

NUMSA GENDER WORKSHOP



FACILITATED BY:

**INTERNATIONAL LABOUR
RESOURCE AND
INFORMATION GROUP
(ILRIG)**



Week Plan: 20 July - 24 July 1998

NUMSA Kwa-Zulu Natal

Gender Workshop

**International Labour and Research Information Group
(ILRIG)**

Objectives:

1. To develop an understanding of the current state of the world economy and its impact on women for the participants.
2. To deepen the understanding of the South African economy in the context of globalisation.
3. To develop an understanding of labour legislation in South Africa in the context of globalisation.
4. To highlight the strengths and weaknesses of labour legislation for the labour movement and women workers in particular.
5. To show how legislation can be used to advance the gains won by the labour movement.
6. To help build capacity of women within the union movement to deal with challenges of globalisation.

Day one

Gender and Globalisation

International Labour Resource and Information Group (ILRIG)

Session 1

9:00– 9:30 Registration, workshop rules and housekeeping issues
Introductions
Programme for the week

Session 2

9:30 – 10:30 Group discussion:

- Changes in the lives of working people since the democratic elections

10:30 – 11:00 Report-backs from groups

11:00 – 11:15 TEA

Session 3

11:15 – 12:00 Continue with report-backs

12:00 - 13:00 Input and discussion:

- What is globalisation?

13:00 - 14:00 LUNCH

14:00 - 15:30 Group work:

- Readings of short articles and discuss questions

15:30 - 15:45 TEA

15:45 - 16:45: Report backs from group discussions

16: 45 - 17:00: Summary:

EVENING PROGRAMME

Video: "Something in Common"

Day two

Women and the South African economy

International Labour Resource and Information Group (ILRIG)

Session 1

9:00 – 10:30 Input and discussion

- Overview of the South African economy and the development of economic policy

Session 2

10:30 – 11:00 Group work:

- Readings and debate: GEAR, the role of the state and social benefits

11:00 - 11:15 TEA

11:15 - 12:00 Group work continues

12:00 - 13:00 Participants debate

- Role of the state

13:00 - 14:00 LUNCH

Session 3

14:00 - 15:30 Group work:

- Reorganising the workplace: What is going on?

15:30 - 15:45 TEA

15:45 - 16:30 Report-backs and discussion

 16:30 - 17:00 Summary Input and discussion

- Gender dimensions of workplace restructuring within the context of globalisation

Day Three

Collective Power - Union Power and women

International Labour Resource and Information Group (ILRIG)

Session 1

9:00 - 10:30 Input - Patricia Dlamini

- Challenges facing women workers in NUMSA

Discussion

10:30 - 11:15 TEA

11:15- 13:00 Input and Discussion: Labour Relations Act

13:00 - 14:00 LUNCH

14:00 - 15:30 Group work

- Case studies on the LRA

15:30 - 15:45 TEA

16:00 - 17:00 Report backs and discussion

- Case studies on the LRA

Day four

Gender-Globalisation and labour legislation

International Labour Resource and Information Group (ILRIG)

Objectives:

- i) To develop a basic understanding of the content of the BCEA
- ii) Through case studies, to examine the link between collective bargaining and the BCEA

Session 1

9:00 - 11:00 Input and Discussion

- Gender and the Basic Conditions of Employment Act

11:00 - 11:15 TEA

Session 2

11:00 - 13:00 Group activity

- Content and Implications of the BCEA

13:00 - 14:00 LUNCH

Session 3

14:00 - 15:30 Group activity

- NUMSA gender agreements, Collective Bargaining and the BCEA

15:30 - 15:45 TEA

15:45 - 16:45 Activity continued

16:45 - 17:00 Summary and Evaluation

Day Five

Way forward for women workers in NUMSA

International Labour Resource and Information Group (ILRIG)

Session 1:

9:00 – 11:00 Evaluation of the week

11:00 - 11:15 TEA

Session 2

11:00 – 12:30 Plenary Discussion: Way forward

12:30 Closure: national anthem

LUNCH AND DEPARTURES

DAY ONE:

GENDER AND GLOBALISATION

CHANGES IN OUR LIVES

Group discussion

In groups, discuss the questions that follow.

You must elect someone to record the discussion. You do not need to record your discussion on flipcharts. Instead you can give a verbal report-back to the plenary.

- 1a) What are the key issues facing you in your workplace?
- 1b) Which of these issues are specific to you as women workers?

- 2a) What are the key issues facing you in your community?
- 2b) Which of these issues are specific to you as women?

- 3) Which of these key issues have changed and which have stayed the same over the last five years?
Describe the changes.

ILRIG Definition:

“Globalisation is a process of restructuring the world economy. This restructuring process is a response to the crisis in the capitalist economic system which began in the early 1970s. The main purpose of this restructuring is to find new ways for business to maximise profits.”

Background to Crisis and Restructuring:

Postwar Economic Boom:

- United States emerges a super imperialist power
- Reconstruction of Europe after World War 11
- Welfare state and social democracy

Boom of 1945 – 70 ended in:

- Overproduction
- Crises of capitalism

Ideological shifts:

- Promotion of neoliberal policies

Neo-liberalism:

- promotes business profitability as the driving force behind economic development
- reduces state's redistributive role through measures like fiscal discipline and privatisation
- promotes free trade and removal of investment barriers
- promotes export-orientated growth
- promotes flexibility of labour

What other factors made all these changes possible?

- Advances in technology, especially in telecommunications and computers
- Fall of the Soviet Union and the Eastern bloc countries

Important features of globalisation:

- **Changes in production:**
 - workplace restructuring – lean production; introduction of new technology
 - internationalisation of some production
e.g. production of cars
 - role and size of Transnational Corporations

- **Changes in trade:**
 - increases in trade
 - trade between countries is unequal
 - trade agreements and institutions like WTO (World Trade Organisation)
 - new global trading patterns emerging with three main trading blocs – NAFTA, EU and APEC

- Changes in investment:
 - Export Processing Zones
 - Foreign Direct Investment
 - Speculative Investment
 - Role and dominance of finance capital

- Changes in technology
 - technology remains the property of the few
 - it is used to help the rich get richer

- Changes in culture
 - e.g. dominance of American culture around the globe – reflection of American economic dominance

Changes in national economic policies:

- Third World Debt
- Role played by IMF and World Bank
 - Structural Adjustment Programmes
 - Austerity Programmes
 - Shock Therapy

Is the power of the state eroded because of globalisation?

- Role and power of TNCs
- Changing nature of state – state now plays a different role?
- Role of state of advanced capitalist countries like America is different from role of state in developing countries
- Regional trade blocs like NAFTA, EU and APEC

What role do women play in the economy?

- Women's work is traditionally seen as:
 - caring
 - cooking
 - cleaning
 - looking after children
- Women are mainly responsible for reproductive work in society
 - unpaid work – but essential for the economy
 - often involves double shift
 - helps capitalists keep wages down because male workers don't have to pay someone to do their cooking, cleaning, laundry etc.
- Women end up in jobs doing the same kind of work that they do in the home:
 - domestic work
 - cleaning
 - nursing
 - teaching

This work is generally regarded as:

- unskilled or with a low skill content
- low status

Women in these jobs:

- generally earn low wages
- are the first to be retrenched

Impact of globalisation on women:

- 70% of the world's poor are women
- 66% of the world's illiterate are women
- **In the factory:**
 - Women's work is marginalised, casualised, outsourced, turned into part-time jobs, or pushed into homework
 - Women are often the first to be retrenched
 - Women are concentrated in jobs that are regarded as "women's jobs". These jobs are often regarded as unskilled.
 - Women often receive lower wages than men because of the type of work they do, or because they are concentrated in informal sector
 - Women often work longer hours than men

- Unemployment affects women more than men because of the kinds of jobs that women are concentrated in
- Feminisation of labour: increasing number of women workers, but this doesn't necessarily mean better wages or working conditions for women
- To survive, many women are forced into the informal sector

- **Social role played by women:**
 - women play the largest role in the reproduction of the labour force
 - women must fill the gap left when the state cuts social benefits
 - women are a major source of unpaid labour : they bear a large part of the cost of social reproduction: but their labour is not recognized.
 - cuts in subsidies affect women the most: the must pay more for basic necessities

GENDER AND GLOBALISATION

Group discussion

WORKSHEET ONE: FLEXIBILITY OF LABOUR

- In your group read the attached readings. We suggest that comrades take it in turns to read the articles out aloud.
- Discuss the questions that follow.
- You will need to elect someone to report-back.
- Use flipcharts to record your responses.

- 1) Would you say that your workplace is becoming more flexible or less flexible?
Explain your answer.

- 2) Do you know of any examples of homework in South Africa? If you do, explain what type of jobs

- 3) How does a flexible workforce benefit capitalism?

- 4) What are the effects on women workers when the bosses change the workplace to make it “more flexible”.

INCREASING LABOUR FLEXIBILITY:

Capitalists want the way that they can employ and use workers to be as flexible as possible. This is an important way for them to try and increase their profits. It means that bosses can respond quickly to changes in demand in either the amount of goods being sold, or the types of goods being sold through the way they organise work. The more flexible they are, the more they can compete against other companies. And the more competitive they can be, the more profit they can make. So for capitalists, a flexible labour force is part of being “internationally competitive”.

A flexible workforce is a very important part of globalisation because it is such an important way for capitalists to maximise their profits.

WHAT DO WE MEAN BY FLEXIBLE LABOUR?

When we talk about flexible labour we are talking about one of more of the following:

i) “non standard” / atypical work:

Labour can be flexible with regard to the contract of employment. This means that instead of employing workers on a permanent basis, workers are employed as part-time workers, as casual workers, as temporary workers, or as homeworkers. Increasingly, factories are employing a small core of permanent workers, who are generally men, and a large number of temporary, casual, part-time, contract, seasonal, and homework workers. These workers are employed according to the demand at particular times. Women generally form a large part of this second group of workers. Why is this the case?

When there are retrenchments, women are often the first to lose their position as permanent workers. Women are often in jobs which are regarded as unskilled or low-skilled. These are jobs like cleaning, sewing clothes and nursing. These jobs have a low status. Often, in a factory they are “non-core” jobs. These are jobs that are secondary to the main purpose of the company. For instance, if the main purpose of the company is to produce motor cars, then a non-core job might be cleaning the factory, or driving the delivery trucks. So if management is looking to retrench workers, these are often the workers that are retrenched first. Once they have been retrenched, women workers might be re-employed, but then it is usually as temporary or casual workers. Though this is not often the case in South Africa.

What are the conditions under which these workers work?

- They have no job security. They are employed for short periods, when there is demand for a particular product. Management is not obliged to employ them after they have finished that particular job. Often these jobs have very little skill content so it is easy to keep bringing in new workers, rather than employing the same workers who have some skills.
- As non-core workers they generally earn low wages.

ii) Flexible conditions of work:

A flexible labour force can also mean that conditions of work are flexible:

- Time flexibility (staggered hours, compressed work week)
- Flexibility of work workers do (segmenting workforce within the firm)
- Numerical flexibility (casual labour/contracting out)
- Pay flexibility (differentiation in wages)

Capitalists would like workers to work long hours, so that they can get maximum production out of one shift. They would like workers to work at the times that suit the production process and the demand for the good. This can mean that workers end up working irregular hours. Capitalists would also like workers to have fewer days sick leave per year, and fewer days for maternity leave. This helps capitalist because it cuts their costs, and it also means that there are more days when workers are working and producing.

Flexible working hours are particularly bad for women because they generally are mainly responsible for looking after the home and children. So they must work long hours in the factory, and then come home to another long shift of work looking after their children, cooking, cleaning and caring for the home.

Workers who are employed on a temporary basis, as part-time or as casual workers are particularly vulnerable to being forced into working long hours, with low wages and few benefits.

GENDER AND GLOBALISATION

Group discussion

WORKSHEET TWO: EXPORT PROCESSING ZONES

- In your group read the attached readings. We suggest that comrades take it in turns to read the articles out aloud.
- Discuss the questions that follow.
- You will need to elect someone to report-back.
- Use flipcharts to record your responses.

- 1) How do Export Processing Zones benefit capitalists and governments?

- 2) Compare your working conditions with those of workers working in EPZs.
What are the effects of working in EPZs for women in particular?

- 3) Why do you think that more women than men are often employed in EPZs?

EXPORT PROCESSING ZONES

Export processing zones (EPZs) are usually industrial areas in a country that have been closed off, and which produce goods mainly for export. Governments are responsible for setting them up to try and encourage investors, particularly foreign investors. They hope to encourage these investors by making it very cheap to produce goods in these zones – much cheaper than anywhere else in the country. In this way, the goods are “internationally competitive” and can be sold in other countries.

During the 1970s and 1980s, many companies from the industrialised countries, like America and Britain, took advantage of what the EPZs in developing countries had to offer and set up factories in these EPZs. So EPZs are one of the key programmes that governments and capitalists support as part of the drive for capitalists to maximise their profits.

What are the benefits and privileges offered to investors producing goods in EPZs?

- Companies pay reduced taxes or even no taxes at all.
- The government supplies storage facilities, roads, electricity and water.
- The government subsidises electricity and water so that they are cheaper than anywhere else in the country.
- Sometimes the government bans trade unions and trade union activities.
- Often the labour laws that apply in the EPZs are not as strong as the laws that apply in other parts of the country.
- The government helps companies with the costs of training.
- The government normally makes sure that imports and exports from the EPZs are duty and tax-free.
- Investors are allowed to take all their profits out of the country.

Countries that allow EPZs are desperately trying to attract foreign investment and compete against each other. Each country tries to offer more benefits than the other and this means sacrificing workers rights and labour standards.

Because of this competition for investors, it is very difficult for trade unions to defend workers rights. Investors threaten to close their factories and move elsewhere if they are not happy with union demands.

What are the conditions of work like in the EPZs?

- Wages:

Wages are as bad as, or even worse, than wages in other local companies. In fact, EPZ workers often earn below the minimum wage. If they manage to reach the minimum level, it is only because of many hours of overtime worked.

- Working benefits:

Very few EPZs offer any kind of social welfare for workers. Unemployment benefits, pension funds or other social security funds which workers outside the EPZs might get are not normally offered in EPZs because the workers are on short-term contracts.

- Working hours:

In a 1996 report, the International Confederation of Free Trade Unions (ICFTU) cites the story of Lesley Rodriguez who works for a Korean EPZ company based in Honduras in South America.

“We only have half an hour break for lunch, and sometimes we work 80 hours per week. The employers ... set productivity at such a high level they were impossible to reach. If we manage to reach them, even so, they increase the quota the next day so that we are always under the level and always under pressure.

“Many workers are forced to take work home to finish their quota. Sometimes they work until one in the morning and they are not paid anything for those extra hours. To go to work they must get up at 5.30am. I earn about 21.50 dollars per week ... I was told that a Liz Claibourne sweater sells in the United States for about 90 dollars. I earn 38 cents an hour for making one.”

EPZ workers in Taiwan have to put in very long hours of work. Normal weekly working hours are between 44 and 54 but, because of overtime, EPZ workers often spend more than 60 hours per week in the factor. Management forces workers to work overtime and threatens them with dismissal if they do not agree.

- Health and safety:

A common feature of EPZs is the repetitive work with intense work pace, long hours of work and unrealistic production quotas. Besides the work pressure and the long hours of work, EPZ workers also face shift work and dangerous working and living conditions. Even in Mauritius, which is often called the EPZ success story, workers complain about the sanitary facilities, poor lighting which damages the eyesight, and crowded workplaces. Many workers suffer from indigestion, heartburn, stomach pains, neck ache, body ache and sleeping problems.

Workers are exposed to dust and poor ventilation in the clothing factories and high noise level in the spinning factories. Back problems and a constant feeling of tiredness are common amongst EPZ workers.

EPZs and women workers:

Studies have shown that about 85% of all EPZ workers are between the ages of 18 to 25 years old and are women. They are engaged in unskilled jobs in labour intensive industries like textiles and electronics.

It has been reported that EPZ companies employ young unmarried women because they see young inexperienced women as workers who are not going to give them any trouble. Young, rural women who come fresh from school are preferred because they are more likely to take orders, work hard and accept lower pay than men. They are also seen as being prepared to do monotonous and repetitive work and are less likely to join trade unions. Single women are preferred because employers believe that they have less household responsibilities and can spend all their energy at work in the factory.

Women workers in EPZs earn low wages, have no job security, and seldom learn new skills. They are regarded as unskilled workers. The only training EPZ workers get is on-the-job training, which is short and covers only assembly type activities. Many companies in EPZs import technicians and managers from industrialised countries. These skills seldom remain in the country for a long time. Even in countries where a large number of EPZ companies were locally owned, only a few local people were trained for key positions.

While women perform dead-end manual jobs, almost all supervisor and management positions go to men. This reinforces women's oppression in the workplace and intensifies traditional gender roles. The low wages earned by EPZ women workers also makes it impossible for them to become economically independent.

In some EPZs, production is slowly changing from being labour intensive to being capital intensive. This means that more and more machinery is being used in production. But this has not meant that working conditions and wages are getting better for the women workers. Instead, what it means is that women workers are losing their jobs, and being replaced by skilled male workers.

This article draws on three documents:

1. A booklet called "EPZs: Solving the problems of Southern Africa?" produced by ILRIG October 1996
2. An article called "EPZs: job creation or super-exploitation?" from *The Shopsteward* – December 1996/January 1997. A full version of this article can be found in the section of extra readings.
3. An article called "Globalisation: women pay the price" by Melanie Sampson in *South African Labour Bulletin* Vol. 21 No 1 February 1997

GENDER AND GLOBALISATION

Group discussion

WORKSHEET THREE: INFORMAL SECTOR EMPLOYMENT

- In your group read the attached readings. We suggest that comrades take it in turns to read the articles out aloud.
- Discuss the questions that follow.
- You will need to elect someone to report-back.
- Use flipcharts to record your responses.

- 1) What problems do women face working in the informal sector?
- 2) Do you think working in the informal sector has any advantages for women? Explain your answer.
- 3) Do you think that a large informal sector has any benefits for capitalists and governments? Explain your answer.
- 4) Do you think that the government should encourage the growth of the informal sector as a way of dealing with unemployment and poverty?

INFORMAL SECTOR EMPLOYMENT

Many workers who loose their jobs, or have never been employed, are forced to survive through informal economic activities. These activities include selling fruit at the side of the road, making clothes in their homes and selling them in the market, cutting hair, and mending shoes.

In many countries, the informal sector is growing. "In Africa, the informal sector employs an estimated 61 per cent of the urban labour force, and is expected to generate around 93 per cent of new jobs in the urban areas in the 1990s." With increasing unemployment, it is often the only source of jobs and money for many people. As companies restructure the workplace and look for ways to cut their costs, retrenchments and job freezes increase. It is often women who are the most affected by retrenchments as they are generally found in low-skilled, low status and low paying jobs – the first jobs to be retrenched. So it is often women who end up being pushed into the informal sector in order to survive.

Men and women working in the informal sector might be working for themselves (self-employed), or for members of their families. For many households, the money earned through informal economic activities is the largest part of the family income. In many cases workers who have jobs in the formal economy add to their income through activities in the informal sector. Often, without the extra money that they make in this way their families would not be able to survive.

Many of those involved in the informal market are women. As we have already said, one reason for this is that women are often the first to be retrenched because of the kinds of jobs that they do. Another reason is that it is often more difficult for women to find jobs in the formal sector that it is for men. So to survive, they are pushed into finding work in the informal sector. Once they are active in this sector it is often very difficult for women to move out and into formal sector employment.

Some people argue that "for some women, the flexibility of working arrangements and diversity of opportunities are the positive side of informal activity."

One woman interviewed in Tanzania said: "You can't wait for your husband to bring home money". Another women said "Women are trying their best. They are affected most by hardships and want to see the well-being of their children. It is their responsibility to the family."

Through the informal sector these women contribute towards the economy of a country. But this contribution is not recognized or acknowledged because the economic activities in the informal sector are not generally counted as part of the economic activity of the country as a whole. In this way, a lot of the work that women are involved in is ignored, their contribution to the economy is downgraded, and the jobs that they do are given a low status.

Many of the jobs that women do in the informal sector are the same types of jobs that they do in the home. For example it might involve preparing food which they then sell. Or it might involve making clothes to sell. As well as earning money in this way, women must often also look after their children. This means that the children are around when the woman is making things to sell, or when she is at the market selling them. So the children get drawn into helping her. This affects their education because it often means that they don't go to school very often, if at all.

It is difficult for women to improve the jobs that they do, or to make their businesses bigger. Often they only earn enough money to survive from day to day, but not enough to save or invest in more equipment or machinery. It is also very difficult for women to get credit from banks to expand what they are doing. Banks generally do not regard women as credit-worthy and won't give a loan unless the woman's husband or father helps.

Life for women who are active in the informal sector of the economy is very hard. They do not earn a regular wage – the money they get in depends on how much they are able to make or sell. Things like bad weather can affect them a lot – if it is raining they might not be able to go out and sell their produce on that day. They are very vulnerable to being robbed or harassed by the police. They have no job security and no benefits like sick benefits, maternity benefits or pensions. If a woman is sick it means that she just can't go out and sell on that day and she gets no money. It is almost impossible for women in the informal sector to enforce their rights as workers.

A day's trading:

“Georgina gets up at 4.30 am, dresses, then wakes her eldest daughter to say she is leaving. She goes first to a private moneylender to borrow the equivalent of \$4, then to the bus station where a range of agricultural produce is being sold by people with smallholdings in the country areas. She buys enough vegetables to fill two baskets then walks to a more central part of the town. She sits by the side of the road and offers the vegetables for sale. After a couple of hours a policeman comes along, kicks over one of the baskets, and tells her to move on. She moves to another spot; and in the course of the day manages to sell most of the vegetables. She goes back to the moneylender and pays him \$5. She goes home and cooks the rest of the vegetables in a stew for her family.”

From: “Women and Work” Women and World Development Series. Prepared by Susan Bullock 1994

GENDER AND GLOBALISATION

Group discussion

WORKSHEET FOUR: THE STATE AND SOCIAL BENEFITS

- In your group read the attached readings. We suggest that comrades take turns to read the articles out aloud.
 - Discuss the questions that follow.
 - You will need to elect someone to report-back.
 - Use flipcharts to record your responses.
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- 1) Why do the IMF and the World Bank force governments to cut back on social services when they impose structural adjustment programmes on them?

 - 2) How does it affect women when the state cuts back on, or simply does not provide, social services and benefits? (Examples of social benefits are health care, education, subsidies on food.)

 - 3) What do you think the government should spend money on so that the lives of women are improved?

THE STATE AND SOCIAL BENEFITS

In the past, workers in many countries won the right to social welfare benefits to people. These benefits included things like public health care and free education. This is now changing in many countries. Many governments today provide fewer services and benefits to people. Instead they hand this job over the private sector. This means that people have to start paying before they get a service. If families can't afford to pay private companies for these services, then someone in the family has to fill the gap. Generally it is women who have to:

- care for the sick when it is too expensive to take them to hospital
- collect firewood because electricity is too expensive
- walk miles to collect water from the river because piped water is too expensive.

Many third-world governments have been forced to limit the role they play in the economy through programmes like structural adjustment programmes (SAPs) that the International Monetary Fund (IMF) imposes on them as one of the conditions for lending them money.

Structural adjustment programmes force governments to:

- cut back on public expenditure
- raise the cost of public services
- abolish subsidies on things like food
- hold back , or reduce real wages

“As traditional guarantors of family survival, it is women who are most burdened by making ends meet, who eat last, who are the first to be squeezed out of schooling and jobs, and who pick up the emotional and physical price of coping.”

What ends up happening is that structural adjustment programmes mean that women must provide those services previously provided by the government. And it means that women must bear the costs of rising prices.

As part of the process of cutting back on the role that they play in the economy of a country, and the amount of money that they spend, governments are also cutting back on food subsidies, grants to cover the cost of social services and so on. This means that the price of food goes up – and women must generally bear this cost since they are ones who buy the food for their families.

When there is less food in the house because there is not enough money to buy more, it is often women and girls who end up going hungry since the needs of men are generally prioritised. This is a particular problem for pregnant woman, or woman who are breast-feeding. It not only affects their health, but also the health of the child. Removing subsidies on transport, energy and fuel have similar effects.

The story of Mama Florence:

“Florence lives in a poor quarter of Lusaka, Zambia’s capital. Prior to the debt crisis, this young woman might have been regarded as one of the better-off in Zambia. But for five years, prices of basic foodstuffs have been rising rapidly and it is more and more difficult to survive on the salary of her husband, a junior clerk in a government office. Often the family have to survive on just one meal a day and they can only afford the luxury of meat on pay day.

Florence’s children are becoming more and more sickly: the youngest has developed an acute respiratory infection. The doctor prescribed a course of medicine but the clinic had run out of the drug because the government could only afford enough foreign exchange to import one-seventh of the country’s requirements of essential drugs. Florence managed to buy the medicine at a high black-market price – and the family’s food allowance for the week went at a stroke. She had to borrow.

A week later, her husband came home with news that, due to the IMF austerity programme, introduced to rescue the economy, the price of maize-meal, the staple foods, was going to double. Florence says, “suddenly it occurred to me that we just wouldn’t survive – we would all go hungry.!”

The price rise prompted thousands of the urban poor to take to the streets and riot. And the food subsidy was restored after a few days. Even so, the incident shows just how close to breaking point successive price rises can push a family which was formerly reasonable well off.”

From The Oxfam Gender Training Manual 1994

DAY TWO:

**WOMEN AND THE SOUTH
AFRICAN ECONOMY**

National Party government in power: 1948 – 1994

- State played a large role to further interests of particular groups:
 - Afrikaner capital
 - monopoly capital
 - white working class
- State:
 - set up parastatals and developed infrastructure to assist emerging local capital
 - major employer
 - provided welfare benefits like education, health care (but mainly for whites)
- Economic boom in 1960s:
 - but for capitalists only
 - for black working class: poverty

The economic boom relied on:

- black cheap labour
- apartheid state repression

Position of women:

- stay in rural areas while men go to towns for work (migrant labour)
- domestic work
- informal sector
- formal sector employment in sectors like clothing, textile, cleaning

Crisis in 1970s:

- external factors: world-wide economic crisis
- internal factors: overproduction
- State begins to implement policies aimed at restructuring economy
- AIM: to allow capitalists to maximise profits again
- Many of these policies are neo-liberal policies being adopted in other countries (e.g. privatisation and deregulation)
- Also use mixture of repression and “carrot and stick approach” to try and contain political resistance
- 1980s: period of resistance and struggle

- By 1990s: apartheid state has been weakened
- Results in negotiated settlement
- Debate: What will economic policy of new government be?
- Different groups come with different solutions
- Democratic movement initiates Reconstruction and Development Programme (RDP)
- RDP became the election platform of the ANC
- What does the RDP say?
 - emphasis on meeting basic needs
 - state to play a large role in kickstarting economy
 - emphasis on job creation
 - state spending

- GEAR: released June 1996
- GEAR: a shift from the RDP and a major contradiction
- COSATU:

“GEAR is based on unacceptable neo-liberal policies and principles. COSATU rejects GEAR as an unsuitable macro-economic strategy for South Africa’s socio-economic transformation, and calls on the ANC government to adopt a developmental macro-economic framework, based on the principles of the RDP.” (resolution from COSATU Sixth Congress September 1997)

GEAR:

- reduces role of state through trade liberalisation; privatisation; deregulation
- private sector must be allowed to make maximum profit
- state must create stable environment for private sector
- tight monetary policy: emphasis on reducing inflation rather than unemployment
- export-orientated growth: manufacturing sector to be “internationally competitive”
- no exchange controls
- cut government spending
- labour market flexibility
- restructure public sector
- privatisation

Women in the South African economy:

- Women's share of employment has increased, but fewer women have jobs than men
 - In 1991, women made up 36,3% of the formal labour force
- Women are concentrated in the service sector, domestic work and informal sector with low wages and poor working conditions
 - about 20% of women workers are domestic workers
 - 72% of informal sector jobs are held by women
- A large number of women are employed in casual work, part-time work, sub-contracted work, temporary work, seasonal work and home-based work.
- The contribution that women make to the economy is often ignored because women's work is often not counted
- About 55% of unemployed in South Africa are women
- Women's share of income is much lower than men's.

(Information drawn from the September Commission report)

Selected indicators of inequality:

- 20% of African women aged 20 or above have received no formal education, compared to 14% of African men, and 0% of white women and men
- 47% of economically active African women were unemployed in October 1995, compared to 29% of African men, 38% of white women and 23% of white men
- 52% of economically active women in the Northern Province, 48% in Mpumalanga and 47% in Eastern Cape were unemployed, compared to 27% in Gauteng and 25% in Western Cape
- 50% of employed African women were working in “elementary”, or “unskilled” occupations such as cleaning, garbage collecting and farm work, compared to 34% of African men
- 75% of African workers in the informal sector are women, 82% of these women are in “elementary occupations such as street vending, domestic work and scavenging. Conversely, 37% of the men are in higher status – and better paid – artisan and craft occupations, and 20% manage or run micro-businesses
- In non-urban areas, 55% of African households use wood for cooking purposes. More than half of those who collect wood must travel more than a kilometre to do so. Usually it will be women who perform this task. 60% of households cannot obtain as much wood as they require.

(information from “The second Women's budget” ed. Debbie Budlender)

Gender and GEAR:

- No explicit analysis of the particular problems facing women, or the effects on women of the policies proposed
- An emphasis on trade liberalisation, export-orientated growth and becoming internationally competitive, has caused many women to lose their jobs. And more are likely to follow.
- Regulated flexibility will impact heavily on women
- Privatisation of service delivery will affect women the most
- Cuts in government subsidies and grants will affect women the most
- The public sector employs many women. With cuts in public sector jobs, women are likely to be the worst hit
- Women generally bear the heaviest burden of taxes like VAT

THE ROLE OF THE STATE

Group activity

1) In your groups read the attached readings on what GEAR says about the role of the state, and the provision of social services.

Groups one and two will read the sections on:

- background to the role of the state
- reducing the budget deficit and government dissaving
- social and sectoral policies
- issues of debate

Groups three and four will read the sections on:

- background to the role of the state
- public investment and asset restructuring
- issues of debate

Groups one and three will play the role of government. You will prepare arguments in support of GEAR and what it says about the role of the state, social and sectoral policies or public investment and asset restructuring. **You must also say what the policies you are supporting will mean for working class women in South Africa.**

Groups two and four will play the role of labour. You will prepare arguments against the position outlined in GEAR. **You must also say what the policies you are supporting will mean for working class women in South Africa.**

2) In plenary, the groups representing government will debate their position against the groups representing labour.

The Role of the State

The Key Areas of the GEAR are concerned mainly with the **role of the state in the economy**. The writers of the GEAR generally promote the idea that the state's primary objective should be to ensure economic growth. According to the GEAR, the best way to ensure economic growth is to create an environment in which business can make greater profits. The GEAR argues that once business makes greater profits, there will be more jobs and more money for services and security.

The GEAR says the government should not try to control the economy via methods like owning industry, imposing heavy income tax, or taking over land. According to the GEAR government should reduce its control over the economy to allow a bigger and more important role for business.

The GEAR's approach to the role of the state has a major influence on how GEAR approaches the key areas of economic policy. We will now examine these key areas.

❶ budget deficit: this is the amount by which government's expenditure exceeds their income each year. Most governments spend more than they earn but budget deficits vary for different countries.

❷ inflation: The rate at which prices for goods and services increase. Inflation is usually measured by what is called the Consumer Price Index (C.P.I.) In 1996 the rate of inflation was roughly 7%.

❸ tight fiscal policy: This is an approach to fiscal policy whereby a main goal of the government is to reduce their expenditure; this is sometimes called "fiscal discipline"

❹ debt servicing: government repayments of loans. Debt servicing includes interest payments.

Reducing the Budget Deficit and Government Dissaving

GEAR's aim is that the amount by which government's expenditure exceeds its income, i.e. the budget deficit❶, should not be more than 3% of Gross Domestic Product (GDP) by 2000. In 1996 the budget deficit was 4,5% of GDP. The GEAR also wants to be sure that overall expenditure does not increase by more than the rate of inflation .❷ In taking this approach, GEAR is committed to a tight fiscal policy ❸ or fiscal discipline.

The GEAR has two objectives in reducing the budget deficit. The first is to try to reduce money spent on debt servicing❹. Due to past and present borrowing the government owes billions of Rands to banks and other institutions, both locally and overseas. Reducing the budget deficit would mean that the government would be borrowing less money. In the long term by borrowing less money the government would reduce the amount allocated to debt-servicing each year.

The second reason for reducing the budget deficit is to reduce the effect of "crowding out". "Crowding out" means that government competes with the private sector for loans from banks. According to the thinking of the GEAR, when government borrows a lot of money, the interest rates go up. This is because both government and the private sector are competing for loans. The banks then respond to the high demand for loans by raising the interest. The GEAR wants "crowding out" to be reduced so that loans will be cheaper for the private sector. The thinking is that if loans are cheaper, the private sector will borrow more money, make more investments, and thereby employ more workers.

How Will GEAR Reduce the Deficit?

The major way GEAR proposes to reduce the deficit is to cut government expenditure. Government expenditure will be cut in a number of areas:

- i) the number of workers in the public service will be reduced. Many workers will be offered a severance package. This process of retrenchment is sometimes called "**right-sizing**".
- ii) public service wages will not increase by more than the inflation rate plus 2%
- iii) expenditure on social services like education, health, and welfare will not be increased. Instead existing money will be redistributed so as to favour the poor.

iv) some government expenditure will be cut back or government will stop providing certain services altogether.

The GEAR provides no specific examples of how it will reduce expenditure. However, the government has already begun to reduce or redistribute some expenditure on social services.

An example of how government might change expenditure on social services is the 1997 proposals on Child Maintenance Grants. Under the previous government, grants of more than R400 per child per month were given mainly to whites. The new government proposed spreading that money so as to include black and white children. The result was that the amount provided per child per month came to only R75. This was in keeping with the idea of not increasing expenditure but redistributing in favour of the poor.

❶ redistribute: to transfer wealth or income from one sector of the population to another. Usually policies of redistribution are intended to assist the poor by taking some money or resources from the wealthy

4. Social and Sectoral Policies

Key Linkages

The GEAR notes that social and sectoral policies have been addressed in the RDP and various policy documents. Therefore, the GEAR only tries to highlight “a few key linkages between growth, redistribution, and new policy directions”.

Education

The GEAR notes that progress in education is important for economic performance and redistribution. The GEAR broadly supports reforms in education including new curriculum, the setting up of the National Qualifications Framework, and addressing the culture of learning in schools. However, the GEAR says that expenditure on education is already quite high. Therefore, the GEAR argues that expenditure must be contained by reducing subsidies ^① to the “more expensive parts of the system” and by encouraging the private sector to become involved in higher education.

^① *subsidy: In the social sectors, a subsidy is a government payment to a relevant department to provide a certain service to the public either for free or at a low price. For example, government subsidises the early years of primary education in order that they can be free to parents.*

Health and Welfare Services

The GEAR praises the moves toward universal and free access to primary health care. It also highlights the need to move away from spending on big hospitals in city centres to providing more clinics in rural areas and townships.

In Welfare, the GEAR supports partnerships between the state and voluntary organisations. The GEAR promotes building of welfare services in “under-serviced areas” and reducing expenditure on large institutions. The GEAR says that social grants play a “vital role in poverty alleviation” but that affordable alternatives must be investigated.

Housing, Land Reform and Infrastructure

The GEAR makes note of important developments in these sectors. In housing the GEAR welcomes the recent increase in housing delivery and says that many jobs have been created. Praise is also given to the improvement of water and sanitation to

5. Public Investment and Asset Restructuring

Main Objectives

① state asset restructuring: changing the ownership or method of operation of government owned companies or property. Some examples of asset restructuring are: privatisation - the selling of state companies to the private sector (e.g. what has been done with radio stations), forming partnerships with companies or individuals (done by either selling part of asset or selling shares to the public).

The main objectives of public investment and “asset restructuring” are to increase the productivity in the economy and achieve higher growth rates.

Public Investment in Infrastructure

The GEAR mentions more than a dozen key areas of infrastructure development.

These include: electricity, water, sanitation, transport, telecommunications, education, health, housing and rural development. Special mention is made of providing basic household infrastructure (e.g. electricity, water, sanitation) as a way of improving the life of “the poor.”

Financing Infrastructure

The GEAR makes note of four sources of financing infrastructure: government budget, grants or loans from overseas institutions, development bank financing, and loans from commercial banks. The GEAR says that the government has little money. Therefore, the GEAR promotes public-private sector partnerships and cost recovery pricing .

① cost recovery pricing: charging fees for services so that some major proportion of the costs are covered via the fees. Cost recovery differs from complete subsidy (free services) or token fees (where fees are charged to commit the person to a programme rather than to cover the costs)

Restructuring of State Assets

The GEAR document also does not use the term “**privatisation**”. Rather, the GEAR uses terms like “**asset restructuring**” to include the selling of government owned companies and property.

The GEAR notes that detailed planning is taking place with regard to state assets. Special note is made of the plan to find partners to buy major parts of Telkom as well as the programme to sell off six major regional radio stations.

The GEAR notes that restructuring can involve either the total sale of the enterprise or the partial sale. However, the GEAR notes that further investigation is being done concerning the restructuring of the “remaining state assets.”

Apart from these types of restructuring, the GEAR also proposes tighter monitoring of the performance of state-owned enterprises. The GEAR also promotes the development of policies in state enterprises whereby prices for services fully recover operating costs.

ISSUES OF DEBATE:

The Role of the State

Issues of Debate:

Issue A): An Increased or Decreased Role for the State:

The GEAR argues that the state should play less of a role in the economy and actively promote a bigger role for the private sector.



Critics Response

Nearly all critics have argued that the state should play a leading role in the economy. They have argued that this leading role should be to carry out some form of redistribution to redress the inequities of apartheid. By decreasing the role of the state, critics have argued that the GEAR is placing too much faith in the private sector to create and share wealth. Many of these critics argue that the private sector benefited from apartheid in the past and therefore cannot be easily trusted to redress the inequities of apartheid.

Critics of the GEAR's position can be divided into two groups. One group argues that a correct economic strategy should be directed at creating a **capitalist economy** that is more equitable. Another group of critics argues that the role of the state should be to lead a transformation to a **socialist economic system**.

Fiscal Policy

"What really impresses me is the commitment to tighter fiscal policy..."

David Mohr, Chief Economist, Old Mutual

"Substantially increased government spending would drive up interest rates and crowd out private sector investment. This would reduce productivity and have a negative effect on exports."

Ockie Stuart, Director, Stellenbosch Bureau for Economic Research

"the strategy's fiscal policy, in accepting the existing structures of production and ownership, privileges those in possession of economic resources...meaning: tax breaks for the capitalists and "tightening of the belt" for workers and poor"

Dale T. McKinley, SACP

Issues of Debate:

Issue A) Government Spending:

The GEAR argues that government spending must be cut.



Critics' Response

Generally the critics argue that a country with as many inequalities from the past as South Africa will not be able to deliver by cutting back on government expenditure. The argument is that government must increase spending in order to increase delivery.

Issue B) The National Debt:

The GEAR argues that paying the national debt must be a priority in order to secure South Africa's place in international trade.



Critics' Response:

Many critics argue that South Africa's debt is not high by international standards. They argue that there is no need to reduce spending because of the debt. Second, some critics argue that most of South Africa's debt was incurred by the apartheid government. These critics argue that the government should negotiate a cancellation of the current apartheid debt of R311 000 000 000.

Social and Sectoral Policy

Issues of Debate:

Issue A) Overall Government Spending:

The GEAR argues that present budget allocations should be redistributed in favour of the poor but increases in overall spending should be avoided.



Critics' Response:

Critics of the GEAR have argued that there must be an overall increase in spending for services as well as redistribution. They have targeted projects like housing construction, construction of clinics, expansion and improvement of education as key areas for additional spending. Critics have also generally emphasized that the most disadvantaged people and areas must be given priority, notably black women and people in the rural areas.

Public Investment and Asset Restructuring

Issue A) Privatisation:

The GEAR argues that government assets must be carefully examined to determine if they should remain government-owned, be partially sold or sold entirely to the private sector.



Critics' response:

Critics have argued against selling off of state assets, particularly if they provide key services or are currently profitable. Criticism of privatisation has focused on two points: **i)** that privatised services will only be available to those with relatively high incomes **ii)** that “**privatisation**” is likely to lead to loss of jobs. Some critics have argued for a careful examination of all state assets by a democratic structure before any privatisation is considered. Others have argued that further nationalisation, not privatisation should be the policy.

WORKPLACE RESTRUCTURING

Group activity

- In your groups, you will need to fill in the attached questionnaire.

- A questionnaire must be filled in for each workplace that is represented in the group. In other words, if there are five participants in the group, and two come from the same workplace, and the other three come from different workplaces, then only four questionnaires need to be filled in.

- Each group must fill in section one and section six of the questionnaire, plus one other section.

- Who is doing the outsourced work?

SECTION FIVE: SHOPFLOOR RELATIONS

- Does your workplace have a bonus scheme? If yes, how does the scheme work?
- Do the workers benefit from the scheme?
- Have any of the following changes taken place at your workplace?
 - Holding of meetings between management and workers to discuss production targets or problems?
 - Forming groups to discuss quality/productivity (e.g. Green areas, quality circles)
 - Introduction of “joint forums” to discuss company values and objectives
 - New “informal” procedures to deal with discipline and absenteeism
 - Discussion with shopstewards about the introduction of workplace forums
 - Any other changes?

SECTION SIX: WHY THE CHANGES?

- Who called for the restructuring in your workplace?
- What reason was given for the changes?
- How was restructuring introduced? How was it carried out?
- If management called for the changes, what role did the workers play? What role did the union play?
- Are relations between workers and management BETTER or WORSE since restructuring?
- What consequences have the changes had for workers?
- What consequences have the changes had for women workers?

DAY THREE:

**COLLECTIVE POWER –
UNION POWER AND WOMEN**

The broad aims behind the LRA:

- **Economic Development**
- **Social Justice**
- **Labour Peace**
- **Democratisation of the Workplace**

Immediate aims of the LRA

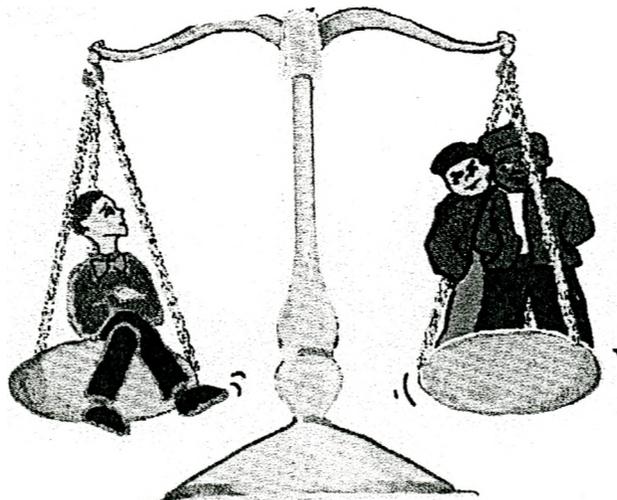
- **Framework for collective bargaining**
- **Ways to solve disputes**
- **Worker involvement in decision making**

Economic development and social justice:

“[The LRA] seeks to balance the demands of international competitiveness and the protection of the fundamental rights of workers.”

“It recognises that South Africa’s return to the international economy demands that enterprises compete with countries whose labour standards and social costs of production vary considerably.”

“For this reason, the draft Bill seeks to avoid the imposition of rigidities in the labour market.”



Labour Peace:

The memorandum talks about:

“Unacceptably high incidence of strikes”

and

“...unnecessary and unprocedural strikes”

The memo also says:

“...the draft Bill is designed...to provide a framework...within which productivity can be increased, wages and living conditions can be improved, labour disputes can be avoided or resolved quickly and a climate of stability attractive to foreign investment can be fostered.”



Workers who strike unprocedurally can be dismissed.

Democratisation of the Workplace:

“The draft Bill provides for the establishment of workplace forums to deal with issues not suited to the adversarial bargaining process and to facilitate the successful adaptation to the new economic order.”

What is in the LRA

Chapter 1 Aims, scope

Chapter 2 Freedom of Association

3 Collective Bargaining

4 Industrial Action

5 Workplace Forums

6 Registration

7 Dispute Resolution

8 Unfair Dismissal

9 General Provisions

Schedules 1 to 8

Who is covered by the LRA (Scope)

All workers, including

- Domestic workers
- Farmworkers
- Police

Not covered:

- SANDF
- Spies



Freedom of Association

- **Start, join and participate in unions**
- **Write own constitutions**
- **Affiliate to federations**
- **Affiliate to international federations**
- **Affiliate to political parties**

Registration

Reason: Democratic functioning

- **Voluntary**
- **Simple procedure**
- **Racist and sexist unions cannot register**

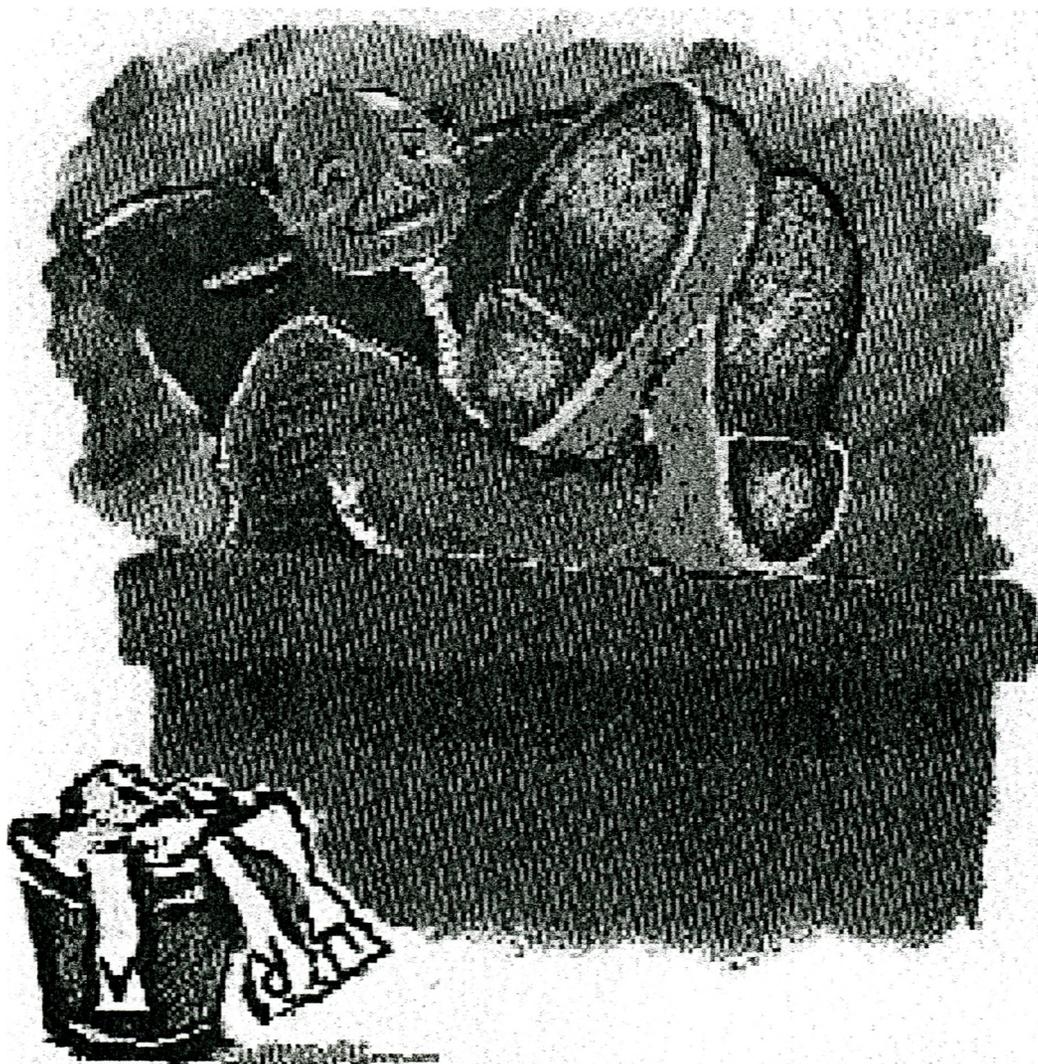
Advantages to registering

- **Organisational rights**
- **Join bargaining council**
- **Can make collective agreements**
- **Can set up workplace forums**

Collective Bargaining

- No duty to bargain
- Plant and sector level

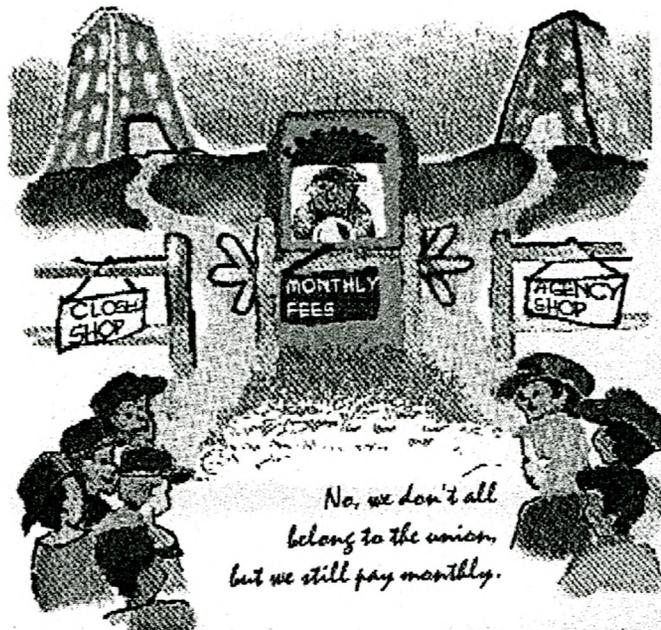
Advisory arbitration before striking





Organisational Rights

- **Access to the workplace**
- **Meetings at the workplace**
- **Stop order**
- **Recognition of shopstewards**
- **Time off for stewards and office-bearers**
- **Disclosure of information**
RI 000 fine
- **Majority membership**
All others “sufficiently representative”



Closed Shop Agreements

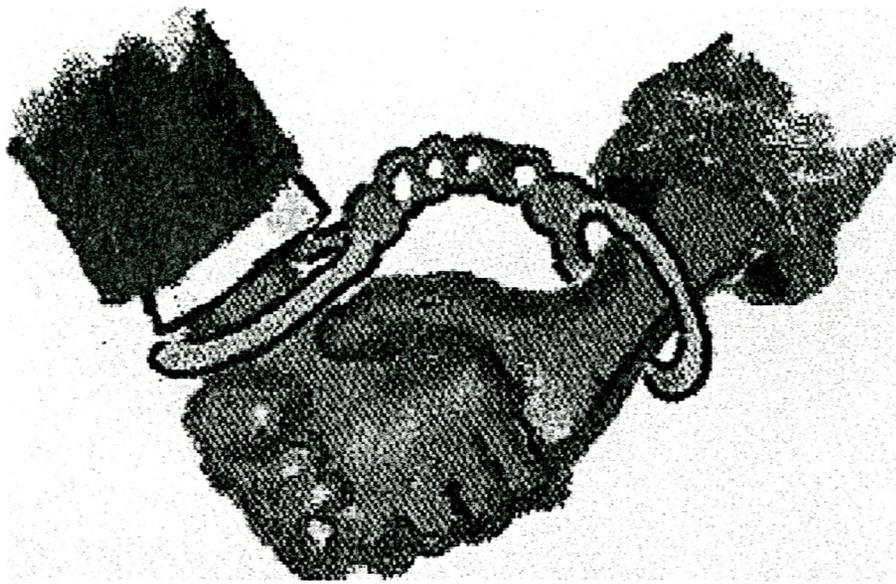
Workplace or sector

- **Majority union or unions**
- **Two-thirds covered to vote in favour**
- **Cannot force workers before agreement to join union**
- **Money not for political parties, elections but only for “socio-economic interests”**



Closed Shop Agreements

- **Workers can also refuse to join unions because of conscience**
- **Agency shop will then apply**
- **Not unfair to dismiss workers who don't join**
- **If Labour Court says dismissal unfair, union must pay compensation**



Collective Agreements

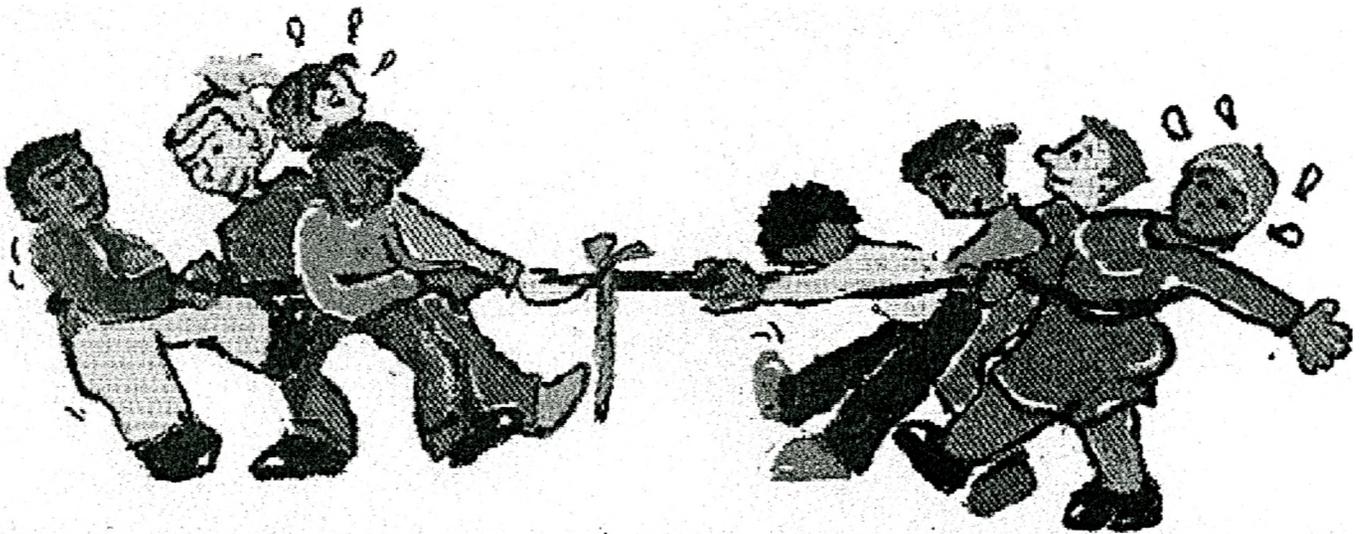
- **Legally binding**
- **Includes agreements made before new LRA**
- **Includes recognition agreements**

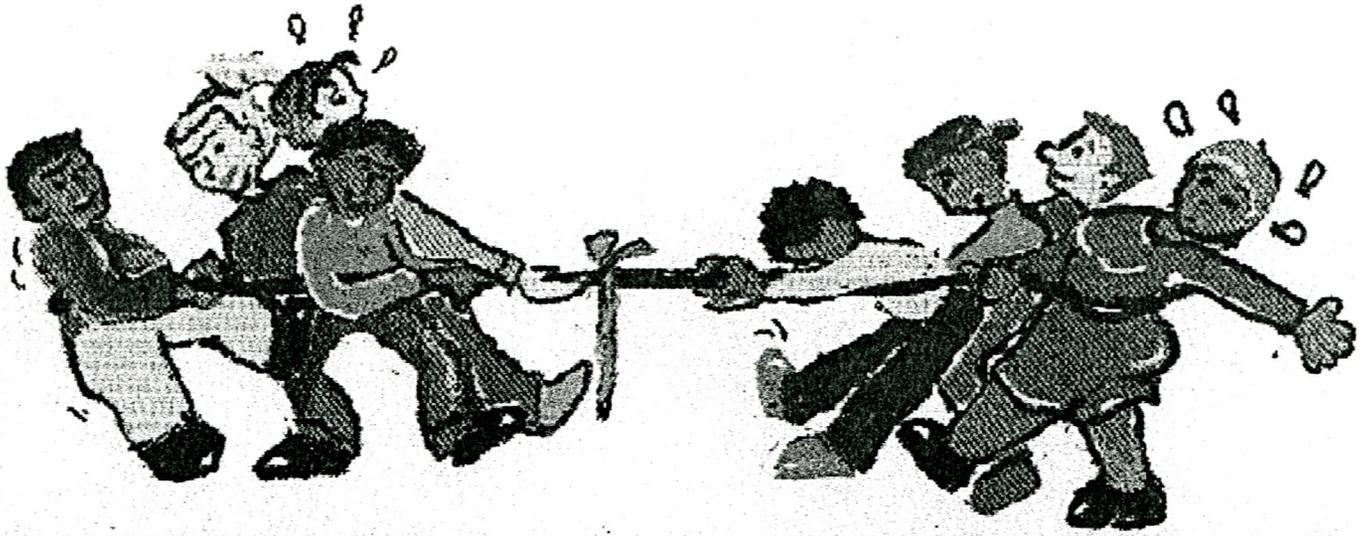
Bargaining Councils

Can be set up by unions and employer organisations that are sufficiently representative

Setting up is voluntary

**Constitution must allow for:
representation for small- and medium-sized enterprises independent exemptions body**





Bargaining Councils

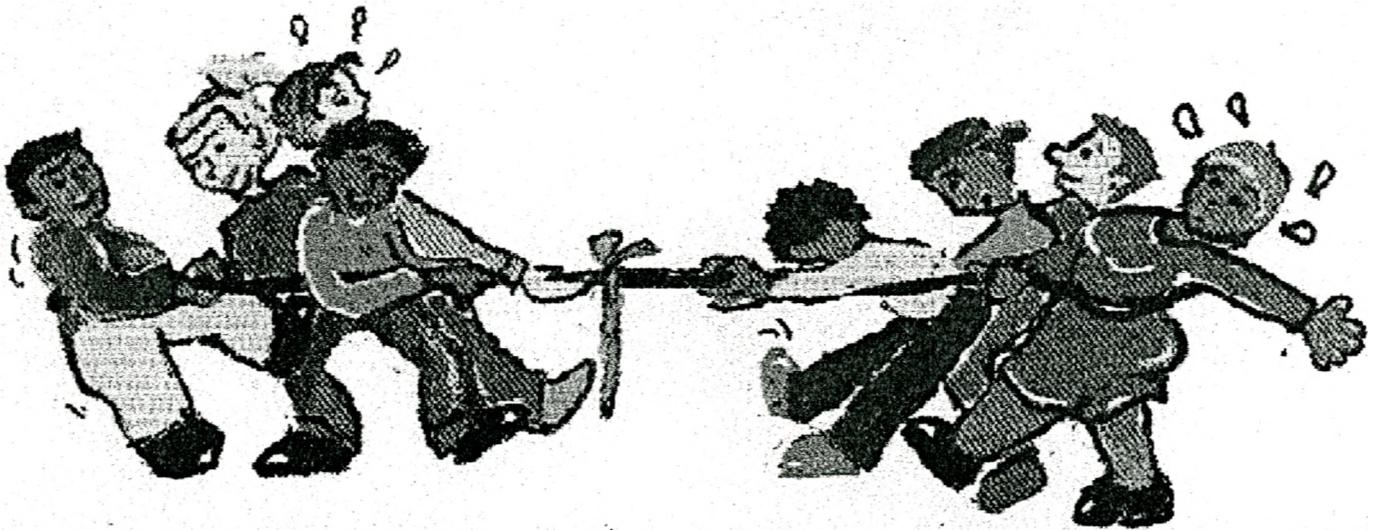
Functions:

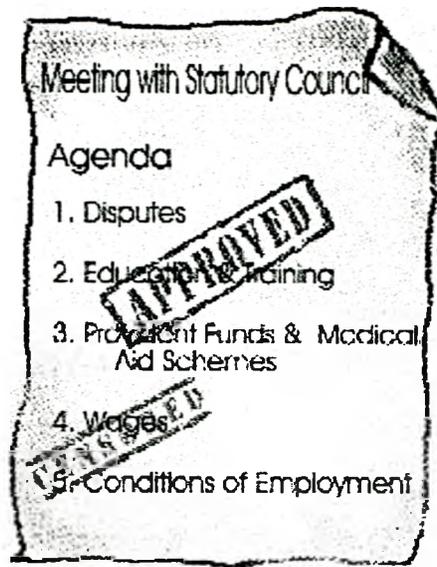
- **Negotiate collective agreements over wages and other conditions**
- **Enforce these agreements**
- **Decide issues for plant level bargaining > no strikes over these issues**
- **Industrial policy, legislation proposals to Nedlac**

Bargaining Councils

Functions:

- **Negotiate and administer benefit funds**
- **Settle disputes**
- **Give extra issues to workplace forums**





Statutory Councils

- **Union or unions 30% representative can apply**
- **Functions of statutory councils:**
 - **Negotiate**
 - **Dispute procedures**
 - **Education and training schemes**
 - **Benefit funds**
- **No wages or conditions of employment, unless by agreement**
- **Statutory councils can become bargaining councils if parties agree**

Members of either statutory or bargaining councils automatically get certain organisational rights at every workplace, irrespective of membership



Industrial Action

The right to strike and the right to lock out

Definition of strike includes go slow and over-time ban

Limits on right to strike:

- **Cannot strike over dismissals**
- **Retrenchment**
- **Issues for joint decision-making in forum**
- **If agreements say no strike**
- **Essential and maintenance services**
- **Wage determinations less than 1 year old**
- **Where LRA says arbitration**

Industrial Action

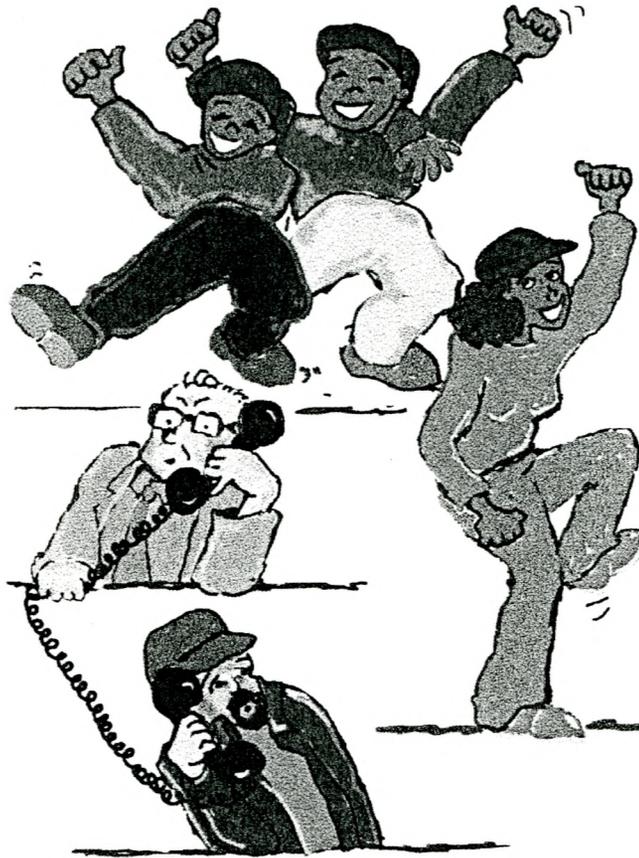
Procedural strikes:

- **Workers cannot be dismissed**
- **No interdicts**
- **Not liable for damages**

But can be dismissed for

- **Misconduct**
- **Retrenchment**





Industrial Action

Unprocedural strikes:

- **Workers can be dismissed
(Must still be good reason and fair
procedure)**
- **Strike can be interdicted**
- **Workers and union can be held liable for
damages**

Industrial Action

Strike or lock-out Procedure

Refer dispute to Commission

Wait 30 days

Ballot

Give 48 hours notice

Or

Follow bargaining council dispute procedure

Or

Follow procedure if there is a private agreement

Industrial Action

When procedure does not apply

- **Boss unprocedurally locks out workers**
- **Workers strike unprocedurally**
- **Boss makes unilateral change > 48 hours notice then strike**



Industrial Action

Scab Labour:

- **Boss can use scab labour if workers strike and boss then locks workers out**

Picketing:

- **Union has right to peaceful picket by members and supporters**
- **Picket can be in any place public has access to**
- **Also inside workplace if employer agrees**



Industrial Action

Secondary Strikes:

- **First strike must be procedural**
- **7 days notice to own employer**
- **Employer can go to Labour Court**
- **Labour Court can lift protection against dismissal**



Industrial Action

Protest action:

- **Union or federation must call it**
- **days notice to Nedlac**
- **Must give reasons, date, duration, place**
- **Nedlac or other forums must first discuss the issue**
- **Protected against dismissal but Labour Court can lift protection or interdict action**



Unfair Dismissal

Automatically unfair dismissal:

- **Participating in a procedural strike**
- **Refusing to scab**
- **Pregnancy**
- **To force worker to accept a demand**
- **Worker took action against employer**
- **Discrimination on grounds of race, sex, culture, language, political opinion, marital status , family responsibility, etc.**



Unfair Dismissal

Fair reasons for dismissal:

- **Capacity**
- **Conduct**
- **Retrenchment**

But must also be fair procedure

Retrenchment Dismissal

- **Employer must consult workplace forum, union or workers**
- **Give reasons, how many workers, when, how much severance pay**
- **Must give all relevant information**
- **WF, union or workers can make alternative proposals**
- **At least 1 week's pay for every year of service**
- **No strike if there is a dispute**



Dismissal for incapacity

- **Employer must follow Code of Good Practice**
- **For poor work performance, Commissioner must consider:**
Is there a work standard

Did worker know about work standard

Was worker given chance to meet work standard

Was worker given training

Is dismissal suitable punishment



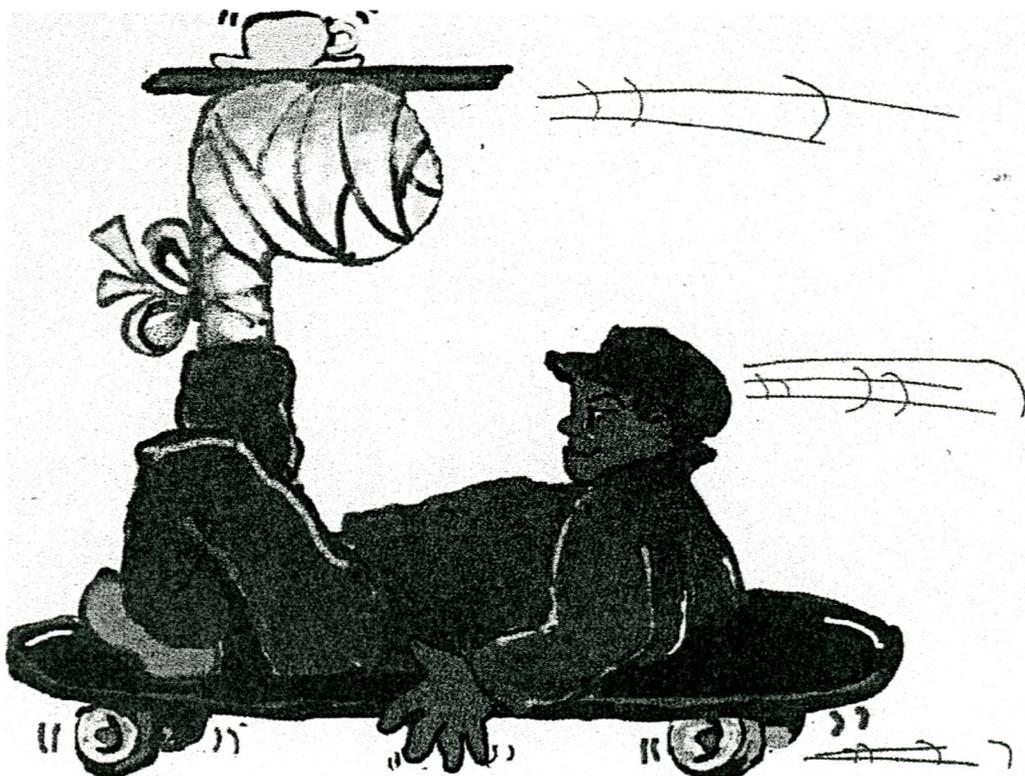
Dismissal for Incapacity

Incapacity because of poor health/accident:

- Employer must follow **Code of Good Practice**
- Commissioner must consider:
Can worker still do the job

Can the job be changed to suit worker

Can another job be found in the company



Dismissal for Misconduct

- Employer must follow **Code of Good Practice**
- Commissioner must consider:
Did worker break a rule

Did worker know about the rule

Is the rule fair

Is the rule used consistently

Is dismissal suitable punishment



Unfair Dismissal

- **Commissioner must order re-instatement or re-employment**

Can order compensation if worker does not want to go back

- **No appeal against decision of commissioner**

- **No strike over dismissals**

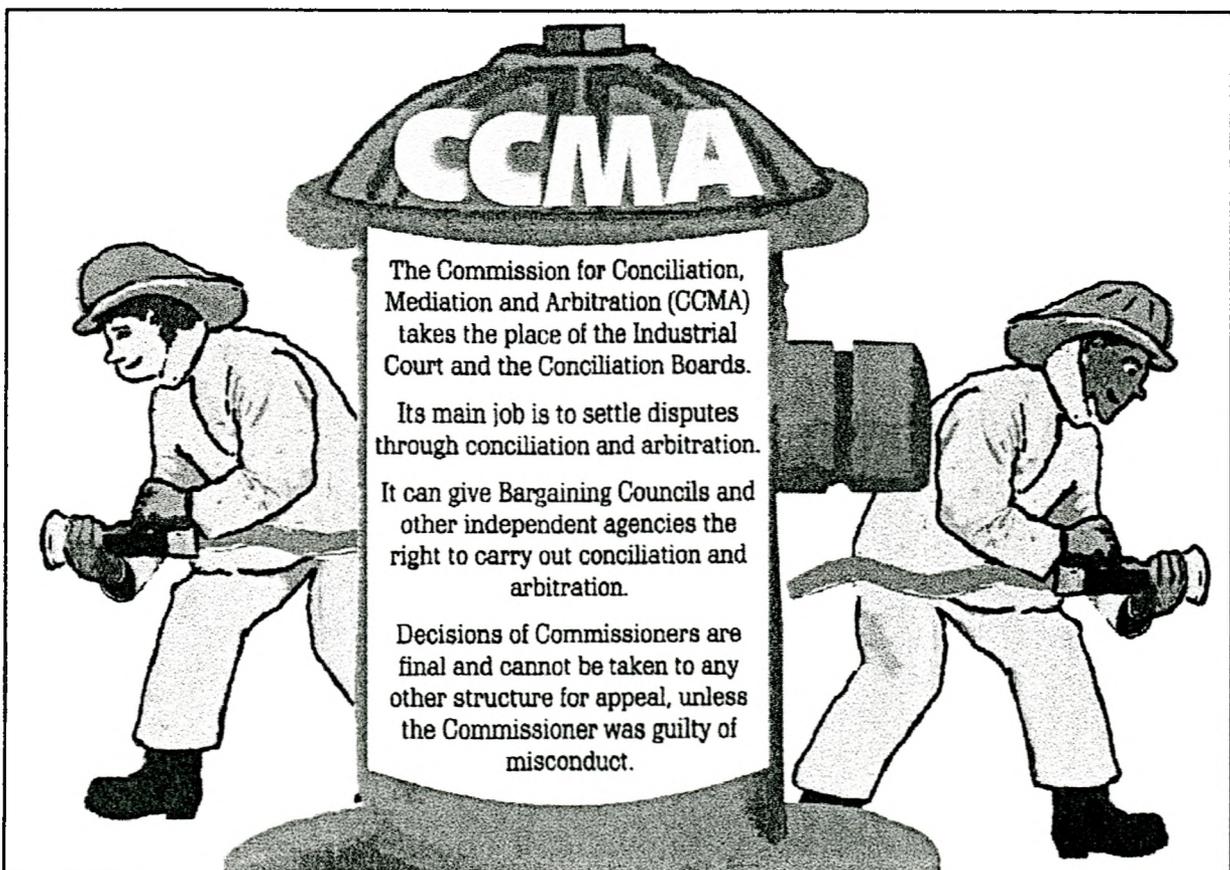
Unfair Labour Practice

- **Direct or indirect discrimination on grounds of race, colour, age, sex, political opinion, marital status, family responsibility, language, culture, etc.**
- **Includes unfair behaviour of employer regarding promotion, demotion, training, unfair suspension or disciplinary action**
- **Definition of “employee” includes workers applying for work.**

Dispute Resolution

Commission for Conciliation, Mediation and Arbitration

- Tripartite, independent (governing) body
- Government - funded
- In all regions
- Commissioners



Functions

- **Settle disputes through
Conciliation/Mediation
Arbitration**
- **Help set up workplace forums**
- **Other functions:**

Give advice

Give assistance

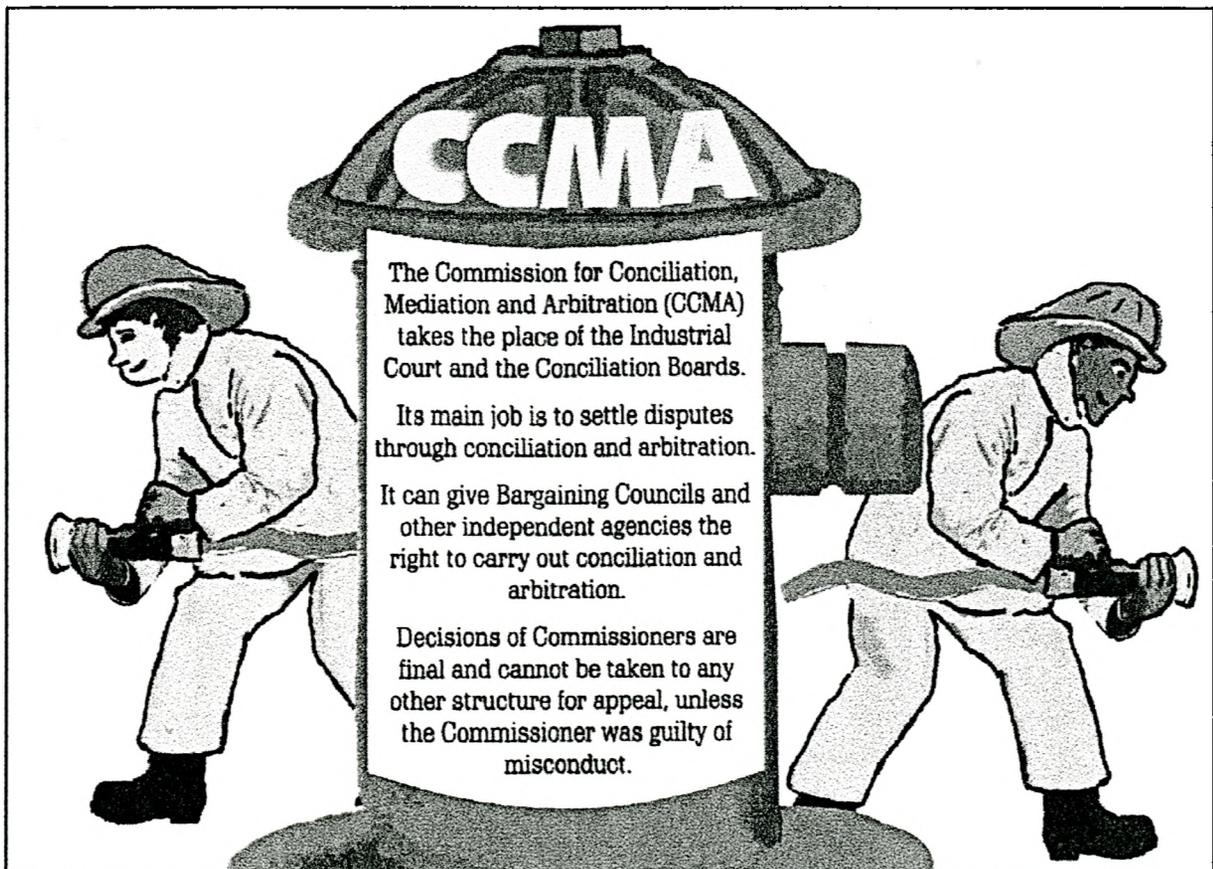
Give accreditation

Conciliation and Arbitration

Must be quick and inexpensive

Informal - no lawyers in some cases

No appeal against commissioners' decisions



Labour Court

Labour Appeal Court



Workplace Forums

What is a workplace forum?

- 100 or more workers
- Majority union or unions can set it up
- Employer must agree to setting it up
- Meeting to agree
- issues
- constitution
- representation formula
- deadlock breaking mechanism
- Election of members of workplace forum
- But forum is not a union structure

Workplace Forums

Role of the workplace forums

- Represent the interests of all employees
- Consultation and joint decision-making
- More efficiency in the workplace



Workplace Forums

Issues for consultation

- **Restructuring the workplace**
- **Way work is organised**
- **Total or partial plant closures**
- **Mergers or transfer of ownership**
- **Retrenchments**
- **Exemptions from agreements**
- **Job grading**
- **Bonus criteria**

Workplace Forums

Issues for joint decision-making:

- **Disciplinary codes and procedures**
- **Affirmative action**
- **Work rules, but not work performance rules**
- **Changes to benefit fund rules**



How the workplace forums will work

- **Meets on its own - at least once per month**
- **Meets with management:**
 - Gets information**
 - Issues for consultation**
 - Issues for joint decision-making**
- **Meets with workers - 4 times per year**
 - Reports on activities**
 - At one such meeting, management must also report**

Workplace Forums

How it will work:

- **What happens in disputes over issues for consultation**
- **What happens in disputes over issues for joint decision-making**
- **Union officials can attend meetings of forum**
- **Union-based forums are allowed where union is only representative of all employees.**
- **Workplace Forums can be closed down by majority union if 50% + 1 vote in favour**

Worksheet one
Day Three: NUMSA Gender Workshop

Case Study No. 1: Swart v Mr. Video PTY (Ltd.)

DETAILS OF HEARING AND REPRESENTATION:

The matter was referred to the CCMA and was conciliated on 17 December 1996 and the arbitration hearing took place on 28 January 1997.

The employer was represented by Mr Arthur Karamanolis, a Store Supervisor responsible for seven stores in the employer's chain of video stores.

The applicant, Ms Virginia Swart, was not represented.

ISSUE TO BE DECIDED:

Whether the employer committed an unfair labour practice by refusing to employ Ms Swart because she was three years older than the age limit specified in the advertisement placed in the press by the employer.

BACKGROUND TO THE ISSUE:

The employer was in the process of opening a video store in Brooklyn and placed an advertisement in the press sometime during the week of 18 to 22 November 1996. The advertisement read: "Winkel Assistent Brooklyn area ouderdom onder 25 jaar" and included the employer's telephone number.

Ms Swart telephoned the employer and subsequently filled in an application form on Friday 22 November 1996. At the time Ms Swart was 28 years of age.

Ms Swart phoned the employer on Monday 26 November and again the following day. On the second occasion she was informed that her application had not been successful as the employer was only considering applicants between the ages of 18 and 25. When she asked the employer why she was not considered for the job, being only three years older than 25, Ms Swart was told that she would not fit in with a different age group.

Ms Swart lodged a dispute with the Commission and conciliation was attempted on 9 December 1996.

SURVEY OF EVIDENCE AND ARGUMENT:

The employer justifies its policy of not employing persons under the age of 25 in the following ways:

- 1 The salary for the job is not high (R1000 00 per month) and is normally only acceptable to young people who are use the job as a stepping stone to more remunerative employment
- 2 Comptability is important among employees and an older person might be reluctant to accept instructions from a younger person.

The second reason was proposed as the more compelling one and, under examination by the arbitrator, the employer's representative maintained that no other indicators of comptability were considered.

In addition the employer's representative stated that it was reluctant to employ Ms Swart because she is married and has children.

Ms Swart maintained that these reasons amounted to unfair discrimination. With regard to accepting instructions from a younger person she maintained that she had reported to a supervisor younger than herself in her previous employment and this had never been a problem.

ANALYSIS OF EVIDENCE AND ARGUMENT:

To consider whether the employer's policies and practices constitute an unfair labour practice.

No agreement with the employer's argument that age must be considered when determining compatibility among a group of employees or between a supervisor and an employee.

Discrimination may be justified if it is based on inherent requirements of the job.

If a person is prepared to work for the salary offered by the employer and is not averse to accepting instructions from a younger person, there is no reason why that person should not be able to perform the work.

LABOUR RELATIONS ACT

The LRA refers to an unfair labour practice as "unfair discrimination against an employee on any arbitrary ground, including but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility". For the purposes of this item "employee" includes applicant for employment.

Unfair discrimination is also prohibited in the South African constitution.

The employer not only committed an unfair labour practice by discriminating unfairly on the basis of age but also on the basis of marital status and family responsibility.

SANCTIONS

The Labour Relations Act includes an applicant for employment in the definition of employee where there is unfair discrimination. This means that a discriminatory refusal to employ is regarded as an automatically unfair dismissal.

The Act also indicates that the preferable remedy for unfair dismissal is reinstatement or re-employment unless: "it is not reasonable or practicable for the employer to reinstate or re-employ the employee"

It also states that compensation awarded to an employee whose dismissal is automatically unfair must be just and equitable in all circumstances, but not more than the equivalent of 24 months' remuneration.

AWARD:

CCMA resolved that within 30 days the employer should provide Ms Swart with employment at its Brooklyn branch or at any other branch acceptable to Ms Swart and compensate her with three months' remuneration (R3 000). If this is not possible the employer should compensate Ms Swart with the equivalent of six months' remuneration (R6 000).

TASK FOR PARTICIPANTS

The person reporting back should first summarise the case for the plenary.

1. Do you agree with the CCMA findings that the worker was discriminated against, or do you think that the company had a valid argument?
2. Does the applicant have a right to challenge the company for not employing her?
3. Consider the procedure the worker herself, or a union, if there was a union in her workplace, would have used in dealing with this case. Refer to the attached handout.
4. Identify examples of automatic unfair dismissals
5. What is the basis for an automatic unfair dismissal on this case?

1. AUTOMATICALLY UNFAIR DISMISSALS

Automatically unfair dismissals mean that the reason for the dismissal is not allowed. There is only one exception to this rule (see the note below). If employers dismiss workers for any of these reasons then the LRA regards this dismissal as **automatically unfair**. The case is strongly against the employer if it is proved that a worker was dismissed for any of the following reasons.

EXAMPLES

- Worker joins or supports a protected strike;
- Worker refuses to do the work of another worker who is on strike (unless peoples' lives are in danger);
- Worker joins a trade union or uses rights he or she has in the union;
- Pregnancy;
- Management discriminates against a worker on the grounds of: race, sex, birthplace, nationality, age, disability, religion, political opinion, sexual preference, language and other issues not listed here.

Dismissals in these cases are regarded as automatically unfair.

LESSON

A word of caution on automatically unfair dismissals. Keep in mind that management will fight as well.

They will resist your challenge as strongly as they can. Even if the reason is listed as an automatically unfair dismissal, nothing is 'automatic' in real life so you should prepare the case for your challenge very carefully.

DISPUTE PROCEDURE

The following dispute procedure must be followed for automatically unfair dismissals.

STEP 1: First attempt to change the employer's decision through internal negotiations. Exhaust any internal procedure you may have agreed to with your employer.

If this fails go to Step 2.

STEP 2: Refer the dispute to conciliation either to a council or the CCMA. This referral must be done in writing within 30 days of the date of dismissal.

Hand a copy of your referral to your employer.

The conciliation process will be completed within 30 days.

The commissioner will issue you with a certificate of the results of the conciliation process.

If this fails, go to Step 3.

STEP 3: Refer the dispute to the Labour Court.

You can take it to the Labour Appeal Court if the judgement is unfavourable to you.

NOTE

The council or CCMA may permit the union to refer the dispute after 30 days if the union has a good reason as to why there was a delay. A good reason could be that a worker was not available for consultation because he or she was in hospital or prison, or that the union was trying to solve the dispute through internal negotiations with the employer.

Worksheet two
Day Three: NUMSA Gender Workshop

Case Study no.2: Mrs. Kabey vs. Dr Bester

DETAILS OF HEARING AND REPRESENTATION:

The arbitration was scheduled for 3 March 1997 at 9H00. At 9H30 only the employee was in attendance though the employer was notified of the date and time of the arbitration.

The employee, Mrs P M Kabey attended the arbitration in person.

ISSUE TO BE DECIDED:

Whether the dismissal of the employee by the employer was substantive and procedurally fair, or not.

BACKGROUND TO THE ISSUE:

Mrs P M Kabey applied for a job with dr Van Wyk, who has a partner Dr A J Bester. Dr Bester employed Mrs Kabey, and after a minor incident dismissed her without any hearing, or giving her any reason for her dismissal.

SURVEY OF EVIDENCE AND ARGUMENT:

Poloko Maureen Kabey, was the only witness. She is a Lesotho citizen working in South Africa on a legal work permit. She worked for the SA Institute for Medical Research in Johannesburg, from 1989 to September 1996. She is a trained Medical Technician.

She looked for another job, and was informed that dr Bester was looking for an assistant. She applied and faxed to Bester her work permit, CV and certificates of her qualifications. After an interview with dr Bester was employed.

During the interview, there was a verbal agreement between her and Bester on the following issues;

- her salary was R2 300,00 per month,
- she would be taught to take x-rays and sonar,
- her working hours would be Monday and Tuesday from 08H00 to 19H00, on Wednesday, Thursday and Friday from 08H00 to 13H00 or 13H00 to 19H00, and one Saturday per month,
- she will do a little reception work, and
- she will be taught to do the accounts.

She stated to work for Bester on 2 October 1996 and she mostly did reception work and dispensing of medication. On a few occasions she watched Julia Venter do x-rays. Her working hours changed and she worked from 08H00 to 19H00 every day for the whole of October.

During November, approximately the 25th, while Bester was on holiday, Julia decided to spring clean the surgery. She helped on the Friday, to scrub the floors. She told one of the 2 cleaning ladies employed there, that she did not like cleaning, and especially scrubbing floors. The cleaning lady did not take kindly to this comment, and an argument ensued. Julia was called to settle the problem.

She also repeated to Julia what she told the cleaning lady, and the matter was settled amicably. Everything was normal after that, until 3 December 1996. Dr Bester was looking for some files. After it was handed to him he called in Mrs Kabey, one Elizabeth and the cleaning lady.

They all worked in the reception from time to time. He was very upset about some administrative problem, which could cost him R1760,00. They apologised. The next day, 4 December 1996, Mrs Kabey came to work in the afternoon, and was informed that she should not come back to work because they were unhappy with her. She was not happy in her job either.

On 5 December she went to collect her cheque but came out with a letter from the employer stating the following:

"You are hereby notified that your services are terminated at the rooms of Dr A J Bester. This comes into immediate effect and an amount of R2300,00 is paid to you in advance which would serve as one month's salary. It has come to my attention that I cannot legally employ you on the grounds that I have no permission from the Department of Internal Affairs."

She never received the cheque referred to in the letter.

She does not want to be reinstated, but seeks compensation.

SURVEY OF EVIDENCE AND ARGUMENT

At the time of her dismissal she was not given a reason for her dismissal. As an afterthought she was given a letter stating that it was because he could not employ her legally, because her work permit only applied to SAIMR.

ANALYSIS OF EVIDENCE AND ARGUMENT:

Mrs Kabey is in possession of a temporary residence permit issued to her by the Department of Home Affairs. According to the endorsement in her passport, her employer is SA Institute for Medical Research. A work permit is subject to the alien working for the employer on the permit. Before employment with another employer may

be taken up, the alien must leave the Republic, apply for a new work permit, and if successful, re-enter the Republic.

In this arbitration the employee Mrs Kabey did not follow the correct procedures, and although she is in possession of a temporary residence permit the condition is to be employed at SAIMS, and nowhere else. Therefore Dr Bester was indeed within his right to terminate the services of Mrs Kabey, because to employ an alien without a legal work permit, is an offence according to the Act. Substantively the dismissal was fair.

The question that remains is whether the procedure followed by the employer was fair? Before she took up employment with Dr Bester, she put him in possession of a copy of her passport, as well as, the permit. With the knowledge that she holds a temporary work permit he went ahead and procured her services. Only to terminate her services after a period of 2 months, without consulting with her, or informing her that he has a problem with the legality of her residence in South Africa. That was unfair to Mrs Kabey. He could have discussed the situation with her, and could have given her unpaid leave to go back to Lesotho to apply for a work seeker's permit, and re-enter the Republic to apply for a work permit.

According to Mrs Kabey it was clear to her that he wanted to get rid of her, and that was all. He found a reason to dismiss her. Procedurally Mrs Kabey was treated unfairly.

Another question that may arise is, whether the CCMA under the LRA 66 of 1995, has the jurisdiction to entertain a referral where an illegal alien is involved? In section 213 of the LRA 66 of 1995, employee is defined as follows:

- "(a) any person, excluding an independent contractor, who work for another person or for the State and who receives, or is entitled to receive, any remuneration; and
- (b) any other person who in any manner assists in carrying on or conducting the business of an employer"

Section 2 deals with exclusion from the application of this Act, and the only categories of employees excluded are, the National Defence Force, National Intelligence Agency and the South African Secret Service. Any other work relationship between an employee and an employer falls under the jurisdiction of the Commission.

On the question of compensation section 194(1) applies. The date of dismissal in this case was 4 December 1996, and the last date of the arbitration was 3 March 1997. She was remunerated R2300,00 per month. Compensation is then calculated as follows; 2300 x 3 months = R6900,00.

AWARD:

Dr Bester is to pay to Mrs P M Kabey the amount of R6900,00 on or before 29 March 1997 as compensation.

TASKS FOR PARTICIPANTS

The person reporting back should first summarise the case for the plenary

1. The employee on this case is a national of Lesotho. Is she covered by the South African Labour Relations Act? If your answer is yes, give reasons for your answer.
2. If the employee was dismissed for poor work performance, how would you decide if a dismissal is fair? Refer to the attached handout.
3. What is the dispute procedure to be followed in cases of incapacity? Refer to the attached handout.

DISPUTE PROCEDURE

The following dispute procedure must be followed for dismissals for misconduct and incapacity.

STEP 1: First attempt to change the employer's decision through internal negotiations. Exhaust any internal procedure you may have agreed to with your employer.

If this fails go to Step 2.

STEP 2: Refer the dispute to conciliation either to a council or the CCMA. This referral must be done in writing within 30 days of the date of dismissal.

Hand a copy of the referral to the employer concerned.

The conciliation process will be completed within 30 days.

The commissioner will issue you with a certificate of the results of the conciliation process.

If conciliation fails to resolve the dispute then go to Step 3.

STEP 3: Refer the dispute for arbitration either by a council or the CCMA.

This step is final. You cannot appeal against the arbitrator's decision.

If you feel that the arbitrator acted incorrectly, you can ask the Labour Court to review the decision.

NOTE

If a grievance procedure is in place, the employer must follow the procedure before referring the dispute to conciliation or arbitration.

REVIEW

A review is different to an appeal. In an appeal the argument is that the arbitrator's decision is incorrect according to the facts of the case. In a review the argument is that the arbitrator did not conduct the arbitration according to the principles and the procedures set out in law.

DISMISSAL PROCEDURE FOR POOR WORK PERFORMANCE

Before employers can fairly dismiss a worker for poor work performance, they must go through the following processes:

- 1 The employer must have an investigation to see why the worker is not doing the job satisfactorily.
- 2 The employer must look into other ways of improving work performance before deciding to dismiss the worker e.g. retraining or counselling.
- 3 The worker must get a chance to have his or her say on the matter and can have a shop steward or another worker present during the meeting to help in his or her defence.

IMPORTANT GUIDELINES

An employer must apply the following normal practice to ensure the good work performance of its employees. If it is shown that these practices are not followed, then the dismissal could be said to be unfair.

A NEWLY HIRED WORKER

- 1 A newly hired worker may be put on probation for a period of time.
- 2 The employer must give the worker any help or training that he or she needs to do the job properly.
- 3 An employer cannot dismiss a newly hired worker on probation until he or she gets the chance to have his or her say on the matter with a shop steward or fellow worker present at the meeting.

A PERMANENT WORKER

- 1 An employer can only dismiss a permanent worker if he or she helped the worker try to improve their work. This help can be instructions on how to do the job better, training to improve the work performance, guidance and any other way of helping the worker do the job satisfactorily.
- 2 The employer must also give the worker enough time to improve his or her work performance after instructions, training and guidance was given.

HOW DO YOU DECIDE IF A DISMISSAL FOR POOR WORK PERFORMANCE IS FAIR?

Ask the following questions to test if a dismissal for poor work performance is fair:

- 1 Did the worker fail to meet a performance standard? In other words, did the worker do the job in the manner expected by the company?
- 2 Was the worker aware of this performance standard? Did the worker know that they had to do the work in a certain way to satisfy the employer? Or should the worker have known because the standard is so obvious?
- 3 Was the worker given enough time and help to meet this work standard?
- 4 Was the dismissal the best way of dealing with the problem of not meeting the work standard?

If you think the answers to any of these questions is no, then you can take up the case for the worker and argue that the dismissal was unfair.

Worksheet three
Day Three: NUMSA Gender Workshop

Case Study. No 3: Pretorius vs. Britz

ISSUE TO BE DECIDED

To determine if:

If the employee's resignation on the 11/11/96 from the employer's employment came as result of sexual harassment on the part of the employer.

If so - what remedy?

BACKGROUND TO THE ISSUE

This is a dispute of an alleged sexual harassment over a period of 18 months. The dispute was unsuccessfully conciliated by the CCMA and the parties consented to arbitration by CCMA.

The employer - Mr. Britz - works for Southern Life Association. Britz in turn engaged the services of a personal secretary in July 1995 - Ms Pretorius.

Britz had a written contract with Pretorius which governed their relationship.

Throughout her employment, Pretorius alleges that she was continuously and consistently subjected to sexual harassment of different type and form including touching, dirty language, unsolicited gifts.

After eighteen months she tendered her resignation.

SURVEY OF EVIDENCE AND ARGUMENT

EMPLOYEE'S VERSION

- She was employed on the 4th of July 1995 till 12 November 1996. Britz interviewed her and then offered her a post of a personal secretary. During the interview Britz expressed the hope that she was not the kind of person who sleeps around with males. In response Pretorius assured Britz and advised him that she was still a virgin.
- Soon after her employment Britz asked her to work late. Later Britz informed her that he was having a poor sexual relationship with his wife and that he would like to sleep with Pretorius.
- On a business trips to Johannesburg Britz would put his hand between Pretorius thighs. Pretorius always tried to stop him but he continued.

- On one occasion Britz came to pick Pretorius for a Saturday work. He followed Pretorius into her bedroom and she escaped into the kitchen. Britz caught up with her, he pressed and rubbed himself against her body.
- Britz had asked Pretorius to come to work on Saturdays without wearing a bra. On one occasion Britz threatened Pretorius into removing her bra or he would leave her at the Carlton Hotel to find her way back home. Because of the fear of her being left behind in a strange place - she ended up succumbing to that pressure.
- Pretorius did not report these incidents to anyone mainly because she did not know what to do but had asked, without success, Britz to behave professionally and that she needed a job.
- Pretorius found another employment earning R1200 without any extra benefits.
- Britz had bought her various gifts including a necklace, perfume; flowers; cards and a g - string panty.
- Under cross examination Pretorius said that she had to carry out instructions to accompany Britz on his business trips for fear of being dismissed.

4.2 EMPLOYER'S VERSION

He is a branch manager of Southern Life in Rustenburg for three years now.

- He employed Pretorius on the 3rd or 4th of July 1995. Initially her performance was good but after she began to seek another job she began to neglect her job. She also concealed the fact that she was job - hunting.
- Her dress code was not up to standard. She had a tendency of wearing revealing clothes to try and get attention from male clients. She liked g- string panties particularly black ones. Management spoke to her about her dress code.
- At times Britz and Pretorius worked behind closed doors when Britz needed confidentiality with Pretorius or did not want to be disturbed by clients.
- Britz admitted discussing Pretorius virginity but that it was Pretorius who mooted the subject first. And that this issue was raised because he (Britz) needed to ascertain if Pretorius was a high - quality worker.
- As time progressed Pretorius chased every pant she could get.
- Britz denied putting his hand between Pretorius thighs but that it was Pretorius who in fact put her hand between Britz thighs.

ANALYSIS OF EVIDENCE AND ARGUMENT

In order to determine if sexual harassment did take place or not the following tests shall be applied:

Was there any sexual harassment i.e. unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature:

Was there any "hostile environment" i.e. unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature that may interfere with the employees' work performance or creating an intimidating, hostile or offensive working environment.

It is important also to determine whether the conduct unreasonably interfered with an individuals work performance or created an intimidating, hostile or offensive working environment.

- whether the conduct was verbal or physical or both;
- whether the conduct was hostile or patently offensive;
- the relationship between the alleged harasser and the survivor;
- whether the harassment was directed at more than one individual;

One or more of these factors shall be used to control the determination.

UNSOLICITED GIFTS

The employer party concedes that of all the gifts the G - string panty could be regarded as having sexual connotations, though it was not the employers intention.

The employers explanation is that he presented the employee with the G- string panty because he intended to improve the image of the company.

I am at pains trying to understand how on earth can a pink G- string panty (as opposed to black one) improve a financial institution's image.

This is an act of sexual harassment.

Although acts of sexual harassment do not have to be repeated in order to constitute sexual harassment I need to look at other incidents to establish a pattern (if any).

AFTER HOURS WORKING

I am yet to find a logical explanation in a person working from 07h30 till 16h30 instead of 09h00 till 16h00 without being paid any overtime.

The employee explains this as forced overtime. And this was so because the employer wanted the two of them to be in the office together so that the employer can sexually harass her.

The employer says this was so because the employee was lonely.

The employee's version seem to have substance and therefore acceptable.

HANDS BETWEEN THE LEGS

The employer argues that if the incident happened the employee should have left the car, therefore the employee also wanted this touching - it's a "silent permission". The employer therefore concedes that this action did take place.

Consent: The employee says she hit the employer's hand because she did not appreciate such actions. The employee's reaction is an indication of not playing along.

EXPLICIT OR SUGGESTIVE LANGUAGE

The employer argues that the employee and the employer discussed the employees virginity because the employer wanted to be sure that the employer has a high quality person in employment.

This is the height of degradation to female employees if their virginity (or otherwise) shall determine their high quality at work. This kind of behavior should not be accepted at workplaces for it clearly constitutes sexual harassment.

DRESS CODE

The employer party has made a song and dance of the dress code of the employee suggesting that the employee had a tendency of seeking attention of men through her clothes.

This kind of thinking - it is not different from a rapist who claims that he raped because of the survivors exposing clothes

Implied in this line of argument is that the employer has committed the alleged acts because of the employees clothes.

CONCLUSION

Considering all this evidence I do not doubt that sexual harassment did take place and probably led to Pretorius resigning her position for a similar job without any extra benefits.

AWARD

In the light of the above I award thus:

Employer to compensate the employee an equivalent of nine months salary calculated at the rate of the employee's remuneration at the time of dismissal.

This payment to be effected on monthly basis at the end of each month for a period of nine months starting from the 15th May 1997 with the first payment.

TASKS FOR PARTICIPANTS

The person reporting back should first summarise the case for the plenary

1. What constitutes sexual harassment?
2. What are the procedures laid out by the CCMA to deal with sexual harassment?
3. How would these procedures have been applied in this case?

7. Procedures

Employers should develop clear procedures to deal with sexual harassment. These procedures should ensure the resolution of problems in a sensitive, efficient and effective way.

(1) Advice and Assistance

Sexual harassment is a sensitive issue and a victim may feel unable to approach the perpetrator, lodge a formal grievance or turn to colleagues for support. As far as is practicable employers should designate a person outside of line management whom victims may approach for confidential advice. Such a person:

- (a) Could include persons employed by the company to perform inter alia such a function, a trade union representative or co-employee, or outside professionals.
- (b) Should have the appropriate skills and experience or be properly trained and given adequate resources.
- (c) Could be required to have counseling and relevant labour relations skills and be able to provide support and advice on a confidential basis.

(2) Options to resolve a problem

- (a) Employees should be advised that there are two options to resolve a problem relating to sexual harassment. Either an attempt can be made to resolve the problem in an informal way or a formal procedure can be embarked upon.
- (b) The employee should be under no duress to accept one or the other option.

(3) Informal procedure

- (a) It may be sufficient for the employee concerned to have an opportunity where she/he can explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable, and that it interferes with their work.
- (b) If the informal approach has not provided a satisfactory outcome, if the case is severe or if the conduct continues, it may be more appropriate to embark upon a formal procedure. Severe cases may include: sexual assault, rape, a strip search and quid pro quo harassment.

(4) Formal procedure

Where a formal procedure has been chosen by the aggrieved, a formal procedure for resolving the grievance should be available and should:

- (a) Specify to whom the employee should lodge the grievance.
- (b) Make reference to timeframes which allow the grievance to be dealt with expeditiously.
- (c) Provide that if the case is not resolved satisfactorily, the issue can be dealt with in terms of the dispute procedures contained in item 7(7) of this code.

(5) Investigation and disciplinary action

- (a) Care should be taken during any investigation of a grievance of sexual harassment that the aggrieved person is not disadvantaged, and that the position of other parties is not prejudiced if the grievance is found to be unwarranted.
- (b) The Code of Good Practice regulating dismissal contained in Schedule 8 of this Act, reinforces the provisions of Chapter VIII of this Act and provides that an employee may be dismissed for serious misconduct or repeated offences. Serious incidents of sexual harassment or continued harassment after warnings are dismissable offences.

- (c) In cases of persistent harassment or single incidents of serious misconduct, employers ought to follow the procedures set out in the Code of Practice contained in Schedule 8 of this Act.
- (d) The range of disciplinary sanctions to which employees will be liable should be clearly stated, and it should also be made clear that it will be a disciplinary offence to victimise or retaliate against an employee who in good faith lodges a grievance of sexual harassment.

(6) Criminal and civil charges

A victim of sexual assault has the right to press separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by this code.

(7) Dispute resolution

Should a complaint of alleged sexual harassment not be satisfactorily resolved by the internal procedures set out above, either party may within 30 days of the dispute having arisen, refer the matter to the CCMA for conciliation in accordance with the provisions of section 135 of this Act. Should the dispute remain unresolved, either party may refer the dispute to the Labour Court within 30 days of receipt of the certificate issued by the commissioner in terms of section 135(5).

8. Confidentiality

- (1) Employers and employees must ensure that grievances about sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.
- (2) In cases of sexual harassment, management, employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary enquiry. Only appropriate members of management as well as the aggrieved person, representative, alleged perpetrator, witnesses and interpreter if required, must be present in the disciplinary enquiry.
- (3) Employers are required to disclose to either party or to their representatives, such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this code.

DAY FOUR:

**GENDER – GLOBALISATION
AND LABOUR LEGISLATION**

Purpose of the Act:

To regulate the right to fair labour practice by:

- Setting basic conditions of employment
- Establishing laws for varying the basic conditions

To replace previous legislation

- Basic Conditions of Employment Act of 1983
- Wage Act of 1957

Who Is Covered by the Act?

All workers except:

- Members of the SANDF
- National Intelligence Agency
- South African Secret Services
- Most provisions do not apply to workers who work less than 24 hours per month

Main Areas Covered by the Act:

- Working Hours
- Regulations for payment of wages (not wage levels)
- Leave: Annual, sick, maternity, paternity, family responsibility
- Process for notice of termination of services
- How the Act is to be enforced
- How the Act can be varied

Idea behind BCEA:

“With regard to labour markets, the government will pursue a policy of regulated flexibility.”

--GEAR

What is “regulated flexibility”?

- Provides legal guidelines (regulations) for creating a “flexible” workforce.
- A flexible workforce means that certain basic conditions are flexible or variable for some workers, in some situations.

Working Hours

Ordinary Hours of Work:

- Normal work week is 45 hours per week
- 9 hours per day for a five day week, 8 hours a day for a 6 day week
- No more than 3 hours overtime per day
- No more than 10 hours overtime per week

40 hour week to be investigated and report submitted to Minister within 18 months.

Averaging of Hours of Work

- Ordinary hours can be averaged over a period of four months
- Overtime hours can be averaged over a period of four months

Meal Interval

- 60 minutes after 5 hours of continuous work

Daily and Weekly Rest Periods

- Daily rest period of 12 consecutive hours
- Weekly rest period of 36 hours including a Sunday

Pay for Sunday Work

Sunday work by agreement

- Double pay for those who do not normally work on Sundays
- One and a half time for those who normally work on Sundays

Night work:

- By agreement
- After 18H00 and before 6H00 the next day
- Compensation by shift allowance or reduced working time

Public Holidays

- Work Only by agreement
- Paid at normal pay if you do not work
- Paid at double pay if you work a full day
- Normal wage plus pay for work done if you work less or more than a full day

Leave

Annual leave:

- 21 consecutive days
- Payment instead of leave is not permitted

Sick Leave

- 6 weeks over a sick leave cycle of 36 months
- This means 1 day for every 26 days worked
- Leave of more than two days requires doctor's certificate

Maternity Leave

- 4 consecutive months maternity leave
- Starts 4 weeks before childbirth or any date recommended by doctor or midwife
- No work within 6 weeks of childbirth except by Doctor's permission
- 6 weeks period also applies in cases of miscarriage and a stillborn child

Payment for Maternity Leave:

- Pay from UIF will equal 45% of workers' normal wage
- An employer will pay up to a third of the worker's normal wage
- This means a total of 78% of normal wage
- Since this is paid from UIF benefits, the worker forfeits other UIF benefits if six months payment was received

Family Responsibility Leave:

3 days per annual leave cycle (1 year)

- Only applies to:
- Those who have been employed for more than four months
- Those who work at least four days per week for the employer

Covers:

- Birth of worker's child
- When the worker's child is sick
- Death of a spouse, parent, child, grandchild or sibling

Notice of Termination:

- One week notice, if employed for four weeks or less
- Two weeks, if employed for more than four weeks but less than a year
- Four weeks if employed for more than a year

Severance Pay:

One week for each completed year of service for workers dismissed due to “operational requirements”

Operational requirements:

“economic, technological, structural or similar needs of an employer”

Child Labour

- No one under 15 may be employed
- certain work may not be done by those between 15 and 18 years

Variations

A variation is the replacement or changing of any of the Basic Conditions of Employment. Variations can be downward or upward.

What cannot be varied downward?

- The ordinary working week of 45 hours
- Regulations for night work, including definition of regular night worker
- Annual leave cannot be reduced to less than two weeks
- Maternity leave may not be reduced
- Sick leave entitlement may not be reduced
- Age of child labourer cannot be lowered

How does variation take place?

- By Bargaining Council
- By collective agreement
- By agreement between the employer and individual worker
- By decision of the Minister
- *Specific determination*
- *Sectoral determination*

Bargaining Council/collective agreements overrule any agreement between an employer and an individual worker.

A sectoral determination by the Minister may not overrule a collective agreement.

Enforcement of Act

Employment Conditions Commission:

- **Advises Minister**
- **Monitors implementation and effects of BCEA**

Inspectorate

- **Investigates and enforces compliance with the Act**

How Does Act Affect Women Workers?

1. Maternity and Family Responsibility

- Flexibility of hours: averaging, compensation instead of paid overtime, Sunday work, shorten rest periods
- Non-union workers/Informal sector workers with no access to bargaining structures
- Workers in service sectors where women are the majority:
 - hotel and restaurant, domestic, small retail shops
 - unemployed women, women in rural areas

2. Role of gender composition and gender awareness of union negotiators (will they agree to downward variations of “women’s jobs”?)

3. Role of Gender Composition and Gender Awareness of Inspectorate and Commission

How Does the Act Promote Globalisation?

- International competitiveness
- Regulated flexibility through variations

Main Problems with the Act

Downward variations:

- Poorer working conditions
- Undermine unions and bargaining structures

Compressed work week

Averaging of working hours

Worksheet one
Day four: NUMSA Gender Workshop

Content and Implications of the Basic Conditions of Employment Act

The participants will be divided into three groups. Each group will examine a different part of the BCEA and answer the following questions which apply to that group.

Group 1: Leave: Annual, Maternity, Family Responsibility, Sick,

Group 2: Working Hours: work week, averaging, compressed working week, compensation, Sunday work, rest periods, breaks

Group 3: Structures of Monitoring and Enforcement of the Act: Employment Conditions Commission and Inspectorate

Answer the following questions:

Your Part of the Act:

1. What are the gains for workers from this part of the BCEA?
2. What are the potential problems for workers from this part of the BCEA?
3. How do you think this part of the Act will affect women workers?
4. How do you think this part of the Act will affect women outside of unions (e.g. informal sector, unemployed, rural women)?

The Act as a whole:

5. How do you think the BCEA will affect the living standards and working conditions of the working class?
6. What measures can unions take to maximise the benefits and reduce the problems coming from the Act?
7. Is this Act in line with globalisation? Why or why not?

Information Sheet for Group One:

Leave: Annual, Maternity, Sick, Family Responsibility

Summary of Content of the Act:

Annual Leave: 21 days (previous Act was 14 days)

Downward variation to 14 days allowed

Previous act did not apply to casuals

Maternity Leave: 4 months, at any time after four weeks before expected birth (Previous Act said no work for four weeks before and eight weeks after childbirth)

Cannot be varied downward

Sick Leave: Over three years: the number of days the worker would normally work in 6 weeks (typically 30 days for a full-time worker)

Cannot be varied downward

Previous Act did not apply to casuals

Family Responsibility Leave: 3 days per year (was not in previous Act)

Can be varied downward

Information Sheet for Group Two:

Working Time

Work week: ordinary time is 45 hours (previous Act was 46 hours)

Averaging: Time per week can be averaged over 4 months. As long as average per week is 45 hours or less, no overtime will be paid. (no averaging in previous Act)

Compressed working week: The 45 hours may be spread over four days (no compressed week in previous Act)

Compensation and Sunday work: Sunday work by agreement only. Worker may be given time off in compensation for working on Sunday. But time off would be 1,5 as many hours as the time worked on Sunday. For example, if the worker worked 4 hours on a Sunday, they would have to be given 6 hours from a normal working day as compensation. (Previous Act only allowed Sunday work in factories with a letter of permission from an inspector. Previous Act paid Sunday work)

Rest Periods: 36 hours between work weeks. Can be varied downward to 8 hours as long as total for two weeks equals 60 hours.

Break (meal interval): Meal interval is 60 minutes after working for five hours. Can be varied downward to 30 minutes. (no major change from previous Act)

Information Sheet for Group three:

Group 3: Structures of Monitoring and Enforcement of the Act: Employment Conditions Commission and Inspectorate

The Act establishes an Employment Conditions Commission. The Commission will advise the Minister on conditions of employment and monitor the enforcement of the Act. (The Commission was previously called the Wage Board and come under the Wage Act, not the Basic Conditions of Employment Act.

Inspectorate: The Act sets up an Inspectorate. This inspectorate will employ inspectors who will have the right to enter workplaces, ask questions of employers and workers, gain access to all company records, and recommend that an employer be prosecuted for non-compliance with the Act. Inspectors must inform shop stewards when they visit a workplace. (Under previous Act inspectors only had to inform employers during a visit.)

The Acts sets out penalties for non-compliance. Some examples are:

Maximum Permissible Fine Not Involving Underpayment of Wages :

If the employer has no previous failure to comply: R100 per employee in respect of whom the failure to comply occurs. Four previous failures would bring a maximum fine of R500 per worker.

If the issue is one of underpayment of wages:

If the employer has no previous failure to comply, the fine is 25% of the amount due to the worker including interest. (E.g. if the worker was owed R1 000, the employer would have to pay the R1 000 plus R250 as a fine plus interest). If the employer had four or more previous failures to comply, the fine would be 200% of the amount due to the worker. (e.g. if the worker was owed R1 000, the employer would have to pay the R1 000 plus R2 000 as a fine plus interest.)

Criminal charges:

Criminal charges can be brought against an employer for the following: employing child labour, employing forced labour, or revealing confidential employee information. Criminal charges may also be laid if the employer does the following to anyone trying to enforce the Act (e.g. an inspector): obstructs their work, provides false information, or tries to influence (e.g. bribes or threats). Penalties for these vary from 1 to 3 years in prison.

(Previous Act had two year maximum prison sentence for the most serious offence, one year for most offences.)

Worksheet two
Day four: NUMSA Gender Workshop

Agreements, Collective Bargaining and the Basic Conditions of Employment Act

Below is a summary of key points in two agreements reached around basic conditions. Read the summaries and answer the questions below.

Agreement A:

Point 1: Workers will normally work three Sundays a month without overtime pay or compensation

Point 2: Women will receive two weeks paid time off for maternity leave. Any additional leave after child birth will have to come from sick or annual leave.

Point 3: Sales workers will receive no wages, only commission.

Point 4: Production workers will work 48 hours a week ordinary time and 15 hours a week over time for 51 weeks of the year.

Agreement B

Point 1: Workers will not normally work on Sundays. Any Sunday pay will be at triple time.

Point 2: Women will receive six months maternity leave, with the employer paying 33% of normal wages or salary during the six months.

Point 3: Sales workers will be paid R10 per hour plus commission.

Point 4: Production workers will work 42 hours a week ordinary time. No over time work will take place without agreement of the unions representatives.

Questions

1. In Agreement A, identify three downward variations in the agreement.
2. Do any of these variations violate the Basic Conditions of Employment Act? If so, explain which ones and why.
3. In Agreement B, identify three upward variations in the agreement.
4. Do any of these variations violate the Basic Conditions of Employment Act?

DAY FIVE:

**WAY FORWARD FOR
WOMEN WORKERS IN
NUMSA**

Group discussion: NUMSA and COSATU Gender resolutions

Aim: To identify successes and difficulties in implementing gender resolutions from both COSATU and NUMSA.

Tasks for participants

Divide into groups and read the resolutions from COSATU and NUMSA

From your experience, what are the successes in implementing the resolutions?
Identify gender issues that need to be taken up by NUMSA as part of collective bargaining.

co-ordinate solidarity with workers involved in such disputes.

3. This require resources and certain powers to be concentrated in the federation to enable it to intervene effectively in the sectors both in terms of enforcing federation policy and assisting weaker sectors.
4. The balance between the centrality of the federation and the autonomy of affiliates should be clearly spelt out.
5. The CEC should use the September Commission proposals to build the capacity of COSATU and affiliates.

COSATU Demarcation

6. All affiliates must be compelled to implement COSATU decisions.
7. COSATU must be empowered to enforce decisions that relate to poaching of members. Any affiliate that currently holds membership in a sector that is not classified as their scope in terms of current COSATU demarcation, should hand over such membership to the affiliate organising in that sector within a period of not more than six months.
8. Any affiliate which breaches the terms of this resolution, shall be subject to sanction by the CEC.
9. Congress agree in principle to the establishment of key broadly defined sectors/cartels within the federation such as Manufacturing, Mining and Energy, Public Sector, Private Sector Services and Agriculture as outlined in the Secretariat report. These sectors should be organised into cartels that should take responsibility for defining sector policy, take responsibility for collective bargaining and set parameters for all other union work of national competence. The CEC should finalise the precise number of broad sectors.
10. The congress mandates the first CEC to commission a study on the implication of broad sectoral unions and how to establish them taking into account its implications on the following areas:
 - accountability & mandates
 - bureaucracy
 - service to membership
 - administration
 - worker control
11. The mergers and process for such broad sectors should be completed by the next congress (three years).
12. In the meantime the CEC must ensure that no affiliate varies its scope into an area already covered by the scope of another affiliate.

Women Leadership

13. To ensure that all workers are equal as stated in the new constitution. To fight against all forms of discrimination against women, and to promote affirmative action in the workplace, unions, federation and society i.e. education and training. To ensure that women take up more meaningful positions of leadership and reflect more equitable representation within society. These principles should also be contained in the workers charter.
14. To defend women workers from all forms of exploitation, oppression and abuse; and to educate them about their rights regarding these issues.
15. To encourage all affiliated unions to elect women as shop stewards at every workplace where there are women members. Women must be encouraged to become shop stewards with the assistance of organisers. Where they are not elected as shop stewards they could be elected as alternates who must be provided with training.
16. To encourage unions to negotiate time-off for women to ensure effective participation in programmes of COSATU and affiliates as a way of empowering them.

Parental rights agreement

31. Companies to pay for health screening for women workers. A binding sexual harassment code must be negotiated in the NEDLAC Labour Market Chamber. The code should provide for companies to pay for shop stewards to be trained by the union.

In the union

32. To take the following steps to encourage participation and leadership of women in all our activities and structures:
 1. Encourage the appointment of women as Organisers as well as other senior positions in the Federation and its affiliates.
 2. Step up our education of both men and women on women's issues. Step up the special education of women in such areas as skills training and broad union issues.
 3. Take disciplinary action against all those violating the sexual harassment code of COSATU and its affiliates.
 4. Ensure the proper discussion of women's issues at all union meetings and structures.
 5. To allocate adequate resources to enable the federation to implement policies on women empowerment.
 6. Childcare facilities be provided at all meetings.
 7. Where meetings take place after hours, the union should be sensitive to the needs of women, by for example, arranging transport for women comrades for after hours meetings.
 8. Women should be encouraged to attend meetings at all levels.
 9. Workplace general meetings should include women's issues.
 10. Affiliates should operationalise COSATU's Sexual Harassment Code.

Build our women's structures as follows

33. The Federation should continue to ensure that Regional and Local Gender fora are properly co-ordinated, and to establish these structures where they do not exist.
34. COSATU and its affiliates should ensure the inclusion of women within any required delegations to meetings, conferences, congresses and workshops.
35. The CEC should develop a broad political programme with a specific focus to develop and deepen the consciousness of our members on gender issues, building women leadership, their capacity in the federation and in affiliates, promote their participation in structures as well as eliminate gender imbalances and all forms of gender discrimination. Furthermore, the CEC should set and monitor the implementation of measurable targets by affiliates and the federation to achieve the above. Affiliates and the federation should share information on progress as well as education programmes.
36. In addition to the above, the CEC should also consider proposals in the September Commission related to building women leadership with the exclusion of the areas which have been resolved by congress.

Strengthening organisation

37. COSATU to strive for building the trade union movement and its capacity to defend and advance the transformation process in our country and the interests of workers and the working class. To strengthen

The National Union of Metalworkers of South Africa

Fiscal Policy CONTENTS | >>> Monetary Policy

Labour Market Policy

NUMSA believes that:

1 - Our views

We reject the government's and business' proposals on Labour Market Policy as they advance:

1. The lowering of labour standards
2. Job losses

2 - Principles of Labour Market Policy

We believe that Labour Market Policy should:

1. Close the apartheid wage gap
2. Train and develop the workforce
3. Through NEDLAC guide the impact of Public Works Programmes to ensure training in communities and job creation.

3 - Outsourcing

1. Outsourcing should not downgrade conditions of employment of workers in the same industry
2. The employers should consult unions 6 months prior to outsourcing.
3. There should be full disclosure of information.

4 - Labour Brokers

1. These should be regulated and workers in these sectors should enjoy full rights and benefits of full-time workers.

5 - Wages

1. Wages should be separated from productivity incentives.
2. There should be a national minimum wage.

6 - Training and skill development

1. All workers should enjoy access to paid training.
2. We support COSATU's position on a 4% levy on companies for training.

7 - Land reform

1. Land reforms should promote small and medium size farmers.
2. Farmworkers must be allowed farming and grazing rights.
3. There is a need for a conference on rural development involving unions and non-governmental organisations. Critical to this conference would be to look at:
 1. Land reform and tourism

Extra reading material

1. *"Three labour bills still on the agenda"*
in **The Shopsteward** December 1997/January 1998

2. *Basic Conditions of Employment Act , 75 of 1997: a summary*
ILRIG summary

3. *"Variations of standards: some possible effects"*
in **TULEC News** Volume 2 no 3 & 4 September 1997

4. *"Labour reform: addressing women's needs?"*
By Roseline Nyman in **Agenda** 1997

5. *"Globalisation: women pay the price"*
by Melanie Samson in **South African Labour Bulletin** Volume 21 No. 1 February 1997

6. *"The women's budget: voting for economic change"*
by Debbie Budlender in **South African Labour Bulletin** Volume 21 No.1 February 1997

7. *NUMSA resolutions:*
 - Women's empowerment
 - Bargaining strategy
 - Monetary policy
 - Trade and Industrial Policy
 - Fiscal policy
 - Taxation – principles of the tax system
 - Work re-organisation/shop-floor restructuring

Three labour bills still on the agenda

Labour negotiators will have their hands full in dealing with labour legislation next year.

While the Basic Conditions of Employment Bill was passed in November, discussions on issues not adequately captured in the Bill are likely to continue well into 1998.

Negotiations on the Skills Development Bill (see page 37) are continuing and the Employment Equity Bill, released on 30 November, will now also join the Nedlac negotiating agenda.

Commenting on the passing of the Basic Conditions of Employment (BCE) Bill by the national assembly in November, Cosatu said the Bill was a milestone in the attempt to combat the conditions of abuse and insecurity which workers face as a result of decades of apartheid, colonialism and capitalism.

"Today will go down in the history of the country and the workers' calendar as one of the days that represents a shift away from exploitative working conditions to fair labour standards, in line with our constitution and the RDP. This is a result primarily of the struggles of workers and the programme of the Alliance to transform the apartheid labour market."

The new legislation will be a step towards ensuring that workers are given relief from the relentless onslaught of unscrupulous employers on the working conditions of vulnerable workers like domestic and farm workers, Cosatu said.

It said important gains for workers include the following:

- Extension of the provisions of the Act to vulnerable workers, including domestic, farm and casual workers;
- Regulation of working hours;

- Protection against dismissal of pregnant women workers and maternity leave provisions;

- Overtime provisions;

- Written particulars of employment; and

- Family responsibility leave.

These and many other provisions of the Act would change the power relations between vulnerable workers and employers who think that we still live in a period of slavery, Cosatu said.

However, the federation said the government now faced the challenge of ensuring that the Act's provisions would be effectively monitored and enforced. Many employers would not comply with the provisions without being forced to do so.

"The inspectorate should be resourced in a manner that will not allow farmers, small business bosses, unorganised establishments and employers of domestic workers to continue with their exploitative conduct as if nothing has happened," Cosatu said.

While Cosatu leaders have hailed the Bill as a progressive one, they have placed on record that this does not mean the federation is happy with all areas of the new legislation.

They point out that, since the negotiations began, Cosatu compromised on its key demands in order to induce a settlement. A number of issues were resolved through political agreements reached in the Tripartite Alliance. But some of these were not properly captured in the Bill that was finally passed, including the key issue of variation.

Cosatu deputy general secretary Zwelinzima Vavi says that, since then, the Alliance national office bearers have agreed that an Amendment Bill

should be introduced to effect these agreements. This will be done before the Bill comes into operation next year.

Vavi said a process to resolve other outstanding matters will be dealt with by the Alliance technical committee. Once this process is agreed on, an Amendment Bill will be referred to Alliance structures for endorsement.

Cosatu had also presented a number of proposed amendments to the Labour Standing Committee. Few of these proposals were taken on board. Another outstanding matter which is likely to be discussed is the 18-month exclusion of public sector workers from the Bill's provisions.

"We remain of the view that these outstanding issues can be resolved by the Alliance in the same way that we resolve an earlier impasse," Cosatu said.

The federation's parliamentary submission on the Bill had harsh words for business and accused it of endless attempts to delay the negotiations process around the Bill.

While Cosatu had compromised in order to reach a settlement, business had refused to compromise its positions.

"Obviously business is in no rush to see the implementation of new basic conditions legislation as the present Act was drafted by the apartheid regime at a time when the majority of workers were disenfranchised and when employers had a close alliance with the regime."

"In the process, business, supported by their representatives in parliament – especially the NP and the DP – have exposed their true intentions.

"Under the guise of 'labour market flexibility' (ie undermining worker rights) they are determined to stop progressive labour legislation which limits the unfettered power which they enjoyed in the past." ❊

BASIC CONDITIONS OF EMPLOYMENT ACT, 75 OF 1997

1. SCOPE AND APPLICATION

Coverage:

All employees who work more than 24 hours per month for an employer, including persons undergoing vocational training except where any term or condition is regulated by another law. There is an 18 month delay for the public service.

Exclusions:

Members of the National Defence Force, the National Intelligence Agency and the South African Secret Service;

Unpaid volunteers working for an organisation service a charitable purpose:

Persons employed on vessels at sea in respect of which the Merchant shipping Act applies (except for section 41 of the BCEA)

Application:

The basic conditions constitute a term of any employment contract

Exceptions:

Any other law that provides a terms that is more favourable to the employee:

The Basic Condition of Employment has been replaced, varied, or excluded in accordance with the provisions of this Act (see below, 'variation');

A terms of the contract of employment is more favourable to the employee;

2. VARIATION OF BASIC CONDITIONS OF EMPLOYMENT

Agreements may alter, replace, or exclude any basic condition of employment if the agreement is consistent with the purposes of the Act. Variation may be by:

- bargaining councils (minister can then extend to collective agreements concluded by union)
- collective agreements
- individual agreements
- the Minister

Variation* downward is permitted for the following:

- weekly rest period
- public holidays
- Sunday work
- sick leave pay
- child labour (the Minister may make variations for children under 15 years or under the compulsory school-going age [if this is 15 years or older] to the extent that their employment is in advertising, sports, artistic or cultural activities)

Variation by Bargaining Councils: may not reduce the following minimum conditions or the protections afforded by the following provisions:

- regulation of working time, maximum ordinary weekly and daily hours of work, and maximum hours of work regulated by Ministerial determination (which must be lower than the prescribed maximum hours);
- regulation of regular nightwork between 23.00 and 6.00;
- annual leave to less than two weeks;
- an employees' entitlement to maternity leave;
- an employees' entitlement to sick leave;
- the prohibition of the employment of children (under 18 years) and forced labour.

Variation by Minister: may not reduce the following minimum conditions or the protections afforded by the following provisions:

- regulation of working time, maximum ordinary weekly and daily hours of work, and maximum hours of work regulated by Ministerial determination (which must be lower than the prescribed maximum hours);
- regulation of regular nightwork between 23.00 and 6.00
- the prohibition of the employment of children (under 18 years) in work that is inappropriate for their age or places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development;
- the prohibition or regulation of the employment of children of 15 years or older and who are no longer subject to compulsory schooling in terms of any law;
- the prohibition of forced labour.

* A schedule setting out what can be varied will be issued later.

SUMMARY OF EMPLOYMENT STANDARDS:

STANDARDS:	CONTENT:	VARIATION:
Minimum Wage	No minimum Wage	
Dismissal	<p>Notice:</p> <ul style="list-style-type: none"> • 1 week for 4 weeks work or less; • 2 weeks for more than 4 weeks but less than year; • 4 weeks for one year or more; • 4 weeks for farm worker or domestic worker employed more than 4 weeks <p>Pay: one week for each year continuous service</p>	Shorter notice period may be agreed to in collective agreement.
Paid Leave	<p>Minimum annual leave: 21 consecutive days' leave on full pay for each 12 month leave cycle. Additional day's leave granted if a public holiday falls during employees annual leave and employee would have ordinarily worked that day.</p> <p>Family responsibility leave: applies to employees worked longer than 4 months with an employer and who work 4 days or more per week. Entitled to 3 paid leave days during each annual cycle (at request of employee) for: sickness of employee's child; death of spouse / life partner, parent, adoptive parent, grandparent, child (including adopted), grandchild, sibling.</p>	<p>One day of annual leave on full pay for every 17 days on which the employee worked or was entitled to be paid;</p> <p>One hour of annual leave on full pay for every 17 hours on which employee worked or was entitled to be paid.</p> <p>Number of days and circumstances for granting leave can be varied by collective agreement.</p>
Sick Leave	<p>Maximum sick leave: 6 working weeks in each 36 month sick leave cycle (payment at the wages the employee would ordinarily have received for work)</p> <p>First 6 months of employment, employee is entitled to 1 day's paid sick leave for every 26 days worked.</p>	Sick pay can be reduced if the number of days paid sick leave can be increased at least commensurate with a reduction in daily amount of sick pay. Sick pay cannot be reduced to less than 75% of the daily rate he/she would have been entitled to.

(con't)

STANDARDS:	CONTENT:	VARIATION:
Maternity	<p>Four consecutive months unpaid leave.</p> <p>During pregnancy & 6 months after birth, an employer must offer suitable and equivalent alternative employment if employee is required to perform nightwork or work poses danger to her health / safety of child, & if it is practicable for the employer to do so.</p>	No variation.
Child Labour /	<p>Children under 15 years or under the minimum school-leaving age if this is 15 years or older may not be employed;</p> <p>children between above age and 18 may not be employed in 'inappropriate' employment</p>	
A-Typical Worker	<p>All rights apply if worker has worked more than 24 hours per month for an employer (includes contract workers), excluding: averaging working week (depends on is worker is a member of a union and the union has made such an agreement) and family responsibility leave (see above).</p>	
Rest Period	<p>Daily: Minimum 12 consecutive hours between, ending and recommencing work.</p> <p>Weekly: Minimum of 36 consecutive hours, including Sunday (unless otherwise agreed).</p>	<p>Can be reduced by written agreement to 10 hours for an employee who lives on the premises of the workplace and whose mean interval lasts for at least 3 hours.</p> <p>Written agreement may provide for a rest period of 60 hours every two weeks; or may reduce an employees weekly rest period by up to 8 hours in a week if rest period in following week is extended equivalently.</p>

STANDARDS:	CONTENT:	VARIATION:
Sunday / Public Holiday	<p>Work on Sunday: double the standard wage for each hour (hours are not taken into account in calculating ordinary hours but are calculated as overtime).</p> <p>In terms of Public Holidays Act, 12 days are public holiday. If any fall on a Sunday, then Monday will be a public holiday.</p> <p>Payment: if employee would normally work, gets daily wage; if employee works on a Public Holiday, gets 2X daily rate, or daily rate plus the amount earned on that day (whichever greater)</p>	<p>Work on public holiday only by agreement.</p> <p>If a shift worked by employee falls on a public holiday and another day, the whole shift is deemed to have been worked on the day on which the greater portion of the shift falls.</p>
Working Time	<p>Weekly: 45 hours</p> <p>Daily: 9 hours (for 5 day week or less); or 8 hours per day (more than 5 days / week)</p>	<p>Maximum weekly / daily hours may be varied by an agreement to average hours of work over period of up to 4 months.</p> <p>Maximum daily hours may be varied up to 12 hours per day (inclusive of mean intervals)</p>
Nightwork	<p>(between 18.00 and 6.00)</p> <p>Only by agreement, and <i>if</i> transportation is available between the employee's residence and the workplace; and <i>if</i> employee is compensated by the payment of an allowance (may be a shift allowance) or by a reduction or working hours.</p>	
Harassment	<p>Protection, through establishing a set of rights, implicitly providing some protection against victimisation and harassment</p>	<p>No variation.</p>



TULEC

news

Newsletter of the Trade Union Library and Education Centre

Editor's note: New look for TULEC News

This is the first issue of *TULEC News* in our new format. This double issue continues our commentary on the Basic Conditions of Employment Bill. Labour's response to the Bill, specifically the Cosatu campaign against it, has received much media coverage. Our follow-up article therefore focuses instead on some effects the proposed variation of standards could have

on women workers. This issue also contains the first of two articles on black empowerment. The introductory article is largely informative, and outlines some of the developments on the economic front in this regard. The forthcoming article will look at workers' views on black empowerment.

Variation of standards: some possible effects

In the first article on the Basic Conditions of Employment Bill (*TULEC News* vol 2 no.2) it was noted that one of the major changes from the old act is the concept of "variation". Most employment standards can be varied by collective agreement, individual contract or by the Minister of Labour. Only the standards on maternity leave, forced labour and child labour cannot be varied.

In this article we look at the consequences of the variation clause for workers, particularly women workers.

As outlined in *TULEC News* vol 2 no.2 an individual worker can agree to:

- Extend his/her working day without receiving overtime pay,
- Agree to time off instead of overtime pay,
- Agree to time off instead of Sunday pay,

- Agree to work Sundays as a ordinary day even when this is not customary in the enterprise concerned,
- Reduce the length of the meal interval or extend the duration of working time between meal intervals,

(Continued on next page)

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- Extend the working week without a weekend rest period (half day Saturday and Sunday under the BCEA) to a fortnight, with a reduction of rest time (two and a half days a fortnight instead of one and a half days a week) built into this.
- Reduce pay for sick leave.

These rights can also be varied downward or excluded altogether, by collective agreement. Collective agreements can also:

- Place constraints on, or change the number of days for family responsibility leave upward or downward.
- Agree to shorter notice periods on termination of employment (although the bill rules out any collective agreement on a period of notice longer than one month).
- Average out workers ordinary working hours over a period of four months.

This acceptance of regulated flexibility in the Bill assumes that workers are in an equal position with management and any variations will be agreed to willingly. Workers will often be forced to accept conditions lower than the minimums, because of their unequal relationship with management. This is particularly true of women workers who are acknowledged to be in a weaker position in the labour market. In South Africa women are primarily in sectors which are difficult to organize (domestic and agricultural), or sectors which are being hard hit by the governments deregulation and tariff policies (clothing and textiles). Women also tend to be in the less skilled positions and are therefore more at risk of being made redundant.

Flexibility and hours of work

Hours of work will be the area most affected by flexibility. Agreeing to flexible time could mean that you will work up to 12 hours a day with no overtime pay as long as the **average** working day over a period of four months is 9 hours. For example a worker could work 12 hours a day, five days a week for two months, and then only 6 hours a day for the next two months. For employers whose companies depend on additional hours of operation during peak periods this means saving the money they usually pay out in overtime. For the employee this means receiving less overtime pay, which many workers in these companies rely upon.

This means less money and therefore a lowering of living standards, which are already very low for black workers in this country.

Long and irregular working hours also means less time for union activities, social events and family matters. It will lead to increased stress and all the health problems that stress causes, such as heart disease, ulcers and strokes. Research done as early as 1958 has shown that workers in light industry who worked more than 48 hours a week were twice as likely to die of a heart attack than those of similar age working 40 hours or less a week. Working long hours will cause fatigue and mental strain. This will eventually result in a reduction in output as well as reduced concern for quality, absenteeism due to illness, lower work satisfaction, higher accident rates and increased errors. This has significant implications for worker safety.

Women workers

A large number of women workers in this country fall into the category of non standard employees. These women are not covered by the Basic Conditions of Employment Bill. Nor are the 5 million people in S.A. who work in the informal sector, the large majority of whom are women. [In a survey done in 1996 there was one homebased worker in every 7 houses surveyed. Six out of ten of these were women (Of the African households surveyed 71% were women)]. Women represent a large part of the informal sector because the industries that women work in and the skills that they have are suitable to home work for example the clothing industry.

Even for women who are covered by the Bill variation or flexible standards will be a big problem. Because of their relatively weaker position in society and in trade unions women are more vulnerable to exploitation than male workers. The negative consequences of variations will be greater for women than for men. In addition to the drawbacks for flexible working hours noted above, women must contend with the following:

1. They are concentrated in sectors which are not unionised or are difficult to organise, such as small businesses, shops, agriculture and domestic work. These women will be under pressure to accept lower conditions of employment, and will not have the force of

the collective behind them. Even women who are members of unions may struggle to keep their rights included in the BCOE Bill. Male dominated unions may be more concerned with the majority of their members needs and therefore may not focus specifically on the concerns of women workers.

2. As the primary care givers in the family the impact on children of women working twelve hour shifts is greater than that of men, particularly if they are single parents. They will see less of their families, and they will more than likely have to pay for additional child care. This additional child care will be a drain on their wages, and there will be no overtime pay to compensate for this. The fact that they spend less time with their family is important. With less family guidance, children are far more likely to turn to activities which will be harmful to them.
3. Taking time off instead of Sunday pay and public holiday pay reduces the family's income. The time taken will not compensate for time that could have been spent with family and friends (who are available on public holidays but not on an ordinary working day).
4. Women who work a full day at the workplace and then return home to care for their family are especially in need of a full 36 hour weekly rest period. The Bill allows workers to agree to take this rest period during the week rather than at the weekend. Again this will

mean less time to spend with families - during the week family members will be at work or school. The Bill allows for this rest period to be stretched to every fortnight, and then lowers the number of hours to 60 (two and a half days instead of 72 hours, or three days). Once again, this reduces the time women workers spend with their families.

5. If workers reduce their parental leave allowance, they will be able to spend less time with families at critical periods. This will increase the burden on women for childcare as men will not share the responsibility.
6. Travelling in the dark, after most workers have gone home, when they work 12 hour shifts, makes women more exposed to violent attacks and rape.
7. Less money and time at home means that women workers will have resort to lower quality food which is detrimental to the health of family members.

The Bill is in line with the government's ambitions to be globally competitive. With more and more companies preferring to "outsource" services rather than employ staff permanently, working women are pressured to accept flexible working conditions. Due to lower income and their inability to afford costs like childcare and transport, they are forced to consider working from home, thus reducing their protection even further. Global competition requires reducing workers rights to such a degree that they are completely at the mercy of bosses.

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Globalisation

women pay the price

FROM: SALB
Vol 21 No 1
February 1997

“The objectives of our Reconstruction and Development Programme will not be realised unless we see, in visible and practical terms, that the condition of women in our country has radically changed for the better, and that women at every level have been empowered. My government is committed to a reallocation of resources to ensure the achievement of this objective.”

President Nelson Mandela, State of the Nation Address, May 1994

Since President Mandela made this statement, the Reconstruction and Development Programme (RDP) has, to all extents and purposes, been abandoned. Government has shifted its emphasis to the Growth, Employment and Redistribution Strategy (GEAR).

GEAR is a market oriented strategy. It assumes that globalisation is inevitable, and places international competitiveness at the centre of policy development.

Although the RDP is no longer the core of government policy, the ANC still claims to be strongly committed to gender equity. However, no effort has been made to look at the impact GEAR will have on gender issues or whether gender equity is compatible with globalisation and international competitiveness.

One reason why there has been no discussion regarding gender and GEAR is that the macro economy is usually

Melanie Samson argues that globalisation, neo-liberalism and competitiveness are based on the increased exploitation of women and are incompatible with the achievement of gender equity.

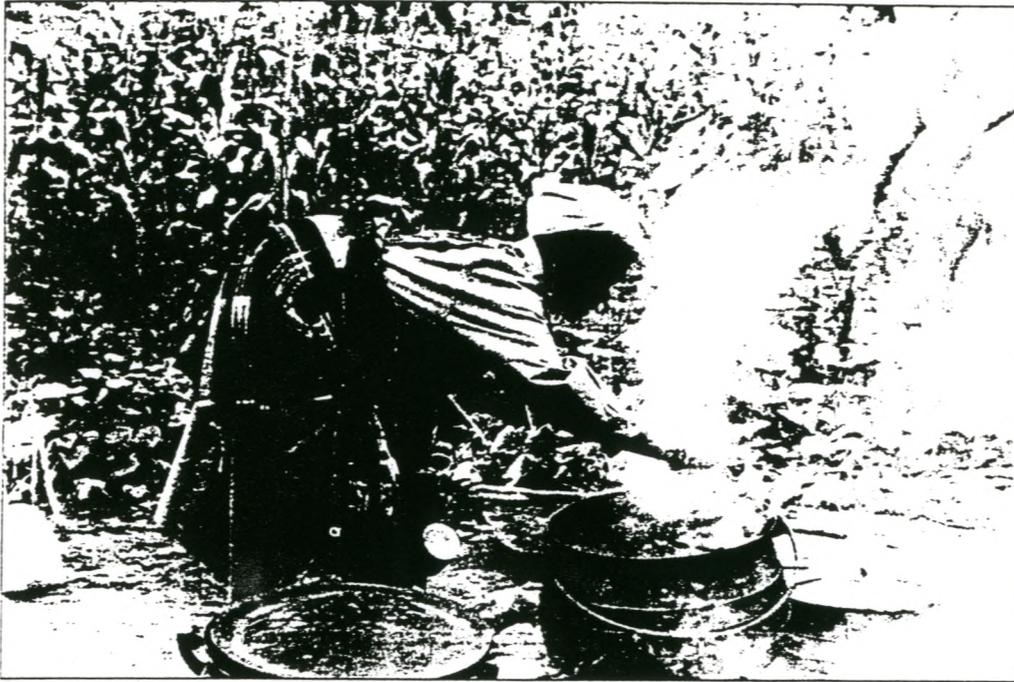
associated with things like interest rates, tariff levels, and exports. Rarely is it viewed in terms of the unequal power relationships between men and women, which is what we mean when we use the term 'gender'.

Women's work

In order to understand the way in which macro-economic and development policy relate to gender we must look at the different roles men and women play in the economy.

Across the globe there are certain tasks considered to be 'women's work'. The most important of these is the reproduction of the labour force. Generally, women are responsible for ensuring that their children (and their male partners) are fed, cared for, healthy and educated. They are in charge of maintaining the home and caring for the elderly.

These unpaid activities are very costly to women. They limit the kinds of paid employment which women can pursue. It is as if women have to pay an extra tax - what has been called a 'reproduction tax' - before



Certain tasks are regarded as 'women's work'.

they enter the job market.

This tax benefits the government (as it reduces the amount of services which the government needs to provide), capitalists (who can pay their male workers less due to the free services provided by women) and male workers (who together with children and the elderly receive these free services). It does not benefit women, as economic and development policies do not take their unpaid work into account.

There are two other key factors which

Differences

All over the world, but especially in South Africa, there are, of course, many differences between women – on the basis of race, class, sexual orientation etc. One of the only ways women can decrease the amount of 'free' work they do is to pay other, more disadvantaged women to do some of this work for them. White, and the increasing number of black, bourgeois women, have taken this route in South Africa.

affect women's position in the economy. The first is the existence of institutions which link people to the job market. Many of these institutions are biased against women.

Women are responsible for child care. South Africa is notorious for its lack of publicly-funded child-care agencies. Women are also excluded from useful networks not only at the executive level, but also on the shopfloor, where male workers most often refer male friends and family for available positions.

The reason men do this is related to gender stereotyping. This is the second factor which affects women's economic position. All societies subscribe to sexist and racist assumptions regarding what kinds of skills different groups of people have, and what kinds of work it is therefore appropriate for them to do.

The kinds of jobs which women do in the formal and informal economy are related to their unpaid labour. In the formal sector, black South African women are

concentrated in a small number of jobs, such as domestic work, teaching and nursing. A significant number of women in the manufacturing sector work in clothing and textiles.

Many women who work in industrial sectors do 'nonproductive' jobs, such as cleaning and tea-making. Women who work in the informal sector are almost all engaged in survivalist activities which are extensions of their unpaid work, such as providing hot meals, selling food, sewing, and childminding.

Because the skills required for the jobs women do are often developed in the home, they are considered to be 'natural' abilities. Women who perform these tasks are regarded as 'unskilled' and, consequently, earn very low wages. This is also justified by the assumption that their income supplements that of a male worker. Until fairly recently, legal minimum wages for women workers in South Africa were lower than for men.

This understanding of the links between women's economic position, gender oppression and capitalism is key to understanding the relationship between globalisation and gender.

Financial globalisation

In its narrowest sense, globalisation refers to the integration of global financial markets and the hyper mobility of global finance.

Even this most abstract aspect of globalisation is highly gendered. The cosmopolitan male financial experts who enjoy the same freedom of movement as the capital which they move around the world constitute only 15% of the workers in the global finance industry. Their work is dependent upon the mostly female clerical workers who make up over 50% of the workforce. Like most of the new service sector jobs open to women in the age of globalisation these jobs offer lower salaries

and worse conditions of employment than manufacturing.

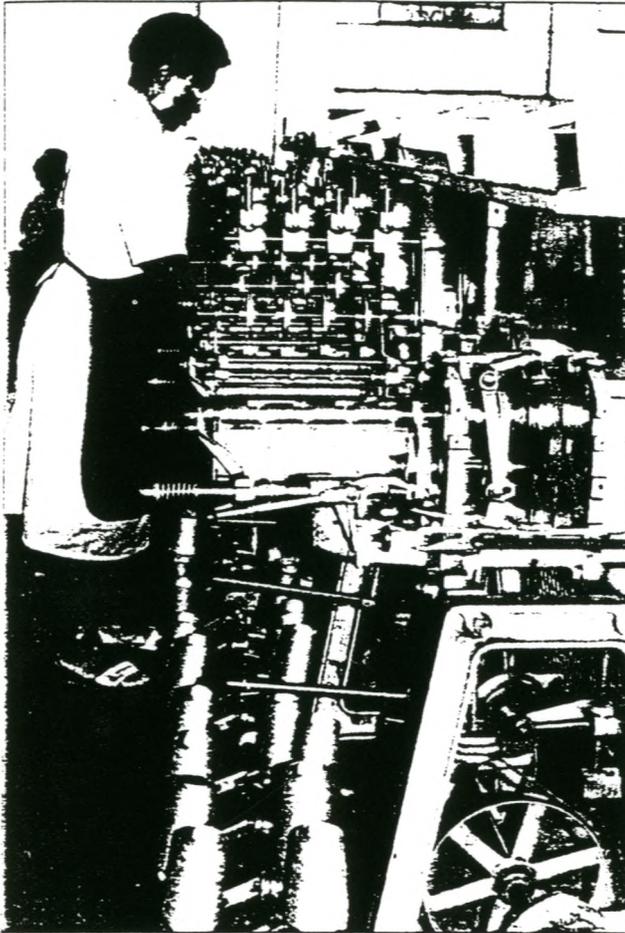
Globalisation of production

The other narrow, economic aspect of globalisation is the increasingly footloose nature of production, which is accompanied by changes in production relations. In the 1970s and 1980s capital began to run away from the unionised workforces of the North in order to exploit cheap labour and lax environmental and health laws in the export processing zones (EPZs) in the South. During this time, when the EPZs specialised in labour intensive production, up to 80% of the workforce was female.

Governments discovered that their nation's competitive advantage was based on women's disadvantage. South East Asian governments actually went so far as to advertise the docility of their female labour force. Some of the multinational electronics corporations which relocated to these areas in pursuit of cheap, passive female workers sponsored make-up sessions and beauty pageants for young women workers. The not-so-hidden goal of these endeavours was to feed into female stereotypes and encourage women to define themselves as 'ladies' as opposed to 'workers'.

Women have not simply accepted this state of affairs. There have been general strikes in the EPZs in the Philippines, and protests in support of unionisation in EPZs in Malaysia. Women workers have not, however, succeeded in challenging notions about what jobs they are qualified to do. In the 1990s, as production has become more capital intensive in the EPZs, female labour has been replaced by skilled male labour. Women workers gained nothing from globalisation but a few years of highly exploited work.

Another strategy, particularly in the clothing and textile industries, has been to shift production out of the factory into the



A significant number of women in the manufacturing sector work in textiles and clothing.

homes of immigrant, black women. These women have limited options in the labour market. In Canada the textile industry has maintained its profit levels by paying homeworkers, who do not benefit from unemployment insurance or pension plans and find it difficult to organise as a result of their isolation, as little as one dollar an hour.

In South Africa, a study by Budlender and Theron found that there was at least one homeworker in 70% of households included in the study, 60% of whom were women. Although only 3% of homeworkers interviewed were doing contract work for someone else, almost half of those interviewed had previously had a job in a

factory, shop or office. While homework in South Africa does not appear to be a result of the contracting out of production it is linked to industrial restructuring and downsizing, which are related to globalisation.

Flexibility

Contracting out is a strategy adopted by capitalists to increase labour flexibility so as to maximise profits. Flexibility involves multiskilling (which is often, in fact, multitasking) a downgrading of worker rights (such as relaxing laws regarding hiring and firing) and the use of non-standard forms of employment such as homework, casual, part-time, contract and seasonal work.

Flexibility in production and flexibility in employment are closely related. With the shift to post-fordism a small core of workers who generally enjoy basic labour rights is retained.

Core workers are supported by peripheral workers, in non-

standard forms of employment, who often have no rights whatsoever. Across the globe it is mainly men who are retained as core workers, and women who are pushed out into the more exploited periphery.

In South Africa the statistics on non-standard forms of employment are extremely poor. However, a recent ILO study found that 82% of firms surveyed use temporary labour, and 45% use contract labour. Although the study did not provide a gender breakdown of these workers, it is known that in some industries, such as fruit canning and deciduous fruit farming, women comprise the majority of seasonal workers (The Women's Budget, p 66).

GEAR specifically calls for increased flexibility in the labour market, and assumes that there will be an increase in non-typical forms of employment. Based on national and international trends it is likely that this will mean that women workers will increasingly be forced to accept non-permanent, insecure jobs.

The politics of globalisation

Those on the right would have us believe that the economic aspects of globalisation outlined here are inevitable processes which result from the radical technological innovations of the late 20th century. They argue that trade and finance have leapt beyond the realm of the nation state and left national governments powerless to do anything other than adopt 'internationally competitive' policies which will attract global investment.

Rather than being passive victims of globalisation, nation states are actually the key agents in this process. Governments have promoted economic globalisation through adopting the very policies which allow capital to hop around the world - the dropping of tariff and non tariff barriers and financial controls.

It is governments who promote globalisation by signing free trade agreements and consenting to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organisation (WTO).

These same governments then claim that they have no choice but to adopt neo-liberal policies to promote international competitiveness! These policies are designed as much to convince capital that the state is 'behaving properly' as to provide direct incentives to capital. Typically they include: dropping tariff and non-tariff barriers to trade, decreasing corporate taxes, reducing state 'interference' in the economy, reducing government debts and deficits in order to please the international financial

markets, creating a flexible labour market, adopting market-oriented approaches to development, and providing international capital with the same rights and privileges as domestic capital.

Globalisation involves a complete restructuring of the state. In the past welfare states in developed countries, and development states in developing countries, were somewhat committed to the provision of social welfare for citizens. Now there is a shift towards 'competitive states' whose main responsibility is to ensure that the economy is internationally competitive. Even government departments such as health, labour and education are reoriented towards these goals. In South Africa, the Employment Standards Green Paper was so concerned that the new law create an even more flexible workforce that it was willing to sacrifice universal basic employment standards.

Services

In her article on The Women's Budget in this edition of the *Bulletin* (see p 57), Debbie Budlender argues that the national budget must allocate resources in a way that benefits women. The competitive state does precisely the opposite. Under structural adjustment and neo-liberalism more generally governments are drastically reducing the services which they provide. Citizenship is being narrowed, rather than expanded, as citizens are being forced to expect less from the state.

While the state might reduce its role in providing services, the need for these services still exists. The competitive state will only succeed if women increase their unpaid labour to meet the needs of their families and communities. The efficiency of the competitive state is financed by increasing the reproduction tax women pay.

A clear example is the international restructuring of health-care systems. With

cuts in nursing staff, women are expected to provide daily care for family members in hospitals. One study cites the case of a woman farmer who missed an entire planting season as she was providing this free service.

A South African example of this trend is provided by the Urban Development Strategy (UDS). The UDS states that the government will not be able to provide the basic urban infrastructure which is required. It will not provide women with services they need, like clean, piped water, child care, safely lit streets and transportation. The UDS is market-oriented and focuses on full cost-recovery. It may increase women's unpaid labour and reduce their possibility of entering the formal job market. To promote gender equity the UDS should provide communities with services which would decrease women's reproduction tax, not increase it!

It is ironic that globalisation and international competitiveness increase the reproduction tax on women. This is because these same processes require an increase in women's participation in the paid labour market.

As Pat Horn's article in this edition of the *Bulletin* shows (see p 90), restructuring in Africa is causing decreases in formal sector employment. The consequent rise in unemployment mainly affects men. Women are then forced to engage in informal economic activities in order to feed and maintain their families.

In South Africa, 16% of people performing paid work in 1994 were in the informal sector - 70% were female, and 79% were African. The vast majority of these women work in survivalist enterprises which will not benefit from the Department of Trade and Industry's support for small, medium and micro-enterprises, which is targeted at promoting international competitiveness and market success. It can only be assumed that the job losses due to

South Africa's tariff reductions will force even more black women to become involved in survivalist micro-enterprises.

Neo-liberalism and international competitiveness rely on exploiting women's weaker position in the labour market. Women are being used as the shock absorbers for global restructuring.

Globalisation is supported by gender inequality, which in turn strengthens and reproduces. If the South African government is seriously committed to the eradication of gender inequality it will have to acknowledge that the attainment of a nonsexist society is fundamentally incompatible with an active acceptance of globalisation and the ideology of international competitiveness. For, as President Mandela himself stated during his opening remarks to the third session of parliament on 9 February, 1996: "We can neither heal nor build, if we continue to have people in positions of influence and power who, at best, pay lip service to affirmative action, black empowerment and the emancipation of women, or who are in reality opposed to these goals..." ★

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FROM: SALB

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The Women's Budget

voting for economic change



In the past, many people thought of South Africa's budget as a rich man's issue: something only the finance and business sectors had to worry about.

In more recent years we have heard something of what the budget means for workers. Up until now, however, we have not explored the meaning of the budget for the unemployed, rural communities and women.

Over 50% of all South Africans are women. Women make up well over half of our rural people. Women are among the poorest members of society. It is they, more than finance and business, who need government to function effectively and equitably.

The democratic elections of April 1994 were an important step towards democracy. In the economy, however, there are still noticeable inequalities. Political democracy has not yet led to economic democracy.

While each person had one vote in the elections, in the economy votes are counted in rands. A few people have millions of votes. Many, including the majority of women, have no vote at all.

One of the main functions of the national budget is to ensure that every citizen has adequate access to goods and services. The main way of doing so is by taking from those who have (through taxation, or by changing policies which benefit the privileged) and giving to those who are in need (by funding things like health, education and welfare).

The national budget is government's most important economic policy instrument. In the past, it has not catered for women's interests. Debbie Budlender reports on an innovative project which seeks to change this state of affairs.

The Women's Budget

On 10 March 1996 we launched the report of the first South African Women's Budget.

The Women's Budget is an attempt to make women's political vote count more, so that government is forced to allocate economic and other resources in a more efficient and equitable manner.

The Women's Budget does not try to look at women separately from men. We have used a gender analysis of society, which sees the position of women and men resulting from the relationships between them. This analysis shows that it is usually women who are disadvantaged in gender relationships, who are 'poorer' in money, power, and virtually all important resources. It is women whose work is either completely unpaid, or even more badly underpaid than that of men.

We are not talking about a separate

budget for women. Rather, we are saying that the whole national budget - and the provincial and local ones - must be gender-sensitive. Nor are we talking about a slice of the cake. We are saying that the whole cake must be baked according to the correct recipe and sliced in a way that takes both women's and men's needs into account.

Many of the observations The Women's Budget makes about women also apply to other less privileged groups. For example, Jenny Shindler's chapter on Education notes that only about 1% of the education budget is spent on adult basic education and training (ABET). We also know that literacy was the only Presidential Lead Project which received no allocation from government. Instead government said that the funding should come from donors.

These budgetary decisions affect every one of the large number of illiterate adults in the country. But there are reasons why it is also a gender issue. Firstly, 20% of all African women have no formal education, compared to 14% of all African men. Secondly, one of the main funders on whom the government is relying to provide ABET are large companies. Many companies, particularly in the mining sector, provide literacy programmes for their workers.



Women lose out because they make up a very small percentage of the workforce in such companies.

Who pays?

Expenditure - how much is allocated for the different things the government spends its money on - is one side of the national budget. The other side is revenue.

Government revenue comes mainly from taxation. In The Women's Budget, Trudi Hartzenberg looks at how much women pay

The new government has abolished outright sex discrimination in taxation. Under the previous system, married women paid higher tax rates than married men or single people. This has now been done away with. (In fact, the government did not have a choice, as unequal rates were unconstitutional!)

Overall, however, this has helped relatively few women. Not many women earn enough to pay significant amounts in direct income tax. Less fortunate women still suffer a tax disadvantage, which they share with other poor people: the enormous shift of the tax burden over the last 20 years from mines and other companies to individuals.

In 1976 companies contributed 35% of tax revenue, while individual taxpayers contributed 25%. At that point there was no sales tax. In 1995 companies contributed only 13%, while individual tax-payers contributed 41%. Value Added Tax (VAT) made up another 27%.

Everyone - woman, man, company or worker - pays VAT. However, while wage and salary tax is progressive, (the more you earn, the more you pay) VAT is regressive - everyone pays the same percentage on every rand they spend. VAT affects poor people more than the rich, because poor people spend a larger proportion of their earnings on their daily needs. It falls particularly hard on those people - mostly



ANC MP, Pregs Govender, played a central role in *The Women's Budget Initiative*.

women - who buy goods daily and weekly to provide for themselves and their families. The Department of Finance itself estimates that very poor households pay out 9% of their income on VAT, while the very rich pay only 5,4%. Because more women are poor, they pay proportionately more VAT than men.

Social policy

Some economists say that what we have produced is not a budget. They say that, while a budget is a technical collection of figures, what we have done is politics. We have a number of replies to this.

Any budget is far more than an 'objective' technical exercise. The budget is the most important economic policy instrument of

government. It determines how much money each government department receives, and what it should spend that money on. It also determines where the government gets its money. Every decision about every rand is a political decision. It determines whose interests will be advanced, and whose interests will be traded off and ignored.

We have not produced a full alternative budget. What we have produced is an analysis of social policy. We have tried to add a 'real' measure to our policy analysis and to give our proposals teeth by linking them to rands and cents.

We believe that policy should drive the budget and not vice versa. The government should *first* determine what it wants to do, and *then* decide how much money it can give towards it and where it will get that money. We believe that this is in line with government's commitment to reprioritise. Rather than, as in the past, just increasing or decreasing each vote by a small percentage each

year, the government needs to look at every expenditure and weigh it up in terms of its overall objectives and what it will mean for women and men, workers and bosses, poor and rich, rural and urban.

We could not have produced a full alternative budget even if we had wanted to and had all the necessary skills. The way in which the budget is currently produced is the very opposite of 'transparent'. It provides very little information. The information it does provide is not presented in a useful way. This makes it difficult even to do social policy analysis. It makes it impossible to compile an alternative budget. Our complaints about the format of the budget have been echoed by many others, including some of those now in government.

A gender perspective

Our first step was to look at the gender implications of departmental budgets. We started with a set of questions drawn up by Lindiwe Mokate (now in the Deputy President's office) and Diane Elson (professor of macro-economics at Manchester University.) The questions, with examples for each from our research, are as follows:

- *How much is to be spent and on what?*
Example: If a large amount of the Education budget goes to tertiary education, and there are fewer women at this level, does this mean less-educated women are short-changed?
- *How are services to be delivered?*
Example: Will the Departments of Justice, Health, and Safety and Security co-operate in providing 'one-stop' facilities for women who have been subjected to violence?
- *How does possible expenditure relate to provision by commercial organisations, voluntary organisations and community groups?*
Example: What form of state assistance will be provided for shelters for battered women established by non-governmental organisations (NGOs)?
- *How does expenditure relate to the informal and unpaid provision of services through households and family networks?*
Example: If welfare policy emphasises community care in the place of institutional care, will women bear the burden as the primary (but unpaid!) community carers?
- *Who is going to benefit in terms of access to services?*
If government services - extension services, grants, health, Legal Aid, etc - are only available at limited outlets and at particular times, what does this mean for poorer women, who have other work to

do and also have limited access to transport?

- *Who is going to benefit in terms of public sector employment?*
Example: Will affirmative action extend beyond colour, and beyond simple numbers, to ensure that black women are represented at all levels of the service, and across all job categories?
 - *What is the impact on poor women in terms of access to more time, better nutrition, better health and better skills?*
Example: Will planning in respect of water, electricity, childcare, etc give priority to those women who at present spend long, unpaid hours in providing their households with these basic requirements for decent living?
- While working on the Women's Budget we came up with an additional question. We asked:
- *What are the hidden assumptions regarding how society is organised, and what are the implications of this for those who do not conform to the norm?*
Example: What happens to groups where women predominate (for example, part-time workers, domestic workers, and those in the informal sector), when they are pregnant or unemployed, if the Unemployment Insurance Act pays out on the basis of the amount previously earned in the formal sector?

Assumptions and stereotypes

We started with the observation that budgets are usually seen as a rich man's issue.

As we looked at the budget, we realised that the budget itself has traditionally seen the 'average', 'normal' citizen as a white, male person, aged 20 to 65, who works eight hours a day, five days a week, in the formal sector. He is married with two (and, statistically, a fraction more!) children,

whom he supports.

From the point of view of this citizen, past South African budgets generally performed relatively well. The worker received a rebate for each child, could deduct contributions and/or expenses such as medical aid and retirement fund, his wife received a maintenance grant if he died, was imprisoned, or otherwise unable (or unwilling) to pay and he and his wife were housed at state expense in an old age home when too old to care for themselves. He was even protected by UIF when unemployed. When he did his 'national service' in the SADEF, defending this state of affairs, the law made sure he was not penalised in terms of work benefits. Each one of these policies was backed up by appropriate allocations in the national budget.

In truth, there is no 'average' 'normal' citizen. If there were, she would certainly not be a white male. Overall, about five of every six South Africans are *not* white, and more than half of all South Africans are *not* men.

But South African women are not all the same. They differ in terms of race, age, class, income, language, rural/urban location and so on.

Different groups of women need different things from the budget. The Women's Budget Initiative looked mainly at the needs of the poorest and most disadvantaged women.

Each woman (and man!) fulfils many roles on a day-to-day basis and through the course of her life. A rural woman is also a



VAT falls particularly hard on women. Anti-VAT protest, 1991.

worker, a consumer and sometimes a wife and parent. The budget affects women as tax-payers and as welfare-recipients. But it also affects them in virtually each of these other roles.

The questions we asked in drawing up The Women's Budget need to be answered in different ways by different women, depending on which role they are playing.

Not just special programmes

Rhonda Sharp, an Australian economist, has a useful illustration of how a gender eye would see The Women's Budget. She distinguishes between three categories of expenditure, as follows:

- **Specifically identified gender based expenditures of government departments**
 - Free health care for pregnant women.
 - Flagship programme for single mothers with young children. and so on
 - plus*
- **Equal employment opportunity expenditure by government departments on their employees**
 - Training for clerical officers or women managers.
 - Rewriting job descriptions to reflect equal employment opportunity principles.
 - Provision of creche facilities.
 - Parental leave provisions. and so on *plus*
- **General or mainstream budget expenditure by government departments assessed for its gender impact**
 - Do each of the sectoral budgets, minus the above two types of expenditure, reflect gender equity objectives?
 - Who are the users of hospital services?
 - Who benefits from agricultural support services?

= TOTAL BUDGET

The third category of expenditure is the most important. It is here that most of the rands are spent. If these expenditures ignore women's position and interests, the smaller amounts of the other two categories will look good on paper, but do little to alleviate the adverse effects of the mainstream expenditure.

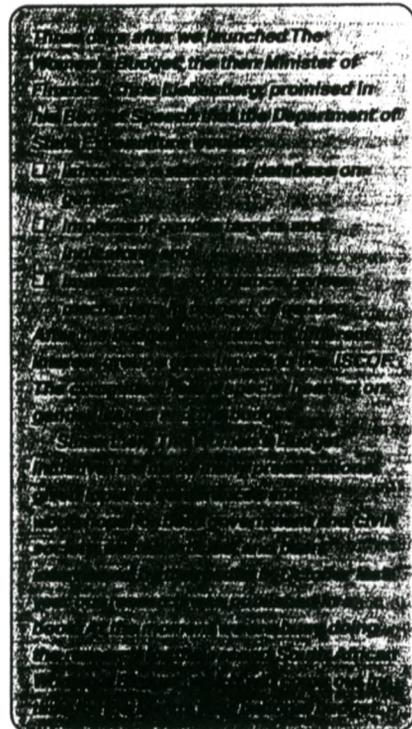
For example, statistics tell us that there are more women than men in the informal sector. Since 1994 the Department of Trade and Industry (DTI) has repeatedly stated its commitment to small, and black, business -

what they term the SMME (small, medium and micro-enterprise) sector.

Imraan Valodia's chapter on Work in the Women's Budget shows that in 1995/6 R80-million (2,2% of the DTI budget) was allocated to the SMME sector. Most SMME policies focus on businesses which the DTI hopes will develop into successful, formal, enterprises and provide employment for others. Most women in the SMME sector work alone, in businesses which just enable them to survive. These businesses are unlikely to develop into major employers. But they need assistance in earning a living just as much as businesses with potential for expansion.

Taking the process forward

The next step is to get government to take on and institutionalise The Women's Budget.



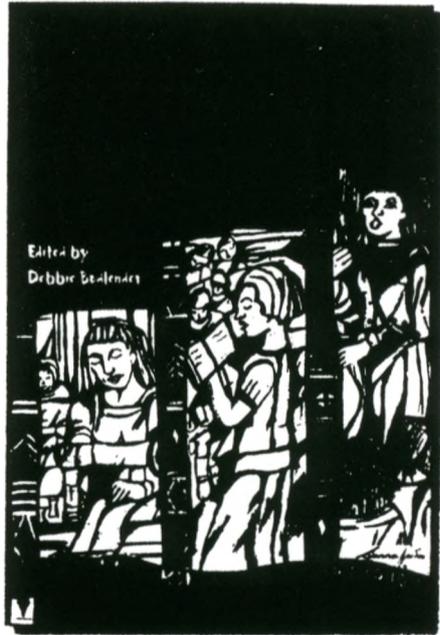
The first Budget could tackle only a few departments. This year we will be tackling another batch. But we have still not looked at all sectors, and do not have the resources to do so.

By locating the initiative in government we can get better primary data on which to base analysis, and also ensure that this data and analysis is used in government decision-making. The Director-General of Finance, Maria Ramos, and Finance Deputy Minister, Gill Marcus, have supported The Women's Budget Initiative from the start and are keen for the Department to take on the work. To date, however, the government has not yet started implementing Liebenberg's three promises of March last year.

Australia's experience shows that those outside government cannot sit back even when the government takes on The Women's Budget. Australia started producing annual Women's Budgets in 1984. From the beginning, these were produced from inside government. Last year, when the Australian Conservative Party won the elections, they simply closed The Woman's Budget down. At the same time, they revoked a range of progressive labour measures.

A long way to go

South Africa has made significant progress in taking on gender issues. In the new government there are more women - including a significant number of black women - in powerful positions. Thanks mainly to the ANC quota, we are now seventh highest in the world in respect of the proportion of women parliamentarians. Twenty-four percent of our national MPs are women, compared to fewer than 3% in the old government. Twenty five Cabinet Ministers, eight of the 13 Deputy Ministers and three of the 25 national Director-Generals are women.



These women have not been confined to sectors traditionally considered as 'women's issues'. For example, both the Director-General and Deputy Minister of Finance are women, as are the Deputy Ministers of Trade and Industry and Mineral and Energy Affairs. Since December, we have our first woman provincial Premier in Ivy Matsepe-Cassaburri.

Within the civil service the government claims that the proportion of women in senior management has increased from three to 10% since April 1994. The White Paper on the Transformation of the Public Service sets a target that, within four years, at least 30% of new recruits to middle and senior management should be women.

Julia de Bruyn's chapter of The Women's Budget, which looks at public sector employment, shows that the picture is less rosy when we look below the icing on the top. Women account for almost half of all public servants, but they are confined to



Different groups of women need different things from the budget.

certain job categories and earn less than men in similar jobs.

Educators make up more than a quarter of all public servants, and two-thirds of all educators are women. But the average salary of a white male educator is 1,72 that of an African woman and 1,43 of a white woman. The teachers, nurses and other workers in the public service also know that many of their jobs are under threat.

Strategies for 'right-sizing' can too easily mean 'down-sizing' of the social service sectors which employ the most people and the most women. These are the sectors which provide the basic services which make life better for women, men and children.

Minister Liebenberg began and ended his 1996 Budget Speech with sports analogies. Our hope is that women are provided with the opportunity to become real players in the game, rather than watching and cheering from the sidelines. We hope that Finance's image of the sportsperson is not disproportionately - or solely - male. We hope that women are not forced to play

rugby if they want their needs to be considered. Those women who want to play rugby must be given every opportunity to do so. But we must also ensure that traditional women's games are recognised and accorded their full worth and resources. ★

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The National Union of Metalworkers of South Africa

Financial Self-Sufficiency CONTENTS | >>> Health & Safety

Women's empowerment

1 - In Employment / at the Workplace

1. There is a need for extensive challenge of the sexual division of labour and stereotypes that limit women's access to certain positions.
2. Encourage employment of women in our sectors and abolish gender bias in promotion and recruitment procedures (eg. bias in advertisements).
3. Employers should implement affirmative action programmes to redress the sexual division of labour by employing females in typical male jobs.
4. Education & Training in companies should target women and ABET should be run during working hours with paid education leave.
5. Job-creation schemes should prioritise the employment of women.
6. The state & employers should assist with the implementation of childcare facilities to facilitate the full participation of women in the workplace and with parental rights agreements

2 - Wage Equity

1. That COSATU work towards an increase in the employment of women in all areas of work and especially in higher paid job categories. This requires a conscious attempt to integrate gender aspects in COSATU affiliate wage policies by linking the demand of equal wages for equal work and equal wages for work of equal value to the living wage campaign. This will ensure that affiliates take up the struggle against the oppression & exploitation of women, ensuring that this is not regarded as a "women's" issue but a problem of every member of the union.
2. Women and men should have equal status in all facets of life.
3. The present ideology plays a major role in restricting women to typical female jobs. Education from pre-school to tertiary education is necessary to combat a stereotype sex role.

3 - The Federation

1. We need to devise mechanisms that will empower women in the federation.
2. Further develop education & training modules (on women' needs).
3. Develop organisers to understand women's demands/concerns.
4. Encourage male comrades to take part in gender education programmes so as to raise understanding of the concept of gender.
5. Integrate gender into mainstream union activity.

4 - Implementing these ideas

1. We should implement an affirmative action campaign including training shop stewards to serve as Affirmative Action officers.
2. Campaign for safe transport.

5 - Women everywhere

1. Support implementation of CEDAW, Beijing Platform of Action and the Women's Charter for effective equality.
2. Participate in the process towards the formation of a movement for the emancipation of women.

6 - Sexual harassment

1. Sexual harassment must be outlawed.
2. We need to define policy principles and adopt a code on Sexual Harassment.
3. Such a code to include sections on:
 - confidentiality
 - report procedure
 - procedures for settling grievances
 - informal procedure
 - correctional / disciplinary procedures
 - dispute resolution
 - implementation of policy.

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Health and safety CONTENTS | >>> Workplace Democracy

Bargaining Strategy

1 - Three year strategy

We resolve that:

- 1. We commit ourselves to our strategy until our goals are achieved.**
- 2. All sectors participate actively in ensuring that our demands are consolidated in the 3 year strategy.**
- 3. We fight to close the wage gap in engineering and motor and between artisans and lowest paid employees.**
- 4. We step up our demands and challenge the employers so that our goals are achieved by the year 1998.**
- 5. We educate our membership on all key issues facing us, eg. globalisation, competitiveness, work re-organisation, health and safety, AIDS awareness, etc.**
- 6. We continuously assess our strengths and weaknesses and update our members on new strategies and developments in the Union.**
- 7. We review our main agreements and sector co-ordinators should have regular meetings with the legal department to look at irrelevant clauses in our main agreements in all Industrial (Bargaining) Councils.**
- 8. Sector co-ordinators should train leadership, including local organisers in understanding our demands together with the negotiators. This should commence in October 1996.**
- 9. There must be co-ordination between the training task team and the bargaining team. This must be a sub-committee of the bargaining team.**

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The National Union of Metalworkers of South Africa

Labour Market Policy CONTENTS | >>> Universal Social Welfare

Monetary Policy

NUMSA believes that:

1 - Monetary policy as instrument

We note the importance of monetary policy as an instrument to drive economic policies and delivery of social services.

2 - GEAR

We reject GEAR's provisions as:

1. They advance high interest rates.
2. They advance a one-sided approach on cutting down inflation.
3. They encourage us to consider a mythical notion that the lack of investment in South Africa is the result of non-saving.

3 - Reserve Bank

1. We remain committed to government control over the Reserve Bank in the long term.
2. In the short term -
 1. Cosatu should agitate for the changing of the Reserve Bank Act in such a manner that elected representatives can have influence over the policies and measures taken by the institution.
 2. Cosatu explores the possibility of a policy of differentiated rates so that projects that are benefiting the people and labour intensive industrial development communities are not prejudiced or made impossible by the policy of high interest rates. The Government and its institutions are to look at a broader approach to fight inflation and desist from using the blunt instrument of high interest rates to fight inflation.
 3. Such measures should include:
 - A broader approach to fight inflation without compromising collective bargaining
 - Price controls
 - Subsidies on basic needs
 - An industry policy to stimulate the productive capacity of the economy

**4 - Financial Sector And Other Intermediary Financial Institutions
(e.g. Commercial banks, JSE, Unit Trusts, Mutual Fund etc)**

Noting:

1. The role that these institutions play in monetary policy
2. The role that they play in job-creation and the whole economy.
3. The gaps in Social Equity on measures to be taken on these institutions.

Therefore resolve:

1. COSATU to commission an investigation on measures that can be taken to regulate the financial sector in a manner that will lead to:
 - the sector contributing to reconstruction and development
 - make it accessible/affordable to the majority of our people (the working class and the poor)

- the sector to redistribute their wealth and invest in the productive section of the economy.
2. The report of this commission to be used as a basis for intervention.

5 - Exchange Controls

Noting:

1. The abolition of controls on non-residents in 1995.
2. The ongoing relaxation of controls on SA residents and domestic capital.
3. The effect that the relaxation is having on jobs and the local economy.

Therefore resolve:

1. That as a matter of urgency, COSATU should meet with the relevant government departments/the Alliance to put its position on the effect of the measures on our people.
2. For COSATU in this meeting, to call for the review and stopping of the planned programme of relaxing controls on residents (including domestic capital).
3. COSATU to inform the public at large about the consequences of such measures.
4. That COSATU commissions a study on what the impact of relaxing controls on non-residents has been on job creation.
5. That such a study will form a basis of intervention on controls on non-residents.

6 - Exchange rate policy

Noting:

1. The way in which the fluctuation of the rand affects local industry and jobs
2. While it is important to take measures at a national level there is not much we can do about this at a national level.

Therefore we resolve:

- Cosatu must link up with fraternal organisations around the issue of an equitable world monetary system.

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Trade and Industry Policy

A Framework

- 1 - Numsa believes that to reconstruct and develop the economy requires an interventionist state especially with regard to industry and trade policy.
- 2 - It dismisses "GEAR" as being inappropriate to address the socio-economic and political ills of apartheid industrial policy.
- 3 - We reject free market purity in favour of interventionist policies. But we do not want the removal of market forces altogether. Market forces on their own will not build internationally competitive industries and they will not always work in the national, social and economic interest. For example, market forces may not see the value in generic education and training but rather favour expenditure on narrow short term task-specific skills. An interventionist approach could employ taxation sticks and incentive carrots to encourage industries to invest in education and training.
- 4 - We have to move our industry policy away from the bias towards commodity production to a strategy for the development of more high value-added products for both domestic consumption (import replacement) and exports. NUMSA believes that current strategies (e.g. cluster studies, Spatial Development Initiatives (SDIs)) place too much reliance on existing commodity and semi-processed raw material production as the basis of industry policy. This is particularly important as the continuing support and extension of these industries (e.g. the new Iscor plant at Saldanha) encourages capital intensive production rather than labour intensive production.
- 5 - We will argue out our interventionist policies in NEDLAC's Trade and Industry Chamber. It will also have to do some hard thinking about which sectors offer long term growth potential and which ones don't. There are some areas where the high skill, high wage scenario cannot survive and it will be necessary to develop adjustments for those industries or sectors. Some of these sectors employ COSATU members so our attitude will have a direct effect on their employment.
- 6 - South Africa's economy and particularly its labour market are impossible to separate from the Southern African region. Since the election of a democratic government, our regional neighbours are complaining more and more that their less protected industries are swamped with products from South Africa. There is no value for South Africa in destroying the regions' industries as they will eventually be unable to pay for South African imports and our industries will suffer.
- 7 - Instead we should see the region as the greatest long term potential as a market for South African goods and services. However it will remain potential for as long as it is economically underdeveloped. In the development of the Southern African economies we should not only rely on private investment but also use the potential for collective action by public enterprise (e.g. transport, utilities) to increase regional economic growth.
- 8 - In developing sectoral industry policies we should be conscious of the potential for co-operative development particularly in those industries that our cost structure cannot sustain. Japan's use of its Asian neighbours represents a useful, if not always savoury, model of this process.
- 9 - Practically for COSATU this means a greater emphasis on our international activity in our region.

Areas of Focus for Trade and Industry Policies

- 1 - Tariff Reduction and Trade Barriers
 1. Tariff reduction without supporting policies in affected sectors leads to job losses.

2. We object to the government's rapid reduction to the agreed time frames.
3. We therefore call for an immediate moratorium on any further reductions particularly those sectors that are geared towards the support of the RDP.
4. We call for the setting up of a tri-partite forum funded by the IDC to do an audit of the effects of tariff reductions on particular sectors or industries and make proposals to renegotiate the agreement with WTO. This forum should also investigate how foreign policy impacts on those trade agreements.
5. We support the proposal by COSATU for the replacement of GEIS with a National Restructuring Fund that assists companies to address the fundamental problems of uncompetitiveness in the areas of education and training, technology upgrades and work organisation.

2 - Investment patterns

Noting that: 1. GEAR is advocating for economic conditions for foreign investment.

2. Foreign investment has not been directed at improving productive capacity and creating jobs but rather in speculation, new management techniques, technology, malls etc.
3. Government has cut its investment in social expenditure.

Resolve that:

4. We therefore need an Investment Code that will require prospective investors to do the following:
 1. Invest in boosting the productive capacity
 2. Invest in labour intensive sectors that create jobs
 3. Emphasis to be on training and skill development
 4. Adherence to labour laws.
5. The IDC's future role should be geared towards job creating activities that address the basic needs of our people.
6. We recognise the current problem of the IDC now in that it concentrates on mega projects that create very few jobs. We call for the reorientation of the IDC from its focus on capital intensive mega projects to incorporate labour intensive projects as well.
7. The IDC board should be restructured and a labour representative seconded to the board.
8. Local investment socio-economic upliftment programmes be encouraged through prescribing on the utilisation of assets of retirement funds. 5% of Funds should be set as the minimum.
9. Government should invest in infrastructural developments.

3 - Customs and Excise

1. We are experiencing job losses through illegal goods entering our markets and the dumping of goods on our markets. These institutions are still managed by corrupt officials from the old guard.
2. We therefore call for the restructuring of these institutions to reflect the population and conform to the need of our economy.
3. We also call for the replacement of corrupt officials and the setting up of a monitoring structure with labour representatives.
4. Structures in government eg. Board of Trade and Tariffs (BTT) must be strengthened to ensure proper monitoring of dumping by overseas companies in South Africa. Any such dumping should be reported to the WTO to ensure that it does not take place again.

4 - State procurement policy

Noting that:

As a large purchaser of goods and services from private - and other public suppliers, the public sector is in a unique position to establish conditions that must be met if contracts are to be entered into. Market power can be a mighty effective incentive to suppliers.

1. Pressure Government to ensure that any State Procurement Policy complies with the following conditions:

1. the policies must not be used to keep firms alive that fail to meet minimum standards;
2. policies must be transparent so that corruption can be minimised;
3. establishing competitive relations between firms may not be the most effective policy;
4. decisions should not be made simply by judging the good or service, but also the production process etc.;
5. centralised purchasing can only be relaxed after basic standards have been achieved;
2. the establishment of national markets should not be jeopardised by misguided regional, local or agency devolution;
3. assistance should be provided for new or innovative firms which are considering tendering; and
4. purchasing policy should be tied to research and development efforts.

We further:

5. Call for the restructuring of the state tender board and the immediate institution of a commission of enquiry to investigate contracts that have been awarded. If any government employee is found to be guilty of colluding with parties to get the tender, s/he should be criminally charged. Laws to be passed to enable this to take place.
6. Government should resist pressures at the WTO to bring procurement policies/activities of the state under the control of the WTO because such a situation would clearly limit the role of the Government as an economic agent.

5 - Cluster studies

1. Cluster studies should be needs-driven and linked to RDP initiatives, example housing delivery programme (finished product determine the establishment of clusters)
2. We reject the notion of export-driven studies.
3. Our participation in the cluster studies should be to defend the interests of workers, particularly changes to work organisation.
4. We should secure funding (IDC, DTI, Japanese Grant Fund) for training and capacity building for our comrades participating in these structures. Develop report-back and mandating mechanisms throughout these processes.

6 - Pricing of raw materials

Believing that: 1. The pricing of raw materials is a major restriction on the ability of high value-added industries to become internationally competitive. e.g. the price of Iscor's steel for a local manufacturer is 60% higher than if the same manufacturer were to buy Iscor steel in another country. Government can change this both through its ownership (IDC) and policy approaches such as;

1. import/export controls on strategic materials (energy, steel etc.)
2. costs and efficiency of transport (rail, road and shipping policy) and communications,
3. design and environmental regulations,
4. exploration permits and mineral and energy policy,
2. Infrastructure development will have a major impact on both basic living conditions and foreign exchange earning industries, particularly tourism.
3. Government's interventions should be biased towards the satisfaction of the basic needs of our people.

7 - Incentives

1. These to be re-evaluated in line with the objectives of the RDP.
2. With regard to SMMEs the following should be observed:
 1. Adherence to current labour standards
 2. Sustainable job creation and displace employment
 3. Strict monitoring mechanisms on their progress

8 - Competition Policy

To labour, any competition policy should not lead to job losses, down-grading of labour standards and deterioration of social welfare.

9 - EPZ, SDI, IDZ

- 1. We remain opposed to EPZ etc. as they down-grade labour standards.**
- 2. In engaging those who propagate the concept, the following principles underpin our engagement:**
 - 1. Community participation in the project development**
 - 2. Capacity building as it relates to human resource development and training programmes**
 - 3. Diversification of investment to avoid possible failures**
 - 4. Backward and forward linkages to stimulate local and regional industries to such zones**
 - 5. Guarantee labour standards**
 - 6. RDP based development.**

10 - Local content

- 1. An Industrial Policy must have a local content provision in the final product.**
- 2. We reject the current relaxation of local content provision as it has led to the collapse of the white goods sector and the envisaged telecommunication agreement with AT&T.**

11 - Capital mobility

In response to the effects of capital mobility, the following is proposed: 1. Build and strengthen the labour movement in Southern Africa

- 2. Demand the representation of the federation in all multi-lateral trade negotiations.**
- 3. Imposition of strict regulations on labour rights abusing countries.**

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Fiscal policy

NUMSA believes that:

- 1 - We reject the obsession around the reduction of the deficit because it places serious constraints on the development of communities and the delivery of basic needs.
- 2 - We should mobilise with other progressive political formations to scrap the "odious debt" (foreign debt) incurred by the previous government.
- 3 - Cosatu should investigate the make-up of the internal debt. Depending on the outcome of this, we should develop terms of repayment that include:
 1. the period
 2. interest rate and
 3. evaluate the internal debt to say which of those that we should not repay.
- 4 - Government should investigate other sources of borrowing that would not lead to an escalation of interest and also should explore creating its own institutions of borrowing.

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Workplace Democracy CONTENTS | >>> Workers' Unity

Work re-organisation/shop-floor restructuring:

The union must intervene both at shop-floor level and at a macro-level where industrial and macro-economic policies are being made. The survival of companies depends not only on shop-floor restructuring but also on a vibrant and interventionist industrial policy. For example, on the policies on the price of raw materials and government support for industrial development.

1 - At shop-floor level:

- 1. Employers must negotiate with unions on work re-organisation by giving information, and discussing their strategic plans with unions**
- 2. We must fight for employment security, job creation and resist lowering of manning levels through natural attrition.**
- 3. Wages and bonuses must be separate.**
- 4. A company must give 6 months notice of the introduction of new technology. This notice period must be before the decision to purchase the machinery has taken place.**
- 5. Teamwork is only acceptable if:**
 - the union triggers the teams
 - work teams have a real say over targets, line speeds etc.
 - team leaders are democratically elected and rotated
 - team leaders can't take disciplinary action, this to remain with management
 - the union can take up production issues
 - the union can meet with its own members outside of the team
 - participation in teams is voluntary
 - shop stewards can address team meetings and union-related issues can be discussed in green areas/team centres
 - the team does not have to meet its target if one of its members is absent.

2 - Training:

- 1. 200 hours of training should be guaranteed but not limited for all workers.**
- 2. Training should be offered during working hours. If after working hours, it must be paid.**
- 3. How this works must be dealt with at plant level.**
- 4. Fight for the creation of a labour pool at industry level and deal with details at a plant level.**

3 - Recognition of Prior Learning (RPL)

- 1. The process must be jointly administered by management and the union. Both parties must be trained as RPL assessors.**
- 2. RPL is compulsory for employers but assessment of employees is up to the employee concerned.**
- 3. No employee must be down-graded as a result of RPL.**
- 4. Interviews, demonstrations, written tests, portfolios, will be used to assess workers.**
- 5. All skills acquired must be paid for, even if they are not being used or applied.**

4 - Productivity

- 1. All productivity payments must be separate from the base rate.**
- 2. All productivity gains must be shared equally. When dividing this equally, comrades at plant level can consider tax implications.**
- 3. Productivity must be a matter for negotiation, not consultation.**

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Labour reform: *addressing women's needs?*

ROSELINE NYMAN provides an overview of the new labour laws and their impact on women in the workforce. She highlights their shortcomings in meeting women's needs in the labour market

Through their day-to-day struggles women have brought to the front obstacles in the labour market

South African labour and social security legislation is undergoing considerable change. The Labour Relations Act (1995) (LRA) is the first act that has been substantially amended. Next on the agenda is the Basic Conditions of Employment Act (1983) (BCEA) and the Wage Act (1957), which will be amended by the present Basic Conditions of Employment Bill (1997). Finally, the Department of Labour has introduced a Green Paper on Employment Equity (1996), the precursor to new employment equity legislation. These legislative reforms are part of the Department of Labour's five-year programme of labour law reform to give and extend worker rights, addressing the perceived rigidities of the labour market and promoting 'regulated flexibility'.

Many aspects of this programme coincide with government's macro-economic strategy as detailed in the Growth Employment and Reconstruction (GEAR) document. The Congress of South African Trade Unions (COSATU), the largest union federation in the country with nearly two million members, and other organisations have criticised GEAR for not advocating socio-economic reforms that will benefit the poor, and in particular economically vulnerable women, the majority of whom live and work on the periphery of the economy.

Nevertheless, the new laws are introduced within the context of legislative changes that aim to improve the position of women. The Constitution's equality, anti-

discrimination and affirmative action clauses provide the primary backdrop to the improved legal status of women. The establishment of the Human Rights Commission and the Commission on Gender Equality, combined with the ratification of the United Nation's Convention for the Elimination of all forms of Discrimination Against Women (CEDAW), (NIPILAR, 1995) indicate a government commitment to eliminate gender discrimination. These legal instruments should provide an enabling environment for gender sensitive labour law reform.

This article firstly examines the obstacles experienced by women at the workplace to ascertain the extent to which labour reform addresses these obstacles. Secondly, it examines the LRA, the Basic Conditions of Employment Bill and the Wage Act, as they form the cornerstone of legislative regulation at the workplace. Finally, it evaluates the Employment Equity Green Paper's promise to improve women's position at work.

WOMEN'S OBSTACLES IN THE LABOUR MARKET

Women workers' long-standing struggle against exploitative and oppressive working conditions have set the legislative reform agenda. Through their day-to-day struggles women have brought to the front obstacles in the labour market. For example, during the early 1980s, the Chemical Workers Industrial Union (CWIU) had a series of successful strikes against wage discrimination. The South

African Commercial Catering and Allied Workers Union (SACCAWU) campaigns regarding maternity and maternity benefits during the late-80s introduced a conceptual shift in the notion of childcare. More recently, the well publicised COSATU mass action campaign around the Basic Conditions of Employment Bill highlighted the demand for adequate maternity benefits and a 40 hour working week.

Minimum gains have been made from these struggles as most women workers continue to face obstacles on the shopfloor. Such obstacles include low wages, wage discrimination, lack of childcare facilities, inadequate maternity benefits, sexual harassment and lack of education and training.

A growing trend is the division between, on the one hand, a core of permanent workers who enjoy job security and benefits, and on the other hand, a periphery of part-time, casual, temporary and sub-contracted workers. Self employed and informal sector workers, as well as workers in the domestic and small business sectors are included in the vulnerable worker category.

While the Department of Labour's legislative reform programme includes addressing inequities in the labour market, because of the socio-economic nature of many of the problems, legislative reform alone will not address women's concerns. For example, the provision of childcare facilities at work and in communities requires a policy and budgetary commitment from Government. Nevertheless, there are many areas where labour law can play a role in improving the working conditions of women. I will now explore the extent to which the Basic Conditions of Employment Bill, the LRA and the Green Paper on Employment Equity can play this role.



PAUL WEINBERG

THE BASIC CONDITIONS OF EMPLOYMENT BILL

The thousands of workers who participated in COSATU's programme of mass action concerning the Basic Conditions of Employment Bill, demonstrate the Bill's importance for workers. The Bill is especially significant for women as it is aimed at improving the minimum standards for workers who are not subject to collective bargaining agreements: domestic workers, farm workers and informal sector workers. It proposes amendments to the BCEA (1983) and the Wage Act (1957).

It is particularly black women who require legislative protection, as they are the most vulnerable group of workers. Black women are concentrated in low-paid and unskilled jobs. They are located in sectors that are difficult to organise, such as the informal sector, in non-standard employment - part-time, casual and temporary work, piecework and contract-work - in domestic work and farm work. As a result, most women workers are not organised into trade unions and will not enjoy an improvement in their positions through collective bargaining. Thus, for the vast majority of women, minimum standards become maximum standards. This section

Women's struggles against oppressive working condition have set the legislative reform agenda

For the vast majority of women, minimum standards become maximum standards

Even when a worker knows her rights she, as an individual, lacks the confidence to command enforcement

examines those aspects of the Bill which impact most directly on women workers.

Scope of the Bill

A welcome recommendation in the Bill is the application of all provisions in the BCEA to all workers (especially those located in non-standard employment) and the extension of the Wage Act to domestic workers and farm workers (Govt of SA, 1997). At present domestic workers do not enjoy the right to sick leave and annual leave.

While this extension is a positive step towards providing rights to those workers who are presently excluded from minimum protection, these rights will only become a reality if they are enforceable. A worrying aspect of the proposed law is that often workers do not know their rights and therefore do not enforce these rights against their employers. Furthermore, even when a worker knows her rights, the power imbalance between her and the employer is so great that she, as an individual, lacks the confidence to command enforcement.

This points to the question of the collective enforcement of rights through a trade union. Many women are located in sectors that are difficult to organise (eg domestic workers and farm workers) and as a result, their level of organisation in trade unions is very low. It is therefore necessary for unions to evaluate their approach to organising workers in these sectors. The COSATU September Commission, which investigated the future of trade unions in South Africa, suggests that COSATU commits itself to a concerted strategy to ensure that vulnerable sectors are organised (COSATU, 1997b).

The idea behind the state compelling employers to provide a minimum floor of rights is to ensure that unorganised workers do not work in 'sweat shops', under very exploitative conditions, without recourse to rights. As a consequence, there is a responsibility on the state to ensure compliance of

employers through the establishment of effective enforcement mechanisms.

Work and family responsibility

COSATU's long-standing demand for six months maternity leave on full pay has been one of the main issues of disagreement between itself, Government and employers at the National Economic, Development and Labour Advisory Council (NEDLAC) where different aspects of the Bill have been debated and negotiated. There is disagreement at NEDLAC between labour, Government and employers, over the question of adequate maternity benefits. The federation's concerted campaign of mass action, protest marches and stayaways, illustrates adequate maternity benefits are seen as a fundamental right by women workers in COSATU, one which the leadership is prepared to fight for.

However, despite the importance of maternity benefits for women, the Bill only proposes an increase in the maximum period of maternity leave from three to four months. The Bill also makes provision for greater flexibility in the taking of maternity leave. In terms of the BCEA, a worker is prohibited from working four weeks before birth and eight weeks after. An employer must apply for an exemption from this provision. The Bill suggests that a woman can be exempted from the work prohibition during the six-week period after delivery, if she submits a medical certificate indicating that her employment will not be detrimental to her health. This flexibility is a double-edged sword. On the one hand, it undermines the commitment to compulsory minimum standards as workers can always be pressurised to obtain a medical certificate. On the other hand, this flexibility is in the interest of the worker as the Unemployment Insurance Act (Govt of SA, 1966) only allows for the payment of maternity benefits of 45 percent of a worker's wage. This means that many women will not be able to afford to take the full four months maternity leave. Although

COSATU is demanding a period of six months maternity leave, this will only be realistic if it is coupled with a demand for full pay.

Who should carry the cost of an increase in maternity benefits? At present the Fund comprises contributions from the employee, employer and the state. As women already earn a low salary and they alone, and not their partners, are responsible for these contributions, it will be unfair and economically unrealistic to expect them to carry the increase. An argument against requiring employers to carry the extra costs is that they will be discouraged from employing women. The best suggestion would be for the state to pay the balance of the maternity benefits. This will be in line with international trends where maternity benefits are paid from social security benefits, provided by the state (Naidoo *et al.* 1996). The Unemployment Insurance Act should be amended to ensure greater flexibility for women to take their maternity leave during the six-month period.

A positive provision in the Bill, is that employers should take into account the health and safety of pregnant women by allowing them to be transferred to jobs which are less hazardous to their health, eg a packer who carries heavy objects. In line with this provision, a night worker should have the right to be transferred to day work during pregnancy until a year after delivery.

Parental rights

A landmark provision is three days paid paternity/childcare leave within the first year of birth. While this period is short, its ideological impact cannot be overstated. While the law is limited in that it cannot play a major role in changing sexist attitudes, it can play an important role in facilitating that change by providing a more enabling environment to change consciousness. For example, even though those workers who are entitled to paternity leave may abuse this leave by using it for other purposes, the right to paternity leave does exist for those fathers

who really want to exercise that right and for those mothers who want to encourage their partners to assist with childcare.

A welcome suggestion is the need to have measures that enable working women to combine a career with family responsibilities. The Bill suggests two options: a career break or a reduction in working hours, it recommends that the second option be considered. Parental/family leave is an important issue for women on the shopfloor, as they have to struggle with employers to obtain time-off to look after their sick children. Permission for time-off is at the discretion of the employer and even though it is unpaid, employers often refuse to give such permission. The need for time off is a source of frustration for women workers and it leads to low morale and absenteeism. COSATU women members have proposed that workers with children should enjoy 12 days paid parental leave per year.

Other issues not covered by the Bill are time-off for ante- and post-natal care, for miscarriages and breast-feeding. There is no mention of breast-feeding facilities at the workplace, or the establishment of childcare facilities.

Downward variation

Undoubtedly, the Bill's most fundamental flaw is that it allows for downward variation of minimum standards by agreement between workers and employers and by ministerial decree. This means that even though the legislation is aimed at providing minimum protection to workers from super-exploitation, employers may undermine these minimum standards. This provision is aimed at promoting 'regulated flexibility' in the labour market. Such downward variation will have a special impact on women workers who are usually more vulnerable. Unorganised workers are particularly at risk as they do not necessarily have the same confidence to resist variation to minimum standards as unionised workers.

The aim is to establish a minimum threshold of working conditions

Clearly, downward variation will make it easier for employers to bypass minimum standards. The aim is to establish a minimum threshold of working conditions. Any variation, with the agreement of workers, should only be upward and not downward. The Minister of Labour's power to exclude large sectors of workers will increase differences in working conditions between various categories of workers. For example, the argument of employers that minimum standards for domestic workers will mean job losses could result in domestic workers being excluded from minimum standards through downward variation.

Wages

In keeping with the Department of Labour's aim of 'giving and extending worker rights', the Bill recommends the extension of the Wage Act to domestic workers and farm workers. It proposes the restructuring of the Wage Board so that it can:

play an active role in the development of a coherent policy on employment standards and provide a mechanism for sectoral variation where the standards are inappropriate (Govt of SA, 1997:41).

The following key changes are suggested: the formation of an Employment Conditions Commission (ECC) to replace the Wage Board. Members would be appointed by the Minister after consultation with NEDLAC. The primary power of the ECC, like its predecessor, will be to make 'a sectoral employment standard' (the former wage determination) that:

- sets minimum terms and conditions of employment, including levels of remuneration for the sector;
- provides for the adjustment of minimum rates of remuneration;
- may not deal with any matter regulated by a bargaining council.

A national statutory minimum wage, which keeps in line with the inflation rate, could go a long way to raising the poverty

wages earned by most women. An important question is whether minimum wages, for example, of domestic and farm workers should be set by the ECC or by the Minister. Another is whether minimum wages should be set at a national or sectoral level. Over 80 percent of domestic workers earn below R500 per month while 18.1 percent earn below R150 (Nyman and Caga, 1996). Thus, if sectoral minimum wages were set, the minimum wage for domestic workers could be lower than clothing workers. Furthermore, as higher-paid workers are found in organised sectors, they have the power to negotiate wages well above the national statutory wage. A low minimum wage in one sector could exert a downward pressure on a higher minimum wage in another sector and result in competition between different sectors. A national statutory minimum wage would have the different and positive effect of uniting workers around a common goal, an acceptable base-line pay level for all workers.

The central policy consideration is that a national minimum wage should raise the living standards of the most low paid and vulnerable workers. Business' argument (The South African Foundation, 1996), that the effect of a minimum wage will be job losses is not supported by evidence. A national minimum wage is an important stepping stone towards a living wage, a necessity within the context of a high unemployment economy where wage earners support the unemployed and where large racial income disparities exist.

THE LABOUR RELATIONS ACT

This section investigates whether the new LRA will improve the working conditions of women workers. It deals with the scope of the LRA, organisational rights, centralised bargaining, and the workplace forums as key issues requiring consideration.

The primary focus of the Act 'is the regulation of relations between trade unions and employers' (Govt SA, 1995), ie collective bargaining. Its concern is with the rights and

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obligations of organised workers. This excludes the vast majority of unorganised women workers – only 26.3 percent of the economically active women are organised in trade unions (O'Regan and Thompson, 1993). The majority of working women are concentrated in unorganised jobs and sectors, in small business, the informal sectors and in sub-contracted, casual and part time jobs.

A large percentage of black women work in the informal sector. Many small enterprises are one person operations, which rely on unpaid family labour. Women operate an estimated 62 percent of all these enterprises. Employment is characterised by 'low wages, bad working conditions and a lack of proper health standards' (Kaqiso Trust, 1993). Deregulation has effectively exempted many small businesses from key provisions of social security legislation. When small businesses are covered by Industrial Council Agreements, exemptions have frequently meant that these workers do not reap the fruit of collective bargaining.

In any event, where Industrial Council Agreements and social security legislation cover small businesses, the statutory regulation structures do not have the capacity to ensure enforcement of provisions. Instead of closing these loopholes, the LRA proposes greater flexibility in the treatment of small businesses.

However, a positive feature of the Act is the inclusion of workseekers in its scope. Women's high unemployment rate means that many of them fall within the definition of a workseeker. A woman workseeker whose application for employment is unsuccessful because of discrimination will be able to institute an unfair labour practice action against the responsible employer.

Organising women

Women form a large proportion of the most vulnerable and marginalised of workers, being concentrated in non-permanent, part-time and seasonal jobs. Many unions have a policy of not organising casual workers

because they are difficult to organise and the few workers per establishment.

Present labour market policy sees women as comprising part of the pool of reserve labour. Their income is seen as supplementary to their fellow male workers. Moreover, their childbearing and childcare responsibilities prevent them from having uninterrupted work records and being regarded as part of the permanent pool of employees.

Despite such difficulties, it remains the responsibility of the union movement to organise women. The law can play a pivotal role in facilitating this organising process. Yet the LRA fails to do so as only a 'representative union' is entitled to basic organisational rights (eg access, trade union meetings and stop-order deductions). A representative union is defined as a registered union that has, as members, the majority of workers at the workplace. The setting of such a high threshold for basic organisational rights will detrimentally affect most workers in unorganised sectors, especially women. The South African Agricultural and Plantation Workers Union (SAAPWU) that organises farm workers, will be particularly hard hit. If an employer refuses to grant a union access, unorganised workers may remain outside the reach of the union. Workers whose place of residence is the employer's establishment, eg domestic workers, farmworkers and manufacturing operations in rural areas, may be especially affected.

While an important organisational right granted by the LRA is the right to have union meetings at the employer's premises, this right is restricted to meetings outside working hours. This restriction will certainly have an adverse impact on women workers as the majority of them are also tied to domestic work. This 'double shift' constitutes a fundamental barrier to their full integration in the union. The LRA could have lessened this problem by allowing for union meetings during working hours.

Representative Union

Women's high unemployment rate means that many of them fall within the definition of a workseeker

The LRA grants more rights and greater protection to workers organised predominantly in 'typical male industries'

Centralised bargaining

Like its predecessor, the Act allows for centralised bargaining concerning wages and working conditions, where a trade union is sufficiently representative of members of a bargaining unit. Collective bargaining at a centralised level has allowed union agreements to be extended to organised and unorganised workers. (Unorganised workers can benefit through an improvement in their working conditions. Moreover, centralised bargaining tends to reduce wage differentials between workers in different regions and sectors. This is pertinent to sectors like the retail and catering industry, which are characterised by a few workers per establishment, large proportions of women workers and a widely scattered workforce.

Thus those unions which do not enjoy the right to centralised bargaining, will have to struggle to obtain this right. Unions that organise a substantial number of women – for example SACCAWU with 70 percent women membership, and Transport and General Workers Union (TGWU) with 45 percent women membership nationally, 80 percent of whom are in the cleaning sector – will be especially prejudiced.

Thus, in many areas where the LRA has the potential to advance the interests of women in the lowest paid jobs and sectors, it fails to do so. Instead, it grants more rights and greater protection to those workers organised predominantly in 'typical male industries' like mining and manufacturing. The National Union of Mineworkers (NUM) and the National Union of Metal Workers of South Africa (NUMSA), the two biggest affiliates in COSATU, already enjoy a degree of centralised bargaining. And although the South African Clothing and Textile Workers Union (SACTWU), with its majority of women members, does participate in the Clothing Industrial Council, a growing proportion of garments are produced in the informal sector. These informal clothing workers

often fall outside the scope of industrial council agreements.

Domestic workers

The LRA does advance the interest of domestic workers by firstly, including them within its scope and secondly, by providing protection against dismissals through speedy and simple arbitration procedures. However, the LRA is limited as it fails to address the peculiar problems in organising domestic workers – namely that the highly dispersed nature of this sector is a major organisational impediment to conducting collective bargaining.

Domestic workers are amongst the lowest paid workers. They are excluded from the Wage Act and were only covered by the BCEA last year. Thus, while the LRA provides an integral framework for the inclusion of domestic workers, many of these rights will only be realised if workers and employers are educated about these rights. The Department of Labour should therefore include a programme of education for workers and domestic workers about their newly-acquired rights and obligations (Nyman, 1997).

Workplace forums

An innovative provision in the Act is the concept of workplace forums. Workplace forums are intended to deal with non-wage matters such as restructuring, the introduction of new technologies and work methods, changes in the organisation of work, physical conditions of work and health and safety.

It is alarming that the Act fails to make mention of issues concerning women that could form the subject matter of discussion at the workplace forums. Childcare and equal job opportunity in respect of recruitment and promotion are some potential issues.

The inherent male bias, in respect of the composition of the workplace forums, also constitutes a major problem. The present domination of men in union leadership positions suggests that male workers will probably dominate workplace forums. The

LRA should have included measures to encourage the election of women. An example of such a measure is the insertion of a clause stating that the workplace forum representatives should reflect a representation proportionate to the gender ratio at the workplace. In line with the German model, the introduction of a defined quota system in favour of women could also be a path to follow. The workplace forums could work out the more concrete details of implementation. In this manner, workplace forums could be made more accessible to organised women.

Importantly, the LRA envisages workplace forums applying to large workplaces (with over 100 workers) where the union is strongly organised. In practice, this will tend to confine such forums to predominantly male workplaces.

THE GREEN PAPER ON EMPLOYMENT EQUITY

The Employment and Occupational Equity Green Paper's primary aim is to achieve workplace equity (Dept of Labour, 1996), and as such, forms an important framework for eliminating obstacles to women workers. As the definition of employment equity is limited to the elimination of unfair discrimination and measures to bring about organisational change, it seems that only obstacles that arise out of such a definition will be addressed by the Green Paper. Thus even though, for example, the lack of childcare facilities can justifiably be identified as a form of unfair discrimination, the Green Paper does not make the provision of childcare facilities peremptory.

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It only provides a tool to unions to obtain agreement from employers to negotiate the provision of childcare facilities.

Unfair discrimination

The first aspect of employment equity is the elimination of unfair discrimination of any kind in hiring, promotion, training, pay, benefits and retrenchment. Unfair discrimination covers all categories of oppressed groupings: women, blacks, disabled people, gays and lesbians (as listed by the Constitution).

While the elimination of unfair discrimination is critical, in many cases it assumes a subtle form. For example, unfair pay discrimination is normally hidden within the formal grading system. Research has revealed that males located in typical male jobs, earn more than females located in typical female jobs, although they are on the same grades. For example, a female tea-maker earns less than a male vehicle assistant. In this event, the grading system has to be overhauled. Furthermore, women's major concern is their location in low-paid jobs. Thus the necessary elimination of pay discrimination between male and female workers who are located in low-paid jobs does

Childcare and equal job opportunity in recruitment and promotion could be the subject of workplace forum discussions

Unfair pay discrimination is normally hidden within the formal grading system

Sexual harassment, directed predominantly at women, requires special policies and procedures

not address the larger question of low wages. In all likelihood, women stand a better chance of obtaining higher wages through unionisation than through legislative change (except in the case of a legislated minimum wage as advocated above)

While gender discrimination in hiring is a serious obstacle for many women, this has to be coupled with the lack of job opportunities in the labour market. Women's high unemployment rate means that they are competing with men for the few jobs that are created. Thus an elimination of discrimination in hiring on its own will not address women's high unemployment rate.

Organisational change

The second aspect of employment equity is the introduction of measures to encourage employers to undertake organisational transformation. These measures are designed to remove the barriers to employment for all South Africans and to accelerate training and promotion for individuals from historically disadvantaged groups. This aspect of employment equity falls within the ambit of the Constitution's 'affirmative action' clause that protects measures aimed at achieving the adequate advancement of people disadvantaged by unfair discrimination.

The Green Paper advances the following measures to implement organisational change: prohibition of harassment on the job; decision-making about career events; an organisational audit and employment equity plans.

Sexual harassment

Harassment is defined as 'unwanted or unsolicited attention based on someone's personal characteristics' (Dept of Labour, 1996). Hate speech and sexual harassment are listed as examples of harassment. An obligation is placed on employers to review grievance procedures to ensure they deal with harassment complaints sensitively and effectively. While the prohibition of sexual

harassment is encouraging, it is not sufficient. Sexual harassment is a particular form of harassment directed predominantly at women which requires special policies and procedures. For example, the COSATU Sexual Harassment Code of Conduct and Procedure provides special procedures for sexual harassment cases. It defines sexual harassment as 'any unwanted or unwelcome conduct of a sexual nature or other conduct based on sex which causes discomfort to the victim. This can include unwelcome physical, verbal or non-verbal conduct' (COSATU, 1997a:8).

The difference between sexual harassment and other forms of harassment is the highly sexual nature of the conduct that goes beyond 'personal characteristics'. A concern is that sexual harassment, as a major obstacle facing women at the workplace, will dissipate in the general harassment complaints. There is a need to target sexual harassment specifically: firstly, by definition; secondly, with procedures; thirdly, remedies; and fourthly, with measures for prevention.

The Green Paper does indicate that the Department of Labour will provide most of the details through codes of conduct. At present, COSATU has submitted sexual harassment as an item for negotiations at NEDLAC and formed a sub-committee to assist its negotiators at NEDLAC. Already, there has been talk of resistance by employer representatives to the adoption of such a code because they believe that sexual harassment is adequately covered by the LRA.

Career events

The Green Paper prohibits employers from using recruitment and selection criteria that discriminate unfairly. Stages singled out in the recruitment and selection process are advertising and selection criteria. Important steps in the advertising procedure are the development of advertising mechanisms that reach all possible candidates. It aims to end mechanisms that do not reach historically

disadvantaged groups, eg newspapers and institutions with limited audience, word-of-mouth recruitment that favours members of historically privileged groups.

The selection criteria involve redefining existing criteria and secondly, transforming work and training. Redefined criteria aim to avoid raising higher hurdles than the current organisation of work and training legitimately require. Existing criteria need reviewing so that they enable the selection of people who can do the job under normal conditions. Furthermore, where possible, criteria should be based on skills and experience rather than formal education.

A critical feature of recruitment and training is the composition of the selection body. In terms of current workplace practices, selection and recruitment is subject to managerial prerogative. The Green Paper recommends that, where possible, selection bodies should include representatives from historically disadvantaged groups, if necessary, invited from outside the organisation. Union participation could help to ensure that employers use fair selection criteria and employ black and female workers.

Transforming work and training seeks to reduce the barriers to employment and encompasses the need to redefine job grades to eliminate unequal pay and benefits where groups do virtually identical jobs.

It aims to forbid the payment of housing allowances and other benefits to married men and unmarried people and not to married women.

The Green Paper makes provision for an appeal and grievance procedure, in line with the LRA's objective of greater workplace democratisation.

The organisational audit

The organisational audit represents an indispensable tool in addressing important areas for workplace change. It provides employers and workers with the necessary information to draft employment equity plans⁷. It is not clear whether the organisational audit will be

restricted to workers or extended to management and directors. It is recommended that the total organisational hierarchy should be subject to scrutiny. This means that not only should wage levels be disclosed but also any share of profits that directors may enjoy.

As advanced by the Green Paper, the union's participation will help to ensure that the audit is modified by the peculiarities of the particular workplace or sector. Public access to the document will facilitate government's role in collating, centralising and interpreting the information and will thus expedite the monitoring process.

Equity plans

Employers' responsibility to draft employment equity plans is probably the most important feature of the Green Paper. Employment equity should provide a programme for workplace change. The measures envisaged include:

- a profile of employees by race, gender and disability and identification of problem areas;
- measures to restructure procedures for hiring, training, promotion, retrenchment and transfers to prevent discrimination;
- identify and minimise aspects of work and training that hinder people from historically disadvantaged groups;
- accelerate more equitable recruitment training and promotion to make people from historically disadvantaged groups more representative;
- develop an organisational culture that welcomes diversity;
- goals and timetables for implementation;
- details on the role of unions and other stakeholders.

More detailed measures entail plans for building physical infrastructure that accommodates women and disabled people and the investigation of more flexible hours, work-related day-care and assistance with transport and housing. These measures will especially advance the position of women workers.

The organisational audit represents an indispensable tool in addressing important areas for workplace change

Legislative reform has to be coupled with a radical socio-economic programme that will lead to job creation

An important aspect is the role of union representatives in the drafting of the organisational audit and employment equity plan. Management triggers and has control over the duration of the process. The Green Paper only states that 'as far as possible, the audit should be conducted in co-operation with relevant employee representatives' and 'these structures will involve consultation with stakeholders' (Dept of Labour, 1996:38). Furthermore, the Green Paper proposes the establishment of a body that can represent all employees in the auditing and planning processes. Where workplace forums exist, they will play this role. If employers and employees do not reach agreement, and after the exhaustion of the internal appeal procedures, the dispute may be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA).

Clearly, the legislation should make it compulsory for union involvement at both stages. It would also make sense for the union to be empowered to trigger the process by the submission of employment equity demands to the employer. The majority of South African employers who have benefited from apartheid lack the necessary political will to effect real change. A degree of compulsion is necessary to bind employers to redress the racial and sexual imbalances in the workforce. The high level of participation of workers and unions in workplace change means that they will be critical players in the monitoring and enforcement process. The new LRA's provisions of information sharing and workplace forums will facilitate the monitoring and enforcement process.

It will be important for both employers and unions to amend the evaluation criteria for placing women in certain grades. One of COSATU's long-standing demands is broad-banding and the reduction of grades, to make it easier for workers to move to higher grades. A critical issue, presently debated in the federation, is the introduction of a standard

ratio between grades to address the wage gap, especially between management and workers.

While the emphasis of the Green Paper is employment equity plans to bring about organisational change, such plans will have a limited impact on substantially improving the conditions of the vast majority of women workers. Firstly, women workers who are located in vulnerable sectors, will not be covered by such plans. Secondly, most women workers are concentrated in unskilled jobs where their major concerns are low wages and poor working conditions. Affirmative action plans will predominantly benefit women in skilled and professional occupations, unless unions use their bargaining power to prioritise women workers' problems.

CONCLUSION

Legislative change can contribute to an improvement of the working conditions of women workers. The extension of the BCEA, Wage Act and LRA to workers located in vulnerable sectors should provide protection to many women workers. Furthermore, an increase in maternity benefits and the introduction of paternity and childcare leave will assist many women and men to combine work and family responsibilities. The Employment Equity Green Paper is an important stepping stone towards eliminating discrimination in the workplace. The legal obligation on employers to introduce employment equity plans will contribute to women's struggle towards employment equity.

While legislative reform is essential for many women workers, a substantial number of them will not reap the benefits from such reforms. Their location in the vulnerable and unorganised sectors of the workforce places them out of reach of many of the beneficial legislative changes. As women make up a substantial number of the unemployed, legislative reform has to be coupled with a radical socio economic programme that will lead to job creation. Furthermore, the limited success of a legislative reform programme depends substantially on whether women

have the confidence to ensure compliance from employers. Their organisation in trade unions will place women workers in a better position to enforce existing standards and to improve the legislative minimum standards.

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FOOTNOTES

- 1 See *Social Equity and Job Creation* (The South African Labour Movement, 1996) and 'Economic gender injustice: the macro picture' (Clayton, 1997).
- 2 The Green Paper lists the following information required of the organisational audit: employment pay and benefits by race, gender and disability; programmes and policies on human resource development, organisation of work in terms of skills and responsibilities, transport, housing and caring arrangements by race and gender; languages used and language competence; physical facilities for disabled people and women; procedures for hiring, training, promotion, retrenchment and transfers; grievance and internal procedures.

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Update:

The Basic Conditions of Employment Bill was approved by the National Assembly in early November. The COSATU demand for four months fully paid maternity leave was won after submissions presented at the Parliamentary Standing Committee by COSATU were agreed on. After the Bill has been approved by the National Council of Provinces it will be signed by the President. The matter of who will fund the four months maternity leave is still not clear. An announcement on a new formula involving employers, workers and the Unemployment Insurance Fund (UIF) is expected to be made by the Minister of Labour, before the President signs the Bill. The Bill is expected to become law in May 1998.