

Editorial



FROM THE EDITOR

Can the law or a legal system be progressive? If one takes some recent judgments from the South African courts on labour matters into account the answer will be that it is possible. The judgment in *Free Market Foundation v the Minister of Labour and Others* explains how the law protects workers' rights and the legality of the extension of collective bargaining agreements to non-parties. Section 23(5) of the Constitution and the Labour Relations Act are cited as proof to that effect. In *Bongani Nkala and 68 others v Harmony Gold Mining Company Ltd and 31 Others* 500,000 workers and their families are likely to benefit from class action law suits.

Those familiar with the history of the Congress of South African Trade Unions (Cosatu) know that the current state is not a 'pap and vleis' scenario described in the September Commission of 1997. But probably the 'skorokoro' scenario: 'zigzagging from problem to problem'. It is because of this that the implosion in some of Cosatu's affiliates is not met with glee but sadness. The federation's president, Sdumo Dlamini, writes in a speech at a 2016 May Day rally at Moretele Resort in Pretoria that the federation is still carrying out its mandates and will deal with various problems as it has done in the past. He also says there is an agenda to destroy the federation being led by universities and the disgruntled and

stresses that such an agenda will be defeated.

At another May Day rally at Mehlareng Stadium in Tembisa there was a gathering uniting around a proposed labour federation. These unions want independence from employers and political parties, worker control and democracy as well as a socialist orientation.

SA has many dubious accolades. One of them is the rape capital of the world and the statistics are alarming. At institutions like Rhodes University, the lukewarm approach to rape by management led to protests against rape culture that promoted impunity against the perpetrators of the heinous crime. Dineo Sitole talked to the students about the protests and social movement politics at the university.

Workers and student alliances continue to be formed at university campuses across the country. The same happened at Rhodes where the National Health Education and Allied Workers Union (Nehawu) joined students in solidarity during protests against rape culture. During the protests it was a meeting of new and old forms of organisation: loose versus structured leadership and voluntary committees versus elected leaders. Social movement approaches were pitted against formal union structures and movement organisations. Were these new ways of doing politics? Was organising moving towards the social media instead of the Labour Relations Act and joining unions

etc? What about issues of class struggle and ideology?

Johnny Copelyn dismisses an article by Nicoli Nattrass and Jeremy Seekings titled: 'Trade unions, the state and "casino capitalism" in South Africa's clothing industry' published in the *Review of African Political Economy*. The article attacks everything Southern African Clothing and Textile Workers Union (Sactwu) is and does – trade policies, affiliation to Cosatu, its investment company and in particular its intervention into Seardel. Copelyn explains in detail how Sactwu became involved in its initiatives to rescue companies under liquidation and how jobs were saved.

Social and labour analysts agree that some of the problems facing the South African economy are historical. The colonial and apartheid economy by design did not benefit the majority African population which continues to be adversely affected by poverty, inequality and unemployment. Access to health and education is also not tipped in their favour and this explains why there has been overwhelming support for the National Health Insurance (NHI). To this end, Mbhekeni Sabelo Nkosi calls for the social ownership of the NHI and uses Zanempilo Community Health Clinic as a case study. ¹

Elijah Chiwota
Editor

The South African Labour

Bulletin's mission is to:

- provide information and stimulate critical analysis and debate on issues and challenges that confront workers, their organisations and their communities; and
- communicate this in an accessible and engaging manner.

In so doing the SALB hopes to advance progressive politics, promote social justice and the interests of the working class.

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Extension of recognition agreements

Free Market Foundation loses case

The Free Market Foundation (FMF) recently lost a case in the Gauteng High Court Pretoria Division when it challenged the constitutionality of the extension of collective bargaining agreements to non-parties, writes **Elijah Chiwota**.

The respondents in the case were the Minister of Labour, the Minister of Justice and Constitutional Development, 47 bargaining councils, the Congress of South African Trade Unions (Cosatu), the National Union of Metalworkers of South Africa (Numsa) and the Southern African Clothing and Textiles Workers Union (Sactwu).

The judgment by Justice JR Murphy cites how s 23(5) of the Constitution 'enshrines the right to collective bargaining ... Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter the limitation must comply with s 36(1)'.

The judgment further explains: 'The national legislation contemplated in s 23(5) of the Constitution is the Labour Relations Act (LRA). Section 36(1) of the Constitution is the provision allowing for the limitation of the rights in the Bill of Rights by measures which are reasonable and justifiable in an open and democratic society'.

The LRA's purpose is to 'advance economic development, social justice, labour peace and

democratisation of the workplace by fulfilling the primary objects of this Act which are to:

- (a) give effect to and regulate the fundamental rights conferred by s 23 of the Constitution;
- (b) give effect to obligations incurred by the Republic as a member state of the International Labour Organisation;
- (c) provide a framework with which employees and their trade unions, employers and employers' organisations can
 - (i) collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest
 - (ii) formulate industrial policy
- d) promote orderly collective bargaining; collective bargaining at sectoral level; employee participation in decision-making in the workplace; and the effective resolution of labour disputes.'

Therefore, the extension of collective agreements is allowed by the law. 'Section 32 of the LRA permits the extension of collective agreements of collective bargaining agreements concluded at sectoral levels to persons not directly involved in the collective negotiations and not party to the agreement concluded in

the bargaining forum, being the relevant bargaining council. Government policy favours such an arrangement because it is perceived to advance: (i) the promotion of collective bargaining at sectoral level; (ii) the promotion of majoritarianism; (iii) the prevention of unfair competition; (iv) the benefit of workers who have no collective bargaining strength to negotiate wages and terms and conditions of employment; and (v) a pluralistic system of industrial relations based on voluntarism (self-regulation) rather than state interference in the collective bargaining relationship.'

THE FMF FOUNDATION ARGUMENT

One of the reasons advanced by the FMF is that extending collective agreements adversely affected small businesses and thus stopped them from growing.

'The FMF questions the economic efficacy and morality of these policy objectives. Its attack on the system is predicated upon a free market perspective opposed to the prevailing orthodoxy. From its ideological standpoint, sectoral bargaining and the extension of the products to of it to non-participants, far from advancing the protection of vulnerable workers, are an impediment to the growth



All smiles at the 12th Cosatu National Congress: General Secretary Bheki Ntshalintshali and Deputy General Secretary Solly Phetoe.

of small businesses resulting in less job creation and a higher rate of unemployment.’

FMF chairperson Herman Mashaba argues in an affidavit cited in the judgment: ‘Finally, it is not disputed in these proceedings that the state may, by way of ministerial regulation properly designed to promote the public interest, impose terms and conditions of employment on employers and employees within the economy. Whether this is economically desirable is a matter on which the FMF has considered views ... the decision on the terms to impose must be that of the State and under our Constitution, it must ultimately be actuated by a genuine understanding of the public interest that is informed by a proper application of the tenets of due process’.

Describing the FMF’s arguments as narrow, ‘ill-conceived’ and ‘off the mark’ the Court, amongst other things, found that the FMF did not take into account the Promotion of Administrative Justice Act (PAJA) 2000 in making its arguments. This concurs with the arguments of Cosatu’s general secretary, Bheki Ntshalintshali, and those from Numsa.

Ntshalintshali argues that the minister can only extend the agreement when the requirements

of s 32(3) of the LRA have been met. He further argues that the FMF’s analysis was ‘fundamentally misconceived’ as bargaining councils were not private bodies exercising public matter: ‘Bargaining councils derive their power both from the LRA and collective agreements. They perform public functions under the LRA’.

The judgment also defined the public interest. ‘Acting in the public interest is aimed at maximising the welfare or well-being of the general public as opposed to the selfish interest of individual private actors. The whole society has a stake which warrants recognition and protection by an administrator tasked with a decision to be taken in the public interest.’

Concurs Numsa: ‘Applicant’s analysis of the manner in which collective agreements are extended to non-parties is flawed. Extension is not achieved by the members of the bargaining council exercising legislative power as the Applicant contends. Extension is achieved by a decision of the Minister’. The argument also mentions that the minister refers to PAJA.

In defending majoritarianism ‘Cosatu put up spirited defence of majoritarianism and dispute the correctness of the economic impacts alleged in the expert

reports. To the extent that any fundamental right might be limited by majoritarianism, in their view the limitation is reasonable in terms of s 36 of the Constitution.’ The LRA ‘seeks to strike an appropriate balance between ensuring that bargaining councils and collective agreements represent and cover a majority of the employees in the sector, while also seeking to ensure that these systems are practicable and do not unduly depend on a strict form of majoritarianism, of the sort supported by the FMF, based on the representivity of the bargaining agents rather than the coverage of the agreement.’

Although it lost the case the FMF was not asked to pay costs because the judge believed the application was motivated by ‘the best of intentions’. ‘Our country prides itself in the promotion of a strong civil society. Although there will be many opposed ideologically to the classic liberal and free market agenda advanced by the FMF, there should be no quibble with its activism on behalf of small business and the unemployed. The most intractable social and economic problem facing our country is the persistently high level of unemployment and its attendant negative social consequences.’ ^{LB}

Against rape culture

Nehawu forges alliance with students

When students took to the streets against rape culture at Rhodes University in Grahamstown in the Eastern Cape, workers joined the protests in solidarity. Amongst them was the National Health Education and Allied Workers Union (Nehawu)'s shop steward at the institution, Alfred Vena Zakede. **Elijah Chiwota** spoke to Zakede.



Phillip Ngxitho a former Nehawu shop steward sustained a right hand injury due to police action when he took part in the students' workers at Rhodes University. He works at the nursery and has been with the institution for 29 years and lives in nearby Dankie Township.

Recently two protests at Rhodes University came fast on the heels of the other: #fees must fall and against rape culture.

Says Zakede: 'During the fees must fall protests and the rape culture crisis workers provided solidarity to students to make sure that their demands were considered: these were national demands.'

He mourns the absence of a central leadership during the protests. 'We believe that every structure must have a way of dealing with its problems but we were not informed by any structure. There were no consultations. We saw that students were protesting against rape culture, and that the police were around. It was difficult to get to the student leadership. So we waited for the management and students to call us and tell us what is happening with the protests against the rape culture. It was difficult to intervene without information and also to contact the management'.

'Later when we asked the students to explain they said that a former leader of the Students Representative Council (SRC) had raped a fellow student and another case had also been reported to the police'.



Alfred Vena Zakede: At the forefront of building solidarity between workers and students at Rhodes University.

‘We (Nehawu) are a trade union that believes in discipline and is disciplined. We engaged everyone after the police had done the mess: shooting workers with rubber bullets, dispersing them and causing panic. We had released workers to join the students.’

However, some sections of the students were better organised like the South African Students Congress (Sasco). ‘Sasco demands were clear and monthly meetings were held with them. Sometimes the students are divided but we want their constituency to come to us. If they do so we can help them with some of the issues because we know how to handle them’.

DISCIPLINED UNION

‘We (Nehawu) are a trade union that believes in discipline and is disciplined. We engaged everyone after the police had done the mess: shooting workers with rubber bullets, dispersing them and causing panic. We had released workers to join the students.’

‘We sat as Nehawu and wrote a statement. Although not radical enough, the statement condemned

rape and gave solidarity to the students. It also condemned the vulgar language seen on some of the posters. Even Dr Mabizela’s car had some of these posters stuck to it by students.’

‘As Nehawu our aim is to protect everyone. We had an alliance with the students. We need each other and our solidarity is forever. However, the court interdict by management on 17 May that was later reviewed stressed students a lot. We are engaging management and trying our best to further engage with students. But we are against violence and loss of jobs as what happened at the University of Cape Town and in Johannesburg. If students are angry anything can happen. We insist that we want to know the leadership – protests have leaders and we want to engage the leaders to discuss rape. It is a

serious crime. Even as fathers in our families we are against rape and police must quickly act. The blood of students is young and their brains quick so they act fast. But as workers we are governed by the Labour Relations Act and we want a clear programme. What are the demands and how many have been won or lost?’

‘There are no labour brokers at Rhodes and there is no outsourcing. There is also a sexual harassment committee but we must continue to condemn the violations of other people’s rights. Listening to each other is important. We are for a better life for students including, improved facilities, affordable or no fees, security, unity, and no violence.’

The Nehawu branch at Rhodes University, which has just signed a recognition agreement, has 532 members. ^{LB}

Interdict won't stop us

Students' pledge



Protests against rape culture at Rhodes. Credit Chapter 2.12.

Scores of Rhodes University students marched around campus in April in a gesture against a court interdict granted to the university, writes **Anele Mjekula and Loyiso Dyongman**.

The interdict issued in the Grahamstown High Court prohibits protesters from threatening or assaulting Rhodes University staff or students.

Week-long protests on the Rhodes University campus were sparked by the circulation of past and present students' names on the so-called #RURferenceList via social media.

The protesters have said there is a rape culture on the campus and that support structures for rape victims at the institution are inadequate.

In negotiations, the university management agreed on mechanisms to address the grievances.

Chaos erupted on the Rhodes campus one morning when police clashed with students, who had been joined by workers and activists.

Dozens of social media posts, many of them videos, documented

interactions between police and the protesters, students and university officials, and university officials and the police.

There was confusion over whether certain roads were part of the campus or were public roads and many students blamed Rhodes University vice chancellor, Sizwe Mabizela, for allowing police to enter the campus.

In various videos, Mabizela can be heard trying to stop the police from acting against the protesting students and urging them to release those arrested. However, this did not appear to stop police action.

Opinion on how Mabizela had handled the situation was sharply divided on social media. Some students sympathised with him, saying he was doing his best to address a difficult situation. Others said he should not have allowed the police on to campus from the onset.

Protesting Rhodes University students held a number of their fellow students captive against their will after the #RURferenceList was posted on the Rhodes SRC page.

University spokesperson Catherine Deiner confirmed that the protesting students had held a number of students against their will until management and police intervened and ensured that the students were released.

Deiner said a list of names of current and past students had been released on the RU Queer Confessions, Questions and Crushes Facebook site with the hashtag #RURferenceList on Sunday and shared to the Rhodes University SRC Facebook page. ¹⁸

This is an edited version of an article which was first published by Grocott's Mail (www.grocotts.co.za).

Understanding silicosis judgment

Families could benefit from class action lawsuit

In May, Judge Phineas Mojapelo handed down the Court's findings on the landmark silicosis judgment. In the case of *Bongani Nkala and 68 Others v Harmony Gold Mining Company Ltd and 31 Others*, Mojapelo and two other judges addressed this question: can mineworkers and former mineworkers bring action for damages as a class, against gold mining companies for negligence as a result of which they were exposed to dust that caused silicosis and/or TB, writes **Pete Lewis**.



THE LITIGANTS

The litigation could run into billions of rands. All the big mining companies are affected, including Anglo American, AngloGold, Gold Fields, Harmony Gold, Randgold, DRDGold, and African Rainbow Minerals. Anglo American has described the case as 'without precedent in South African law and indeed in any other jurisdiction in the world'.

According to Judge Mojapelo, the 69 applicants so far included in the proceedings do indeed represent up to 500,000 current and former gold mineworkers and their dependents in all the southern African countries from which people come to work on the South African gold mines. More than 45 of the applicants were silicosis patients, with or without TB, and more than 25 of them were TB-only cases. The applicants were represented by Richard Spoor Inc, Abrahams Kiewitz Attorneys and the Legal Resources Centre (LRC). The Treatment Action Campaign (TAC) and Sonke Gender Justice, represented by SECTION27, participated as friends of the court (*amicus curiae*).

This issue has been extensively covered by Groundup over the past nine months, including the details of the 10 days of court argument which resulted in this judgment.

FAMILIES OF DECEASED MINERS MAY BENEFIT

The judgment was damning for the mining companies. The court dismissed all their legal arguments against certification as being without merit. The court also upheld every argument by mineworkers' legal representatives as to why and how certification should proceed. In doing so, the court drew on international legal precedent on both class action litigation and common law, from the UK, Australia, Canada, and the USA. The judges also drew on South African legal history, in one instance going back 100 years, roughly the lifespan of the South African gold mining industry.

In reaching its conclusions, the court significantly amended the common law, ruling that dependents of all South African litigants in common law delictual damages cases will inherit the claims of family members who die before their cases are settled, in whatever circumstances, whether these claims are made through class, or individual actions.

Judge Wendell held that this amendment to the common law should only apply to class action cases, but this opinion was not shared by the other two judges because of its discriminatory implications with regard to equality before the law, which is enshrined in the Constitution. This was the only dissenting finding in the judgment.

In ruling this way, the Court drove a bus through the current 'irrational, unjust and discriminatory' common law which holds that dependents can only inherit damages awarded if an applicant happens to die just before judgment is handed down in a delictual damages case.

In ruling on this significant development of common law, the judgment upheld the arguments of

the TAC and Sonke Gender Justice, unchallenged by the mines' legal representatives, that the lives of female dependents of sick mineworkers had been completely reversed by having to care for sick miners in poverty-stricken rural and peri-urban areas with no help from the mines who allegedly caused the sickness in the first place.

The ruling stated clearly that this had worsened rural poverty by preventing these women from earning income, engaging in subsistence activities, or education for the betterment of their family circumstances. The common law denial of damages to these women and their families, according to the court, would be a breach of the constitutional right to gender equality.

The mining companies opposed this development of the common law and argued that at best it should only apply from the date of the trial. But the court ruled that on the contrary it will apply from the beginning of the litigation for the class action case (lodging of court papers in 2012). This means the dependents of any sick mineworker who died after that date will still inherit any damages awarded, whether through an out-of-court settlement, or by trial of the class action case, no matter how long the mining companies delay such a final settlement.

OBSTRUCTION OF JUSTICE

The ruling noted that mineworker applicants expressed their frustration with the mining companies' methods in the hearings, alleging the obstruction of justice. It also noted that the mining companies' legal representatives had not responded to this allegation. The Court found this attitude 'unfortunate', because, the judges wrote, it is a serious allegation worthy of considered response, since obstruction of justice 'damages the integrity of the legal system'.

Since 2012, five of the applicants in the Spoor application have died, and eight out of 24 of the LRC applicants have died since 2013. If

the potentially 500,000 current and past mineworkers in the class action the court has certified are dying at even half of this rate, we begin to understand just what damage the gold industry is accused of inflicting on sub-Saharan Africa, not only in the past five years, but in the past century and more.

Since 2012, 13 of the 68 mineworkers who brought this court case against the mining industry have died.

The coverage of the court case described in detail the arguments of the mining companies against certification of the class: unmanageability, discriminatory against mineworkers who want to institute individual action, proliferation of sub-classes, non-commonality of issues, variations in the levels of dust and working practices in the different mines, and so on. The Court found that all of these were without merit. It certified the class action in line with the proposal in the mineworkers' depositions.

WHO IS INCLUDED IN THE CLASSES?

The ruling divides the class action into two main sub-classes; those with confirmed silicosis, with or without confirmed TB, wherever they live, who could show they worked underground in one or more of the respondent mines from 1965, for however a short a period; and those with TB only who worked underground at one of the respondent mines for at least two years over the same period. The date 1965 was chosen to coincide with the implementation of new regulations on mine dust control under the Mines and Works Act 1956, which the mineworkers' shocking affidavits say were flouted, and in recognition of the fact that it is unlikely that anyone who began work in gold mines before that date and who contracted one of the diseases would still be alive.

Members of each sub-class who worked at any one or more of 82 actual mining operations listed in Annexure A of the judgment are

included. Any individual mineworker who is part of any other litigation on the same issues, ongoing or settled, is excluded from both sub-classes.

The mining companies had used precedent to argue that because TB is not caused by crystalline silica but by a bacterium, and that other factors such as smoking and HIV may be more important than dust exposure, including a class for TB-only would require the mineworkers to prove that in the absence of exposure to silica dust they would never have contracted TB, which is of course impossible.

However, the court dismissed this argument, and pointed to more recent precedent in common law, which allows for causation to include the concept of increased risk of harm. Since exposure to respirable silica dust weakens the human immune system, it increases the risk of contraction of TB, and therefore compounds the effect of other causes, such as overcrowding and poor conditions in mine hostels, also factors over which the companies had exclusive control, and which feature prominently in the depositions of the mineworkers.

HOW THE CLASS ACTION LITIGATION WILL WORK

Again, contrary to the depositions and arguments of the mining companies, the court ruled that there would be two phases of the class action trial. The first would deal with common issues applicable to all the applicants and respondents (such as mine ventilation practices, provision of personal protective equipment, watering down dust, dust monitoring, and other technical issues, as well as training and informing mineworkers of the dangers of dust and how to avoid it, and hostel conditions), and the allegation by the mineworkers that the policies of the individual mines on these issues was determined centrally by the Chamber of Mines, thus ensuring 'commonality' of issues in the class, though with unimportant variations between individual mines.

Once these common issues had been put to trial and determined, and assuming that the mineworkers established liability for the disease burden in the process, the second phase of the class action would decide on individual issues, without having to prove the common issues which had already been determined. This phase would examine issues such as proof of employment and disease in each case, length of service in the respondent mines, and damages claimed in each individual case.

PHASES

In line with the arguments of the mineworkers, phase one of the class action trial is to be on an opt-out basis; workers who do not want to be included will have the opportunity to count themselves out.

Phase two will be on the opposite, opt-in basis: when the common issues have been adjudicated, and if the mineworkers are successful at that stage, those who wish to be included in the determination of damages resulting must opt in.

This process, ruled the Court, would be achieved through two separate official and approved notices to mineworkers explaining what they have to decide at each stage, and how to register or not. The Court regarded this as the best way to give individual mineworkers who are potential members of the two sub-classes the maximum amount of choice while maintaining their constitutional and legal options for redress.

NOTICES ACROSS SOUTHERN AFRICA

The Court ordered each of the two parties to disseminate the notices widely in various media within their constituencies throughout southern Africa, giving broad discretion to the mineworkers' representatives to choose the most effective and comprehensive organisational outlets that exist within civil society on the sub-continent. It furthermore ordered that the mining companies must pay half the very substantial

costs incurred by the mineworkers' representatives in this exercise.

The ruling is extremely specific as to how these notices will be disseminated. The text of the notices is given in the judgment, along with a text for radio notices. 50 newspapers are named, including 16 in other southern African countries. A long list of radio stations is also given. The notices have to be in multiple languages.

The Court ruled that the notices must also penetrate the mines. Each mine in the list is ordered to post the notice in a prominent place at each mine for 180 days, as well as on all company website home pages. Given the direct contact that all mineworkers have through their community networks in the labour sending areas, this is likely to be highly effective in getting the word out.

The Court ordered that the parties must report quarterly on progress to the Court. Any out-of-court settlement reached will have no effect unless approved by the Court, in the interests of justice.

The Court found none of the arguments against this process from the mining companies had any merit. The judges noted that the companies had accepted the argument of the miners that individual litigation by so many poor and sick people and their dependents in isolated and inaccessible areas would mean that they would effectively forfeit their constitutional right to redress. So the Court was unimpressed that the companies continued to argue that individual litigation was the only possible solution, without putting forward any third possibility.

This ball is rolling, and will have political and economic effects throughout southern Africa. ^{LB}

Pete Lewis is a former senior researcher at the Industrial Health Research Unit at the University of Cape Town and this article was first published by GroundUp at www.groundup.org.za.

Unlocking labour laws

HIV and AIDS discrimination in the workplace

Where employers have HIV positive employees on their staff, can they use competence as a measure to dismiss an employee on that basis alone? No. Yet, being HIV positive has become a dismissible offence according to the modern day employer. The stigma is far-reaching and the workplace is yet another arena where HIV positive employees are victimised, writes **Ayanda Ngubo**.



People living with HIV constitute a minority. Yet society responds to their plight with intense prejudice. They are subjected to systemic disadvantage, discrimination, are stigmatised and marginalised. Employment is denied because of their HIV positive status without regard to their ability to perform the duties of the position from which they have been excluded. Society's response forces most of them not to reveal their HIV status for fear of prejudice. This in turn deprives them of the help they would otherwise receive.

Notwithstanding the availability of compelling medical evidence on transmission, the prejudices and stereotypes against HIV positive people still persist and the impact of discrimination is devastating especially when it occurs in the context of employment. It denies them the right to earn a living. For this reason they enjoy special protection in our law.

Employees often disclose their status to the employer out of fear of losing their job, or when faced with an employer's questions about why they need a day off each

Discrimination occurs when a person is treated differently from others because of prejudice. The Constitutional Court has mentioned that the basis for the prohibition of unfair discrimination is the recognition that all human beings regardless of their position in society have equal dignity. This dignity is impaired when a person is unfairly discriminated against.

month to collect medication. On the other hand, they disclose their status in an attempt to retain their jobs. Employees are then faced with fierce discrimination, marginalisation, prejudice and ultimate dismissal from the workplace.

DISCRIMINATION AND THE LAW

Discrimination occurs when a person is treated differently from others because of prejudice. The Constitutional Court has mentioned that the basis for the prohibition of unfair discrimination is the recognition that all human beings regardless of their position in society have equal dignity. This dignity is impaired when a person is unfairly discriminated against.

Prior to 1998, employees relied on the provisions of s 187(1)(f) of the Labour Relations Act 66 of 1995 (LRA) which provided various grounds on which a dismissal could be deemed unfair. Employees also relied on s 9(3) of the Constitution which sets out grounds upon which a person may not be discriminated against. The problem was that HIV and AIDS in both the above pieces of legislation was not a listed ground. This necessitated the introduction of laws to prevent and/or address discrimination against people living with HIV in all areas of life including the workplace.

The Employment Equity Act 55 of 1998 (EEA) was amongst some of the pieces of legislation introduced to deal with discrimination against HIV infected employees. Section 6(1) of the EEA provides that no person may unfairly discriminate directly or indirectly against an employee, in any employment policy or practice

on one or more grounds including amongst others a person's HIV status.

Section 7 of the EEA prohibits medical testing of an employee unless it is permitted by legislation and if it is justifiable in light of medical facts, employment conditions, social policy and the fair distribution of employee benefits or the inherent requirements of the job. This section provides further that testing of an employee to determine their HIV status is prohibited unless such testing is determined justifiable by the Labour Court in accordance with these criteria.

The definition of testing in the EEA is quite broad. Often employers design questionnaires which are couched in ambiguous terms to try and ascertain the medical condition of employees. The above section renders these questionnaires unlawful unless an employer obtains the permission of the Labour Court to do this. In the event that the Court agrees to this it may direct that pre- or post-counselling be offered to employees and that the employers keep the information obtained confidential.

Nonetheless, employers are sometimes faced with a situation where an employee cannot continue doing the same duties due to illness. The Code of Good Practice on Key Aspects of HIV and AIDS which was introduced in December 2000 as well as the revised Code provides that employers have to accommodate employees as far as possible. This includes restructuring positions where they will be expected to do less strenuous duties, as opposed to merely dismissing them or medically boarding the employees. If an

employee cannot perform their duties an employer is entitled to institute an incapacity inquiry, which can be the basis for dismissing an employee.

STEPS TO TAKE AFTER AN UNFAIR DISMISSAL BASED ON HIV AND AIDS

- Refer the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA) within 30 days.
- If the matter is not resolved at the CCMA you should refer the matter to the Labour Court within 90 days from the date of conciliation.
- An employee who is unfairly dismissed on the grounds of HIV is eligible to apply for damages and/or re-instatement under both s 187(1)(f) of the LRA and the EEA.
- Employees dismissed on the grounds of HIV who have no resort to legal assistance can seek free legal advice at the HIV and TB helpline operated by Legal Aid SA on 0800 110 110.

I would recommend that employees familiarise themselves with the above legislation to ensure their rights are not infringed upon and in the event that their rights are infringed to urgently contact Legal Aid SA in order to receive legal advice. Employees should know what steps to take when their rights are infringed upon. Similarly, employers and trade unions should develop appropriate strategies and policies to understand, assess and respond to the impact of HIV and AIDS in their particular workplaces and sectors. ¹⁶

Ayanda Ngubo is a partner in the pro bono practice at Webber Wentzel.

Cosatu alive and kicking

Giant not dead



The Congress of South African Trade Unions (Cosatu) cannot be written off. **Sdumo Dlamini** argues that the federation has sound programmes and will defeat its enemies.

Comrades, we are meeting to mark 121 years since the first May Day celebrations by South African workers in 1895. We also celebrate the victory of workers who 29 years ago forced the apartheid government to declare May Day as a paid public holiday after bitter struggles under the leadership of Cosatu. We are standing on the shoulders of the giants who led this federation.

This year marks 52 years since comrades Vuyisile Mini was hanged by the apartheid regime together with Wilson Khayinga and Zinakile Mkaba on 6 May 1964.

We are also reminded that 40 years ago in 1976, there was a trial which involved comrade Harry Gwala, the Lion of the Midlands, in which over 40 people were detained in connection with their intention to remove the apartheid government.

Two of the accused, Joseph Nduli and Cleopas Ndhlovu, were badly tortured by the apartheid police and died in their hands.

On 7 May 1980, meat workers under the Western Province General Workers' Union (WPGWU) at the Table Bay Cold Storage went on a 12-week crippling strike which paralysed meat supply in Cape Town.

It is also 29 years since Cosatu launched the Living Wage Campaign in 1987 and the bombing of our head offices by apartheid agents sent by the Minister of Law and Order Adrian Vlok. The intention was to instill fear, weaken and ultimately destroy Cosatu. They failed dismally but our enemies did not stop their plans to weaken and destroy us.

In 1985 when Cosatu was launched, they formed a counter federation called United Workers Union of South Africa (Uwusa) which was funded by the apartheid regime. They found us prepared. We fought back and defeated them. We had no money but united workers behind the organisation.

Today 31 years after, the enemy is still trying the same old tricks but in a different form. This time they use expelled people, who had been found to be corrupt; and who chose to sleep with women instead of building the organisation.

They use people who did everything to be dismissed by Cosatu so that they could run away from facing corruption charges. It is these discredited leaders who are working hard to form a new federation that will oppose Cosatu.

We want to tell them, that like we did with Uwusa we will defeat them! We know that the enemy will never rest. Some commentators and journalists want us to keep quiet and not talk about the glaring plot which is intended to reverse the gains of our struggles.

We know that the Democratic Alliance (DA) went to parliament to take away our right to strike and thanks to the African National Congress (ANC) comrades in the portfolio committee who stopped them.

The DA supports the existence of labour brokers and are prepared to go to the courts to challenge our call to ban them on the basis of the so-called constitutional right to trade, even if it's the right to trade with humans.

For us as workers, the DA's Mmusi Maimane, and Herman Mashaba will never in their life time stand up against labour brokers and the exploitation of workers.

We know that plans are being hatched to destroy Cosatu through various projects including funding the formation of a new federation and books against the federation. Certain universities have become a hub for these activities.

We want to tell you that we are on the ground, with the workers, and all over and will defeat you in the same way as the apartheid regime.

The plans to destroy Cosatu are no longer a secret or conspiracy but now in the open. They are being driven by the expelled and discredited.

We do not underestimate our enemies. We know they are being funded, and work with various highly resourceful institutions that are committed to helping them.

Employers and monopoly capital are having sleepless nights because they had calculated that by this time Cosatu would be a thing of the past. We have even seen books written on the so-called 'Cosatu crisis'. To their surprise every day they receive news that Cosatu is moving from one great victory to another.

STRIKES

We continue to use strike action as a weapon against employers and Cosatu affiliates are involved:

- 2009 51
- 2010 74
- 2011 67
- 2012 99
- 2013 114 strikes.

We continue to fight without compromising and employers are doing everything possible including helping towards the formation and funding of new unions and the new federation.

In 2014, 2015 and this year we have had a series of protest actions in the mining sector, and in the public sector, with the most recent joint mass action with the South

African Communist Party (SACP) in KwaZulu-Natal. Those who say this giant is dead must think again!

We engage both in the boardroom and in the streets! We have secured many victories in the recent past and have placed on the table a demand for a legislated minimum wage and the matter is no longer whether it should be implemented or not but how it should be done. Business is trying to employ delaying tactics and we will be going to the streets to demand implementation.

We will not stop and never retreat from our demand for an effective, accessible, reliable, safe, affordable and integrated public transport system. We do not want e-tolls and they must be scrapped now!

Labour brokers must be banned and we will issue a report soon that shows the extent to which they continue to treat workers as slaves. We are no longer prepared to negotiate this matter.

We fought for a free public health system called the National Health Insurance (NHI) and it is no longer whether it is necessary but about implementation. We are ready to engage on the white paper. Business must know that the NHI is not for their profits but for the ordinary people of this country.

We demanded and fought for the implementation of a comprehensive social security and there is a process underway for the release of a white paper and we call on government not to delay the process which must commence now.

The Unemployment Insurance Fund (UIF) Amendment Bill has finally been adopted by the National Assembly's Portfolio Committee on Labour. This is a Bill on which we have spent a great deal of time pushing the Department of Labour to process since 2013.

It is a progressive Bill which will see billions of rands of UIF funds channelled to workers by increasing benefits from eight to 12 months, increasing maternity leave payments

from 54% of income to 66%, including mothers, who had miscarriages in the third trimester and still borns under maternity leave, empowering the minister to set special regulations for domestic workers for maternity leave, covering reduced time workers under full-time benefits etc.

We have won the postponement on the implementation of retirement funds reforms based on the Taxation Laws Amendment Act. But our demands remain that we want the act to be scrapped.

The youth wage subsidy was forced on us and we are demanding a review of its impact. We are certain that it had benefited employers and not the youth. Instead the millions of young people remain unemployed despite the youth wage subsidy.

The plans to destroy Cosatu are not delinked from that of weakening and destroying the liberation movement as a whole and replacing it with new political pseudo-left organisations.

We are worried that despite these obvious and sustained attacks directed at the liberation movement we see many of our comrades acting in manners that reinforce this offensive. We want to call on them to be careful and understand that what may appear as an attack against the president of the country and of the ANC is actually aimed at insurrection and shifting of state power back to our former oppressors.

This process may both be direct or indirect. It may take a form of weakened electoral presence in the state and assume power sharing based on coalitions.

It may take the form of some pseudo-left organisations like the Economic Freedom Fighters (EFF)/DA alliance gaining electoral presence at local government.

It may manifest as a direct transfer of political power from the ANC to the EFF/DA coalition. We are asking our comrades all over the country to be alive to this reality and stop acting in a manner that makes them play in the palm of the hand of our enemies.

It easy to be the heroes of the media but it will be difficult to win the lost political ground and state power. Ask our comrades in the Western Cape.

VOTE ANC

We call on our people to stand up and defend political power from shifting to our former colonisers. Let's work to correct and strengthen our ANC!

To defend the ANC and the revolution, we need to ensure that it wins decisively in the local government elections. We need to defend the ANC but it should make sure its government defends the workers. Our aspirations and goals should matter and be a priority. We want the ANC to prove that it is still biased towards the working class, through action.

As Cosatu, let's us be ready for the battles ahead!

We have made strides but a lot of battles lie ahead. We need to be ready because it is going to be ugly. Employers are not prepared to give us our fair share and we should be ready to take it. We have a clear message to employers, big business and government:

1. We cannot continue as workers to remain enslaved in waged labour, while our economy remains highly monopolised, foreign-owned and also in the hands of a white minority.
2. We are going to fight privatisation and demand the transformation of the colonial and apartheid structure of the economy.
3. We are going to fight and demand decisive interventions to stem the unfolding de-industrialisation and on-going job losses.
4. We demand the introduction of capital controls to stem the tide of capital flight.
5. We want a state bank now. The process of issuing a licence of the Post Bank to function as a state bank must be fast tracked.
6. We want the nationalisation of the South African Reserve Bank

(SARB). Those who are refusing to implement this policy must be removed from government. We find it horrifying that the SARB has outsourced one of its core functions, the printing of money to European countries. Money supply cannot be outsourced by any self-respecting economy and we demand the immediate in-sourcing of this core function of the SARB.

7. We want a state pharmaceutical company now, and a progress report on the issue. We want the implementation of the Alliance Summit decision calling for the redrafting and fundamental overhaul of the core economic and labour chapter of the National Development Plan.
8. We want the review and withdrawal of the Employment Incentive Tax Act.
9. We demand the lifting of a moratorium on the freezing of vacant posts in the public service.
10. We want the abolition of e-tolls and labour brokers.
11. We demand the implementation and adoption of the principle of equal pay for work of equal value and the abolition of the apartheid wage structure.
12. We want Treasury to ensure that the State Owned Enterprises are properly funded to fulfill their developmental and decent work agenda.
13. Our government must intervene to ensure that the Sector Education and Training Authorities deliver upon their mandates and spend their budgets to ensure that workers receive the necessary training to help them find decent employment.
14. We want the immediate introduction of a legislated national minimum wage. ¹⁵

This article is an edited version of a May Day speech delivered by Cosatu President Sdumo Dlamini at Moretele Resort, Mamelodi, Pretoria.

Workers' summit declaration

Time for new federation

History was made in South Africa on 30 April 2016 when 1,406 representatives of 29 separate trade unions and one existing federation, the National Council of Trade Unions (Nactu) with 22 affiliates, supported by a range of civil society and community organisations, came together to commit themselves to building a new, worker-controlled, democratic, non-racial, non-sexist, independent, financially self-sufficient, internationalist, socialist-orientated and militant union federation.

The formation of this new body is vital and especially urgent because of the economic crisis gripping South Africa. Twenty-two years after the democratic breakthrough on 27 April 1994, mass unemployment, poverty, extreme inequality, racism and rampant corruption are the daily experiences of the majority of the working class.

Workers face attacks on their living standards and job security. Jobs are becoming more and more precarious, with outsourcing, labour broking, casualisation and sub-contracting growing exponentially. Workers in informal employment are unsupported and unprotected. In the manufacturing and mining sectors whole workplaces and even entire industries like mining and steel are in danger of disappearing and throwing thousands more on to the streets. As well as retrenchments, workers are suffering short-time work and unions are being forced to negotiate training layoff schemes.

The chances of retrenched workers finding another job are next to zero given the shocking rate of unemployment – 33.8% in the fourth quarter of 2015, by the more realistic expanded rate which includes those who have stopped even looking for work. The economy is growing very slowly – just 1.3% last year. That means there are not enough jobs for all those coming from school and tertiary institutions, still less for older retrenched workers.

The living standards of those who can hang on to a job are plummeting. In three months, from November 2015 to January 2016, the price of their basic food basket increased by 9%. The year-on-year increase for January 2015 to January 2016 was 14.6%. Some of the biggest increases have come in some of the most basic foods:

- mealie meal 21.2%
- samp 36.2%
- cooking oil 38.8%
- potatoes 120%.

Nearly all the biggest price increases are on items on which

workers and the poor spend a higher percentage of their incomes than the wealthy. It means that in real terms all those on fixed incomes are substantially poorer than a year ago; 13-million people go to bed hungry every day, including many of the working poor.

Yet the super-rich bosses, in the world's most unequal society, tell us that the wage rises we demand will drive up unemployment and worsen poverty. They call for belt-tightening and below-inflation increases so as not to scare away investors and lead to ratings agencies downgrading the country to junk status. But tightening our belts does not make the economy grow! On the contrary, paying workers more makes the economy grow, because they spend more on goods and services which stimulates more production and more jobs. They only want us to give them even more profits.

Now a new battle front is being opened up by the bosses, the Free Market Foundation (FMP)



On the ground: Workers listen to May Day speeches at Mehlareng Stadium, Tembisa, Johannesburg.

and their political allies, especially in the Democratic Alliance (DA) and other openly capitalist parties. They want to destroy rights which workers have won through struggle, especially to collective bargaining, despite the fact that only 23% of workers' wages are determined by collective bargaining; and only 9% determined through centralised bargaining, while 54% of all wages received by workers are already determined by the employers without any negotiations. These people want that figure to rise to 100%! Meanwhile, more and more jobs are being casualised or outsourced to labour brokers.

Never have workers had a greater need for the protection of strong trade unions and a powerful, united federation to defend jobs and living standards and repulse the attacks, yet never since the days of apartheid has the union movement been weaker and more fragmented. The Congress of South African Trade Unions (Cosatu) has become a shadow of its former self and is little more than a labour desk for the African National Congress (ANC) government, whose neo-liberal policies are the source of the very attacks we are facing.

The Department of Labour records 184 registered trade union entities and many more are unregistered or are in the process of being registered. Even worse is that a staggering 76% of formal workers remain unorganised. Many of these workers are in the most vulnerable sectors in greatest need of a strong trade union, those employed by labour brokers, part-time and casual workers who have no permanent employer or workplace. In addition millions of informal workers are unprotected and are subject to harassment, evictions and confiscations.

It is therefore essential that the new federation recognises the changing nature of the labour force, and moves beyond traditional areas of scope and targets recruitment of these vulnerable, often unorganised workers.

The summit agreed that the new federation must also be based on the following founding principles:

- **Independence:** Unions must be independent from employers (in the private and public sector) and from political parties. This does not mean that unions are apolitical.
- **Worker control and democracy:** Unions must be worker-controlled and practise democracy, accountability, transparency and be tolerant. Within the federation affiliates must have autonomy but not independence, but differences of opinion must be tolerated.
- **Non-racialism and non-sexism:** Unions must fight for the maximum unity of all workers and reject all divisive and negative sentiment such as xenophobia etc. They must ensure that women comrades play a full role, including in leadership.
- **Financial self-sufficiency, accountability and opposition,** in word and deed, to business unionism, corruption, fraud and maladministration within its own ranks and in society as a whole.
- **Anti-imperialist and internationalist:** Unions must place a high priority on international solidarity.
- **Socialist orientation:** Unions must be ready to engage in the transformation of our societies to counter capitalist exploitation, inequalities and poverty.

- **Militancy in fighting for the working class and the poor:** Unions must be ready to actively campaign for change, and make links with all of the oppressed of South Africa.
- **Effective organisation and representation:** Unions must organise in the most effective manner to represent workers and serve their interests.
- **Solidarity with all workers** struggling for better wages and conditions or to save jobs.
- **Support for workers exposing corruption:** Prasa and the Midrand municipality etc.

The Summit agreed that the new federation must embrace a renewed commitment to internal democracy and worker control, with an insistence on mandates and reporting back.

There was no time to debate fully all the other four discussion papers which will be thoroughly debated at all levels in all the unions, in line with the principles of bottom-up democracy, and then placed on the agenda of the founding congress of the new federation.

The summit condemned moves by state employers to refuse to process debit orders for union members and to campaign to force

them to stop denying workers their constitutional right to join a union and depriving unions of much-needed funds.

The summit expanded the interim steering committee to include the presidents of all unions in attendance. All members of this committee will be properly mandated by their members so they have the authority to take bold decisions, and, more importantly, to see that these decisions are then fully implemented. It is hoped that the founding congress can be convened by the latest in 2017, possibly earlier.

There will be a campaign to say no to job losses, and yes to restructuring the economy. Active state support must be given to industrialisation and the creation of jobs, and government must increase tariffs, cut interest rates, reject inflation targeting, bring back capital controls and end privatisation. We shall support the campaign against the new laws on provident fund annuitisation.

IMPORTANT PAGE TURNED

The Workers Summit agreed that measures must be taken to ensure that a new Workers Federation be up and running before the end of

2016. This will be a federation that leads by example. It will be a model of union democracy, and will show in practice how to unite workers by democratic means and not by dictatorship from the top. The new federation will not be a 'Board Room Federation', but will actively link with workers' struggles on the ground, so that all workers and their unions are supported and given the solidarity they need to win. This will be a federation that supports and encourages its affiliates to grow, and evolve to be able to respond to changes in the economy. It will build the capacity of its affiliates, through targeted recruitment campaigns, research, and workers' education. Most importantly, it will link with informal workers, unemployed workers and poor communities that are experiencing very harsh conditions, so workers everywhere will know they are not alone, and that a solid new home is being built that will protect workers against the ravages of an economy that is based on exploitation and inequality. ^{LB}

This article is based on a statement by the proposed federation.



Rapists are the problem

Rhodes students uprising against rape culture

South African youth are commonly defined in mainstream media as unemployed, drug and alcohol addicts, and as part of the HIV and AIDS statistics. Is this narrative any different when we talk about the build up to the protests against rape culture and students' protests in general? **Dineo Sitole** interviews **Khanyisile Melanie Mboya** and **Londiwe Mntambo** from Rhodes University, Grahamstown, in the Eastern Cape.

As we celebrate 40 years since the Soweto Uprising in 1976, the focus is on students uniting around causes without necessarily falling under the banners of political parties. The #FeesMustFall movement, the slut walks, and the fight against rape culture led by students around the country took charge of these discussions, redefined and reclaimed the mass movement. Students joined the protests either because they were direct victims of institutional cultural norms or could relate to their colleagues' struggles.

'It's very important that South Africans recognise the strength of the young people,' emphasises Londiwe Mntambo who has been active in occupy movements and #FeesMustFall.

In a country where youth have been viewed as victims and defined by unemployment, drug and alcohol abuse and HIV and AIDS statistics, the students of 2015 and 2016 built a narrative around youth being active participants in the country. They took up genuine issues of young people, and united to change some of the cultural norms that exist in society such as rape culture.

'Rape culture is just like any culture that perpetuates something that we do without us necessarily knowing that we are doing or being aware that we are perpetuating it ... It shifts the blame or shame from the rapist to the victim; the victim feels like she should not have acted in a specific way,' stresses Mntambo. In that sense society has created an environment that protects and perpetuates rape actions that are in existence.

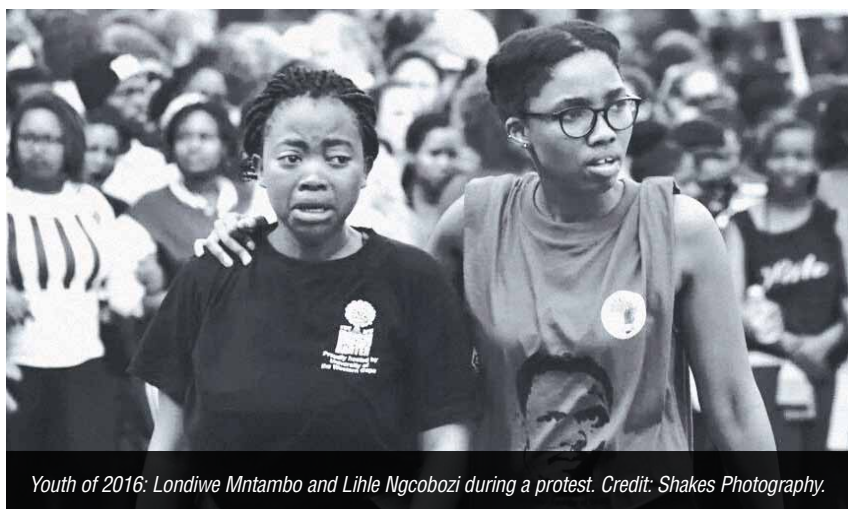
At the launch of her book *Rape: A South African Nightmare*, at Rhodes University, Pumla Dineo Gqola asked simple questions: 'How many of you know rape victims? How many of you know the rapists?' The reality is that society does not know who the rapists are, but knows the rape victims.

'Rape is not a vague violation of the body. The vagueness around rape though is a result of the rape culture that exists in society,' says Mntambo. The fight against rape culture is to argue against the dismissive nature of society around rape and its normalisation of rape. Rape culture represents the "genocide of woman's bodies," adds Khanyisile Mboya. Society knows the oppressor but does nothing about it.

Social media was a useful tool in the protests at Rhodes as the Rhodes University referendum (RU referendum) was posted on the Student Representative Council (SRC) Facebook page with 11 names on it. The list was not titled: 'the list of sexual violators or rapists'. However, in one of the comments by students it was mentioned that what was common with the names was that they belonged to sexual violators. The list emanated from Chapter 2.12 which was led by women who were disappointed and frustrated by Rhodes University management's response to dealing with sexual violations at the university. Chapter 2.12 was intently against the protection of the sexual violators and management's shocking response.

'The conversation started by Chapter 2.12 is a conversation about rape culture: how we treat rape and management's response' explains Mboya. In essence, Chapter 2.12 became the influencing force around the protest action that took place after that.

Although the issue of rape at the institution was known in private discussions amongst friends and



Youth of 2016: Londiwe Mntambo and Lihle Ngcobozi during a protest. Credit: Shakes Photography.



Khanyisile Melanie Mboya.

colleagues it was not a public discussion. These private discussions also silenced many people but in their silences they were able to unite brave women in trying to deal with rape culture at Rhodes. The stories linked and their commonality began a process of mass action where more victims joined.

Other students joined but the perpetrators were now specifically targeted. However, the protest was not just one for publicity. According to Mntambo, although necessary it was a traumatic experience 'for a lot of the women particularly the victims or survivors of rape. The protest led them to mental and physical breakdowns. The process was hard, and very emotional. It's been shocking but also challenged people around the cultures'.

'Rape culture must be fought because it takes away the dignity of women,' says Mboya. 'You have to undignify me and rape me to have your dignity as a man because you had sex with a woman.'

'Movements are fluid, they spark whenever is necessary.'

The South African Students Congress supported the movement, but no political organisations led the process. Says Mntambo: 'That is what makes the movement special. Movements don't have a hierarchical leadership; they don't have an institutional leadership. Movements are fluid, they spark

whenever is necessary.' The essences of movements are the bodies that are there; there is no need for leadership'. The coordination of the protests was done by a task team. Mboya and Mntambo argue that movements used a bottom-up approach rather than a top-down.

'The institutions have failed us, the presidents (of different institutions including the national president) have failed us, and the masses have taken upon themselves to do the hard work,' Mboya stated vehemently.

'Institutions swallow you in their bureaucracies and then reproduce the problem. Institutions have never solved problems, rather they reproduce them,' adds Mntambo.

'The consciousness of the masses is not the consciousness of the state. Therefore movements are important because they represent the grassroots,' says Mboya. 'Government though is represented by people that are our grandparents, and therefore are not having these conversations.' Mass movements according to the young women are critical in addressing the social ills that exist in society. They see the humanity in people's issues while government tends to impose bureaucracy instead of addressing issues. The government and the elderly leading the state need to ask themselves whether they are speaking to and being heard by

young people. Do they represent the young's interests?' But if movements are the answer, who begins them and do they only begin once a crisis has erupted?

Stuart Hall states that if the 'relationship between signifier and its signified is the result of a system of social conventions specific to each society and to specific historical moments – then all meanings are produced within history and culture'.

Representation, writes Boyd Barrett, is not an exact copy of the realities experienced but is the 'process by which signs and symbols are made through culture to convey certain meanings'. Culture is in its nature the active process of compiling, adapting and ultimately circulating meanings and pleasures within a social system. In this sense it can be argued that South Africa has created a rape culture.

However, when reflecting on the protests students have raised important issues including restoring the dignity of women by providing toilets in Khayelitsha, Cape Town, the 'bring back the land' campaign, and issues on the economy and control of the means of production. These are important issues for South Africa's transformation that needs to be addressed. ^{LB}

Dineo Sitole is a youth activist based in Johannesburg.

Deleting purple politics

From Rhodes University

A social movement approach to campaigning for student issues is more effective as it brings all together. This helps in assessing and addressing issues affecting the community as universities are not islands, argues **Lazola Kati**, chairperson of the South African Students Congress (Sasco) at Rhodes University as she shares her experiences as a political leader at a supposedly apolitical institution in an interview with **Dineo Sitole**.

Unlike most higher learning institutions in South Africa in recent weeks, Rhodes University has been amongst the least politically involved. We hardly hear of students being associated with various structures and the Student Representative Council (SRC) members are chosen as individuals and under banners of movements. The arguments for this are around representing more students, and giving them more say pertaining to liberal individual aspects. Referring to the university's purple brand colour Lazola Kati argues against this approach. This 'purplisation of the institution' represents the silencing of students, and the separating of the university from the Grahamstown community.

'At Rhodes University if you are part of a political organisation you are a minority, and being a minority and in the majority at the same time you don't have a voice. Rhodes students are silenced and that's what Sasco wants to change'.

In many instances there has been a clear removal of political

parties from the movements in higher learning institutions dealing with students' issues. Recently the University of the Witwatersrand Vice Chancellor, Adam Habib, welcomed the decentralisation from political parties of students fighting against fee increases that impoverish students as well as the rape culture protected by university policies countrywide.

However, when discussions were held with President Jacob Zuma, political organisations were invited in numbers. What then becomes the need for organisations such as Sasco, when students cannot ask the organisation to represent them? Is representative democracy sustainable when the masses afflicted by bureaucracy continue to be unheard even within existing avenues?

Sasco works with other organisations on common issues. These include Chapter 2.12 which was formed by the Gender Action Project (GAP). Although not part of it, Sasco supported the protests it led as young women wanted to be

represented by organisations not affiliated to any political dynamics outside of the university. Despite this Sasco released a statement supporting Chapter 2.12. Rhodes as an apolitical institution means that if political organisations 'participate under the banner of a political movement it breeds a lot of animosity' between management and students. 'However, Sasco met with the task team and the African National Congress (ANC) Women's League was there in numbers. Also respecting that the protest was not started by Sasco which is a political organisation'.

Sasco learnt that rape culture in higher learning institutions is dealt with under counselling. As there is no talk around the campus, Sasco was not aware of the problem. The fact that young people after being raped or sexually assaulted run and report to a different side of the campus, and then run to the counselling centre located on the opposite side is further victimisation. Their bodies having already been violated, are



Speaking with passion: Lazola Kati emphasises a point.

The union of workers and students is the type of union that created May 1968 [in France]: the type of union that created a civil society in itself. The only way power can listen to civil society is when civil society addresses the issues united.

further violated by the system. Sasco asserts that over and above shaming the perpetrators, the management rule books on rape must be changed, and spaces of reporting and counselling be in the same place. Furthermore, statistics on rape must be accessible to all students.

Not only has movement politics been challenged but bureaucracies of organisations as well. According to Kati movement politics are 'relevant to current modern struggles' and allow for more united formations. Movements remain critical to assessing and addressing community issues. However, as political movements it's important that the mandates are heard and listened to. The political

mandate provides for support from other avenues and addresses the expectations of movements.

Obviously 'Sasco is aligned to the ANC, and because of that we receive a certain level of privilege'. It had the support of the ANC Women's League in the community and united with the ANC Youth League to ask for help against the police brutality experienced by students. Sasco became a catalyst in uniting both the students and workers, as well as the community at large.

'The union of workers and students is the type of union that created May 1968 [in France]: the type of union that created a civil society in itself. The only way power can listen to civil society is

when civil society addresses the issues united.' Kati emphasises that the unity of society is fundamental in achieving expected ends and in addressing issues. But this needs 'to be tweaked' and intensified.

'There are plans to do more community work, to be active in community struggles and to engage further in community areas. Before Sasco members are students, they are community members.'

'Getting an education in our day is very difficult. In fact I would need to go to jail for [free] education'. The struggle for free and accessible education is still a critical programme for Sasco which stands and will continue to stand for students. The big question is will students stand with Sasco? ¹⁸

Reply to Nicoli Nattrass & Jeremy Seekings

Trade unions, the state and 'casino capitalism' in South Africa's clothing industry

Nattrass and Seekings (N&S) have penned a highly critical piece on the Southern African Clothing and Textile Workers Union (Sactwu) published in the *Review of African Political Economy*, attacking virtually everything it is and does, including its trade policies, its affiliation to the Congress of South African Trade Unions (Cosatu), its investment company and in particular its intervention into Seardel. This response contests many of the assumptions they make about the union and its approach to the world but perhaps more importantly seeks to shed some light on the collapse of the largest clothing and textile corporation in the country (Seardel) and the union's attempts to rescue it from liquidation, writes **Johnny Copelyn**.

SUMMARY OF ARGUMENTS

The N&S article starts by making the point that Cosatu and several of its member unions have lost their edge and are no longer organisations representing the interests of their members. Three allegations are put up to explain this:

- (1) Cosatu's alliance with the governing party has neutralised its capacity to represent the political interests of workers as it used to do prior to the advent of democracy
- (2) Unions have become embroiled in 'corporatist structures' particularly industry wide bargaining councils which, according to the article, are creations of post-apartheid labour legislation

- (3) The success of the unions resulted in them paying many 'perks' to their officials which have distanced the union from its members.

These factors are cobbled together to explain the split in ranks between militant trade unions who can no longer take the degeneration in the trade union movement represented by Cosatu and are on a path to forming a new federation, that presumably will be far more responsive to workers than the contaminated Cosatu style of leadership.

The split in Cosatu's ranks implicitly requires each affiliate of Cosatu to choose whether it wishes to remain with the degenerate federation moving increasingly out of step with

worker interests or whether it wants to leave Cosatu and follow the real interests of its members.

All this macro analysis is cited with its well documented academic trail of supposed authority, to demonstrate a key proposition that Sactwu chose to stay in the Cosatu stable for a simple reason: It preferred to abandon its real mandate to serve worker interests in favour of other interests. Without pausing to check whether the dichotomy the article sets up has any basis in reality at all, the authors plunge into the heart of the point they are burning to make:

'Sactwu's hesitancy to burn its bridges with the ANC accorded with its evolving relationship to both state and capital.'



Sactwu members: The union has been at the front of saving jobs. Credit: William Matlala.

The extraordinary degree of the treachery to its mandate being perpetrated by Sactwu is caused by two cardinal sins.

The first is its 'heavy dependence' on the state. Through this indispensable crutch, the union has been able to secure 'control of non-unionised employment through wage regulation' as well as procure 'industrial policies that facilitate higher wages for its members'.

The second is occasioned by its 'deepening business interests' which depend on the state 'rigging the odds in its favour' - 'Casino capitalism' at its most grotesque.

Just in case the above is not sufficient to appall the reader, the professors add the following addition from their research. These 'deepening business interests

reinforced its preference for relatively high wage and capital intensive production models that produced fewer but better paid jobs.'

A FEW GENERAL OBSERVATIONS

While in general I would like to focus this response on the N&S critique of the union's investment in Seardel it is unavoidable to respond to some of the other analysis.

Is it true as N&S insists, that Sactwu remaining in Cosatu reveals its dependence on the ANC rather than remaining true to its mandate to fearlessly represent the interests of its members?

The launch of Cosatu a little over 30 years ago was the result of a determined effort by trade unionists of many differing political shades to put aside their differences in the interests

of trade union unity. Its fragmentation today is not part of the story of workers regaining their lost voice. It is a pitiful statement that union leaders rather than workers, have come to the view that their differences are more important than trade union unity.

I spent 20 years in unions from 1974 to 1994 trying, alongside others, to pull disparate unions in the same industry into a single non-racial organisation dedicated to protecting workers from abuse. In the end we managed to merge six racially and regionally divided unions into a single organisation - Sactwu.

In the same period we spent years trying to unite unions into a single non-racial trade union federation. We started as TUACC, formed Fosatu and finally united under the banner of Cosatu.

The leadership of Sactwu that went through all that knows better than anyone how difficult it will be to repair the damage being done to the workers' movement and its ability to influence the way in which South Africa develops from here. Far from the 'new' federation representing a simple return of union organisation to its grassroots, it is far more likely to be characterised alongside Cosatu, primarily by the fact that they represent disunity.

By saying this I don't mean to blame the National Union of Metalworkers of South Africa (Numsa) or even the Association of Mining and Construction Union (Amcu) for this collapse of unity. Numsa did not walk out of Cosatu. It was expelled. That was a devastating blow to the future of Cosatu being the centre of trade union unity. Sactwu did not favour that expulsion, nor does it hold that differences between trade union leadership in relation to political outlook should be the basis of which unions should be admitted to Cosatu.

The fact that the union does not wish to participate in splintering Cosatu has absolutely nothing to do with the reasons cited by the authors. Rather, it has everything to do with resisting the fragmentation of the trade union movement.

Has Sactwu lost connectivity with its membership base and if so is this the consequence of offering its officials too many perks?

N&S sets up a completely undocumented accusation that Sactwu has lost its connection with workers, resulting in its members becoming ungovernable.

Where unions become disconnected from their members, expressions of worker militancy spill into the open despite the union rather than through it. The authors boldly assert this phenomenon is the consequence of the many 'perks' offered to union officials.

The critique of Sactwu offered in this regard is most unfair. To the best of my knowledge, there has been no militancy of clothing and textile workers whatsoever outside of struggles in which the union has been very much a part. Nor have splinter unions, so characteristic of union weakness in other industries, been a characteristic of clothing and textile worker organisation. I am not aware of any criticism whatsoever from any section of the union about the salaries of officials nor have they changed in any remarkable way over time. They remain at perfectly inoffensive levels.

Are the efforts of Sactwu to reduce wage differentials in different parts of the country through a national bargaining council a proof of a contemptible reliance on the state?

N&S take great umbrage at the fact that Sactwu has sought to regulate the wages of the clothing industry nationally by the creation of a national bargaining council. This strategy of the union they take to be further evidence of the contemptible growing dependence of the union on the state.

Despite the authors' assertion that bargaining councils arose after the introduction of the 1995 Labour Relations Act, they have been in existence for a hundred years. The clothing industrial councils were in general created in the 1920s or early 1930s and have been fundamental to the setting of wages in that industry ever since.

Ironically, the union held up as the model of worker representivity, not subject to any of the criticisms N&S throw disparagingly at 'Cosatu', namely Numsa, has its entire capacity to mobilise its membership centred in national bargaining councils. This was as true on 1 December 1985 when Cosatu was formed, as it continues to be today.

Developing a national bargaining council is not a statement of dependence on the state that

is available to unions which are involved in alliances with the African National Congress (ANC). It is the consequence of a century of trade union struggles greatly valued by unions of every age and stage in our country's history. The notion that the only way to create jobs in an industry is to allow some areas to undercut agreed labour rates of more established areas is simply one of the most anti-union propositions one might hope to advance.

The N&S elaboration that the heretical deviation of which Sactwu is allegedly guilty, demonstrates a degenerate 'heavy dependence on the state' and 'deepening business interests' is simply not true.

Worse I feel it is a denial of the reality of apartheid's effect on the clothing industry since the 1970s.

Is Sactwu's commitment to a National Bargaining Council a commitment to a 'higher wage fewer jobs' strategy in direct conflict with the interests of its members.

The next broadside attack on Sactwu's outlook offered by the N&S critique relates to the union's alleged 'preference' for higher wages and fewer jobs. This critique arises from a fundamental difference the authors have with Sactwu's efforts to address historical structural imbalances in the sector.

In essence, the authors object to efforts made by Sactwu to compel employers in Newcastle and other such areas to raise the wages of their employees. Essentially they assert it would have been far wiser to leave these wages at the level they were as this would have allowed more jobs to be created. They postulate that the wage levels were thoughtfully determined by 'progressive technocrats' working for the state after 1994.

To get some historical perspective on the problem, perhaps one should start with the basic effects of government policy on the development of the clothing and textile industry over the last two decades of apartheid.

In that period, government dreamt up a key industrial policy aimed at preventing the 'influx' of black workers to cities. This was the development of 'border industries'. Certain areas bordering on 'homelands' were to be developed as industrial areas with enormous subsidies in an effort to ensure that development of labour intensive industrial sectors would be skewed towards these areas. These subsidies included tax breaks, free rentals in state built factories for several years, and a subsidy of 95% of wages up to a certain maximum level. If employers chose to increase the level of wages above this level they were on their own!

In this crude manner, the state drove wages of workers in these areas to their lowest possible levels. These areas were developed outside the jurisdictions of the industrial councils and were maintained as areas for cheap African labour with little room for trade unions by virtue of the racial limitations on membership of registered unions. The exclusion of African workers from registered trade unions rendered it impossible for such unions ever to create enough pressure on employers to grant union rights to their workers or to resist the depression of the level of the social wages payable there.

These were not conditions imposed by 'progressive technocrats'. They were the most grotesque racist manipulations of the labour market to the great disadvantage of workers, by people who were totally indifferent to their suffering.

With time these became cesspools of draconian labour practices such as employing female workers on night shifts, locking them into the factory so the owner would not have to waste money on hiring security workers at night. There were cases of workers being trapped in these plants when a fire broke out and several cases of pregnant women who could not

get out of the factory when they went into labour. There were several stories of workers being physically beaten as a disciplinary measure. Wage levels were set at below half those of urban areas and invariably unscrupulous employers would pay rates even lower than that, all with the connivance or total disregard for worker rights by the state.

I do not think that the N&S assertions about smart government technocrats trying to develop a 'low wage high employment' model in these areas after 1994 is helpful. In truth the work done by these workers relies on orders placed by the very retailers who previously used to order clothing from factories in the traditional areas of clothing manufacture like Durban and Cape Town.

More depressingly the weakness of these utterly fragmented and disorganised clothing manufacturers resulted in those retailers devouring every bit of the additional margin that manufacturers might have made through the cheap labour practices imposed on their workers.

It seems to me in short that every garment made in these areas undercut the price paid for identical garments manufactured in metro areas and in consequence virtually every job created in these areas was a job destroyed in some other area. Every cent saved through cheap labour practices went to the retailers which grew and grew as the manufacturers yielded every cent they underpaid their workers.

The cost of labour in many manufacturing operations is around 10 to 12% of the cost of manufacture. In the clothing industry it is over 30%. The profit margin on mass manufactured clothing virtually never exceeded 5% of the cost of manufacture anywhere, any time in our country. The consequence of allowing such enormous disparities in wages of workers in different local areas allowed non-metro factories to undercut metro prices by at least

10% forcing them to operate at a loss unless they moved. It is the projection of Rev Malthus on steroids – a race to absolute poverty without even waiting for the population to grow!

For the authors to suggest that it was in some way wrong for the union to create a national bargaining council as quickly as it could and to set its sails firmly on limiting the disparities in wage levels of competing local firms, is nothing short of diabolical.

To postulate that it would have been better to rely on government technocrats developing a new 'model' to protect the interests of clothing workers, could be the sort of idea that might come from the pen of a consultant to the retail industry. However, to simultaneously postulate that Sactwu's problem is that it has 'too great a dependence on relations with the state' requires a special blend of such interests wrapped tightly around a Houdini. How can the authors offer up the advice that the union should have relied on the guidance of 'progressive government technocrats' to set wages through wage boards while clinging fiercely to a damning criticism of unions that 'access state power'?

What is truly amazing is the total indifference of N&S to the facts of the wage differentials in metropolitan and non-metropolitan areas. While it goes on for pages about the 'high wage' strategy of the union and how this eliminated jobs in the 'low wage' centres like Newcastle, nowhere does it ever deal with the actual wages of the workers involved. I say this even though it includes a table reflecting the wages earned by qualified metro machinists, as its authors seem simply not to have internalised its content in any way. The table reveals that the current wage of a qualified machinist with two years' experience in Newcastle in 2016 is only R3,000 a month and in Cape Town is only R4,000 a month.



Power salute: Sactwu members during a march. Credit: William Matlala.

This is the 'high road' that the authors find so offensive. It is the result of the 15-year struggle of Sactwu to raise Newcastle rates in relation to metro rates. Over this period the gap has narrowed from a 50% discount on metro rates to a 25% discount.

While the discount is finally approaching a realistic level, the issue that remains is whether this is the much denigrated 'high road'. How much less should workers earn if Sactwu relied on the 'progressive government technocrats' so ardently urged by N&S?

Unavoidably, what N&S is actually saying, is that the right way to have eliminated the extraordinary wage gaps that were artificially imposed by apartheid on outlying areas and so mercilessly exploited by retailers, was to have allowed all clothing wages to fall to that level. The 'right' way for workers to deal with more and more manufacturing moving from major centres to outlying areas should simply have been to exchange their 'high' wages (currently R4,000 a month) for half of that.

If truth be told, the power behind the throne is not the state. It is a handful of retailers that dominate the conditions of manufacture and constantly scour the world for

cheaper manufactured products. Essentially N&S says the best course of action is simply to surrender.

I can't help feeling this armchair advice is all just too glib to be of any use to any bona fide trade union struggling to best represent the long-term interests of its members.

GOVERNMENT POLICY IN CLOTHING AND TEXTILE INDUSTRIES

Globalisation has exposed our manufacturing industry to being undercut by the great clothing exporters of the world. South Africa's longstanding policies in respect of the clothing and textile industries from the apartheid period involved three fundamentals.

Border areas

First was an obsession with the location of places of work which I have dealt with earlier, aimed at limiting the influx of African people to the major cities. While the decentralisation benefits disappeared after 1994, the key scar remained the totally depressed wages paid to workers in these areas.

Protectionism

Second was protecting the industry against imports to ensure its growth in the local market. It was generally well understood that this was an

industry which could create the maximum number of manufacturing jobs for the least amount of money per job and its protection was fundamental to the country's industrialisation.

N&S appears to suggest that it is a disgrace to 'protect' local jobs against globalisation. It seems to conceive of our failure to be a low cost producer solely as a statement of domestic inefficiency that should never be resolved by protectionism. I think this is too limited a view. There are many factors that go into other countries lowering the cost of producing clothing including the subsidising of raw materials, cheaper electricity, ensuring worker transport costs are at a minimum, producing long runs of the same garment, aside from managing foreign exchange rates like China does, and providing special export incentives specifically targeting South Africa.

It is highly unlikely that South African clothing manufacturers will ever be the cheapest producers in the world. Unless one wants the industry decimated, one has to protect it to some degree. It's one thing to say our protections were too high in the 1980s. It's quite another to say there should be none at all.

At the end of the apartheid period, SA tariffs on importing clothing

were negotiated at the World Trade Organisation (WTO) to fall from 120% to 45% over several years. In their wisdom, both Trevor Manuel and Alec Erwin sliced these tariffs three years in advance of that required by the WTO, causing complete mayhem in the industry in the period 1994 to 2005. Added to this, they abandoned clothing tariffs of 35% between South Africa and neighbouring Southern African Development Community (SADC) countries over the six years from 2000 to 2006, facilitating an avalanche of production shifting from South Africa to such states, paying about a quarter of the rates of South African metro workers. Literally tens of thousands of South African clothing workers lost their jobs. In cavalier fashion, the new government virtually threw the industry under a bus.

Aside from the level of duties payable at law, the key to the viability of all such protections is their enforcement. South Africa's capacity to enforce even the lowest level of duty has degenerated remarkably over the last 20 years. Despite imported goods flooding into the country, duties collected thereon are a small fraction of what they should be. It is utterly commonplace for people to import containers of clothing at nominal prices without being challenged. Likewise it is commonplace for goods to be imported via South Africa, allegedly bound for Lesotho or some other SADC country and either 'fall off the truck' unnoticed before getting to the border or are smuggled back into the country without import duty from there. We have seen the mushrooming of massive cheap clothing bazaars in every major city across the country. All of the goods traded there are imported and all are sold at prices which indicate no duty could have been paid. Nevertheless, this is done without attracting any apparent interest from law enforcement agencies.

All this devastation is of course of no interest to N&S which holds that wage cuts would have resolved the whole problem.

Export assistance

These difficulties cut across the third state commitment to the industry referred to by N&S, namely that of trying to foster the sector as an export industry through a duty credit system whereby duty credits could be earned on exports. In turn these could be set off against duties payable for the importation of textiles and clothing.

The state spent billions of rand on this system despite union opposition for many years. N&S blithely quote amounts credited to Sear del under this system as proof of the futility of the efforts made by the state to prop up an uncompetitive industry. They juxtapose this with a press comment by a Cosatu spokesperson which suggests that the state assistance was abused for management cars and bonuses. Somehow this unbearably low level of enquiry is then left to suggest that Sactwu policies and the union's total indifference to the long-term interests of its industry are the root cause of the demise of Sear del in particular and the industry in general. Such argument is not insightful and obfuscates understanding the wastefulness of a poor choice of state policy.

The Duty Credit Certificate (DCC) scheme was riddled with corruption. Middlemen purportedly exported millions of items of clothing under the scheme. In reality a small quantity of goods were 'round tripped' several times, with the same goods simply smuggled back into the country and 're-exported' for further credit. Other scams involved goods manufactured in China being imported by Malawi where a small assembly line attached 'Made in Malawi' labels and exported them to SA as items of clothing locally manufactured there.

Still other scams centred themselves on the simple solution of creating counterfeit DCC. The genuine certificates were issued by the Department of Trade and Industry, but for years there was no way in which Customs and Excise could check the authenticity of DCCs


claimed as the two departments had no IT system linking them.

Sactwu and Sear del (post the HCI take over of the business) were at the heart of a great many initiatives jointly with investigative units at SARS to expose the extensive corruption but no matter the level of proof thereof, no charges were ever pursued by the National Prosecuting Authority (NPA). In truth the NPA seems more likely to charge the minister of finance and anyone attached to the former SARS investigating units than any importer not paying duties.

N&S fails to deal with the effect of the DCCs on the clothing industry in any significant way. It does not seem to care whether any sustainable export industry was ever created by the system. All that seems important to them is the 'principle' that the union should not be able to influence state policies affecting the industry in which their members work.

Nevertheless, Sactwu finally succeeded in persuading the state to move away from the utterly wasteful system of the DCCs to the great benefit of the part of the industry interested in operating lawfully. Currently the DCC scheme has been replaced by a production incentive which offers local producers a credit for proven local production in compliance with tax and labour laws of the country. These credits can be claimed as financial assistance in meeting the costs of capital projects of the factories concerned to modernise production which are approved by the IDC. They are not tradable and the only way to claim them, is to prove the qualifying investment has been effected by the manufacturer concerned.

Is this a better and more far sighted form of support to industry? Unquestionably.

What possible gripe can the authors have with the union using its knowledge and skill to guide and pressure the state into the improvement of its policies in relation to supporting the industry? 

Sactwu rescues Seardel workers

So-called 'casino capitalists' at work

In 2008 the largest textile and clothing manufacturer in the country became insolvent. It was rescued by the Southern African Clothing and Textile Workers Union (Sactwu) from the jaws of the liquidators. Its efforts were not without pain and it succeeded in preserving only half of the jobs involved, writes **Johnny Copelyn**.

Nicoli Natrass & Jeremy Seekings (N&S) appear to be fundamentally critical of the union's intervention into the Seardel Group. More than that it is utterly contemptuous of the fact that the union had the capacity to intervene where no one else had any intention to tread.

They spend some time developing a totally fictitious point that the union obstructed a foreign company in taking over the Group's central textile factories as a going concern, and ultimately frustrated a possible transaction which would have avoided the closure of Frame 'by refusing to allow further retrenchments' until the unnamed 'Asian investor' walked away. In this diabolically cynical manner the suggestion is left hanging that, if not for the union and its stupidity, the factory would have been saved.

Likewise, in relation to the Group's clothing operations, N&S suggests that if not for the foolishness of union resistance to a 'new wage model' which Seardel, among others, had been trying unsuccessfully to introduce into the country, the bankruptcy of the Seardel clothing operations would have been avoided.

HOW SACTWU BECAME INVOLVED

N&S notes that the Seardel Group moved much of its manufacturing out of Durban to Ladysmith to take advantage of the cheaper wage levels there from 2004 (which contradicts everything else it says about the cause of the Group's troubles), and then pops up with this:

'Sactwu responded by purchasing shares in Seardel (attaining 19,3% of the N-ordinary shares in 2005) and Copelyn was installed on the board.'

The innuendo is that the union planned a shareholder take-over of the group in order to stop it moving production to Ladysmith.

The truth of the matter is totally different.

Actually, Sactwu was invited by Aaron Searll to acquire non-voting shares in his family controlled listed holding company via a BEE consortium. The reason for Searll's interest in such a consortium was simply to raise capital in the course of his bid to acquire sole control of the Frame Group after he fell out with his former partner Roy Sable.

The consortium was led by Cyril Ramaphosa (now SA deputy president) who became chairperson of the company for a while but soon realised the business was

still being run as a family business totally controlled by Searll, the holder of 51% of the voting shares. This resulted in several issues whereby Ramaphosa was called upon to intervene in an effort to separate 'personal from corporate' in the business. A year or so later Ramaphosa tired of the effort sold off his shares to the only BEE grouping interested in the company, namely the union investment company. The union had quietly gone along with Searll because it believed he was more likely to grow the business than any other contender for its control.

After Ramaphosa resigned, Searll invited me to sit on his board, not as chairperson, but simply as a non-executive member. His approach was based on his feeling that this would give the union a sense of participation without it actually having a seat on his board, which he felt was a step too far.

TRANSFORMATION OF SACTWU INVOLVEMENT

Seardel operated the Frame factories at a loss for quite some time after the removal of the protective duties over the textile industry. The executives of the Group seemed entirely relaxed about this fact and



Marching for jobs: Sactwu members take to the streets of Johannesburg. Credit: William Matlala.

gave everyone on the board the impression it would shortly be 'back in the black'.

At some point in 2008, the banks suddenly stopped payment on the transfer of the monthly salaries of all Frame monthly paid workers. Not unsurprisingly this resulted in them going on strike. The monthly paid workers were not unionised and I was totally unaware of their problem or action, which was not publicised at all.

The regular quarterly board meeting which I attended happened to be scheduled for about three days later. The issue was not even on the agenda! It was simply raised as a query under 'General' at the end of the meeting by Walter Simeoni, the managing director of the Frame Group. His query however created total confusion. The long-time chief executive officer (CEO) and controlling shareholder said he was completely baffled as to how this had happened. Backed up by his financial director he asserted the group had over a billion rand worth of unused banking facilities. He claimed that in all his years of being in business he had never been so outrageously mistreated by a bank.

In response to my alarmed

questioning, it was eventually said that the Group had exceeded a particular facility and had failed to reduce its borrowing despite demand by the bank concerned to do so. It was unclear whether the unused facilities were with the same bank or not but it was believed the banks were trying to compel the company to grant the banks security over particular assets of the Group which it was not willing to do.

More persistence eventually resulted in a statement by the executives that all three of the major banks involved with the group would visit the company to discuss the situation.

An impression was given that the CEO had summoned them all to give them a good dressing down about the disastrous mess they had caused.

I requested to be allowed to stay for this meeting. Totally out of character the CEO agreed that I could. Up to that point I had never been allowed anywhere close to the business other than attending its quarterly board meetings.

At the meeting with the banks it became perfectly obvious that the banks had already formed a consortium and had called the

meeting to advise the Group they were putting it into liquidation forthwith.

The 'unused facilities' turned out to be totally fictitious and the banks had reams of correspondence requiring the company to stick within its borrowing limits which it had systematically ignored or failed to do.

Since I was the only person saying anything, the conversation quickly degenerated into one between me and the representatives of the banks with the management of the company sitting utterly dejected and silent.

At the end of the meeting it was clear that the only way the whole Group would avoid being placed in liquidation forthwith, with a consequent loss of all its jobs, would be if someone would commit at least R200-million in cash, back ranked behind the banks, within 24 hours.

Seardel arrived at its moment of doom without the non-executives on the board having had the slightest idea that the Group was in any serious difficulty. To be honest, I do not really believe the executives really understood what had happened to the Group. Unquestionably, they were in no



Making loud demands: Sactwu members during a jobs march. Credit: William Matlala.

position to assure anyone of any facts about the group and it was a certainty that the banks would not be hanging around while someone conducted a due diligence into the business. They had absolutely no confidence such process would lead to any money being put into the business.

Purely on the basis of my persistence, the banks reluctantly agreed to take no further action until we met again the following morning.

I went off to discuss the matter with Sactwu. As pointed out by N&S, the group employed some 15,000 workers, some 15% of the industry nationally. Admittedly it was known that the Group had decided to close the Frame plant at Ladysmith and that about 1,000 workers were in the final stages of retrenchment. Nevertheless, the remainder was an exceptionally large number of union members.

The outcome of a feverish set of consultations and decisions in both union and HCI structures

was a decision by the union to lend HCI the R200-million needed as a completely ring fenced loan secured only by whatever interest it acquired in Seardel, in exchange for HCI agreeing to commit management time to a desperate rescue mission.

I'm not sure what N&S is trying to suggest about the union and 'casino capitalism'. It seems it is suggesting the union is not really involved in actual business risks and all the rules are rigged in its favour, leaving it in the happy financial position of making pots of money without really doing much.

In reality there is not another investor in the country who would have tried to rescue Seardel from closure because of the ghastly risks involved and the remoteness of the up side.

Why did Sactwu do it? Does it show the union is now embedded in inappropriate relations with capital, with the African National Congress (ANC) or government? Or is it simply that the union has lifted

the level of its capacity to help protect its members and that its motivation is solely in that space?

One thing is certain: I never heard a single question being asked by the union leadership about how much money it could make, nor whether it might earn any brownie points with the ANC or the state. The only thing it appeared to be concerned about was whether it could prevent the wholesale retrenchment of its membership in the group.

HCI TAKES OVER SEARDEL

The next morning I negotiated with the banks the terms on which we would release the money to them. We would ensure a rights issue was conducted at Seardel to raise more equity and that it puts all its assets as security to the banks, including a pledge of debtors; first mortgages on property; liens over stock; notarial bonds over all movable property including all plant and equipment, provided there would be no covenants on any debt for two years and we would be given a

free hand to try to turn the business around in that time, without the banks intervening therein nor seeking to foreclose on the Group's debt facilities.

While our attorneys and those of the banks worked furiously on drafting all this, we negotiated with the controlling shareholder the terms of the rights issue. At the time there were some 90-million shares in issue, most of which were N-shares. They were trading at about R6 per share. We offered to underwrite the rights issue at 50c a share placing a value on the existing equity of some R45-million provided we were assured we could acquire control of the group in the process.

It is hard to imagine a transaction of this nature. Essentially, the organisation representing workers at Seardel earning less than R3,000-4,000 a month was investing R200-million in the company; leaving R45-million for existing shareholders, namely its founder and various financial institutions that had supported him, in order to preserve as much of the defunct company as could be rescued.

The long and short of all this is that we bought ourselves control of the company and 24 months in which to turn the business around.

CLOSING DOWN CHARMFIT

We then started trawling through the devastation of the company. We discovered that Charmfit, which employed 1,000 workers manufacturing Triumph bras on an evergreen licence, had sold the licence back to Triumph for R32-million the previous year. Arrangements in the Group allowed for some 10% of this amount to be paid out to the retiring manager as a bonus and gave the Group an extra R32-million profit for the 2007 year which allowed it to partially hide the extent of its losses.

The sale agreement provided that the group would continue to manufacture for the holder for three years after licence disposal

which gave the retiring manager time to depart without taking any responsibility for the disaster which lay ahead. We were left to beg the new licence holders to allow Seardel workers at the plant to continue to do the production beyond this point. We virtually never received another order and all these workers had to be retrenched.

CLOSURE OF THE HEART OF THE FRAME GROUP

In the case of the textile manufacturing plants of the Frame Group at New Germany, a budget was presented which made assumptions no one had any confidence could be achieved. For example, production efficiencies were budgeted to rise from 62% to 90% now that the union investment company was taking over; customers would grant a 5% price increase though there was no hint that such an increase was plausible. Nevertheless, the budget provided a R45-million loss for the year. When management were asked to prepare a scenario where the company might become cash positive (though not necessarily profitable after depreciation) over a five-year period they were unable to do more than hope to reduce the cash burn rate to R10-million a year if all these unlikely assumptions persisted for the five-year period.

By this time it is true that Ebrahim Patel and Rob Davies were in cabinet and that the Industrial Development Corporation (IDC) as well as various other state controlled programmes aimed at preserving industrial capacity of the country reported to them.

In HCI we all racked our brains to try to think how to save this capacity. The New Germany factories alone filled some 190,000 square metres of especially designed factory space. The replacement cost of its plant and equipment was valued at a figure well north of a billion rand, apart from hundreds of millions of rands of stock and debtors.

Nevertheless, the projected losses of the Frame factories was so large the Seardel Group could not survive them.

We proposed a new ownership structure with the IDC taking a quarter; the KwaZulu Regional Development Bank and the NEF each taking a quarter and Seardel remaining with a quarter. We offered to contribute the premises rent free for a period as well as placing only a fire sale value for the plant of R200-million. We offered either to continue to manage the plants or to allow the other shareholders to replace such management if they felt it beneficial to the company. We offered R169-million in severance to pay off workers. The new proposed company would then hire as many of the workers for the new operation as it chose and on whatever terms it decided.

There never was another party, Asian or otherwise, that expressed the slightest interest in maintaining the plant as an operating plant in South Africa. The only expressions of interest ever made were to buy sections of the plant with the intent of dismantling it and shipping it out to either Pakistan or Bangladesh.

In all fairness we could not think of a better offer than the one we tabled to keep the plant open without sinking the whole group, but ultimately we were unable to agree on the proposal. The IDC was very reluctant and the other proposed entities were only prepared to come in if the IDC was strongly in favour of a rescue mission. The reason for its reluctance may have been because of a conflict of interest with Prilla Mills and Da Gama Textiles which were direct competitors of Frame and hoped to fill their plants if Fame collapsed. The IDC was the primary investor in these factories. Alternatively, it may simply have been that it felt we were flogging a dead horse.

As a result of the state ultimately declining to become our partner, we closed down most of the business, saving what we could such as the knitting, non-woven and polypropylene divisions, as well as moving some cotton looms to Worcester. For the rest we dismantled and sold off the plant to companies which shipped it to Asia.

Ultimately, the reality of a capital intensive business doing major beneficiation work but only able to command selling prices 28% higher than the cost of its raw material, could never be a viable business. The collapse of all protections for the industry left it absolutely vulnerable to every twist of business cycles. Its raw materials were committed months in advance in dollars and its revenue was receivable six to nine months later in rands. It was required to make a wide array of fabric, no matter how small the local order book was for it, or accept that fabric would be imported. The fact that it could never be assured of continuous production made it impossible to run its plant 168 hours a week, despite the capital intensive nature thereof and the fact that its competitors around the world were doing precisely that with similar plant.

As a result of the state ultimately declining to become our partner, we closed down most of the business, saving what we could such as the knitting, non-woven and polypropylene divisions, as well as moving some cotton looms to Worcester. For the rest we dismantled and sold off the plant to companies which shipped it to Asia. We then redeveloped the property as an industrial park which brings in a substantial rent from third parties.

As is customary with failure, there was a certain amount of the blame game. For example, the technocrats at the IDC had suggested we were over valuing the plant we were offering to the proposed joint venture which made it difficult for them to accept our proposals. Nevertheless we received more

than that amount through the sales as the dismantled plant was sold off. All said and done, we all failed to save the industrial capacity and dashed the hopes of its workers who expected better from us. I hang my head at that fact.

I hope I am not missing any suggestion that N&S may be seeking to offer, but I truly do not think they offer a single suggestion that might have saved even one of these jobs.

HCI BATTLES TO SAVE CLOTHING JOBS

These closures still left the Group with several thousand workers in its clothing divisions. We succeeded in selling off some plants, including Lesotho, Darling and Malmsbury as going concerns, leaving us the Cape Town and Ladysmith factories. By this time the state had transformed the assistance programme to the industry. The Duty Credit Certificate (DCC) system gave way to one where tax and labour law compliant local producers were to be assisted with grants in respect of capital projects they undertook, to improve productivity of their operations. While it was no more expensive for the state than the DCC system, it was not subject to middle men syphoning off benefits without improving local production, nor was it something that retailers could buy at half price to reduce the cost of their imports. It was a genuinely constructive state programme.

N&S seems to care only that the programme was pushed for by the union and to see no positive significance in the policy change. I, on the other hand, see no negative significance to the fact that the union formulated a better industrial policy and see only positive benefit to the industry and its employees through such a change. Had it been

implemented in 1994, which it should have been, we would have saved far more of our precious manufacturing jobs. Alas, for Seardel it was too late.

We tried our best to turn our clothing factories around. We made mistakes. We were insufficiently experienced. Perhaps these failures were decisive. I do not want to be defensive about our failures.

A tragic moment was presenting our key customer with a proposal to commit to sourcing R150-million worth of garments through the central metro clothing factory that remained – Intimate Apparel – for the following year. This commitment was fundamental to facilitate it operating at optimum efficiency. It would also have allowed it to break even.

We put it to the customer that it could not meet the wage disparity of non-metro rates unless the factory was fully loaded with work. It employed 800 workers and had made the most dramatic strides forward in its efforts to be a world-class producer.

However, the customer was not prepared to make the commitment to sourcing locally from a metro factory and insisted it had to reserve the right to source garments from cheap production units like Ladysmith, or Lesotho which it now regarded as 'local' procurement. It had to retain the right to import if the rand strengthened against other currencies and as a result would only commit to a third of the volumes needed to sustain the factory. We had no other customers of substance at this factory.

We agonised but I knew there was no future in being a wholly dependent supplier of unbranded clothing to a party who cared

so little about our future. It had grown so indifferent to our fate and so confident about our willingness to absorb more losses while it basked in the support of its customers, who simply did not care where the clothes they were purchasing were made nor under what circumstances.

We drew a line in the sand and closed Intimate Apparel as we had said we would have to do without their commitment to our future. Unquestionably the customer was shocked. They never believed we would actually close the plant, but Intimate Apparel joined the many, many other metro factories that are no more.

Did we do enough? Failure says we did not and I judge myself that way.

Nevertheless, I offer the following details of our feverish efforts to save the heart of the clothing manufacturing capacity of Cape Town. Up close it felt so different to the analysis offered by N&S.

WHAT FAILURE LOOKS

This is a story of the 'strappy' – a popular ladies wear garment – and the fate of its production at Seardel is typical of the fate of much of our efforts with the production of other garments.

In 2000 Seardel required 0,37 metres of fabric and took eight minutes of machinist labour to produce. We produced 440,000 of these garments at a price of R34,90 a garment.

Over the next ten years we succeeded in halving the number of minutes allowed for its manufacture, which is to say labour productivity was doubled. N&S suggest the only way this might happen is with piece work but we succeeded with other methods of monitoring production albeit that workers were paid on a time basis. While the factory cost of labour escalated from R0.92 to R1.65 a minute over the decade, the labour cost of the garment was reduced by 9.5% through increased efficiency.

We likewise managed to reduce the fabric wastage, thereby reducing the amount of fabric used per garment from 0.37m to 0.32m, a saving of some 13.5%. While the cost of fabric over the period escalated from R26.52 per metre to R32.91 per metre (24%) we managed to contain this escalation to 7.3% over the decade by saving fabric wasted.

Taken together the effect of these labour costs and raw materials used is that we succeeded in holding costs to the same rand value primarily through massive increases in labour efficiency for a whole decade.

By 2011, however, our selling price was down to R29.75 and our volumes were down to 205,000.

Part of our responsibilities included attaching the price tag for the retailer showing the price the garment would be sold in its shops. It retailed in the stores of the same customer at R69.95 across the ten years. The retailer grew the number of its outlets, and in consequence the volume of its strappy sales steadily each year.

The consumer paid the same price for the garment for the decade which may appear to be a great contribution to avoiding inflation but it still masks who paid for that price stability and who systematically increased its take.

Effectively the retailer widened its margin on the garment by 15% over the ten years at our expense as well as imported half its requirements or more. Seardel on the other hand was reduced to producing garments at a growing loss despite all improvements.

That is what failure looks like up close. When one stops being cute, what is the answer to this?

I'm happy to hang my head and admit we did not improve fast enough. Workers lost their jobs through that failure and it sits heavily with me. At the end of the day an employer's first and

primary duty is to provide work to his employees. No one is that interested in why you fail if you do. All that matters is that you did.

So to N&S I say: Have a field day about Intimate Apparel. There is no defence to your attack on our failure. Let's not pretend, however, that this has anything to do with rigging the odds in our favour.

SELF ASSESSMENT

Lastly, mainly for the benefit of N&S, I offer that it is better to try and fail than not to try at all. While we had our failures, we also had our successes. We saved the group and we saved the majority of the jobs. While N&S record the decline in the number of workers employed in the group, they simply ignore jobs retained in businesses stabilised and sold as going concerns, where machinists continue to work and earn a living. Most of these workers are in fact directly employed in another Sactwu controlled company.

Of some significance, the key retailer supplied by the remaining factories has now come to accept it has a duty to commit volumes to these factories up front so they can plan staff levels and optimise other aspects of production. In principle this at least gives them the chance denied to Intimate Apparel to be their most efficient, which is a key to their survival.

As a manager: It's a mixed bag with plenty room to criticise.

As a union: Casino capitalism be damned. Sactwu tried harder than anyone else in the country to save the jobs of its members. Its partial success against all odds deserves more than the N&S take on it. From my seat there is no better union in the country. ^{LB}

Johnny Copelyn is the Chief Executive Officer of Hosken Consolidated Investments and a former General Secretary of Sactwu.

Private or social ownership

Primary health care as strategy for National Health Insurance

How will Primary Health Care be implemented when the National Health Insurance project is rolled out? **Mbhekeni Sabelo Nkosi** argues that one of the ways to do so is through nationalisation of health services and not privatisation.

The African National Congress (ANC) continues to move forward with the decision to 'implement the National Health Insurance (NHI) as a way to provide quality and affordable personal health services to all South Africans. To this end, a White Paper or Policy Statement on the NHI has been released by the South African government's Department of Health for public participation and comment.' As stated in the ANC 8 January statement titled: 'The year of advancing people's power: Local government is in your hands', the ruling party made a further call to its branches to take the lead in public participation processes on the NHI White Paper so as to have a further direct impact on how future health services are shaped and designed. The White Paper states, 'the health services covered by the NHI will be provided free at the point of care'.

This article is a theoretical reflection on the reengineering of primary health-care (PHC) as an integral strategy of the NHI. Using Marxist theory on Zanempilo Community Health Clinic I argue that the private health-care sector in South Africa needs to be nationalised.

Zanempilo is useful in discussing the contradictions between private and social ownership of the means of production.

NECESSITY FOR NATIONALISATION

The health-care industry or the health economy is an integration of sectors within the economic system that provides goods and services to treat patients with curative, preventive, rehabilitative, and palliative care. The public sector refers to that part of an economy that is controlled by the state. The public health-care sector relates to health-care goods or services which may include hospital management organisations, health maintenance organisations, and a variety of medical products and services.

Public health also has to do with protecting the safety and improving the health of communities, the definition of which may be different for every person. According to the World Health Organisation (WHO) public health refers to all organised measures (whether public or private) to prevent disease, promote health, and prolong life among the population as a whole. Its activities aim to provide conditions in which people can be healthy and focus on

entire populations, not on individual patients or diseases. The private sector, on the other hand, is that part of the national economy that is not under direct state control. Private health-care is health-care that is provided by private entities other than the government.

I select variables to aid my theoretical reflection in which nationalisation is an intermediate variable that by definition is the process of transforming private assets into public assets by bringing them under the public ownership of a national government or state. When I say that the private health-care sector (a dependent variable) in South Africa needs to be subjected to nationalisation (an intermediate variable) I mean the private health-care sector needs to go through a process wherein it is transformed into becoming a public asset by bringing it under the public ownership of the government.

However, nationalisation is caused to vary through socialisation (an independent variable): the process of transforming an economic activity (health-care) into a social relationship and collective endeavour. To justify the choice of selection of variables, I chose



Social ownership: Clinics should be owned by the community. Credit: William Matlala.

an initiative by Steve Biko who was a medical student who later participated in starting a primary health-care centre: Zanempilo Community Health Centre. An article in South African History Online states: 'One of the more enduring structures established as a Black Consciousness Programmes initiative was the Zanempilo Community Health Centre... [situated] in Zinyoka, 10km outside King William's Town, it opened in January 1975 and was one of the first primary healthcare initiatives outside the public sector in South Africa and provided much needed community health education. However, the centre was not solely a health facility, it became a meeting point and a training ground for activists, a place where the community could gather to discuss issues, but also a place for joy and celebration, an example of the communal life that Biko ... had spoken about. The success of the Zanempilo project led to a similar establishment on the South Coast of KwaZulu Natal, named Solempilo (Eye of Health), but the ban on Black Consciousness organisations in 1977 put an end to the project'.

The assumption is that at Zanempilo the patients received health-care products and/or health-care services for free at the point of care. However, Zanempilo was not controlled by the state, but it was in the health-care sector. It also provided community health education and training. The means of production were: physical, non-human inputs used for the production of economic value, such as facilities, machinery (and/or technology), tools (and/or instruments), infrastructural capital and natural capital. Therefore, Zanempilo as a facility can be referred to as the means of production.

However, forces of production as a term is used to refer to the means of production to which labourers add value and transform capital into products/services (for sale at the point of care/service). Therefore, the NHI as a financing mechanism can procure/purchase health-care products or health-care services on behalf of the patients at the point of care. If our assumption is that at Zanempilo the patients received health-care products (for example pharmaceutical products) and/or health-care services (curative,

preventive, rehabilitative, and palliative care) for free at the point of care. Then, in our context, the patient can have an NHI card enabling him/her to receive quality health-care services/products for free at the point of care, through the NHI as a mechanism.

SOCIALISATION

The form of ownership at Zanempilo was a form of social ownership. Social ownership refers to a form of ownership of the means of production in a socialist economic system entailing for example:

- public ownership (state ownership – in this case Zanempilo was not owned by the state)
- employee ownership (for example, this could mean the nurses, the doctors, the paramedics, the community health-care workers [CHWs] or members of the health-care team), or
- cooperative ownership (ownership by the staff of the community health-care centre inclusive of the community, including patients, who can also become members of the cooperative).

In addition, and most importantly, socialisation of the surplus value appropriation may occur at this point, after the socialisation of the means of production has taken place. Marxist theory asserts that, a contradiction develops between socialised production and private ownership and appropriation of the surplus value and profits.



Attending to a baby: Doctor at work in Johannesburg. Credit: William Matlala.

This is an example of socialisation of the means of production: the building of the primary health-care centre outside of the public sector in South Africa.

In addition, and most importantly, socialisation of the surplus value appropriation may occur at this point, after the socialisation of the means of production has taken place. Marxist theory asserts that, a contradiction develops between socialised production and private ownership and appropriation of the surplus value and profits. Zanempilo is a case of a socialised production and not private ownership. Marxist theory further suggests that this contradiction (between these

three sub-concepts: socialised production, private ownership, and appropriation of the surplus value and profits) will intensify to a point where socialisation of the surplus value appropriation in the form of social ownership of the means of production will be necessitated, resulting in a transition from capitalism to socialism.

CONCLUSION

What this means in our context is that the South African government may need to pursue urgent nationalisation of private health-care facilities in general (for example private hospitals and clinics) in all the nine provinces. However, at the PHC level of care there needs to be a socialisation of

the means of production: the primary health-care centre that the NHI White Paper refers to then needs to be owned by the members of the community in which it is situated (including the health-care team) through a form of social ownership that is not public ownership (ownership by the state). Then the appropriation of the surplus value and profits will occur in such a way that the members of the health-care community (the workers and the community, including the poor) will benefit. ^{LB}

Mbhekeni Sabelo Nkosi is an ANC member from Ward 51, Enkululekweni Branch, Katlehong, Ekurhuleni Region, Gauteng.

Don't derail universal health-care

Stop attacking National Health Insurance

The Congress of South African Trade Union (Cosatu) central executive committee (CEC) is deeply concerned that the National Health Insurance (NHI) is departing from the framework that was developed by the Alliance, through the African National Congress (ANC) education and health subcommittee, Alliance summits, and the 2009 and 2014 manifestos.



Nehawi rally in Ulundi, KwaZulu-Natal. Credit: William Matlala.

The CEC is calling on President Jacob Zuma to intervene and take the lead in the implementation of NHI, because this is one of those projects he must leave behind as his legacy for the working class.

There is an urgent need to arrest this deterioration and the deviation from the initial conceptual framework on which the NHI was founded. The NHI is under sustained threat inside the government, mainly from the Treasury and vested interests at provincial government level. There are also outside threats coming from the four private hospital monopolies, the Free Market Foundation (FMF) and others, such as the foreign-funded non-governmental organisations (NGOs).

The president cannot afford to sit on the sidelines and watch this ANC policy being watered down and handed over to big business interests by his own government departments. The NHI is the only programme of the ANC government, since 1994 that proposes to radically redistribute resources on a mass scale to the poor, directly from the rich, ensuring access to all and also breaking down class differentiation in the quality of access.

We have not forgotten that the delay in the release of the White Paper was largely caused by persistent attempts on the part of the Treasury to undermine the NHI, as it favoured the continuation of the current fragmented multi-payer system, which excludes 84% of the population.

The federation feels that government is deliberately dropping the ball with regard to the NHI and there is a lack of commitment, clarity, consistency and decisiveness from responsible departments. We are deeply concerned that progressive people, who have been key in driving the NHI are being sidelined by the Department of Health and replaced by World Bank



Minister of Health, Aaron Motsoaledi is campaigning for the National Health Insurance. Credit: William Matlala.

approved consultants. Cosatu calls for the reinstatement of these officials and for government to stop allowing the NHI to be hijacked by business interests.

The fact that the NHI was only allocated R4.5-billion over the next three years is a confirmation for us that it remains under threat not only from private monopolies and other opponents, but also from the Treasury itself through austerity measures.

The CEC is concerned that last year the Treasury stated that the implementation of the NHI depends on economic growth. In April this year, the Treasury circulated some problematic and sceptical documents, within government, on obstacles that may allegedly make it impossible to implement the NHI. They pointed to the shifting of some functions from provinces to the NHI Fund and central hospitals to the national government. This move by Treasury is intended to mobilise provinces against the NHI.

The government should remember that the ANC manifesto that committed to providing the people of South Africa with universal health-care through the NHI, received an overwhelming mandate of 62% in the 2014 elections. What is currently taking place goes against the ANC's electoral mandate to pool all health resources into a single publicly administered NHI Fund.

When the Health Market Inquiry was launched, under the auspices of the Competition Commission in 2013, the minister of health, Aaron Motsoaledi, said 'the artificially high private health-care costs need to come down as one of the two major conditions necessary for the successful implementation of the NHI.'

We expect this fund to act as both the payer and purchaser that will help us realise universal health coverage, through cross-subsidisation of health risk and costs from the wealthy to the poor and from the healthy to the sick.

Currently, the cost of private health care in South Africa is ranked as the most expensive in the world, even higher than in the United States. In addition to the influence of the profit motive this is also caused by the structural issues in the absence of a public mechanism of setting tariffs or prices on private hospital groups.

When the Health Market Inquiry was launched, under the auspices of the Competition Commission in 2013, the minister of health, Aaron Motsoaledi, said 'the artificially high private health-care costs need to come down as one of the two major conditions necessary for the successful implementation of the NHI'. Basically, the inquiry's mandate was to look at the pricing of private health care with the view to reduce the current extremely high costs that are caused by distortions or abuse of monopoly power.

Cosatu is therefore concerned that in the revised terms of reference, the panel of the Health Market Inquiry have made it very clear that they are not going to look at breaking down the hospital group monopolies, which means the status quo will remain. We are also troubled that the Health Market Inquiry is considering coming up with a counter to the NHI in the form of a Social Health Insurance.

The CEC expects an urgent intervention from the president and the ANC and we are ready to

mobilise South Africans if nothing changes. Cosatu affiliates will be rolling out a campaign demanding the absorption of the community health workers into the public service. Most of these workers are highly exploited by various NGOs that are contracted to provincial governments and are used by government to substitute for the filling of vacant posts in the public health sector. We will fight against the imposition of austerity by Treasury as part of our campaign on the filling of vacant posts and the recruitment of more nurses and doctors to ensure the successful implementation of the NHI.

Currently, many functions in the public health sector are outsourced. These include the ambulance services, security, catering, cleaning and others, which often leaves health institutions in conditions that are unsafe for health workers and patients.

We call on Cosatu members and health-care workers in general to play their role in improving services in our health-care facilities in preparation of the NHI implementation. We also need government to ensure that Ketlaphela, the state pharmaceutical company is strengthened because the private pharmaceutical companies are too greedy; and cannot be relied upon to demonstrate any level of developmental consciousness. The CEC fully supports the Cosatu public sector unions and is ready to push back against the offensive that is currently directed at them. ¹⁸

This article is based on a Cosatu CEC press statement.

Change in the reverse

Nigeria not where it should be

By embracing the International Monetary Fund (IMF) and the World Bank's policies while being soft on corruption and weak on policies to transform the country, the Muhammadu Buhari government that won the popular vote last year appears to be putting Nigeria in reverse gear, writes **Denja Yaqub**.

When Nigerians decided to vote for change of the country's political leadership during the 28 March 2015 federal elections, it was premised on the obvious helpless situation we all found ourselves as the Goodluck Jonathan government treated the country and her citizens with such nauseating contempt and without remorse.

As against previous elections, the country united mainly behind a man with records of people-driven services, clean from corruption which has characterised our political leadership for decades, perhaps since the 1960 flag independence. The votes were more for the candidate than for his party for obvious reasons though his party's influence cannot be underscored.

As a military officer, Major General Mohammadu Buhari, and his team's intervention at dawn on 31 December 1983 was popular at inception because we all saw the country drifting towards political anarchy and socioeconomic abyss. With stinging sights of mass poverty alongside a tiny few bloating and swimming in unquantifiable wealth – stolen from funds borrowed from neo-liberal multilateral financial institutions. The institutions knew the destination of their resources but

ignored any checks because it is in their interests to borrow out funds that will keep countries and their citizens in perpetual subservience to them.

Just as it was before the inevitable but unfortunate termination of civil rule in 1983, the political class and their cronies took the entire country for granted: looted the treasury in such mindboggling magnitude that until the new government came in, we all underestimated the quantum of what was left. Money was transferred to private accounts under ludicrous guises, including spiritual prayers. The worst and perhaps most criminally callous was the diversion of funds budgeted for securing lives, properties and the sovereignty of the country. This included funds for retrieving the Chibok girls from their captors, Boko Haram – the gang of terrorists hardened by state negligence. Boko Haram reigned in brutal conquests because we had a leadership that feel the country can go down as long as public funds keep flowing into their private accounts.

What belonged to the collective was distributed for political campaigns of an individual, a president almost the entire country felt was not worth the office as he was obviously lacking in nearly

all facets of leadership attributes. Though he got into office with popular votes in 2011, many voters turned their backs on President Jonathan as they soon regretted their votes just few months into his reign. Insensitivity, mass looting, political rascality, administrative nepotism, impunity at all levels and on all issues reigned supreme, compromising our fundamental political and economic rights.

However, the massive votes President Buhari got was not for excuses. We desired obvious change beyond sloganeering.

What has happened so far under the leadership of President Buhari has not demonstrated any qualitative change to make the country feel the federal elections victory moved us far enough from the old order. Though we are not where we were; we are also not anywhere near where we should be.

As important as the battle against corruption is – even as the fulcrum of our underdevelopment – it cannot be the only preoccupation of any serious government. It is worst when the president seems the only individual in his government determined to fight corruption, or merely expose those who filtered our collective resources to their private uses. That is what has



Nigeria Labour Congress marches against electricity tariff hikes.

happened so far. We read or hear of people who had so much of our money in their possession but we do not have the big thieves, as alleged, yet in jail. We do not even know how much has been returned under the so-called 'plea bargain' option, which in itself encourages corruption. This is obviously because the battle is not systemic, it's more like flashes in the pan so far.

Corruption, or any obstruction to national development cannot be dealt with without a major shakeup of the entire system that created or encouraged such obstacles.

A serious battle against corruption must start from the judiciary, at the bench and the bar; the entire justice system, including review of relevant laws. The judiciary is the final point for determining the fate of the accused, and if the judiciary is not fully part of the battle, then it's a lost battle at inception. That's what has happened so far. Accused persons are arrested; splashed in media with lots of hype and arraigned before a court which finally grants bail, even before commencing trial. That ends the case.

To worsen the battle, the legislature seem not committed to any change and cannot be relied on to make any qualitative review of existing anti-graft laws since most of those at the National Assembly can hardly be exonerated from

allegations of corruption, especially former governors who have found it a safe haven.

In any case, the ruling party is pathetically in the majority in the National Assembly and because the party is not just in obvious deficit of common policy, guiding principles and strong political cohesion, it does not have the muscles to give direction to the legislators.

Some highly placed elements in the All Progressives Congress, as has now become obvious, fought against all anti-people policies, aligning with the Nigerian people and practically made the country ungovernable under previous administrations such that in January 2012, power was clearly on the streets for days. If the Nigerian people had a strong opposition leadership with a clear popular pro-people ideological commitment, the opposition could have easily taken power then just as it could have in 1983. But we all submitted our hopes in the 2015 elections for an alternative.

That alternative now seems a monumental disaster. As soon as the Buhari regime assumed power, the Breton Woods institutions grabbed the country effortlessly with the aid of their agents within the party and around the president. The result of the visits of Christine Lagarde, the International Monetary Fund (IMF)'s managing director and her

World Bank counterpart is what has manifested in the recent increases in electricity tariffs and pump prices of petroleum products as well as the free fall of the national currency.

The danger in having a popular government lacking in any serious socio-political vision is that it will become a bride of global contraptions against the poor – the only constituency that brought it to power. Such a government conveniently forgets that it emerged from a platform of a party filled with prominent beneficiaries of our collective struggles who rode to power through the ashes of popular mass actions; conveniently assuming power snatched from the pangs of the battles of the majority.

As the country's leadership has been fully captured by the IMF and its cohorts, Nigerians should brace for more excruciating hardships, perhaps that is the change the new administration had in mind when Mr President and his party promised us change before the 2015 presidential election. We just hope the administration will learn from history how those who embraced the IMF and its allies collapsed like packs of cards through mass uprisings and eventual electoral defeats.^{LB}

Denja Yaqub is an assistant secretary of the Nigeria Labour Congress in Abuja.

Organising in and along value chains

What does it mean for trade unions?

Globalisation has become a household word that for millions of workers means uncertainty, loss of jobs and income, and upheaval. Outsourcing, offshoring, sub-contracting and agency work have taken their toll on union membership. For many, this development is not only threatening, it has taken on a look of being inescapable. But is that really so? Is there no way for workers and trade unions around the world to collectively exercise their democratic right to form unions to voice their concerns and represent their interests, writes **Michael Fichter**?

Over the past decades governments around the world have bent over backwards to provide transnational corporations (TNCs) with investment subsidies, tax breaks and deregulated labour markets – often in an openly anti-union atmosphere endangering democratic workers' rights. Corporate investments flow where governments pursue competitiveness (deregulation) while workers' rights and democracy often suffer (Table 1).

TNCs have reaped enormous benefits from this development and constructed a new system of international economic and social power relations beyond the nation-state. Today, TNCs operate through vast networks of extraction, production, supply, distribution, and sales that they control. These webs of power, spread across the globe,

overlapping and interlocking, account for 80% of international trade. This kind of economic power is massive (see box on next page), but it can also be vulnerable to disruption in many ways, including concerted, proactively defined policies to protect and represent workers.

Trade unions require bold new approaches to fight the power of TNCs and meet the challenge of global value chains. Trade unions know their own turf, the workplaces they represent and the companies in the sectors in which they operate. And they need to continually struggle to combat union-free zones on their own turf. But increasingly, those workplaces and sectors are only one part of a much larger global operation governed by corporate decision-makers whose first concern is their shareholder value.

TNCs have to invest and operate locally where the labour and consumer markets they want to exploit are located. But they exercise their power and make decisions globally. Trade unions may have secured niches of power at single workplaces or across a sector of industry or services within their own country. In the face of TNC power based in global value chains, those are fragmented and endangered strongholds.

To protect the rights of workers and represent their fundamental interests in this globalised world, unions need to secure their local and national power base within global value chains by connecting across borders and along global value chains. Realistically, that is a task that no union can tackle single-handedly.

Table 1: Country rankings: investments, competitiveness, workers' rights, democracy

| Country | FDI Ranking 2014 | Global Competitiveness Index 2014–2015 (Ranking among 144 Countries) | International Trade Union Confederation Global Rights Index 2014 | Democracy Index 2014 (Ranking among 167 Countries) |
|----------------|------------------|--|--|--|
| China | 1 | 28 | No guarantee of rights (5) | 144 (Authoritarian Regime) |
| USA | 3 | 3 | Systematic violations of rights (4) | 19 (Full Democracy) |
| United Kingdom | 4 | 9 | Regular violations of rights (3) | 16 (Full Democracy) |
| Singapore | 5 | 2 | Regular violations of rights (3) | 75 (Flawed Democracy) |
| Brazil | 6 | 57 | Repeated violations of rights (2) | 44 (Flawed Democracy) |
| India | 9 | 71 | No guarantee of rights (5) | 27 (Flawed Democracy) |
| Chile | 11 | 33 | Regular violations of rights (3) | 32 (Flawed Democracy) |
| Mexico | 13 | 61 | Systematic violations of rights (4) | 57 (Flawed Democracy) |
| Indonesia | 14 | 34 | Systematic violations of rights (4) | 49 (Flawed Democracy) |
| Russia | 16 | 53 | Regular violations of rights (3) | 132 (Authoritarian Regime) |

It needs a broadly cooperative effort – across workplaces, firms and union boundaries. And it will take strategically defined steps towards achieving that goal.

TNC-CONTROLLED GLOBAL VALUE CHAINS

A key initial step in developing new approaches and marshalling the necessary resources is to understand the organisational makeup of global corporate power. As pointed out earlier, the global economy is run through the global value chains of TNCs, the mass production factories of the 21st century. Altogether these

spatially dispersed and network-like economic structures have facilitated shareholder value maximisation by enabling TNCs to distribute financial risks and at the same time control the streams of value add. These networks and the individual value chains within them are constructed strategically for profit. Regularly, they link together sectors of the economy, both in industry and services, cutting across trade union organisational boundaries and in the process defining new categories of workers (i.e. dependent contractor, assemblers in logistic firms). This has put trade unions on the defensive

and not seldom also in conflict with each other over membership jurisdictions. Equally detrimental, the spread of global value chains, bringing relocation, outsourcing, offshoring, and whipsawing, has increased precarious employment and undercut local and national trade union bargaining power. The scope of local (and even national) collective bargaining is increasingly set by far-removed corporate headquarters. And the extent of their interest in the future of specific plants is determined less by the immediate profitability of those plants than by powerful investors and global cost calculations.

CORPORATE POWER UNBRIDLED

- Amazon in Germany ignores work stoppages at several of its distribution centres, continuing service to customers from other centres in Germany, Poland and the Czech Republic. Amazon refused to negotiate with the union, preferring to continue paying workers in Germany €8.50/hr (minimum wage, eight-hour day) and in Poland €3/hr for a ten-hour day.
- Nokia once had a profitable cell phone factory in Germany, heavily subsidised by local tax money, with up to 4,500 employees until it closed down in 2008 and moved to Romania. In 2007 the company and the German factory had made millions in profits. In Romania, same story: That factory was also built with subsidies, employed over 2,000 workers, but was closed in 2011 and production was moved to Asia. Then Microsoft bought Nokia. But that did not work out. Microsoft announced in 2015 that it was closing down Nokia and laying off almost 8,000 employees.
- Rexam, a British TNC, makes cans for soft drinks and alcoholic beverages in Berlin. In three shifts, seven days a week. Despite running a profit for years, management modelled a new factory in Poland where wages are much lower. Using this model, management shut down operations in Berlin because they were too expensive.

UNIONS MUST ORGANISE AGAINST TNCs

In the industrialised and industrialising countries, workers in manufacturing have historically led the struggle for unionisation and workers' voice. And in these unions, the membership basis has been built upon a core constituency of skilled workers. But that basis is eroding. The mass production factory of 19th and 20th century capitalism is being dismantled and fragmented, both internally (agency workers, contractors) and geographically (outsourcing, offshoring). Today, advances in technology combined with widespread business restructuring both within and across national borders are accelerating changes in the labour process and whittling away at even this traditionally stable core of membership. Automation and deskilling have always impacted workers, but today, robotics is changing the nature of work and skill requirements more rapidly and in ways that even recently were generally unimaginable.

At the same time, the globalisation of labour markets combined with instant communication and low-cost transportation has enhanced management's flexibility to make short-term decisions and be able to define core competencies according to the immediate demands of shareholder value. Cost cutting means outsourcing manufacturing processes to suppliers and service providers, in general, undercutting standards of wages and working conditions achieved by unions in manufacturing and increasing the use of agency and contract workers. These economic and financial developments have been flanked in many countries by political attacks on unions, all of which have succeeded in changing the complexion of the industrial workforce in factories everywhere, swelling the ranks of service workers and in the process generally decimating the ranks of union members.

Unions still have core memberships to rely on, but can they compensate for the losses by organising new workers – youth, women, minorities, contractors etc – with less secure jobs? And even if individual unions are successful in holding their own or even expanding their membership base at a workplace, throughout a company, or across a certain sector, will that suffice to be able to bargain at eye level with global players? Isn't it already high time to be able to challenge management's pursuit of cheaper labour and less regulation wherever it wants to grow?

There is no question that many unions are trying to turn the tide of membership loss by devoting considerable resources to organising strategies. That is important and necessary – but will it be enough for unions to tackle this individually? The challenge facing the organising efforts of unions today is that of increasing globalisation and constant dynamic change driving corporate decision-making. For unions to increase their membership base and leverage their organisational power in the struggle with TNCs they need to expand their horizon of activities and forge new TNC alliances.

Figure 1: Price Analysis of a Running Shoe



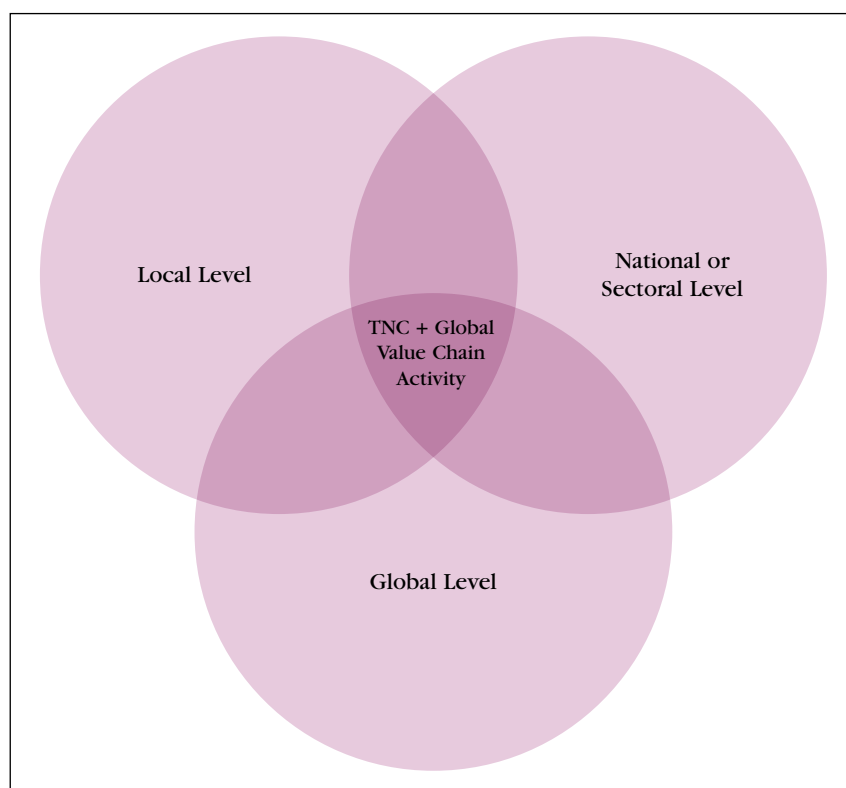
Value and profit are concentrated at the top (Brand name, Retailer) where control is located.

Source: www.cleanclothes.org/img/PriceMarkUpShoe.jpg/view

GLOBAL VALUE CHAINS – AN EXPLANATION

- **Global:** TNCs expand to operate around the world, unevenly though, clustering around lucrative local and regional markets in Europe (EU), North America (NAFTA), Asia, Latin America.
- **Value:** TNCs organise and control supply and production to create and capture value – for profit.
- **Chain:** Businesses linked by contracts to produce specific products and provide specific services. TNCs have many chains, often overlapping, that build a network of TNC-controlled operations (webs of power).

Every trade union has its own priorities based on the needs of its members. How those needs are defined and acted upon will be markedly affected by the way unions respond to the challenges of globalisation and in particular to TNCs with their global value chains. Holding on to policies that were successful in the past but do not address the challenges of today has never met with success, and under the conditions that unions face today, will surely not work. Globalisation is continuously redefining the parameters within which trade unions can organise and operate. The power and influence of TNC-controlled global value chains is a defining element of this new context, affecting all workers, even in key areas of the public sector. This is why trade unions need to recognise this shift and the importance of responding to it through new strategies and heightened cross-sectoral and cross-border transnational cooperation.

Figure 2: Levels / fields of action

Organising within and along value chains means developing cooperative projects and alliances across TNCs and their webs of power. It means bringing the transnational dimension into organising in global value chains. The International Transport Workers' Federation (ITF) uses the terms 'vertical' and 'horizontal' for organising 'along' and 'within' value chains. 'Vertical' and 'along' refer to trade union networking across different segments or operations of a global value chain, while 'horizontal' or 'within' are concerned with specific workplaces, hubs or clusters (see Figure 2). Collaborating to collect and exchange information and set goals will help select the most likely organising targets, i.e. a single just-in-time operation, a community-backed workforce, a sub-contractor, or even a regional cluster of competitors in a single segment of a global value chain. Organising along value chains is not calling for

building new value chain unions; nor does it mean that organising is limited to the contracted firms of a particular value chain. It is more about recognising and using the opportunities that referencing the enlarged context offers: greater policy insights, broader solidarity, and increased leverage for organising and collective bargaining.

BUILDING TRANSNATIONAL UNION POWER: WHERE TO START?

Unions need to collaborate on researching or mapping global value chains. Unions in different countries have increasingly begun to do more thorough research on the individual workplaces and corporations on which they are focusing their own local union organising campaigns. Building union power in global value chains presents challenges on an even greater scale, requiring a broader and more complex assessment of the opportunities and risks involved.

Understanding the challenge – building union power in global value chains – requires a systematic look at how such value chains operate. First of all, who runs the value chain? How is it managed and where are strategic decisions made? Is production in the hands of a lead firm such as in the automotive industry: GM, Ford, Volkswagen, Toyota etc? Or is the lead firm a discounter or brand name firm that has outsourced its production, such as Nike or Apple? What kinds of processes and businesses are crucial to the successful operation of the global value chain? Are there locations (places, processes) that are vulnerable to disruption? Conflicts within the value chain are harmful to profitability and operating efficiency – but can be necessary in the face of management anti-unionism to gain union recognition and bargaining power.

Second, it is equally important to understand the situation of the unions representing workers in different segments or firms in the global value chain. Where are locations of union power, both at the workplace and industry-wide? And where can such bases of local or industry-wide union power be connected across workplaces, firms, industries and countries to build transnational union networks in support of organising drives and collective bargaining?

Third, to build on this networked power base unions need to take a hard look at union-free zones, i.e. workplaces without unions or where there are unions that are standing alone and too weak to exercise power effectively. What does it take to build and strengthen unions in such cases? And how can the potential of community support be mobilised? Can alliances be built with local activists or organisations outside the unions? And how can the media be reached?



Numsa is one of SA's unions that is organising around value chains.

As a fourth question we would suggest that trade unions consider how to deal with the way corporations and firms in the global value chain present themselves to the public, especially in terms of their claims of striving to reach the highest standards of social responsibility and sustainability. Does the TNC respect the right to unionise in practice? Do its claims fit to the reality of working conditions on the shop floor? Or is there a difference between the public claims and the reality within the corporations in a global value chain that can be confronted, either internally or publicly, or both? On working conditions and employment practices? On investment policies? On taxes?

Global value chains are a common phenomenon across all industries and sectors of the economy. For trade unions, it all boils down to understanding where the power lies and what that power relies

on to be exercised. Power will be concentrated in the dominant or lead TNC, whether it is a manufacturer, a discounter or a brand name. But throughout the global value chain there are power relations that exist between the firms involved. These can vary from one point in the chain to another; and the global value chains of single products may exhibit very different power relations. For unions to leverage the power they can mobilise they need to understand where to strategically focus their campaigns and organising efforts. For example, is it best to mobilise workers and unions at TNC operations around the globe (i.e. within or horizontal) or is it more effective to focus on selected TNC customers and suppliers (i.e. along or vertical)?

Are unions prepared to do this kind of comprehensive research and strategic planning? And then move forward, turning the insights they have gained into campaign

strategy? Many union leaders and activists would say no, arguing that this is not normally the way their union operates. Union officials and shop floor stewards take care of everyday problems and respond to new management actions in the service of their members. Strategic research and campaigning are at best tools that are used only occasionally and then defensively to ward off management attacks. But as the workplace and corporate environment changes, becoming more global, the future of an individual union's capacity to represent its members and provide those services is questionable. ¹⁸

This article is taken from a booklet titled: Organising in and along value chains. What does it mean for trade unions? published by the Friedrich Ebert Stiftung. Michael Fichter is a political scientist specialising in labour relations and former lecturer at the Global Labour University in Germany.

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