing was R29.50 per day.

<sup>26</sup> For example provident funds and life assurance.

<sup>27</sup> These occurred in 1994 at the Mooi River and Colesberg blockades and in the November 1996 national wage strike.

<sup>28</sup> While serving as a TGWU negotiator in a 1995 meeting with management of a national transport company, the author and TGWU shopstewards were mandated by drivers (who faced a reduction in take home wages) to maintain a 126 hour working week for double crew shift drivers rather than accept a management offer to reduce the working week to 98 hours and gain additional jobs. **[THIS IS AN INTERESTING BIT OF EVIDENCE BUT IT ADDRESSES A SLIGHTLY DIFFERENT ISSUE TO THE TEXT TO WHICH IT IS AN ENDNOTE - THERE THE DIFFERENCE IS BETWEEN PROFITS AND WAGES, HERE BETWEEN HOURS AND JOBS]**

<sup>29</sup> According to a 1992 Department of Health Aids survey of truck drivers, 60% of heavy motor vehicles over 3,500 kg were fitted with tachographs or on-board computers. (Lexetran, 1992:13)

<sup>30</sup> 47 out of 87 drivers could recall how many hours they spent at work the previous week while 12 out of 87 drivers recalled how many hours they had driven the previous week. All 87 drivers recalled how many hours they had driven in the previous 24 hours.

<sup>31</sup> Average time at work per month was arrived at by adding the drivers' estimation of the average trip length to the average time at home between trips over a 730.1 hour month.

<sup>32</sup> The exception were 7 drivers in the survey who were at work for the full month of 730.1 hours.

<sup>33</sup> In the case of shift workers (14 drivers), time at work and time off are rostered, but for the majority of 73 non-shift drivers, the average time at work in a month and the number of trips varied unpredictably, as shown by the highest number of trips in the sample being 17.4, and the lowest .34 per month.

<sup>34</sup> This was calculated by dividing the average take home wage by the average number of hours at work per month.

<sup>35</sup> This hourly rate is calculated on the total hours spent at work including driving and resting time.

<sup>36</sup> A trip could involve transporting a number of different loads to different destinations before returning to the home depot.

<sup>37</sup> The majority of long distance truck drivers do not have a working week broken by either daily or weekly rest periods away from work. Therefore, a driver working a 17 hour 54 minute day, would complete a conventional working week of 46 hours within two and a half days (excluding resting time), yet his time at work continues so long as his trip is incomplete.

<sup>38</sup> This was arrived at by dividing the calculated monthly average time at work by 4.333 weeks.

<sup>39</sup> Telephone interview with Mr B.C.E. Gratz, Secretary of the National Bargaining Council for the Road Transport Industry (Goods). **[DATE OF INTERVIEW?]**

<sup>40</sup> This sample represents drivers who were interviewed at different stages of their working day. That is, some might have been at the beginning and others at the end of their day. Others had been standing for part of the time in the previous 24 hours at rest, waiting to load or unload, or on a breakdown.

<sup>41</sup> Further research needs to determine the ratio of driving time to other work time of South African drivers.

<sup>42</sup> We analysed the drivers average monthly time at home by combining the average trip time with the average time spent at home between trips into a trip/rest at home cycle. We then calculated the number of possible cycles that a driver could complete in a month and therefore the average number of hours that a driver in the survey spent at home per month.

<sup>43</sup> This information is not exhaustive, and has been gathered from various sources including (ITF,1989), (ITF,1984), (ITF, 1990) and (Bare Act,1995). It is currently in the process of updating information of African transport workers' hours.

<sup>44</sup> The ITF has a campaign to increase this to 5%.

<sup>45</sup> According to the following calculations:

8 hours time per day x 60 kph ave. speed = 480 kms per day

3 days x 8 hours = 3 x 480 kms

72 hours = 1360 kms

<sup>46</sup> Table 6 shows that whilst the average basic wage of double crew drivers is higher than single drivers, the average take home wage is less.

<sup>47</sup> Whilst some of the accident data is published by CSS, this research relied on unpublished data received by the author in correspondence with CSS.

<sup>48</sup> This information is presented to highlight the danger truck accidents pose to public road users. The presentation of this data does not identify what time of day truck drivers are most likely to have accidents. Further analysis of this data would require



information on the number of ultra-heavy duty vehicles travelling during different times of day. van Ouwerkerk (1987) concluded from other research that the risk of a truck accident is twice as great between the hours of 24h00 and 08h00 than it is between 08h00 and 24h00. (1987:24)

<sup>49</sup> Working for the National Transportation Safety Board in the United States.

<sup>50</sup> All data on hijackings obtained from SAPS unless otherwise indicated. This data refers to vehicles with a mass of 3 tons and more, and excludes the ex-TBVC states.

<sup>51</sup> Equivalent to driving 600 km every day for 1,666 days, or non-stop for 4.6 years.

<sup>52</sup> Bargaining Council exemption. Telephone interview with Gauteng BC secretary.

<sup>53</sup> This refers to all work associated with the vehicle other than actually driving.