A long spoon needed to 'sup' at capitalism's table

Various initiatives underway are forcing organised labour to look more proactively at how workers can benefit from black economic empowerment (BEE) deals. The **Labour Bulletin** initiates a debate – which will continue in the next Bulletin – on the strategic choices that unions need to make to ensure BEE benefits workers. The KWV deal, which embraces the concept of Employee Share Ownership Schemes, is a case in point.

In the 1980s many unions, especially Cosatu affiliates, began to win control over retirement funds, records a Naledi draft discussion paper from the 90s. Having achieved this, many unions tended to focus on the administration of these funds, leaving the investment decisions up to the contracted private investment companies. The reasons were partly ideological and might have been why there was a failure to ensure a robust and more transparent discussion around union investment companies.

Mention of union investment companies today still illicits awkward responses from trade unionists. This is despite the fact that about 13 Cosatu affiliates (including Cosatu as a federation) have established investment companies – though one or two are in the process of closing.

This failure to ensure proper engagement has meant certain practical questions, such as 'should a union (through its investment company) invest in a privatisation sell off or oppose the sale?' have gone unanswered

While insufficient focus might have been given in the past to investment issues, this has changed, most notably, with the inclusion in the growth and development summit (GDS) agreement of a decision to work towards ensuring that 5% of investible income of retirement and life assurance funds goes into appropriate financial instruments.

Another sensitive issue emerged around initiatives embarked on by employers in the 1980s, most notably in the mining industry. After the 1987 mineworkers' strike, Anglo American introduced an employee share ownership scheme. At the time there was much scepticism around the project as it was seen, in some quarters, to be an attempt to entice workers to the benefits of capitalism.

A former trade unionist says it was viewed by the NUM at the time as an attempt to divide workers. He says that it did have a divisive effect when workers cashed in their shares five years down the line. He recalls that the NUM did have a debate around ownership issues when mines began closing in the late 1980s and by the time the first mining summit took place in 1991 further discussions were held. But it appeared this issue was not something that the union wanted to take forward.

This did not stop mining companies from pursuing various incentive schemes. Harmony introduced an incentive scheme linked to the gold price in the early 1990s. However, when Harmony saw the gold price going up, the company bought their way out of the profit share scheme. More than ten years down the line, the union has tabled a proposal with Harmony to introduce Esops. The NUM's proposal is extremely significant as it is the first Cosatu affiliate to initiate such a move. The decision to table a proposal around Esops follows intensive and lengthy debates within union structures since an enabling resolution was adopted at the national congress in 2003. The formulation of the NUM's position will be explored further in the next edition.

WHAT HAS CHANGED?

A draft document on BEE, which was debated at Cosatu's central executive committee (CEC) meeting at the end of August, argues that the renewed drive for BEE has led to new pressures on labour. Unions now have to deal with participation in the formulation of sectoral BEE charters which seek to endorse a broad-based approach to BEE and related to this is the move by companies to urge unions or workers to take up a share offer as a form of black ownership as was reflected in the KWV deal (see p29).

The draft document states that: 'Cosatu has long been dubious about the emphasis in the BEE process on expanding black ownership and control of formal companies. But the state has thrown its weight behind the process. In these circumstances, Cosatu supports collective ownership by workers – whether as employees, through pension funds or through unions – over individual ownership by new capitalists. Nonetheless, the process poses very substantial risks for unions.'

One of the risks identified in the draft discussion document (see box) is managing processes around worker ownership of any kind. Companies' efforts to sell shares to black owners have led them to court workers and unions. If the definition of ownership is extended to include collective ownership, they will certainly turn to the pension funds as well.

A DIFFERENT APPROACH

There are different types of employee ownership schemes. The most commonly spoken about scheme at the moment in SA is the employee stock ownership plan – known as Esops. However, there are different types including the following:

- Cooperative
- Employee investment plan
- Plan with stock ownership as a retirement benefit
- Leveraged Esop buyout
- Profit sharing stock ownership programme
- Stock bonus plan
- Stock purchase plan.

The debate around Esops should not, however, be limited to discussion around control of the company. There are creative ways of ensuring that blocks of shares allocated to workers, could be utilised to access a whole range of new benefits for workers.

KWV DEAL

The KWV deal in which 25% of the equity was sold off to an empowerment grouping, is one of the most recent examples of where the union, Fawu, effectively endorsed the concept of Esops. In terms of the deal, the company expressed its intention to the empowerment group that workers should be included in the consortium, along with the community and others. The union got involved in discussions with the consortium and during these talks the union indicated that BEE deals should benefit workers and communities in a real way and not only empower a few. Following intensive negotiations, the workers, through the union, engaged with the community and it was agreed that together they should own the majority stake in the consortium, which was to obtain a 25% stake in KWV.

This resulted in the workers being able to raise their stake in the consortium from 10% to 27%. Together with the community (which had a 25% stake already) the two became the majority shareholders in the consortium. Cosatu's Western Cape regional secretary Tony Ehrenreich explains that this deal sets a precedence for future BEE deals. The involvement of workers (and their families who become indirect beneficiaries) clearly promotes the mass-based approach being pursued, Ehrenreich says.

He believes that the structuring of real broad-based empowerment deals should become the subject of public debate as workers and communities are more deserving of a BEE stake rather than a couple of individuals. In the absence of such a debate, the ultimate effect of the current BEE process merely amounts to the deracialising of the elite.

In terms of the KWV deal the workers shares will be put into a trust while part of the dividends will be used to service the debt – basically to pay for the shares. This means that workers will not physically have to pay for the shares. Ehrenreich says that a portion of the dividends will be ring fenced to finance projects so that workers and the community will be able to see immediate benefits in the short term. This deal (and the current momentum around BEE), he acknowledges, is pushing organised labour in the direction of considering Esops more seriously. There is a need, he says, to encourage some debate around this.

CONCLUSION

Governments' so-called commitment to mass-based or broad-based empowerment is forcing organised labour to develop a position which will ensure its members benefit instead of these nameless and faceless organisations which claim to represent communities, the disabled and women. How real (and representative) are these organisations which suddenly emerge in the major deals with the black 'captains of industry'? The most recent deals involving former trade unionist Cyril Ramaphosa and Standard Bank provides for the issuing of shares to black managers in the organisation. What about workers? The deal between Absa and a consortium involving former Gauteng premier Tokoyo Sexwale claims to represent various communities. But who are these nameless, faceless communities – is this real mass-based involvement? How is of mass-based empowerment to be measured?

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DRAFT DISCUSSION DOCUMENT

The potential benefits identified in the draft discussion document include the following:

- Ownership by workers, unions and/or communities clearly contributes toward more equitable ownership overall. That in turn aligns with a deep-seated aim of transformation, which is to ensure more equity in the economy as a whole.
- In addition, in theory these new owners could influence company decision-making to encourage greater investment, improved services for the poor, and job creation as well as better conditions of employment.
- Acquisition of shares in major companies could provide a strong and stable source of income for unions, at least after the initial loan has been repaid (up to 15 years down the road).

The risks are:

- Reliance on debt financing is inherently risky. Unless carefully designed, unions could actually go bankrupt if the economy goes into a downturn and the profits on their new interests do not cover the costs of the loan.
- Worker ownership inevitably risks conflicts of interest. It means unions have to choose between their own returns and wages for workers or services to the poor.

  Since workers would only have a minority share (companies typically want to sell 25.1% of their stock), they cannot actually dictate decisions. Moreover, workers and unions often lack capacity to oversee decisions. In these circumstances, they may end up taking responsibility for reactionary decisions without actually being able to reverse them.
- The experience to date of ungovernable investment companies underscores two additional risks. First, workers can in fact end up providing a vehicle for a few people to enrich themselves, without enjoying much in the way of benefits. Second, the process can lead to corruption of worker leaders.

These risks have long been recognised by the labour movement. In light of the pressure to acquire shares under the BEE process, however, the position of simply rejecting direct worker ownership now seems unsustainable.

As guidelines to reduce the risks and maximise benefits, we propose the following.

GUIDELINES FOR WORKER OWNERSHIP UNDER BBBEE

1. Cosatu in principle supports collective ownership, but as a rule accepts only direct employee ownership and pension investments, not union holdings.
2. Investments must be shaped so that employees and pension trustees have some real power, with provisions to ensure training and communication so that they can engage actively with key decisions. The sector charters and general scorecard should include requirements that the representatives of collective owners are empowered to engage actively.
3. Cosatu will develop guidelines for shareholder engagement aimed at enhancing investment, job creation and service to poor communities.
4. Where unions themselves buy shares:
   a. Unions should invest only where they see a genuine chance to impact on decisions in workers' favour.
   b. Cosatu must develop a model to ensure accountability of union representatives and that the benefits indeed flow to members.
   c. The financial arrangements must be scrutinised carefully to ensure that the survival of the union is not jeopardised, no matter how the shareholding fares. COSATU will develop a panel of sympathetic financial experts, and raise funds from the state to ensure proper analysis of major proposals.
   d. The investment should not be linked to the provision of services to members, since that would constitute a clear conflict of interest.