

# Workplace forum proposals

## *opportunity or threat?*

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

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

The key features of this model were as follows:

A workplace forum can only be

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

established in a workplace with more than 100 employees.

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

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

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

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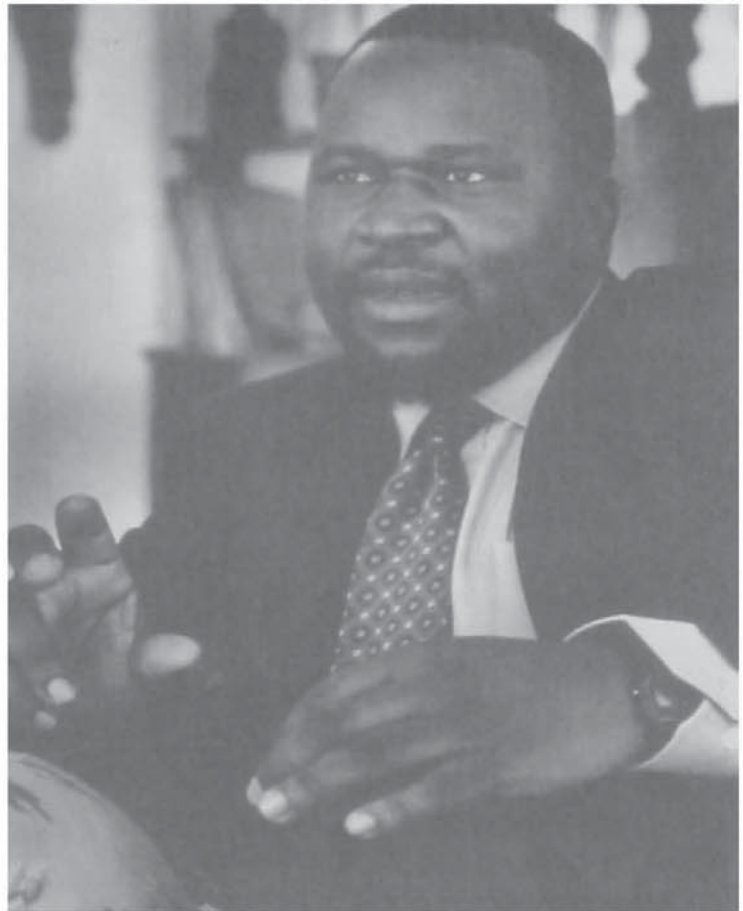
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- A workplace forum is entitled to be consulted by the employer about proposals relating to a long list of operational matters, including restructuring the workplace (notably the introduction of new work methods and new technology), changes in the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

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

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

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



Former Minister of Labour, Tito Mboweni.

### Non-compulsory

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

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

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

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

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

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

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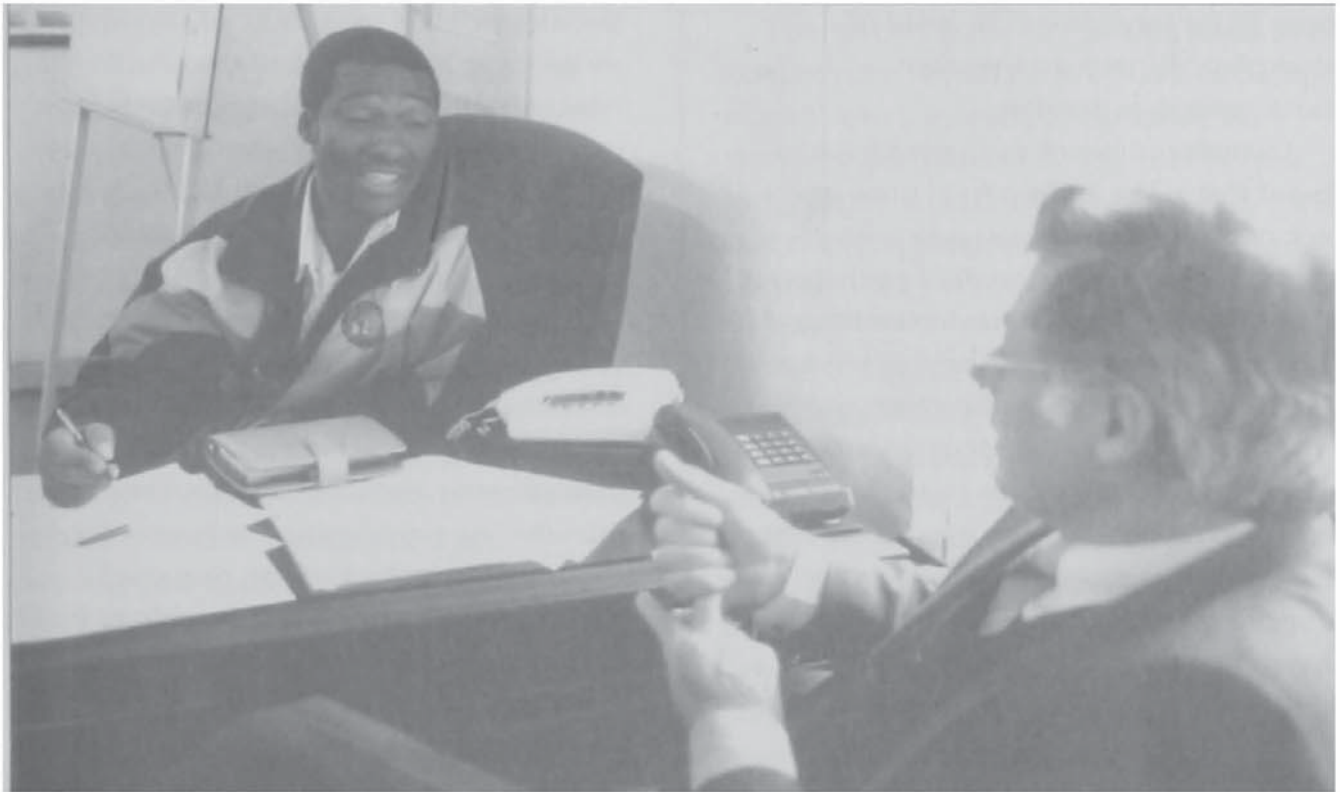
workplaces in which there is a representative registered union (or a single unrepresentative registered union) that does not wish to trigger a forum. The existing rights of registered trade unions should in most cases not be undermined since a workplace forum does not infringe on those rights, and employers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

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

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

### **Response**

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



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

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

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

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

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

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

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

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

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

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

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

### **Proposal**

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

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

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

### Implications

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

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

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

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

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

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

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

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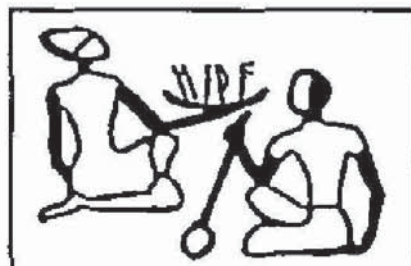
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