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Towards new collective bargaining, wage and social protection strategies in South Africa - Learning from the Brazilian experience

Neil Coleman

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Towards new Collective Bargaining, Wage and Social Protection Strategies in South Africa - Learning from the Brazilian Experience

Neil Coleman

Always bear in mind that the people are not fighting for ideas, for the things in anyone's head. They are fighting to win material benefits, to live better and in peace, to see their lives go forward, to guarantee the future of their children. (Amilcar Cabral)

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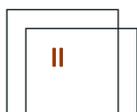
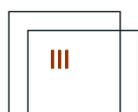


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1. SUMMARY OF PROPOSALS¹

The Congress of South African Trade Unions COSATU has recognised that the South African labour movement is facing a major challenge in the functioning of labour market institutions inter alia because: collective bargaining institutions are fragmented and being constantly destabilised; there is no coherent wage policy in the country, to address poverty and inequality amongst workers; or a coherent framework to link our labour market strategies and institutions to a broader economic development strategy. At the heart of this paper therefore is an attempt to analyse fundamental shortcomings in wage and income policies and their failure, as well as the failure of our voluntaristic collective bargaining institutions, to transform our apartheid labour market; and to then look at what shifts are required to meaningfully address these challenges. These shifts can only succeed, particularly in fighting the scourge of unemployment, if they are accompanied by radical restructuring of our economic policies. We therefore propose:

- The need to campaign for adoption of a national minimum wage;
- The need for development of Federation-wide collective bargaining strategies, to reconfigure the wage structure, and introduction of legislated mandatory centralised bargaining;
- The need to campaign for universal income support to cover all adults;
- This package of labour market and social protection measures should lay the basis for a national agreement, connected to an overhaul of our macro-economic policies; and
- Where employment is threatened in crisis hit industries, a package of rescue measures needs to be devised and implemented by the parties together with government.

¹ This is a revised and updated version of a paper presented to the COSATU Central Executive Committee in May 2012. A number of the proposals in this paper, including the call for a national minimum wage for South Africa, and comprehensive collective bargaining, were adopted as COSATU policy by a COSATU national bargaining conference in March 2013.

2. CHALLENGES IN TRANSFORMING THE SOUTH AFRICAN LABOUR MARKET

The South African labour movement and workers in general, are being faced with the need to develop new strategies to qualitatively advance the position of workers in the labour market, in relation to:

- Wages and social protection;
- Collective bargaining; and
- Employment strategies.

This paper focuses mainly on the first two areas. Gains made by the labour movement on these fronts are constantly under attack and face reversal. Further, workers have failed to make a decisive breakthrough in changing the patterns of the apartheid labour market, with limited exceptions.

At the level of wages, the many gallant struggles of workers, have not succeeded in fundamentally changing the apartheid wage structure, with the partial exception of the public service and local government, some pockets of the manufacturing sector, such as metal and engineering and less so, mining.² The wage structure remains highly stratified and unequal. The majority of black workers continue to live in poverty, and low paid workers in numerous sectors receive wages way below the household subsistence level (in 2010, 50% of workers earned below R2800 per month, compared to a minimum living level of about R4000 per month³). This low wage trap affects not only unorganised workers in vulnerable sectors, such as agriculture, domestic, retail and services. It applies to blue collar workers, including hundreds of thousands of union members, across the private sector. The 2012 COSATU Workers Survey⁴ suggests that at least 20%, or 400 000 COSATU members earn under R2500 per month, and more than 45%, or over 1 million COSATU members earn under R5000 per month, particularly those employed in the private sector. A similar proportion of non-COSATU union members earn these wage levels. However the Survey suggests that almost 80% of non-union members earn below R5000 per month. The gains that unions have made in most of these sectors, while real, don't constitute a fundamental restructuring of the apartheid wage structure, or redistribution on a meaningful scale. Further, the introduction of Sectoral Determinations in 2002, while slightly improving the situation, in most instances peg minimum wages way below the household subsistence level- see Figure 1 below.⁵ The system of

2 The four above mentioned sectors all have achieved minimum wages of around R4000 per month, about double the average minimum for all sectoral determinations, and significant gains throughout the wage structure.

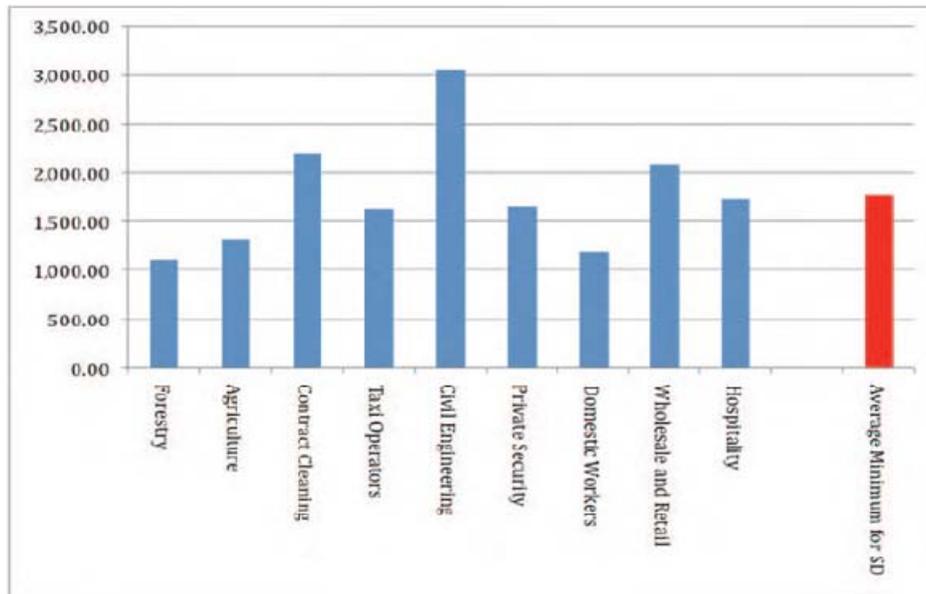
3 In June 2013, the exchange rate of the South African Rand: the US Dollar was about R10: 1 US \$.

4 Covering 3030 workers in 37 urban districts across the country. The urban bias of the survey suggests that this is an underestimate of union members earning low wages.

5 According to Naledi (2011), the average minimum for the sectoral determinations was about R1700 per month. A weighted average, which would be more accurate, would be

Sectoral Determinations (modelled on the old wage determinations) is both partial (only covering some low paid sectors), uncoordinated, with big variations in the minima, and without any coherent rationale in terms of the basic subsistence needs of workers⁶.

Figure 1: Minimum Wage Levels in Sectoral Determinations in Rand per Month, 2011



Source: Naledi (2011)

Table 1 below shows that many of the minima contained in collective agreements are not much of an improvement⁷. While there are exceptions, many of the struggles waged by workers achieve limited incremental gains on ultra-low wage levels- at best an increase of a couple of percentage points, or sometimes no change in real wages. There is therefore the danger that current strategies are in important respects reinforcing the apartheid cheap labour structure. Widespread poverty amongst workers remains a serious problem in South Africa. This is made even worse by the high levels of unemployment, and lack of social protection, leading to greater dependency on low wages - something we return to below.

below this, as more workers are covered by sectoral determinations on the lower end of the scale. The Labour Research Services (LRS) figure for 2011 is R2118.

⁶ There is no agreed poverty line, or household subsistence level. Various calculations of basic subsistence requirements have been made. The most credible- the Household Subsistence Level or the Supplemented Living Level- are way above most of the sectoral determinations. See below on the minimum living level measure.

⁷ According to Naledi (2011) the average minimum for bargaining council agreements was about R1900 per month. More accurate would be a weighted average, which would be considerably higher, as more workers are covered by agreements with higher minima. The Labour Research Services average figure for Bargaining Council agreements in 2011 is R2725.

Table 1: Monthly Wage Income of Unskilled, Semi-skilled and Skilled Workers in Bargaining Council Agreements (excluding the public sector) in South Africa, 2011

Bargaining Council	Unskilled	Semi-Skilled	Skilled
Metal and Engineering Bargaining Council (National)	3,529.60	3,945.60	6,774.40
National Textile Bargaining Council	3,278.08	3,928.85	4,799.96
Bargaining Council for Laundry, Cleaning and Dyeing Industry (Natal)	2,831.13	3,021.65	3,174.06
National Bargaining Council for the Road Freight Industry	2997.96	3007.62	
Bargaining Council for the Furniture Manufacturing Industry of the Western Cape	2,747.29	3,014.13	3,831.36
Bargaining Council for the Goods Canvas Industry (Wits and Pta)	2,571.96	3,083.82	3,335.35
National Bargaining Council for the Electrical Industry of SA	4,980.19	5,336.46	8,526.40
Building Industry Bargaining Council Cape of Good Hope	2,486.92	2,873.68	5,633.04
Bargaining Council for the Building Industry – Bloemfontein	2242.94		4,558.62
Bargaining Council for the Fishing Industry (National)	1,998.19	2,408.64	2,948.38
National Bargaining Council for the Clothing Manufacturing Industry	1,986.78	3,061.60	4,271.61
Bargaining Council for the Meat Trade - Gauteng	1,843.80	2,453.20	2,879.80
Bargaining Council for the Hairdressing Trade - Cape Peninsula	1987.47	2519	2847
Hairdressing and Cosmetology Bargaining Council - Kwazulu Natal	1,730	1,997	2,848
Furniture Bargaining Council	1,705.65	2,441.75	2,880.51
Bargaining Council for the Laundry and Dyeing Industry (Western Cape)	1,686.44	1,992.57	4,284.75
Bargaining Council for the Food, Retail, Restaurant, Catering and Allied Trades	1,561.72	1,862.23	2,017.25
Hairdressing and Cosmetology Services Bargaining Council (Semi-National)	1,524.60	1,957.60	3,320.60
Bargaining Council for the Furniture Industry of the South Western District	1,787.67	2,328.15	3,313.14
Bargaining Council for the Furniture Manufacturing Industry of the Eastern Cape	1,579.58	1,846.31	2,165.73
Bargaining Council for the Furniture Manufacturing Industry of Kwazulu-Natal	1737.41	2743.27	2947.52
Building Bargaining Council - North and West Boland	1,722.48	4,012.94	4,918.01
Motor Industry Bargaining Council	1,360.05	2,534.30	4,665.65
Bargaining Council Restaurant, Catering and Allied Trades (Johannesburg)	1,650.37	1,921.22	3,651.48
Bargaining Council for the Contract Cleaning Services Kwazulu-Natal	1,498.39	1,587.05	1,610.43
Bargaining Council for the Hairdressing and Cosmetology Trade, Pretoria	1,297.00	2,161.00	4,013.00

Note: the highlighted rows indicates the lowest paying and highest paying sector for unskilled workers; Source: Naledi (2011)

We have begun the process of assessing the wage profile of the South African economy⁸. However, a far more detailed analysis is needed of the impact of wage struggles, at all levels of the wage hierarchy, in different sectors of the economy, and to what extent attempts in certain sectors to reconfigure the apartheid wage and occupational structure have progressed. While strategies, such as broad-banding, flattening of hierarchies and wage structures, linked to recognition of skills and training, have aimed to achieve this, the impression is that this has had limited success. A frank assessment of progress is required.⁹ What we do know is that huge inequalities continue to persist at different levels of the wage structure, between so-called unskilled, semi-skilled and skilled workers, blue collar and white collar, different levels of management and workers, and that the gap between these different levels, and particularly the top and the bottom is getting wider. Huge wage gaps also exist between different industries and sectors.¹⁰ At a global level, workers income as a share of GDP has declined significantly in the last 20 years¹¹. Therefore, in some respects, democracy has seen redistribution occur in the opposite direction than was desired. At the same time, significant gains have been registered in certain areas of the economy. A more detailed analysis of these patterns would assist in understanding how these gains have been achieved, and whether they can inform a strategy for far-reaching transformation.

Bargaining strategies have attempted to confront the apartheid wage gaps, but have not been radical enough to make a fundamental impact. It is significant that it was only through collaboration between the labour movement and the democratic state (propelled by workers struggles), that it was possible to engineer a radical transformation of the wage structure in the public sector- this has implications for the minimum wage debate which we return to below. COSATU affiliates in the private sector have attempted to tailor bargaining strategies to address the plight of the low paid, by weighting demands in their favour. Macun (2008) reports for 2007 that increases within bargaining council agreements averaged 7.2% for the unskilled, 6.9% for semi-skilled, and 6.4% for skilled, confirming other evidence of slightly higher increases at the lower end. He notes, however, that more skilled workers are more likely to receive premia above the prescribed minima. The movement has also not always been consistent- in

⁸ A note on labour market figures in South Africa: there are numerous discrepancies in South African labour market statistics, including a range of statistical anomalies and areas of confusion. We indicate some areas of concern in this paper. However much more work remains to be done on this matter.

⁹ The only sector where a qualitative breakthrough has been made on this front on a large scale, although with problems, is the public service. It is no accident that the private sector has systematically resisted a similar transformation.

¹⁰ The Labour Research Service noted in 2005 that the average minimum weekly wage for private sector bargaining councils was R380 per week, while for semi-skilled and skilled workers the average minima were R652 per week. The lowest minimum wage for unskilled workers in bargaining councils was R185 per week in electrical, while the highest, for metal and engineering, was R647 (see Budlender, 2009).

¹¹ As an illustration of this trend, the share of workers' income in South Africa as a proportion of GDP fell from around 57% in 1994 to around 51% in 2010. Forslund (2013)

some instances across the board percentage increases have been demanded, which have the effect of entrenching or widening these gaps.

Despite some gains in the provision of a social wage post-apartheid, non-wage pressures remain a huge issue for low paid workers. As has been observed internationally, low wage, and particularly casualised workers, receive the lowest non-wage benefits in the workforce. They have to deal with limited pensions, health care, transport, housing assistance etc. Commodification of electricity, water, and the rising costs of food also put huge pressures on low paid workers.

Social Protection: High dependency ratios in working class communities also mean that in the absence of social protection, workers' wages are the main safety net, which is worsened by growing unemployment. Since their families tend to be more disadvantaged in terms of educational opportunities, and entry to the labour market, low income workers, more than higher paid workers tend to be the single earner. Therefore the failure to make a breakthrough on social protection for unemployed adults, or the introduction of a Basic Income Grant, means that even the limited income available to low paid workers is eroded through support for the unemployed.

Crisis of collective bargaining? The operation of collective bargaining, and the entire wage fixing system in South Africa, is not able to respond to these challenges, and needs to be re-evaluated. While centralised bargaining is critical for the labour movement, and is a historical achievement which needs to be defended, it is not in its current voluntaristic form, able to drive the transformation demanded by the South African situation. Indeed the fragility of collective bargaining institutions can be used by employers to attack wage levels.

The crisis which has faced the SA Clothing and Textile Workers Union (Sactwu) in the clothing industry (where even ultra-low wages are being subjected to downward variation) merely dramatises this reality in its most extreme form. Recent developments e.g. the court cases being brought by employers to challenge collective agreements in the engineering sector, indicate that the attack on collective bargaining in clothing is the thin end of the wedge, which employers are now trying to drive in other sectors. Faced with intransigent employers in the low wage economy:

- aiming to undermine and if necessary collapse collective bargaining, including through aggressive legal actions;
- devising all sort of strategies to deny workers their rights, including through casualisation, labour broking etc.; and given that this
- co-exists with the reality of high unemployment, low wages and desperate conditions

this means that centralised bargaining is constantly undermined.

By itself centralised bargaining is not able to do much more than maintain the status quo in these low wage sectors, and prevent a serious rolling back of workers conditions, or even collapse of bargaining structures. More recently this pressure has been worsened by the job loss bloodbath following the financial crisis, which has seen over a million jobs lost in South Africa, many in the heart of the manufacturing sector. It is under such conditions that unions are put under extreme pressure to engage in concessional bargaining, in terms of which hard won gains of workers are sacrificed, in the face of employer threats, particularly of job loss.

Developing societies such as ours, face particular labour market challenges: with large vulnerable and unorganised sectors; a preponderance of low wage work including in organised sectors; high levels of atypical work; large informal sectors; and high levels of poverty and unemployment. The international experience shows that in such a situation, centralised bargaining needs to be combined with effective, large-scale state intervention in the wage structure, if it is to seriously address these challenges. The experience of Brazil, which we discuss below, is a dramatic illustration of the importance of this two-pronged approach of sectoral negotiations plus state intervention. Beyond Brazil, recent literature of the ILO (International Labour Organisation) reflects growing international recognition of the fact that a greater degree of labour market justice, as well as economic development, can be achieved through an effective combination of collective bargaining and state intervention through a statutory minimum wage¹². At the same time, forward movement requires a renewal, strengthening and overhaul of centralised bargaining strategies, to address current realities.

The evolution of debates in South Africa around a national minimum wage and centralised bargaining

The independent labour movement in South Africa fought a battle against all odds in the 1970's and 1980's to establish collective bargaining institutions, in the face of massive resistance from a powerful apartheid state and employers who relied on a cheap labour regime. Once the labour movement had established its leverage in strategic parts of the economy, it saw the establishment of centralised bargaining as a key strategy to institutionalise the power of organised workers, and break down old paternalistic structures aimed at controlling black workers in particular. One of those paternalistic structures established by the minority regimes was that of the Wage Boards, which unilaterally determined minimum wages for different sectors. These very low minima were set to guide employers on actual wage rates, and remove wage competition between them, building on the historical monopsony¹³ created by the mining employers. The intention

12 Particularly Part II of the ILO's Global Wage Report (2008/09) on Minimum Wages and Collective Bargaining; and Part II of the ILO Global Wage Report (2010/11), on Wage Policies in times of Crisis.

13 Mine owners used their centralised control of recruitment to determine the price of labour.

therefore of these apartheid era 'minimum wages' was actually to keep wages as low as possible, rather than setting a minimum floor to raise workers conditions.

In the face of the anti-worker character of the apartheid state, unions saw strong collective bargaining structures as a bulwark to build worker power. This probably contributed to the development of a 'voluntarist' tradition, in which unions preferred self-regulation with employers, to reliance on state intervention¹⁴. This tradition drew strongly on the approach in large parts of Western Europe, where strong centralised bargaining structures, and high union density, prevailed. This voluntarist perspective was ultimately to find expression under the democratic state in the Labour Relations Act of 1995 (LRA), and the type of bargaining structures, and wage-fixing mechanisms which evolved. In essence the state would stand back and allow unions and employers to engage each other.

The strength of this approach was that unions would have to rely on their power and organisation to achieve gains, and were not dependent on intervention from above. The weakness was that large parts of the economy remained un-unionised, union density was relatively low, and employers exercised considerable power to perpetuate the cheap labour structure of the South African economy. Nevertheless the movement was of the view that it could incrementally assert its power throughout the economy. The voluntarist approach failed to recognise: the huge power imbalance between employers and workers; strategies which employers could adopt to undermine the unions; and the fact that the state intervention would be a key factor in tilting this power imbalance.

When it came to debates about a national minimum wage vs. sectoral bargaining, it was in one sense logical that the movement opted in favour of the latter, given the background outlined above¹⁵. The Living Wage Conference in the early 1990's, decided to continue focusing on sectoral bargaining, and no formal decision was taken to support the proposal which was tabled by the National Union of Mine Workers (NUM) for a national minimum wage- the matter was left hanging. This reluctance may have been motivated by a number of perceptions amongst certain unions:

- That a national minimum wage could undermine worker militancy and organisation;
- That a low national minimum wage could undermine higher minima in sectors;
- Fears in more conservative circles that a national minimum wage would lead to unrealistic demands in terms of the capacity of the economy.

¹⁴ However as we see below this was premised on the understanding that self-regulation would take place within a structure of compulsory centralised bargaining.

¹⁵ Not all saw these as opposing alternatives. There was a strong voice at COSATU's living wage conference in 1991 which argued for a combination of the two. This echoed the tradition of various campaigns; including the Sactu pound a day campaign, as well as COSATU's initial call for a national minimum wage in its living wage campaign of 1987. The call for a national minimum wage is also contained in the Freedom Charter.

However, in retrospect it was an error to counterpose a national minimum wage to sectoral bargaining, as they should have been considered as complementary and mutually reinforcing strategies.

Until the recent Bargaining Conference held by COSATU in March 2013, there had not been a coherent policy discussion on this matter, and related resolutions have tended to fudge the issue. Strictly speaking, decisions of COSATU before 2013 seemed to favour a national minimum wage in addition to centralised bargaining, but there had not been clear debate about what this would mean, how it would be implemented, and how it would relate to sectoral bargaining. Resolutions of the Federation, while appearing to give support to a national minimum wage, had ambiguous formulations which could be interpreted in different ways. Therefore COSATU's May 2012 CEC recognised that it was urgent for the labour movement in South Africa to finalise policy on these issues. The March 2013 COSATU Bargaining Conference has now done precisely that.¹⁶

International trends

The notion that the state needs to remove itself from minimum wage regulation, in preference for a self-managed approach of centralised bargaining, is increasingly being questioned, not only in developing economies, but also in high union density economies of Western Europe. State intervention in minimum wage setting is being increased around the world, even parts of the developed world where it was not previously used¹⁷. Conversely, collective bargaining is being robustly promoted in a number of developing countries, as a complement to national minimum wages.

Pressure for greater state intervention has been accelerated by the international trend for employers to wage a war of attrition to undermine collective bargaining, and union organisation, and the resulting fall of union density in many countries. International trends towards atypical work, mobility of capital and production, and the undermining of worker organisation have led to a growing crisis for labour. This has also been associated with the undermining of historical wage patterns, with the growth of income inequality, and intensification of low wage work. Particularly in the wake of the 2008 economic crisis, unions have been increasingly fighting defensive battles, including engaging in concessional bargaining to save jobs. Even traditionally strong collective bargaining societies

¹⁶ See <http://www.cosatu.org.za/docs/declarations/2013/finaldeclaration.pdf> (2013, pp.11-12).

¹⁷ The ILO (2010) Global Wage report notes that this trend has increased after the global crisis: the Global Jobs Pact encouraged governments to consider options such as minimum wages to reduce poverty and inequity, increase demand and contribute to economic stability – emphasizing also that minimum wages should be regularly reviewed and updated. Later, tripartite actors from Central and Eastern European countries recognized, in November 2009, the insufficient development of wage institutions and agreed on the need to have minimum wages as a wage floor to protect the most vulnerable workers. The same conclusion was reached by the tripartite delegations in the countries of the Caucasus and Central Asia. In Western Europe, too, there is a growing public debate on the possibility of using statutory minimum wages in countries which have traditionally relied exclusively on collective agreements.

like Germany are seeing the erosion of these structures, and the emergence of growing low wage enclaves.

The ILO argues that national minimum wages and collective bargaining are complementary, not competing interventions, and that they have different functions.¹⁸ The national minimum wage sets a basic floor, below which no-one should fall- and is linked to the idea of a basic subsistence level; while collective bargaining engages in wage determination throughout the wage structure, as well as engagement on a whole range of non-wage issues. National minimum wages are increasingly been seen as a platform on which to build higher sectoral wage gains, and to prevent the erosion of the most basic standards. The national minimum wage is asserted as a basic human right, and a social good, to prevent a self-destructive race to the bottom, by employers bent on super-exploitation. The national minimum wage has been convincingly demonstrated, particularly in the context of Latin America, to have a powerful redistributive role, as well as a strong developmental impact, and to be an important tool for fighting poverty. This form of state intervention takes minimum wage determination at the lowest level of the wage structure out of the hands of employers, regardless of whether it is an organised or an unorganised sector. This allows unions to concentrate on improving this and other elements of the wage structure, and to focus on other collective bargaining issues, rather than having to constantly fight the downward variation at the bottom end of the wage structure.

Consequently, there has been a decisive shift in international thinking in favour of the national minimum wage, amongst certain governments, unions, academia, and UN institutions: previous dogma by conservative economists about the employment destroying effect of minimum wages have been comprehensively discredited- see Box 3 below. National minimum wages and centralised bargaining are different, but necessary and complementary interventions in a labour market that reflects fundamentally unequal power relations. We discuss the elements of the national minimum wage in detail below, but one lesson from the international experience, which is worth stressing up front, is emphasis on the need for the minimum wage to be of universal application, so that no one falls through the cracks, and for the minimum wage structure to be as simple as possible. Multiple minimum wage rates and exemptions are discouraged by the ILO in favour of one national minimum wage. Multiple rates can, and should, be negotiated above the level of the national minimum wage, in sectoral collective bargaining processes.

Similarly there is growing recognition in the ILO and some states that there is the need for strengthening of collective bargaining institutions. Further, that unions' collective bargaining strategies need to become more dynamic, to deal particularly with the challenges post the economic crisis, to avoid the dangers of

¹⁸ This approach is recognised by some but not all governments. While some, such as in Brazil, accept the ILO's approach, others see statutory minimum wages as a substitute for collective bargaining. Further, centralised bargaining is increasingly coming under attack in Western Europe.

concessional bargaining, which systematically weakens unions' position. So for example, to develop creative strategies, often in collaboration with the state, to avert job losses, which don't involve wage cuts, are temporary in character, and which allow unions to proactively determine the agenda. We deal with these matters in more detail below.

3. THE 'BRAZILIAN MIRACLE' AND ABOUT MARKET TRANSFORMATION

A quiet revolution is taking place in peoples' living standards in Brazil, and certain other parts of Latin America. Strides are being made in reducing poverty, creating decent work, and reducing inequality and unemployment, over a short period. At the heart of many of the gains in the labour market is the consolidation of national minimum wages and collective bargaining, with a deliberate strategy driven by progressive governments, to substantially increase the real level of minimum wages, and address the plight of the working poor. The rise in peoples' real incomes, is both a social intervention aimed at greater equity, and part of an economic strategy to boost domestic demand, linked to state-led industrial and economic strategies, to drive a new growth path. The other key leg of the strategy to raise peoples' incomes, together with the minimum wage, is a package of social protection measures to ensure that all the poor, including the unemployed, have access to basic income.

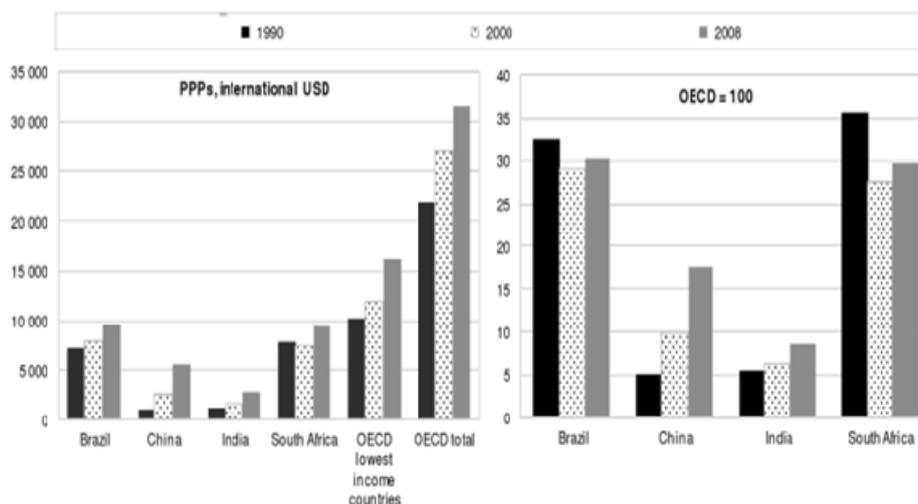
Focusing on the positive dimensions of the Brazilian experience is not to claim that Brazil is without serious challenges. The most important question is how a society with such deep problems has been able, in less than a decade to make such rapid progress, in addressing challenges not dissimilar to those South Africa confronts.

While there are differences, there are significant similarities between the Brazilian and South African societies. These include some similarities in the nature of the economic structure, the high levels of inequality and poverty, and the legacy of doctrinaire neo-liberal policies. We therefore can learn a vast amount from the shifts in policy direction, and the impact of these shifts over relatively short periods: it gives us a concrete example of how alternative growth paths can be practically implemented.

Although Brazil is a huge country with a large population, when compared to South Africa, OECD figures show that the size of the Brazilian and South African economies, relative to our populations, are remarkably similar, when measured in GDP per capita:¹⁹

¹⁹ OECD (2010, p.17) Tackling inequalities in Brazil, China, India and South Africa.

Figure 2: GDP per capita in BCIS countries, 1990-2008, in PPPs constant 2005 international USD



Source: OECD (2010, p.17)

Transforming the Brazilian Labour Market: a Snapshot

Key features of recent developments in Brazil are summarised in the following brief extracts from a recent article by Paulo Eduardo de Andrade Baltar (2010)²⁰, documenting the Brazilian experience since ex-President Lula and the Workers Party (PT) took power. We reproduce these extracts, followed by extracts from ILO and OECD reports, without comment, as the power of the information contained in these reports speaks for itself.

The article by Baltar et al. focuses on the period 2003-8, and documents Brazil's astounding achievements over a mere six years in raising peoples' standard of living, and the role of the minimum wage. It focuses on interventions in the labour market:

Transforming the labour market: The marked change in the labour market configuration, has had a very positive impact on poverty levels. From 61.4 million people in 2003, the number living in poverty dropped to 41.5 million in 2008 (a decline from 34.3 per cent to 21.9 per cent of the total population). Those in absolute poverty fell from 26.1 million in 2003 to 13.9 million in 2008 (from 14.6 per cent to 7.3 per cent of the population). The recovery in the purchasing power of the minimum wage has been crucial here. It really gained momentum from 2005 on, when the federal government made an explicit commitment to promoting it. Between 2003 and 2008, the minimum wage rose faster than inflation, providing workers at the base of the income pyramid with significant real gains (38.3 per cent). (On the post-2008 period see Appendix 1: Minimum Wages setting in Brazil)

²⁰ The data in the following paragraphs is from Baltar et al. (2010). Partly shortened quotes are given. This is followed by data from ILO (2011) and OECD (2010).

The government established a policy of annual adjustment that takes account of past inflation and adds up the average GDP growth of the two previous years. There has also been an important, though smaller, increase in the real median wage. Its purchasing power rose by 23.5 per cent.

The proportion of formal employment in the whole economically active population (including the unemployed) aged 15 and above increased from 36.1 per cent in 2004 to 40.9 per cent in 2008. There was an especially significant increase in the formalization of jobs for youth. This is important, as formalization brings workers within the effective scope of labour law and social security provisions.

Recent Brazilian experience contradicts the frequent assumption that a minimum wage will lead to net job losses and inflationary pressures. (See Appendix 2: Minimum Wages and Employment in Brazil) Rather, it points to the importance of public regulation of the national labour market. In Brazil, employees who are formally hired cannot be paid less than the established legal minimum. But the minimum wage is also a reference point for most informal workers and many of the self-employed. And its revaluation has had a positive influence on wage negotiations, especially on setting wage floors for some occupational categories.

Income transfers. Social security provisions have been a further important means of income distribution. A non-contributory scheme brought in for rural workers has helped put them on an equal footing with urban workers, and a Continuous Money Benefit has ensured an income for some particularly disadvantaged groups. In both cases, the benefit cannot be below the value of the minimum wage. On the other hand, the increased purchasing power of the rural pensioners and other poor beneficiaries has resulted in increased disposable income in the country's smaller communities, especially those in the long-impooverished north-east. More effective social security coverage has also indirectly helped to improve the labour market, as a guaranteed income for senior citizens enables them to stop seeking work. And it also allows some dependent minors to avoid premature entry into the labour market, thus reducing the incidence of child labour.

Unemployment insurance is another important safety net. Despite the employment expansion in 2004–08, the number of people drawing unemployment benefits actually rose. This was because the greater formalization of jobs, which increased the number of those covered by unemployment insurance, was not accompanied by a reduction in employee turnover. The increased expenditure on unemployment pay-outs also stemmed from the real increase in the minimum wage, as the minimum benefit is equal to the statutory minimum wage. Unemployment benefits helped to maintain households' spending power during the worst period of the economic crisis, between the end of 2008 and the beginning of 2009. The benefits have also been contributing to the promotion of decent work in Brazil, as they are payable to workers who are rescued from slave-like employment relationships, during the time it takes to reinsert them into the labour market.

The role of trade unions: Although it has seven recognized trade union centres and more than 1,600 unions, the Brazilian labour movement has been demonstrating greater unity in action in recent years. Even during the crisis of 2008–09, a large proportion of the occupational categories managed to bargain up the purchasing power of their wages. The negotiating climate has changed significantly since 2003. Rights are no longer being bargained away in exchange for the maintenance of employment. The relaunch of Brazil’s development agenda has increasingly shifted the union focus to winning back lost rights and making broader demands – notably for a 40-hour week (Baltar, et al., 2010, pp.24-30).

Box 1: The role of Brazilian trade unions and collective bargaining

"...the growing strength of (trade unions) is apparent in the collective bargaining outcomes and in its capacity to dialogue with the Federal Government. Despite some tensions, the relationship with the government has moved forward, especially since 2005, towards meeting various labour demands, prominent among which are: the minimum wage revaluation policy, recognition of the trade union centres and adoption of measures to tackle the recent crisis in 2008-2009. So the trade union movement... is an important interlocutor for the Federal Government, and is given the space to take part in the formulation of public policies.

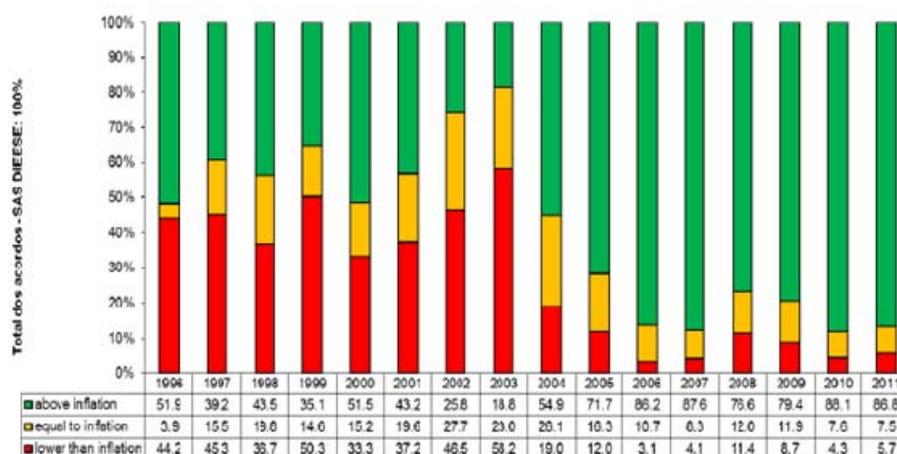
From 2004 ... collective bargaining outcomes improved, contributing to the recovery of purchasing power. Even during the crisis of 2008-2009, a large proportion of the occupational categories managed to regain the purchasing power of their wages. What happened was that the negotiating climate changed, reversing the trend that had prevailed up to 2003. Rights are no longer being bargained away in exchange for the maintenance of employment. So the trend towards a better-organized labour market was strengthened. And, even though this trend was predicated on economic growth ... the Brazilian judicial and institutional framework contributed to the fight against the most destructive forms of labour exploitation and in favour of more formalization of employment.

The times the country has gone through recently, with the relaunch of the development agenda, have increasingly shifted the trade union movement's focus from simply defending jobs to winning back lost rights and broadening out its demands. Among the main issues around which the unions and the trade union centres are currently mobilizing are: i) reducing weekly working hours to 40; ii) regulation of subcontracting; iii) the minimum wage revaluation policy; and iv) defending a development model that distributes income more fairly.

One distinctive feature of the past few years had been the adoption of a joint agenda by the main Brazilian trade union organizations. In 2010, apart from the issues outlined above, the main action point will be to discuss a sustainable development model for the country ... and one of the events envisaged is the holding of a unity conference. So the union centres aim to take an active part in the national debate and influence the guidelines to be drawn up for the development model that the country will adopt. It should be emphasized that many of the issues cited have more to do with the trade union movement's relations with the present government than with the capacity to mobilize workers and society..." (Baltar, et al., 2010, pp.30-32)

Recent data on wage negotiations over this period confirm the analysis that substantial real increases in the national minimum wage, were accompanied by improvements in the negotiating environment, and collective bargaining outcomes which saw real increases in wages throughout the wage structure, as seen by the rising proportion of wage settlements above the level of inflation, in sharp contrast to the situation prior to 2004.

Figure 3: Collective bargaining outcomes 1996-2011



Source: SAS-DIEESE (2012)

The ILO G20 policy brief on Brazil from September 2011 arrives at similar conclusions to the article by Baltar, namely that labour market transformation, job creation, and reconfiguration of the wage structure has been the key to Brazil's progress in tackling poverty and inequality, and that social protection has played a supportive and complementary role. It also acknowledges that this transformation was enabled by the leading role of the Brazilian state, including in terms of its response to the global economic crisis. This is outlined in the following extracts:

- One of Brazil's greatest successes since 2003 has been the creation of 15.3 million formal jobs, which has led to growing formalization of the country's labour force. Indeed, during the 2000s, formal job creation outpaced informal job growth by a three-to-one ratio ... Gini coefficient measure of inequality was reduced from 0.58 to 0.54. Two-thirds of the fall in inequality is attributed to increases in wages, of which one-third stems from earnings equivalent to the minimum wage (between 2003 and 2010, the real value of the minimum wage increased by 81 per cent). The remaining distributional gains stem from the social safety net, in particular the rural pension (previdência rural), which provides benefits equal to the minimum wage to 8.4 million rural workers; the Benefício de Prestação Continuada (Continued Benefit Provision), which provides social assistance pensions equal to the minimum wage to 3.5 million elderly poor and disabled; and the flagship Bolsa Família conditional

cash transfer programme, which provides modest benefits to a quarter of the population, at the low cost of 0.4 per cent of GDP.

- Fifty-two per cent of Brazilian households are now considered to be in the 'middle class'²¹, a rise of 22 per cent over 2004. The increase in incomes of the poor and middle classes has fuelled domestic demand. Because Brazil retains an important manufacturing base, the growth in consumer demand has benefited the economy and spurred job creation, particularly in manufacturing and distribution as well as among large retailers such as supermarket chains and hyper- markets, where jobs are predominantly formal.

Formalisation of Employment: The ILO G20 Policy Brief further reflects on deliberate measures taken by the Brazilian state to formalise employment:

- ...while economic growth was critical for the growth in formal, salaried employment, specific policy interventions aimed at formalizing workers also played a significant role ... It is estimated that in 2000–05, the law contributed to the formalization of close to 500,000 small and micro-enterprises, accounting for 2 million jobs.
- Changes to labour inspection methods in Brazil have improved labour law compliance while contributing to increased formality. Better labour inspection in Brazil is not the result of an increase in the number of inspectors, which has fluctuated around 3,000 since 1990, but is due to changes in the incentive structure and new methods for meeting inspection targets.
- In 2008, the Government reformed the Rural Pension Law, removing obstacles to the formalization of rural workers by introducing portability rules between urban and rural schemes... (ILO, 2011, p.1-3)

The OECD Report (2010) "Tackling inequalities in Brazil, China, India and South Africa" also outlines specific measures taken by the Brazilian state to formalise workers, and regulate employment:

- The law determines that all workers must have a booklet where all individual labour contracts and any changes in them over time are registered by the employer. By definition, a formal worker has a booklet signed by his employer ('carteira assinada'). Besides this obligation to sign the booklet, the law stipulates a set of minimum conditions any employment relationship must follow. The most important rules cover: maximum hours of work per week; maximum extra-time working hours; minimum payment for extra-time work; minimum wage; pre-paid annual vacations; special protection clauses for women and children; the prohibition of the dismissal of pregnant women; the right to paid

²¹ The definition of 'middle class' referred to here by the ILO is highly contested in Brazil, as it tends to refer to workers who can now consume certain consumer goods, rather than middle class in any strict definition of the term.

vacation before and after childbirth, for the mother; special work conditions for night shifts; one month pre-notification of firing; and protection against unjustified dismissals. (OECD, 2010, p.87)

Response to the Global Crisis: According to the ILO G20 policy brief, the response of the Brazilian state to the global economic crisis was decisive:

- (T)he recent economic crisis did not halt the trend towards a greater share of formal employment in Brazil's labour force. When the international economic crisis hit the country in the last quarter of 2008, GDP contracted by 4.4 percentage points compared with the preceding quarter (seasonally adjusted), and GDP declined by 0.6 per cent in 2009. Yet in 2009, the country was able to generate 1.7 million formal jobs, an increase of 4.5 per cent over 2008.
- The strong labour market performance was due in large part to the Government's effective response to the economic crisis. This included a large injection of liquidity in BNDES, the national development bank, a rise in infrastructure spending associated with the Growth Acceleration Programme (PAC), tax exemptions for automobiles and other consumer durables, increased unemployment insurance instalments for workers in sectors most affected by the crisis, implementation of the training programme, vocational training and microcredit concessions for people receiving the Bolsa Família benefit (Programa Próximo Passo) and an expansion and increase in the benefit levels of the Bolsa Família. In addition, beginning in December 2008, the Central Bank lowered the base interest rate, known as the SELIC, from 13.75 per cent to 8.75 per cent in September 2009. The Government also maintained the scheduled increase in the minimum wage, which contributed to raising the incomes and purchasing power of the 15 per cent of the employed population that earns the minimum wage, as well as people whose pensions and social assistance benefits are tied to the minimum (ILO, 2011, p.2).

The 2009 ILO World of Work Report: The Global Jobs Crisis and Beyond also outlines Brazil's response to the crisis since 2008:

- The Government's response to the crisis was swift...the Government raised the minimum wage by 6 per cent in real terms (increasing both directly and indirectly the income of about 40 per cent of workers). Unemployment insurance was extended to cover workers who were particularly affected by the crisis. ... In Brazil, household consumption is relatively high, representing 61 per cent of GDP in 2008, compared to other emerging economies, such as China where it represented only 36 per cent in 2008. Policies to maintain household income and support domestic private consumption have aided the recovery process: consumption grew by 2.1 per cent in the second quarter of 2009. ... Brazil's experience shows that an increase in the minimum wage was not accompanied by decreases in the formal workforce. (ILO, 2009, p.25-26)

Combating working poverty in Latin America

The 2012 ILO Global Employment Trends Report shows the impressive performance of Latin America and the Caribbean countries, in combating working poverty (see ILO, 2012 a): An estimated 3.3 per cent of the employed in Latin America & the Caribbean were living in poverty in 2011 at (US \$1,25 a day). At the US\$2 level, the proportion in poverty was 8.8 per cent in 2011 (down from 15.1% in 2000), making Latin America and the Caribbean one of only three regions with a working poverty rate at the US\$2 level of below 10 per cent (the other two regions are Central and South-Eastern Europe (non-EU) and CIS and North Africa. For international comparison see Table 2:

Table 2: Working poor indicators, world and regions (US\$ 2 a day)

Both Sexes	Numbers of people (millions)				Share in total employment (%)			
	2000	2007	2010*	2011*	2000	2007	2010*	2011*
World	1197.6	978.3	916.6	911.5	45.9	33.1	30.2	29.5
Central and South-Eastern Europe (non-EU) and CIS	19.3	8.8	7.7	7.4	13.0	5.5	4.8	4.5
East Asia	396.0	206.7	157.1	148.9	53.2	25.6	19.1	18.0
South-East Asia and the Pacific	146.5	105.3	96.1	95.7	60.5	38.3	33.0	32.3
South Asia	415.5	425.5	421.1	421.6	81.2	70.8	68.7	67.3
Latin America and the Caribbean	31.3	25.5	23.7	23.3	15.1	10.4	9.1	8.8
Middle East	3.4	4.4	4.1	4.4	8.3	8.0	6.8	7.0
North Africa	15.4	16.7	16.8	17.3	32.7	28.4	26.5	27.2
Sub-Saharan Africa	170.2	185.3	189.9	193.0	75.7	67.0	63.2	62.4

* 2011 are preliminary estimates. Note: Totals may differ due to rounding
Source: ILO (2012a, p.102)

Understanding the 'Brazilian miracle'

These dramatic advances in Brazil, despite the global economic crisis, have to be understood both in terms of internal Brazilian politics, and in the context of the resurgence of left movements throughout the continent, particularly over the last decade. Seven of the ten major Latin American countries²² are now governed by left or centre left governments: namely Venezuela, Brazil, Argentina, Bolivia, Uruguay, Ecuador, and Peru. Increasingly this bloc of progressive states (despite some differences between them) is characterised by: a rapidly expanding state

²² Down from 8 after the left leaning Paraguayan president was recently removed by a right wing congress.

role in the economy, with strategic ownership of key sectors, and an active industrial policy; active promotion of social ownership, particularly through a huge increase in co-operatives; pursuit of more expansionary macro-economic approaches; and lastly, progressive interventions to transform the labour market, by formalising employment, combating atypical work, raising wage levels and, increasingly, promoting collective bargaining.

COSATU argues that a number of important factors help to explain the remarkable achievements in Brazil²³, which could be emulated by the movement in South Africa in creating its own 'Lula moment'. Key amongst these are decisive leadership by the Brazilian Workers Party (PT) and leaders in government to harness the Brazilian state to drive the transformation they wanted, despite constituting a minority in the Brazilian Congress. In particular it is asserted that:

1. Decisive political leadership enabled the Brazilian PT to navigate out of an emerging crisis, at the end of Lula's first term, and use the need for change to chart a new path. They were not blackmailed by pressure from the conservative establishment, or problems in their own ranks, to abandon their programme of social transformation. Instead they became more focused and decisive.
2. The Brazilian PT deployed key people into strategic positions (Treasury, Industrial Development Bank - the BNDES etc.) to drive the policy shifts they wanted to implement.
3. They were not afraid to take on the markets where necessary, for example through implementing taxes on capital flows, or introducing more effective regulation of worker rights.
4. The Brazilians were very practical in their approach, and avoided getting stuck at the level of political rhetoric. They focused on interventions which were high-impact and transformative in improving the material realities of the majority of people, particularly in relation to key challenges of poverty and inequality. They launched simple high-profile campaigns which would have a concrete impact, and everybody could relate to, such as the 'zero hunger' campaign.
5. They asserted a central role for the state in the economy in terms of driving and financing development. The Brazilian government reversed privatisation, drove a state-led industrial strategy, with the involvement of key state corporations in strategic sectors, and provided affordable finance on a massive scale to promote industrial development, through the state bank, the BNDES.
6. They defied conventional economic prescriptions, and instead advanced economic strategies which put redistribution of incomes, and stimulating demand, at the centre of their approach, especially through raising wage levels and social protection. This was deliberately linked to an industrial policy which promoted local procurement and production, and which fed off growing demand. Increased consumption was based on rising incomes, rather than credit.

23 See Secretariat Report to the 11th National COSATU Congress (COSATU, 2012 a).

7. This national economic strategy was linked to a broader economic development strategy in the region aimed at asserting an independent development path.

8. The Brazilian government deliberately intervened to formalise the labour market, demonstrating that increased worker rights, combating of atypical and unregulated work, rising wages and improved conditions of employment, are consistent with large-scale job creation. They took on employer lobbies who were opposed to such changes, but also put in place incentives for employers to comply, while acting firmly against those who violated legal protections.

9. Strategic focus meant that they put in place the measures required to build state capacity to drive these changes, e.g. through strengthening their labour inspectorates, and massively increasing training in tertiary institutions to ensure sufficient qualified people were available to staff key state institutions.

While this is all true, it is also the case that Brazilian society, like South Africa, is confronted with massive challenges, which can only be addressed by long term, and systemic transformation. COSATU's 2012 Congress Report concludes that, despite major strides, Brazilian society continues to be characterised by high levels of inequality, poverty, violence and landlessness, and that the Brazilian government has been criticised for *inter alia*: Environmentally destructive policies; Lacking an agrarian reform programme to address the high concentration of land ownership; Inadequate affordable public services, especially transport, health care and education; Conservative monetary policies; Over-dependence on the export of primary commodities, and import of consumer goods; Persistence of relatively high levels of corruption; and attempting to drive transformation of society from above, unlike other Latin American states which have entrenched popular participation.

It has also been argued that advances in transforming the Brazilian labour market are uneven. The labour market remains characterised by certain regressive features, and contradictions²⁴. Contradictions which have been identified include:

- Despite the increased level of labour market regulation, employers are able to dismiss workers with little restriction, leading to a massively high turnover²⁵.
- The high concentration of low paid jobs, particularly in new employment, although new workers benefit from significant increases in the minimum wage;
- The increase in the rate of outsourcing and contracting out, despite formalisation of the labour market. This trend is however off a low base²⁶.

²⁴ This is discussed in more detail in Coleman (2013a)

²⁵ Nevertheless, workers are protected by a social security fund: employers dismissing workers 'without reason' have to pay a penalty equivalent to 40% of their accumulated contribution into this fund. Interview with Leandro Hosie, Dieese 25 September 2012

²⁶ According to Baltar et al. temporary contracts have a low incidence, representing only 1.4% of total employment in the private sector. (Baltar et al, 2010)

Therefore the task of transforming the Brazilian labour market remains incomplete, Nevertheless, the improvement in labour market conditions for workers in Brazil, including growing employment opportunities, greater formalisation and regulation, has led to the increased ability of workers to fight for their rights in the most exploited sectors, such as domestic work. Despite their impressive achievements therefore, the Brazilian government, and labour movement, have a huge task, given the brutal legacy of cheap labour, and forced labour, in making the goal of decent work a reality for all working people.

4. SOUTH AFRICAN WAGE STRATEGIES AND THE MINIMUM WAGE

The agreement in the Clothing Bargaining Council to reduce minimum wages for new workers came as a particular shock to the labour movement, because clothing is an ultra-low wage sector, which is also highly unionised, with a closed shop agreement. Why then did the union felt compelled to reach such an agreement? The crisis in the sector is part of the answer, but the sector had been facing major challenges for many years, and more recently had been showing signs of stabilisation, as the union itself argues. The growing offensive by employers against collective bargaining in clothing is clearly an important part of understanding the pressure placed on the union. Another important structural element is that because there is no national minimum wage floor, this allows employers to pursue a race to the bottom on wages, particularly (but not only) in poverty stricken areas such as the former Bantustans, where some clothing manufacturers are located. But these pressures are not unique to the clothing sector.

The reality is that it is very difficult for the unions (or government), throughout the economy, to pursue a national wage policy through the patchwork of voluntary collective bargaining, and Sectoral Determinations. Employers are able to pick holes in an already leaking wage structure. An honest assessment is that we have failed to substantially transform the apartheid cheap labour structure, in most of the private sector, because South Africa doesn't have a coherent wage policy, or a national minimum wage structure in place, nor do we have comprehensive collective bargaining. In this situation, unions are constantly forced to fight rear-guard battles, particularly in the ultra-low wage sectors, such as clothing. This is in sharp contrast to the position we outlined in Brazil, where government intervention has played a key role in driving a new wage and anti-poverty strategy.

The labour movement is therefore at a strategic crossroads: either it continues the current approach of trying to wage battles purely at a sectoral level, with the danger of systematically being driven back, particularly in low wage areas of the economy, which employers are using as a testing ground; or it adopts a new approach, which builds on the strengths of a reconfigured centralised bargaining

system and combines this with the exercise of state regulation through the implementation of a national minimum wage, and comprehensive social protection. These three legs of a wage and income strategy - compulsory centralised bargaining, a national minimum wage, and comprehensive social protection - would dramatically raise the living standards of working families, and lay the basis for a radical reconfiguration of the apartheid wage structure. This new wage strategy would be an important complement to economic policies aimed at creating decent jobs, and raising internal demand; and labour market strategies aimed at formalising employment, transforming our skills base, attacking atypical forms of work and so on.

In the next two sections we focus on the role of a national minimum wage and social protection, in setting a basic wage and income floor. In the following section we then look at the need for comprehensive centralised bargaining.

International approach to the national minimum wage

The international literature, particularly from the ILO and other UN structures, emphasises the importance of combining a national minimum wage and social protection, to provide a basic income floor for the working poor and the unemployed. By a floor is meant a level below which no-one should fall. It is not intended as a substitute for collective bargaining, which should improve on these minimum levels. Because of low levels of social protection in developing countries, and high levels of unemployment, the tendency is to look at the basic needs of *families*, in determining the minimum wage. In the developed north, however, the focus is more on the needs of the *individual worker*. Therefore the national minimum wage, in the first instance, is supposed to be linked to consideration of what basic income is needed for a family to live on²⁷, a level below which the household will have to sacrifice basic necessities including adequate food, shelter, education, health care etc.²⁸ The table below characterises the relationship between minimum wages, and collective bargaining and their effect on low pay:

27 The OECD (2010) states that a study of minimum wages showed that in a majority of OECD countries, a full-time minimum wage earner in a single-person household reaches 50% of the median household income, considered the relative poverty threshold in OECD countries. But in the case of families, one minimum wage is normally not enough to escape relative poverty (using the same 50% threshold).

28 Social protection complements the minimum wage, particularly for the unemployed and vulnerable.

Table 3: Two institutions and their potential effects on low-wage work²⁹

Institution	Relevant features	Potential effects on low pay
1. Minimum wage legislation	<ul style="list-style-type: none"> • Method of uprating • Level relative to average earnings Coverage and strictness of enforcement • Use of multiple (or single) minimum rates 	<ul style="list-style-type: none"> • Direct increase in basic pay • Increase in weekly earnings, providing employers do not cut hours of work to offset higher hourly pay • Wage spillover, or “ripple”, effects on pay further up the wage distribution to restore pay differentials by skill, seniority, qualification, etc. • Virtuous cycle of higher pay, better incentives for skill development, higher productivity and higher pay • Increased labour costs encourage negative employer adjustments to working time, training budget, other non-pay costs
2. Collective bargaining	<ul style="list-style-type: none"> • Strength of coverage • Degree of formal or informal coordination • Degree of centralization of bargaining level Strength of trade unions • Wage equity principles (including gender equity) 	<ul style="list-style-type: none"> • Multi-employer bargaining can “take wages out of competition” • Inclusive industrial relations systems integrate new firms, new workforce groups and protect against fragmentation • Strong trade unions can foster solidaristic wage policy, spreading gains from productive sectors to non-productive sectors • Difficult to sustain and continuously renew multi-employer bargaining, especially with internationalized product markets, entry of foreign-owned multinational companies • Gender bias of wage-setting institutions may • hinder women’s pay progress

Source: Adapted from Grimshaw (2011)

²⁹The third aspect Grimshaw (2011) deals with is welfare institutions, and the fourth aspect 'skill formation systems'.

The question of a minimum living level is a contested and ideologically loaded, concept, as there is no generally agreed definition as to what constitutes the basic minimum necessities which poor working families need in order to live. This definition is therefore itself a matter of struggle. However, it is more open to some type of generally agreed social criteria of basic needs, than employer-driven criteria often used to set minimum wages such as 'affordability', competitiveness, etc. We have seen in South Africa how such concepts have been abused, including in the clothing sector, to argue for sub-human wage minima on which it would be impossible for a working family to survive. Employers use arguments, such as the need to meet international competition from ultra-cheap labour countries, the inability of certain (including fly by night) employers to afford a basic minimum wage etc., to drive down minimum wages, and divorce calculation of the minimum wage from any concept of basic needs.

It is therefore critical, in putting forward the need for a national minimum wage in South Africa that the labour movement defend, interpret, and reassert this dimension of basic needs, which is increasingly accepted in the international context. Other factors, when taken alone, such as 'affordability', the alleged employment impact of a minimum wage etc., tend to be ideologically driven constructs, often used to justify super-exploitation. To the extent that these factors are considered they need to be carefully and objectively examined, and regarded as subordinate to the overriding concern of meeting workers basic needs.

The concept of a basic minimum wage floor, below which no-one should be allowed to fall, must be distinguished from the notion of a living wage, which unions struggle for, to give workers a decent life, which goes beyond minimum subsistence requirements. It is only through worker organisation and struggle, and collective bargaining based on strong unions, that the living wage can be achieved. The national minimum wage is, however, an important platform on which to build.

Progressive international literature supports this conception of the minimum wage, and its relationship to collective bargaining. Key issues considered by the ILO, and others advancing social justice in the determination of a minimum wage, include the following seven policy approaches:

- Structure and number of minimum wages - the preference is for simplicity: one national minimum wage;
- The appropriate level of minimum wages - this is generally linked to some concept of a minimum living level, which is progressively improved;
- An approach to increasing minimum wages, and relationship to overall wage levels - a solidaristic approach is advanced aimed at reducing the wage gap and inequalities, while improving pay for all those in the bottom half of the wage structure;

- The mechanism to determine minimum wages, and the role of government - there are various mechanisms, but governments usually have the final say, after recommendation from a tripartite structure;
- The link between minimum wages and social security payments - these are seen as complementary, but the setting of social security at minimum wage levels is not advised by the ILO - see below;
- Minimum wages and the informal sector- minimum wages often impact through a 'signalling effect' to the informal sector;
- Minimum wages and their relationship to collective bargaining - is seen as complementary with minimum wages setting a floor which collective bargaining improves on.

Table 4 summarises the approach of ILO documents and other progressive literature to these 7 issues, except the 1st bullet (on the structure/ number of minimum wages), which we deal with separately:

Table 4: Summary of statutory minimum wage policies

Level of minimum wages	<ul style="list-style-type: none"> • Minimum wages must affect a sufficient number of the lowest wage earners to be effective • Minimum wages should be between 40 and 60 per cent of average or median wage (this is the case in most countries) • A basket of goods can be defined as a living wage and this can become the minimum wage • The minimum wages should as far as possible allow a single worker to live a decent life; in developing countries minimum wage may cover the living expenses of a whole family.
Frequency of minimum wage adjustment	<ul style="list-style-type: none"> • Annual adjustments; in a situation of very high inflation a more frequent adjustment is needed • Discretionary adjustments
Rules for quantitative changes of minimum wages	<ul style="list-style-type: none"> • At least according to the wage norm (medium-term productivity in the industrial sector plus target inflation rate) • If the wage level increases faster than the wage norm minimum wages should increase according to the wage level • To compress the wage structure from below, minimum wages should increase faster than the wage level • No automatic indexation of minimum wage adjustments/ discretionary adjustment process of statutory minimum wages
Adjustment mechanism of minimum wages	<ul style="list-style-type: none"> • There should be at least one tripartite body that recommends minimum wage adjustments • Instead of governments' representatives in the tripartite body, independent experts can be appointed; the model of the Low Pay Commission in the UK is a positive example
Link between minimum wages and social security payments	<ul style="list-style-type: none"> • Minimum wages and social security payments should be de-linked • As soon as such a link exists because of budgetary reasons governments are very reluctant to increase minimum wages • The more minimum wages and social security payments are de-linked, the higher the likelihood that governments will increase the power of tripartite bodies to determine minimum wages
Role of minimum wages for the informal sector	<ul style="list-style-type: none"> • Empirical analyses show that statutory minimum wages influence wages in the informal economy • There seems to be a signalling effect from the formal to the informal economy.
Minimum wages and collective bargaining	<ul style="list-style-type: none"> • Minimum wage policy should not substitute collective bargaining • Minimum wages should set the platform for wages, unions can and should then negotiate higher minimum wages in certain industries whenever possible

Source: Table is an edited version of Herr/ Kazandziska (2011, p.22)

The Situation in South Africa

There is no national minimum wage in South Africa. Key features of the minimum wage structure that currently exists include:

- The existence of multiple, fragmented, minimum wages
- Low levels of these minimum wages
- Lack of a poverty line or basic income floor measure
- Low levels of enforcement
- They have a complicated relationship to collective bargaining

Nevertheless the existing minimum wages do play an important function. The existence of multiple minimum wages: As outlined above, South Africa has a patchwork of largely sectoral minimum wages, some of them set through collective bargaining between the parties, and some of them set by government through Sectoral Determinations. As at 2010, minimum wages were set in 11 Sectoral Determinations³⁰, and by 47 private and public sector Bargaining Councils (BC's), with huge variation, between and within sectors, as well as regional variation, in the minimum wage levels. In addition, there are minimum wages set in hundreds of collective agreements outside Bargaining Councils, either at sectoral level, as with the Chamber of Mines, or at company level. These minima are therefore neither comprehensive nor uniform.

Sections of the workforce, including certain groups of atypical workers, as well as workers in certain sectors or sub-sectors are not covered, because of gaps in the system. If we consider that the Bargaining Councils only cover about 2,4 million workers, and Sectoral Determinations about 3.5 million³¹, there are clearly large gaps in the system (these account for only 5.9 million of the approximately 10.2 million formal sector workers)³². A far smaller number of workers (than either Bargaining Council agreements or Sectoral Determinations, are covered by non-statutory collective agreements, at sector or workplace level, although exact figures are not available. One major non-statutory sectoral agreement exists at the level of the Chamber of Mines. At workplace level, the 2012 COSATU State of Affiliates report (Naledi, 2012a) suggests that the overwhelming majority of affiliates, with the exception of SA Commercial Catering and Allied Workers Union (Saccawu), have less than 25% of their agreements in the workplace. Therefore it

30 In South Africa there are currently eleven sectoral determinations, or wage minima, governing vulnerable workers in different sectors of the economy, namely Forestry, Agriculture, Contract Cleaning, Taxi Operators, Civil Engineering, Learnerships, Private Security, Domestic Workers, Wholesale and Retail, Hospitality, and Children under fifteen in Advertising, Artistic and Cultural Activities (DPRU, 2010, p.3).

31 These figures were given by Godfrey et al. (2006, p.89) for 2004. Since then workers covered by Bargaining Councils agreements have decreased, and those covered by sectoral determinations have increased somewhat. The total figure however is not significantly different.

32 According to Statistics SA (2012), there were 9.6 million non-agricultural workers in the formal sector as at December 2011, and 630 000 workers in the agricultural sector. The total number of workers in the formal sector is therefore about 10.2 million.

is likely that at least a couple of million workers are not covered at all by minimum wages.

The fragmented nature of the system is illustrated in Table 5 that documents average wages for 'elementary workers', covered by different types of wage fixing mechanisms. While these figures are average wages, not minima, they nevertheless capture the wide range, or dispersion, of wages among blue collar workers in different sectors, the very low level of wages amongst them, the many different minima which exist, and the big gap between wages earned in the different categories of agreements and determinations. For example, the average wage for elementary workers covered by Sectoral Determinations is 2.5 times less than the average wage for workers covered by collective agreements. Further, within the collective agreements, there is a wide range. Table 5 documents the wide dispersion of average wages for elementary occupations, according to agreement type.

Table 5: Average monthly wage for workers in elementary occupations^{a)}, 2010

Type of agreement	Sample	Monthly weighted average	Number of workers
Sectoral Determinations	14	R1479	1 525 000
Bargaining Councils (private)	53	R3421	658 957
Bargaining Councils (public)	84 ^{b)}	R4226	33 524 ^{c)}
All collective bargaining Agreements ^{d)}	387	R3711	916 353
All agreement types ^{e)}	401	R2321	2 441 353

a) Elementary occupations exclude wages for semi-skilled and skilled workers. These figures therefore exclude a significant number of workers. Nevertheless it gives a good indication of the relative wages by agreement.

b) There are 5 public service Bargaining Councils at national level, including the Public Service Co-ordinating Bargaining Council (PSCBC) itself (plus the Public Health and Social Development Sectoral Bargaining Council, the Safety and Security Sectoral Bargaining Council, the Education Labour Relations Council and the General Public Service Sectoral Bargaining Council (GPSSBC). Amendments to the LRA disestablished the 36 departmental and provincial Bargaining Councils in the public service. The reason that this table lists 84 Bargaining Council Agreements may be that a number of the old collective agreements signed in the old Departmental Bargaining Councils are still in force.

c) The number is so low because of the small number of manual workers covered by Public Service Bargaining Council agreements, given the widespread situation of contracting out.

d) This includes both Bargaining Councils agreements and collective agreements outside Bargaining Councils.

e) This includes all Sectoral Determinations and collective agreements.

Source: LRS (2012): Award website

There is no coherent wage policy which governs minimum wages. No reference point exists to guide the setting of a minimum floor, including in vulnerable sectors. Leaving aside collective agreements, which are based on negotiation between the parties, it becomes obvious when looking at Sectoral

Determinations that there is little commonality, or coherence which guides them. If the minima were determined by a clear reference point, relating to the cost of living, one would expect that they would cluster around a common figure, with a variation of not more than 25-50%. However, if we look at Figure 1 above, we see that the minima in the lowest sectoral determination are as much as 300% lower than the highest determination (which is itself way below the household subsistence level, as we see below). The discrepancy is even greater with certain collective agreements, with the ratio of minimum wages between the highest and lowest Bargaining Council agreement being more than 4:1.

Because of the way in which these minima are determined, the processes are fragmented and largely technocratic, meaning that there is no national focus on the setting of the minimum wage, and low public knowledge of what the minima are, unlike countries where there is public engagement around the setting of a national minimum wage. In the absence of political mobilisation, and activism by unions around setting the minimum wage, powerful sectoral interests are able to control the process, and limit the impact of workers, who are too vulnerable and unorganised to assert their voice.

The Employment Conditions Commission, responsible for recommending sectoral minima, has not distinguished itself as a powerful advocate for vulnerable workers. The impression exists that the lobbying by employers' interests, around arguments such as 'affordability' are more influential in setting these minima than any objective criteria of workers' needs³³. Inherited apartheid wage structures in cheap labour sectors have not been fundamentally disturbed.

Regardless of the limited but significant gains which may have been made in the ultra-low wage sectors, such as domestics and agriculture, the clear sense is not only that existing minimum wage setting mechanisms are failing to bring workers in such sectors out of poverty; but that many workers are getting stuck at the level of these very low minima. This makes achieving decent national minima even more critical, as many employers in low wage sectors, covered both by Sectoral Determinations, and Bargaining Council agreements are using such minima to determine actual conditions: as the Labour Research Services has observed, not only in relation to minimum wages, but also other conditions such as hours, leave etc., these agreements and the Basic Conditions of Employment Act (BCEA) look more like a ceiling, than a floor, with few significant upward variations (LRS, 2012).

A national minimum wage would therefore be important:

- In overcoming this fragmentation, and ensuring comprehensive uniform coverage, (a wall to wall floor), through which no worker would fall;
- In facilitating campaigns for a national wage floor as a weapon to fight working poverty, and as a platform on which to build greater improvements; and

³³ The Employment Conditions Commission (ECC) has not advanced an assertive case for example around the need for a nationally accepted minimum living level.

- Because of its simplicity and clarity, every worker would be made aware of their rights, unlike the current system, which has numerous sectoral and regional variations.

The ILO Global Wage Report 2008/09 makes a strong argument for one national minimum wage under the heading Keeping it simple: “It is important that the design of minimum wage fixing institutions is kept simple. A majority of countries in the world implement relatively straightforward national minimum wages... National minimum wages are economy-wide wage floors that apply to all workers, with possible variations between regions or broad categories of workers (in particular young workers or other groups such as domestic workers). Examples include the United Kingdom’s national minimum wage and the SMIC in France. Another example is the US federal minimum wage, which celebrated its 75th anniversary in 2007. There are also a fair number of developing countries that rely on such relatively simple systems, including Brazil, China, and much of francophone West Africa.” (ILO, 2008, p.51)

Low levels of the minimum wages: Ultra-low minimum wages for vulnerable sectors are not confined to Sectoral Determinations, although sectoral determination minima are amongst the lowest, in sectors such as agriculture, forestry, domestics, security, and hospitality. Bargaining Council agreements also contain many low wage minima way below R4000 per month, not just in clothing, but in many other sectors- (see Table 1). The LRS uses R4105 as a 2010 benchmark for the minimum living level: at this benchmark there are few sectors outside the public sector which have minima greater than this (LRS, 2011, p.14).

Given the fact that Bargaining Council agreements are negotiated in organised sectors, it is not surprising that most Bargaining Council minima, while very low, are significantly higher than minima in Sectoral Determinations. Further, bilateral agreements negotiated at company or sector level, have higher minima on average than Bargaining Council agreements, although Bargaining Councils cover more workers, and in theory set minima, which can be improved on at company level through the negotiation of 'actuals'.

There are two key yardsticks which can help us to measure the adequacy of minimum wages:

- The relationship of these minima to a minimum living level, or put differently, whether the affected workers are living in poverty; and
- The proportion of the average minimum wage to the national average wage, a yardstick which is used internationally.

The low level of wages in the South African economy in general is illustrated by the median wage figure, which reflects the point at which the same number of workers earn below and above that figure. Statistics South Africa reveals that in 2010 the median employee earned R2800 a month, and even the median formal-sector employee only earned R3683 a month (Statistics SA, 2011, p.vii).

Poverty and low minimum wages: The extent of poverty amongst workers, even those covered by minimum wages, is shocking. This is illustrated by the Development Policy Research Unit of University of Cape Town (DPRU) calculation - see Table 6 - that, even using a low poverty level measure, two thirds of workers covered by Sectoral Determinations in 2007 were living in poverty (if you combine those classified as 'ultra-poor', and 'poor'). The inadequate level of the minima is demonstrated by the fact that the poverty profile of workers covered by determinations has hardly changed since Sectoral Determinations were introduced in 2002³⁴, with the exception of farm and domestic workers, where poverty levels were reduced significantly³⁵. Only a third of workers in these sectors covered by determinations were described as non-poor in 2001. This number, of non-poor, in 2007 increased marginally - by only 2% on average - after 5 years of the operation of the determinations. In fact, casualisation and weak enforcement saw poverty actually increase amongst workers in certain sectors - in contract cleaning, security, and hospitality.

Table 6: Proportion of households by poverty status and sectoral determination of household in 2001 and 2007 in per cent

	2001			2007			Total
	Ultra poor	Poor	Non-poor	Ultra Poor	Poor	Non-poor	
Retail	12.6	24.8	66.1	11.2	24.8	63.9	100
Domestic	45.3	28.9	22.5	36.6	28.9	34.6	100
Farm	45.0	44.1	14.8	34.8	44.1	21.0	100
Forestry	36.7	41.6	29.5	32.5	41.6	25.9	100
Taxi	12.1	28.0	49.7	26.7	28.0	45.3	100
Security	11.6	33.0	64.5	14.7	33.0	52.3	100
Hospitality	19.0	28.8	57.9	18.2	28.8	53.0	100
Contract cleaning	15.4	28.7	55.6	24.3	28.7	47.0	100
Civil engineering	1.5	0.0	94.7	3.1	0.0	96.9	100
Total (all workers covered)	33.3	32.3	34.4	30.2	33.0	36.8	100

Source: DPRU (2010, p.39)

³⁴ Although in some sectors, wage determinations were already in place in 2001, and were replaced by sectoral determinations.

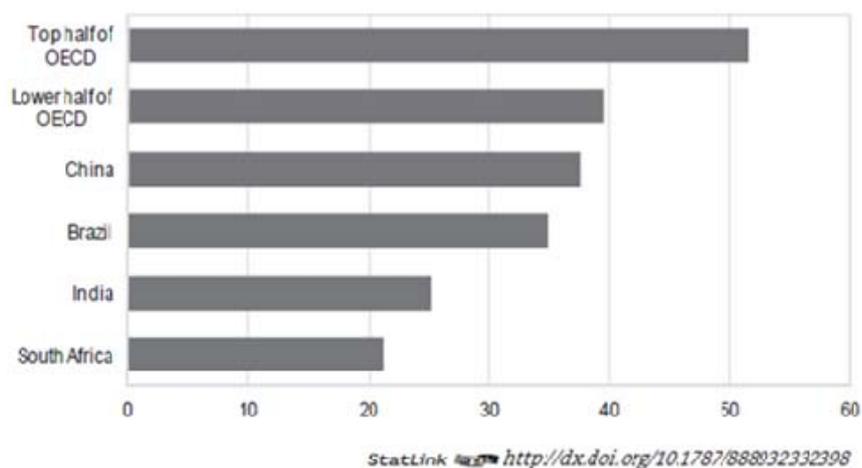
³⁵ Table 6 shows that the proportion of farm worker households that were non-poor increased significantly from 14.8 to 21 per cent between 2001 and 2007; and domestic worker non-poor households increased from 22.5 to 34.6 per cent.

It would be useful to conduct this same exercise for workers covered by Bargaining Councils, and other collective agreements, most of whom are union members. It seems clear that a significant number of such workers, in a range of sectors, would also be classified as living in poverty, although not to the same extent. According to the DPRU "the analysis of household poverty and Sectoral Determinations suggests that on average, households with workers dependent on wages subject to minimum wage legislation are likely to be poor, whereas households where wage earners are not covered by Sectoral Determinations (their wages may for instance be set by bargaining council agreements) are less likely to lie below the poverty line." (DPRU 2010, p.39)

The proportion of the average minimum wage to the national average wage: the ILO and other international experts argue that the national minimum wage as a proportion of the average wage should be at least 40-50%. In Latin America the levels of minimum wages are higher than this, with a regional average above 50 per cent of average wages (ILO, 2008).

The OECD 2010 report Tackling inequalities in Brazil, China, India and South Africa states that around two-thirds of OECD countries have set statutory nation-wide minimum wages, and although their levels vary greatly across countries, they "tend to be between 40% and 50% of average wages" (OECD 2010, p.279)³⁶. They point out that in 2006, with ratios below 25%, South Africa (and India) is "considerably below the OECD average" (OECD 2010, p.279), which indicates both our high levels of inequality, and the low relative level of our minimum wages (see Figure 2).

Figure 4: Ratio of minimum wages to average wages in per cent



Note: Ratio of minimum to average wages in 2006 for Brazil China India and South Africa;
 Ratio of minimum to average wage of full-time workers in 2008 for OECD countries.
 Source: OECD (2010, p.280)

³⁶ It is noted that some international bodies, including the ILO, suggest that in countries with extreme inequalities in the wage structure, such as ours, the minimum wage should be pegged at about two thirds to 75% of the median wage.

The gap between Brazil and ourselves has grown. With large minimum wage increases since 2006, Brazil's ratio of minimum to average wages is now over 50%. Importantly, this has had a knock-on effect for all low paid workers (throughout the bottom half of the wage structure), not just those earning the national minimum wage, so the median wage has also increased significantly³⁷.

If we follow the guideline for a national minimum wage of 40-50% of the average wage, we get interesting results: the monthly earnings figures from Stats SA (Table 7 below) for the last quarter of 2011, show that the average national earnings in the formal non-agricultural sector (including bonuses and overtime³⁸) is R13284. For the purposes of our calculation, we can reduce this figure to R12000³⁹, to exclude bonuses and overtime, which are slightly less than 10%. Based on the calculation of a 40-50% ratio for minima to average wages, a South African national minimum wage, in 2011 prices, should be R4800 to R6000, way above the average minimum wages for Bargaining Councils, and Sectoral Determinations (which are below R3000 and close to R2000 respectively) and well above the average minimum wage for the whole economy, calculated by the Labour Research Services to be R3299 p/m⁴⁰ in 2011. A national minimum wage of R4800 to R6000 (in 2011 prices) would therefore put South Africa in line with international norms. This target of 40-50% of the average wage may not be achievable in the short term, but it should definitely be a target that we aim to progressively realise over the medium term.

37 The real median wage in Brazil increased by 23.5% between 2003-2008 (Baltar, 2010).

38 This is the only global figure available. The Statistics SA figure excluding bonuses and overtime, is only available by sector, and no national average is available. However, the difference between the two sets of figures is less than 10%.

39 The inclusion of agriculture would bring this figure down slightly.

40 Given what we know, the LRS figure seems to be on the high side. We don't know if this is a weighted average, reflecting the number of workers, or whether it is a simple average of the different determinations/agreements.

Table 7: Estimates of average monthly earnings, including bonuses and overtime payments, at current prices, by industry within 95% confidence limits in rand in 2011

Industry	August 2011*				November 2011			
	Lower Limit	Estimate	Upper Limit	RSE+	Lower limit	Estimate	Upper limit	RSE+
Mining and quarrying**	13 784	13 784	13 784	0,0	13 969	13 969	13 969	0,0
Manufacturing	11 297	11 567	11 837	1,2	11 874	12 182	12 490	1,3
Electricity, gas and water supply	23 845	24 448	25 051	1,3	26 699	27 359	28 019	1,2
Construction	8 847	9 530	10 213	3,7	9 054	9 736	10 418	3,6
Wholesale and retail; repair of motor vehicles, motorcycles and personal and household goods; hotels and restaurants	8 052	8 453	8 854	2,4	8 139	8 519	8 899	2,3
Transport, storage and communication	15 996	16 612	17 228	1,9	16 180	16 864	17 548	2,1
Financial intermediation, insurance, real estate and business services	14 040	14 850	15 660	2,8	13 558	14 319	15 080	2,7
Community, social and personal services	14 559	14 805	15 051	0,8	15 763	16 039	16 315	0,9
Total	12 710	12 923	13 136	0,8	13 072	13 284	13 496	0,8

*Revised estimates +RSE= Relative Standard Error

**Data obtained from the Department of Mineral Resources at this stage the Department of Mineral Resources is unable to provide data items with regard to bonuses and overtime payments separately.

Source: Statistics SA, Quarterly employment survey, Dec 2011

Therefore it is clear that, both by South African standards (in terms of the level of poverty associated with ultra-low minimum wages); and in terms of international benchmarks for the level of minimum wages, South African minima are far too low⁴¹. The question then is obviously, what is the 'appropriate level' and how do

41 The DPRU (2010) study argues that we have 'high minima' in vulnerable sectors covered by sectoral determinations, based on the argument that when compared to mean, or average wages, in some sectors, the minima are sometimes even greater than average wages. This is because of the widespread lack of enforcement- see below. This is obviously a circular argument, which justifies low minima on the basis of low enforcement. This is

we achieve it? Proposals should be developed as to how we could make the transition to raising our minimum wages to this international benchmark, and research how this process has been managed in other countries, particularly Brazil and other Latin American countries, such as Argentina. It is suggested below that we connect this discussion to proposals for a national agreement in terms of government's New Growth Path policy document, and a policy and legislative framework which needs to be developed to manage this transition.

Minimum wages and other conditions of employment: Low wages are associated with bad conditions of employment. The international literature points out those workers are not in a position to trade low wages with other more favourable conditions, and benefits. Low-paid workers tend to be worst off both in terms of wages and employment conditions. Interventions to improve minimum wages often go together with improvements in the rights, working conditions and benefits of low paid workers. While limited information is available on South Africa, it does appear that improvements in the minimum wage, and associated conditions in Sectoral Determinations, have had some impact on improving other conditions of employment, although limited. As with the minimum wage there is still the need for far bolder interventions on this front.

Table 8 shows changes in working conditions for workers covered by Sectoral Determinations. The results suggest that whilst overall there has been a slight improvement in working conditions, and a significant improvement in legal compliance with Unemployment Insurance Fund, contracts etc. amongst workers covered by Sectoral Determinations during the 2001 to 2007 period, domestic workers seem to be the worst off, as well as workers in the Farm, Forestry and Taxi sectors.

why minima need to be compared to global figures for the economy as a whole, and need to be rigorously enforced.

Table 8: Changes in working conditions by sectoral determination, 2001 and 2007

Sectoral Determination	Paid Leave		Written Contract		Medical Aid		UIF		Flexible working hours		Pension	
	2001	2007	2001	2007	2001	2007	2001	2007	2001	2007	2001	2007
Retail	56.5	63.9	52.4	78.0	21.4	20.9	57.2	71.5	9.0	4.8	43.3	50.7
Domestic	17.3	24.2	9.1	28.8	1.3	0.9	3.5	29.9	18.8	13.6	3.6	8.9
Farm Workers	28.2	37.3	30.9	59.8	4.0	5.5	33.0	62.0	6.5	6.0	13.4	22.4
Forestry	34.1	35.4	38.2	59.1	5.0	6.6	46.7	57.9	2.5	3.2	28.2	28.0
Taxi	57.3	35.6	40.4	49.8	22.0	12.3	47.5	40.9	8.3	16.1	44.8	28.5
Security	59.2	59.2	65.8	86.8	13.5	14.4	62.2	73.5	5.0	1.3	44.7	49.0
Hospitality	45.5	56.1	42.7	74.0	6.1	8.6	42.3	67.6	6.5	4.0	25.8	33.8
Contract Cleaners	65.1	61.3	63.5	80.2	25.0	26.2	56.9	71.1	4.2	2.3	60.7	54.5
Civil Engineering	83.7	92.2	79.6	94.3	63.6	77.3	63.1	85.1	8.2	3.0	78.1	92.4
Total	40.9	45.4	38.5	60.4	11.5	11.6	37.4	56.4	9.6	7.3	28.2	32.3

Source: DPRU (2010, p.46)

Table 9 shows the mean number of hours worked per week by sectoral determination. Overall, there was a significant decline in mean weekly hours worked, of nearly 6 percentage points between 2001 and 2007. Some of this may be a result of Sectoral Determinations allowing for minimum wages to be reduced through reducing hours, something that needs to be looked at more closely as it is particularly problematic in sectors which have been casualised.

Table 9: Mean hours worked per week by sectoral determination, 2001 and 2007

	Retail	Domestic Workers	Farm Workers	Forestry	Taxi	Security	Hospitality	Contract Cleaning	Civil Engineering	Total
2001	47.1	41.7*	51.7*	48.0	49.2	56.5	49.3*	46.4*	45.0	47.5*
2007	45.3	38.5*	47.8*	47.5	53.8	55.4	44.8*	43.1*	42.6	44.8*
%change	-3.7%	-7.8%*	-7.4%*	-1.0%	9.3%	-2.0%	-9.1%*	-7.1%*	-5.4%	-5.8%*

Source: DPRU (2010, p.47)

Low levels of enforcement: No matter how radically we reform wage policy, and employment conditions, these changes won't have the desired impact unless government massively ramps up capacity to police and enforce them. But we need to go beyond that, to ensure that strategies are in place to formalise employment, and to create a combination of penalties and incentives to bring all employers into the net. We need to look at Brazil's strategy in more detail to see how it has been so successful in achieving both formalisation and enforcement.

It is well known and documented how employers evade Bargaining Council agreements, particularly in sectors such as clothing⁴². The Development Policy Research Unit study of Sectoral Determinations also reveals widespread non-compliance, with 45% of workers covered by Sectoral Determinations earning below the relevant minimum wage. The study finds that "non-compliance or violation in South Africa is high. The high estimates of violation are reflective of a significant number of employers in South Africa who are violating minimum wage laws across all Sectoral Determinations (DPRU, 2010, pp.9-10). The survey finds that):

- In 2007, 45 per cent of all workers covered by Sectoral Determinations were not being paid the legal minimum. Non-complying employers paid wages that were on average 36 per cent short of the legislative minima in that year.
- Security workers were the most violated cohort in 2007. 67 per cent of Security workers earned sub-minimum wages in 2007, which is the highest estimate amongst all sectors. Civil Engineers recorded the lowest levels of violation (9 per cent).

42 See LEP and Naledi (2010).

- Although non-compliance levels of employers with minimum wage legislation in South Africa are high, there is some evidence to suggest that non-compliance declined during the 2001 to 2007 period. The proportion of violated workers fell from 55 to 45 per cent, and the mean gap between their wages and the minima declined from 45 per cent to 36 per cent during this time.
- The decline in violation was most notable amongst Domestic and Farm workers. Whilst 63 per cent of all Domestic workers were earning below the minimum in 2001, by 2007 the measure of violation for this cohort had dropped to 39 per cent. The figures for Farm workers in turn yield a drop in non-compliance rates from 78 per cent to 55 per cent. (DPRU, 2010)

Importantly, the study finds further that "the intensity of enforcement, indicated by the number of labour inspectors in an area, is a key predictor of whether an employer will violate minimum wage regulations or not. A larger presence of inspectors in an area possibly acts as a deterrent to employers considering violating the minimum wage, given the larger probability of being caught and penalized. This result has important implications for policy makers wishing to increase compliance with minimum wage legislation."(DPRU, 2010, p.64).

Interestingly, a rise in violation (or a fall in enforcement) was associated with a decline in employment in the Retail, Domestic worker, Hospitality, and Civil Engineering sectors. These sectors all yielded "negative employment-violation elasticity estimates" (DPRU, 2010, p.5). However, whilst this result at "first glance indicates that an increase in enforcement increases employment, this result must be interpreted with caution" (DPRU, 2010, p.5). A similar pattern of decreased enforcement being associated with employment destruction can be detected in the clothing sector, where non-compliant employers are often marginal, fly by night operators, who are unable to sustain their operations.

Box 2: The ILO on creative approaches to promote enforcement

Penalties for violators, adequate compensation for workers whose rights have been breached and suitable resourcing of the enforcement authority, are all crucial. But even such measures may not be sufficient, particularly in developing countries with a large informal economy. In such a context, one way to make the minimum wages binding is by ensuring consistency with any existing employment guarantee scheme. Through such schemes, the government can act as an "employer of last resort", employing the entire excess supply of labour at the stipulated minimum wage rate. State procurement policies may also be used to promote adherence to minimum wage laws (ILO, 2009a, p.12).

The need for a new approach to the minimum wage

The above analysis shows that the existing minimum wage system in South Africa has clearly failed to achieve its objectives of addressing the plight of vulnerable workers, and transforming the apartheid labour market. Further, in its current form, it is incapable of acting as a powerful component of our development strategy - raising effective incomes and demand; and drastically reducing income inequality, and poverty. A radically different approach is therefore required.

To sum up, a comparison of the key features of a progressive perspective supported internationally, with the reality obtaining in South Africa, shows that we are falling far short of the recommended approach, in four major respects:

- On the structure of minimum wages - while the international preference is for one national minimum wage, South Africa has numerous, fragmented minimum wages, and there is currently no plan to move in the direction of one national minimum wage;
- The appropriate level of minimum wages - while international advocates of the minimum wage propose that it should be linked to the concept of a minimum living level, which is progressively improved, there is no connection between minimum wages in South Africa and some broadly agreed minimum living level. Most South African workers earning minimum wages live in poverty, because of the extremely low level at which they are set. Many others earn way below these wages, because of widespread non-compliance;
- Many advocates also advance a carefully designed solidaristic approach, in terms of progressively increasing minimum wages, and reducing gaps in overall wage levels, while improving pay for all those in the bottom half of the wage structure. However there is no coherent wage policy, or deliberate programme to use minimum wages in South Africa to advance these objectives, despite our huge income inequalities;
- It is recommended that the relationship between the national minimum wage and collective bargaining is seen as a complementary one, and that the different mechanisms should perform different functions. The minimum wage should set a floor, below which no worker can fall, while collective bargaining improves on this wage floor in different sectors and regions, and negotiates a wide range of benefits and improvements for workers. In South Africa, however, there is confusion of the roles of these different mechanisms: trade unions constantly have to struggle to use collective bargaining to establish and defend a minimum wage floor, because of the lack of a national minimum wage, such as in the clothing industry; and minimum wage setting mechanisms in Sectoral Determinations are also used for collective bargaining purposes in vulnerable sectors (such as security), in the absence of comprehensive centralised bargaining. Therefore we have a de facto hybrid system, which fails to do justice to either element.

Key challenges if we are to successfully advance a radically different approach include:

- (i) Advancing detailed proposals for one national minimum wage as part of a comprehensive wage strategy;
- (ii) Consideration of the employment effects of a national minimum wage;
- (iii) Addressing resistance in society to the idea of a national minimum wage;
- (iv) An approach to the relationship between collective bargaining and minimum wages;
- (v) Establishing a minimum living level measure; and
- (vi) Developing proposals for implementation, and enforcement, of the system.

Policy options for a national minimum wage

Our departure point is that one national minimum wage has numerous advantages over the current situation, providing it is set at a reasonable level, to improve workers lives. It would be comprehensive, clear, simple, and provide a social floor for all. This is in contrast to our numerous, fragmented sectoral minima with massive discrepancies and gaps. One national minimum wage would be easy to popularise, everyone could be made aware of their rights under it, and therefore it would be easier to enforce. Similarly it would facilitate national campaigns for a decent minimum, and link to discussion of what constitutes a minimum living level. It would be clear that this is a floor, above which workers and employers should negotiate sectoral minima. The above scenario is the ideal we should strive to achieve.

Having established this in principle, however, further consideration would need to be given to the structure of minimum wages, and the relationship of the national minimum wage to other minima: If we had one national minimum wage, would it mean that other sectoral minima would only be set by centralised bargaining, and we would do away with all Sectoral Determinations? Or even if we did away with most Sectoral Determinations, would it be desirable to have some sectoral minima set by the state at a higher level than the national minimum wage? This is the situation in Brazil, where sectoral and regional minima can be set in addition to the national minimum wage, as long as they are set at a higher level.

Although appealing at some levels, the danger of this approach may be that it would create a temptation by the state to set the national minimum wage too low, on the basis that sectoral minima could be set above this. While having government-set sectoral minima in addition to a national minimum wage , would improve on our current situation, in that everyone would be covered, the danger is that it would perpetuate the current fragmentation of minimum wages, when the objective is to create a greater convergence, reduce inequalities, and

eliminate working poverty. This is of course unless there was a coherent wage policy which systematically set out to achieve these objectives.

On the other hand, one national minimum wage, without additional Sectoral Determinations, also runs the risk of using the lowest paying sector as its reference point. Even if a new national minimum wage leads to a substantial increase in the lowest paying sector/s, the danger is that it may be set too low to make a sufficient impact on other sectors. So for example, even if the national minimum wage was immediately set 50% above the level of the current minimum for domestic workers, it would still be below the current minima in a number of sectors, and about half of our estimated Minimum Living Level.

One option would be to settle for one national minimum wage, despite the drawbacks outlined above. A second option to address this problem would be to use a 2 tier structure, as in a number of countries, in which domestic workers and farm workers are not covered by the national minimum wage, but are covered separately. The advantage of this could be to push up the level of the national minimum wage. The clear disadvantage however is that it would perpetuate a degree of fragmentation, although far less than currently. A third option, which may be preferable, would be to begin with this two tier arrangement, which initially covers domestic and farm workers separately, and phase in one national minimum wage which would include domestic and farm workers, over an agreed period.

Whatever is decided, the issue of the level at which the national minimum wage is pitched would be a major challenge. The wide disparity of current minima presents a problem. As argued above, we don't want to pitch the national minimum wage using current ultra-low minima as the major reference point. The national minimum wage would probably need to be somewhere between the average minima in collective bargaining agreements, and those in Sectoral Determinations. At the same time we need to look at what is achievable over the short term, and have a plan to progressively move towards an agreed minimum living level.

According to the Labour Research Services (2012, p.9), the average minimum wage was R3405 in 2011 for all collective bargaining agreements (including company level)⁴³; and R2118 for Sectoral Determinations. If the national minimum wage was pitched between these averages, it would suggest an initial level of between R2700 to R3000 in 2011 prices. While this may be low in terms of current Minimum Living Levels and the international benchmarks discussed above, it would nevertheless constitute a large increase, in percentage terms, of current sectoral determination minima in agriculture, domestics, retail, security, hospitality, etc. (between 50-100%). For unskilled workers covered by Bargaining Council agreements too, this would represent a major gain on current minima in sectors such as clothing, building, fishing, furniture, motor etc. (an increase of between 30-80%). Therefore a national minimum wage initially pitched at this

43 And R2725 for Bargaining Council agreements (LRS, 2012, p.9).

level, and effectively enforced, would substantially improve the position of several million workers, defend workers from attacks on these basic gains, while laying a floor for further gains to be made in various sectors.

Note on the 2013 farm workers sectoral determination: the feasibility of ramping up minimum wages in the low wage sectors has been tested in the agricultural sector this year, after massive struggles by farm workers in the Western Cape, demanding that the minimum wage be increased by over 100%, from R 69 to R150 per day. In an important advance, the minimum wage for farm workers was increased to R105 per day or R2274.82 per month. While still very low, this constituted an increase of around 50%, drastically reducing the gap between farm worker minima and those of other sectors.

There is currently some acknowledgement that the system of wage regulation in South Africa is incoherent and leaves large gaps. Partially in recognition of the problem that there is no comprehensive measure, the Department of Labour and Employment Conditions Commission raised the possibility in 2011 of a general sectoral determination for unskilled workers (ECC , 2011). But there has been no progress on this idea. In any event, such an intervention, while an advance on the current situation, would not be a substitute for a national minimum wage , linked to a minimum living level measure. We cannot expect that the radical overhaul proposed of introducing a national minimum wage, would be easy to achieve, nor that it will be achieved through the force of argument alone. The fight for a national minimum wage, as well as the level at which it is pitched, will be the subject of massive social contestation, given that the very cheap labour foundations of the South African economy is ultimately at stake.

The National Minimum Wage as part of a comprehensive wage solidarity policy: The national minimum wage needs to be a central pillar, together with collective bargaining and other key instruments, of forging a new wage policy for South Africa. The key elements of this policy must be to eliminate working poverty, radically reduce income inequality, and promote a new economic development path. Therefore it needs to be consciously designed as part of a South African wage solidarity model, to work with other elements of the regulatory structure, to achieve these objectives - progressively increasing minimum wages, and reducing gaps in overall wage levels, while improving pay for all those in the bottom half of the wage structure. A policy and legislative framework should be designed to give effect to this. The weak form of regulation currently contained in the Employment Equity Act, aimed at reducing income differentials (which has largely been ignored), needs to be radically strengthened, across our labour legislation. The national minimum wage, as well as other forms of minimum wage setting, including collective bargaining, should be required to achieve certain targets over a specified period of time, in terms of reducing wage inequality, and meeting nationally set Minimum Living Levels. The wage policy could also be guided by international benchmarks such as wage minima being at least 40-50% of the average wage. Achievement of sectoral and company plans to promote wage solidarity could also be a condition for access to certain state incentives,

procurement etc. The goal must be to completely overhaul the current wage structure.

The effect of minimum wages on employment

There is extensive theoretical literature on this question. We don't go into this debate in detail here except to note that the conventional economic wisdom that there is necessarily a direct trade-off between minimum wages and employment is no longer widely accepted. The ILO refutes this conventional economic wisdom- Box 3 below.

Box 3: Do minimum wages hurt employment?

The ILO Global Wage Report quotes from key international institutions refuting this proposition:

Standard textbooks usually explain that minimum wages introduce a "distortion" into labour markets that inevitably translates into lower labour demand and, thus, into higher unemployment or more informal employment ... These assumptions also underpin the views of economists who argue that there should be no minimum wages, since they inadvertently hurt those very workers they are intended to protect...

In recent years, [a contrary] view appears to have become dominant. In 2006, over 650 economists, including five Nobel prize winners and six past presidents of the American Economic Association, issued a statement in which they made the proposition that increasing the minimum wage in the United States 'can significantly improve the lives of low-income workers and their families, without the adverse effects that critics have claimed' ...

Similarly, in the United Kingdom, the Low Pay Commission stated that: "ten years ago, as the minimum wage was about to be introduced, it was just this fear of job losses that dominated discussion. ... In fact, since the introduction of the National Minimum Wage, the Low Pay Commission has been at the forefront of the search for evidence of any damage caused by the minimum wage to the economy or to jobs. So far we have not found any significant negative effects, either in the work we have done ourselves or in the work we have commissioned from others. ...

More recently, the OECD also concluded from a sample of OECD countries that "the ratio of the statutory minimum wage to the median wage is associated with no significant alteration of gross worker flows" and that "taking also into account the micro-economic literature, this suggests that statutory minimum wages have at best second-order impacts on labour reallocation".

Source ILO, 2010

The recent Latin American experience also refutes the idea that large increases in the national minimum wage leads to large scale job losses. As outlined above, the

real value of the minimum wage increased by 81 per cent in Brazil between 2003 and 2010. This was combined with a large increase in formal employment over the same period - over 15 million formal jobs were created. Indeed, analysts argue that the rise in demand resulting from increased incomes was an important element of Brazil's employment-creating growth path. Argentina has had the largest increase in the real minimum wage - 200 per cent between 2003 and 2010 - starting from an admittedly very low level after the collapse of the Argentinian economy, following the currency crisis. The resultant increases in labour income in Latin America are in all cases the single most important factor in reducing inequality - measured in the fall of the Gini coefficients - explaining 73 per cent of the fall in Argentina. Real minimum wages increased in 14 out of 18 Latin American countries in the 2000s, although at very different rates.⁴⁴

In South Africa, no clear relationship has been established between rising minimum wages and levels of employment. The DPRU (2010) study of Sectoral Determinations reveal a mixed picture, but was surprised to find an average bias in favour of growing employment. Their analysis of sectors covered by Sectoral Determinations, showed that after the introduction of higher minimum wages, employment increased by over 650000 workers, from 3,45 million to 4,1 million, in the period 2001 to 2007. "The simple employment-wage elasticity estimate for the 2001 to 2007 period was, somewhat surprisingly, 1.4, suggesting that a 1 percent increase in wage levels was accompanied by a 1.4 percent rise in employment. Most of the sectors yielded a positive employment-wage elasticity estimate, barring the Farm worker, Forestry, Taxi, and Security sectors, which yield a negative relationship between employment and wages." (DPRU, 2010, p. 5)

It is clear however that the employment effects of a minimum wage are not a simple one, or directly causal, but also relate to other conditions in the economy, and the sector involved. The story of the introduction of Sectoral Determinations for farm workers on the one hand, and domestic workers on the other, which saw similar increases in minimum wages, over the same period, with very different 'employment effects'⁴⁵, is a good illustration of the point. Employment performance of sectors can only be explained by a range of economic factors, as opposed to a simplistic connection to the level of a minimum wage. Sectoral conditions, industrial strategy, trade dynamics as well as broader economic conditions (including domestic consumer demand), have a critical role in determining how a sector performs. Further even if minimum wages might reduce employment in certain sectors, on a macroeconomic level employment can increase because of the macroeconomic demand effect of higher minimum wages. Wage policy has to be combined with appropriate economic and sectoral policies to have the desired employment impact.

44 The rise was especially strong in Argentina, Brazil, Honduras (in 2009), Nicaragua and Uruguay (2012) (see Keifman and Maurizio, 2012).

45 Before introduction of the minimum wage in 2001, about 880 000 domestic workers were employed; and in 2011, according to Statistics SA about the same number were employed. In Agriculture however there were large scale job losses over the same period.

Interestingly, since the recent crisis, a number of governments have been recognising the beneficial economic effects of raising minimum wages: "...evidence shows that, contrary to what happened in previous downturns, a large number of countries have raised their real minimum wages or are considering improving their minimum wage fixing systems. This is a recognition that minimum wages can serve as a social floor for wage adjustments, a tool to fight against wage deflation, while maintaining the consumption capacity of those at the bottom of the wage scale, thus contributing to a quicker economic recovery." (ILO, 2009a, 12)

Addressing resistance to the national minimum wage in society

Debunking of the myth about minimum wages destroying jobs is an important element in spreading acceptance of the need for a national minimum wage. At an international level, there is growing approval for the idea that a national minimum wage can promote equity, combat working poverty, and support development. Labour supporting intellectuals, particularly progressive economists, should be urged to throw their weight behind this demand, and counter the arguments of conservative economists, who are given so much airtime in the South African discourse. This requires robust engagement in the media to counter the current public offensive against low-paid workers, as seen with on-going propaganda claiming that unskilled workers in South Africa are overpaid.

In the first instance, it is important to focus on advancing the principle of a national minimum wage, and a process to arrive at its determination, rather than becoming bogged down in a debate about the appropriate amount. The process of formulating a proposed amount should involve broader society, and most importantly the workers who will be affected by such a decision. Mobilisation of a campaign by the labour movement, buttressed by a coherent argument for adoption of the national minimum wage, will be important in mobilising support of labour's civil society allies and the African National Congress (ANC) for such a proposal. Equally importantly, the labour movement needs to engage the government on the need for a new wage policy.

Engagement is also needed amongst unions themselves. Historically some unions have had an ambivalent attitude to the question of statutory, as opposed to negotiated minimum wages. Internationally, however, a shift has taken place amongst many unions traditionally opposed to the national minimum wage, as conditions in the labour market have undermined the voluntarist model: "...Minimum wages also tend to be supported by trade unions, although attitudes have been more sceptical in countries where there are strong voluntarist traditions such as the UK... (In the USA) moves to establish a general minimum to cover men as well as women were originally opposed by the AFL on the basis that the minimum wage would soon become the maximum wage (...). In the UK, trade unions up until the 1980s were not only wary of a national minimum wage but also opposed sectoral minimum wages in the form of wages councils for fear that these sapped the development of free collective bargaining. The weakening of

the voluntary collective bargaining system in the 1980s led, however, to a widespread conversion to the need for statutory intervention. In the US trade unions at the local level have joined forces with other community groups to press for living wages (...). Between 1994 and 2000 in over 50 local states or cities living wage ordinances were passed requiring contractors receiving public funds to pay living wages..."(Rubery, 2003, p.40)

Statutory minimum wages were also questioned in countries with a strong culture of self-regulation through centralised bargaining, such as Germany. This has begun to change now, as centralised bargaining has begun to be undermined, and growing numbers of vulnerable workers are exploited outside the system of regulation: "...As for the German trade union movement, today there is a lively debate between supporters and opponents of establishing a statutory minimum wage... (Opponents arguing that) wage earners guaranteed a minimum wage will have less reason to join a trade union in order to defend their interests... However, (supporters of the minimum wage argue that) it overlooks the point ... that the minimum wage is a building block in the development of collective bargaining. Nevertheless, it is true that this... depends on the political will and organizational efforts of the actors concerned." (Eyraud and Saget, 2005, p.14) Today all unions in Germany support a statutory minimum wage.

Despite this mixed history, unions in many advanced capitalist countries, in addition to unions in the South, have now seen the importance of the national minimum wage, and are active participants in campaigns for its adoption, or strengthening. In the UK for example, the National Minimum Wage Coalition has been campaigning for 10 years. The members of this coalition are the British Trades Union Congress (TUC) and unions such as the public sector union Unison, Union of Shop, Distributive and Allied Workers (USDAW) as well as institutions and organizations like the Institute of Employment Rights, British Youth Council, Child Poverty Action Group, National Union of Students and YWCA England & Wales. The aim of the campaign is to spread information about the national minimum wage, and to promote higher and equal rates across ages and the coverage of apprentices (Benassi, 2011).

Unions have also embarked on international campaigns to push for an international wage floor, in particularly exploitative industries such as clothing: "Companies in the garment sector in Asia strategically undercut labour costs to maintain competitive prices, threatening outsourcing when higher wages are required. To tackle this problem, union leaders and labour activists, mainly from Asia but also from the other continents, set up the Asian Floor Wage Alliance in 2005. This network has been developing a strategy for the Asian garment industry which is based on a campaign for a minimum wage floor." (Benassi, 2011, p.29)

In the background to this paper, we outlined three reasons which historically may have led to some scepticism about the national minimum wage among some COSATU unions:

- The belief that a national minimum wage could undermine worker militancy and organisation;
- Fear that a low national minimum could undermine higher minima in sectors;
- Fears in more conservative circles that a national minimum wage would lead to unrealistic demands in terms of the capacity of the economy.

It is possible that such perceptions continue to exist, and they need to be debated. However, we have spelt out the realities outlined in this paper of the plight of vulnerable workers, and the failure of the voluntarist collective bargaining system, by itself, to achieve its intended objectives over the last 20 years since COSATU's Living Wage Conference, which deferred a decision on the national minimum wage. We have argued that a new combination of statutory wage regulation and centralised bargaining are required to address these realities. These realities include the fact that large numbers of vulnerable workers are not covered by collective bargaining. Further, super-exploitation is not only threatening vulnerable workers but also gains made by the organised working class, e.g. in the clothing sector. The existing system makes vulnerable workers dependent on a complex range of Sectoral Determinations, which keep them locked into an ultra-low wage structure. This arrangement tends to undermine and confuse collective bargaining.

A high profile campaign for a national minimum wage would be an important weapon for organisation amongst vulnerable workers. Employers will resist it, and unions will have to constantly campaign to ensure its implementation. Further, it could provide a stable floor for centralised bargaining in low wage organised sectors, such as clothing, and help stem the pressure for a race to the bottom. Obviously the main source of resistance to proposals for a national minimum wage, as well as its implementation, is likely to come from employers. While not all employers are necessarily opposed to minimum wages⁴⁶, as wage agreements take wages out of competition between employers, there will be major contestation around the level at which the national minimum wage is pegged. Also many employers, as is currently the case, particularly in the most abusive sectors, will resist its implementation. Therefore engagement with employers has to take place at a number of different levels.

⁴⁶ Interestingly a survey of the British national minimum wage in 2007 found that 87% of employers supported it (Benassi, 2011).

While there will inevitably need to be negotiations with the major employer organisations around the national minimum wage, the matter would need to be largely driven by government, as is the case with national minimum wages which have been successfully implemented in other parts of the world. Once employers realise that government, and the ruling party, are determined to implement it, they tend to be less resistant, as outlined by a labour academic writing for the ILO: "While it may be a general rule that employers tend to resist all forms of intervention in their employment practices as a principle, such opposition is not always carried through in their attitudes towards and compliance with labour standards, particularly once these have been in force for a while and are not subject to rapid change....where there is a highly coordinated system of wage determination minimum wages may simply be accepted as a key feature of that system. There is no doubt that employers' attitudes towards compliance with a minimum wage will depend not just on economic but also on social and political forces. Where there are strong expectations of compliance, employers are less likely to resist. This applies even in developing countries; for example in Indonesia negative publicity in newspapers about non complying organisations and public blacklisting of those organisations had apparently more impact on compliance rates than the wildcat strikes that led to the newspaper stories...." (Rubery, 2003, p.39)

The relationship of minimum wages to collective bargaining

The relationship between the national minimum wage and collective bargaining should be a complementary one, given that the different mechanisms should perform different functions. The minimum wage should set a floor, below which no worker can fall, while collective bargaining improves on this wage floor in different sectors and regions, and negotiates a wide range of benefits and improvements for workers. In South Africa, however, there is confusion of the roles of these different mechanisms: trade unions constantly have to struggle to use collective bargaining to establish and defend a basic minimum wage floor, because of the lack of a national minimum wage, such as the situation we now find in the clothing industry; and minimum wage setting mechanisms in Sectoral Determinations are also used for collective bargaining purposes in vulnerable sectors (such as security), in the absence of comprehensive centralised bargaining. Therefore we have a de facto hybrid system, which fails to do justice to either element.

The ILO for this reason supports a unified national minimum wage system, and warns against this situation of proliferation of sectoral minimum wages in its Global Wage Report of 2008/9: "In the absence of strong collective bargaining, governments somehow seem compelled to intervene in wage determination through minimum wages. This has sometimes led to very complicated systems of industry, sectoral and occupational minimum wages. The reliance on overly complex systems of minimum wages rather than collective bargaining is unfortunate for at least two reasons. First, the role of collective bargaining goes much beyond protecting vulnerable workers – it actually benefits a broader

spectrum of workers than do minimum wages. Collective bargaining also goes beyond wage negotiations to include other aspects of working conditions, such as hours of work and quality of employment. Second, minimum wages that set wage rates for many categories of workers in different industries can end up discouraging collective bargaining instead of stimulating it. While some negotiations between social partners over minimum wages have contributed to stimulating collective bargaining, in the majority of cases complex minimum wages were found to 'crowd out' collective bargaining. This negative experience points towards the importance of careful and coherent policy design ... (Further) a particularly important challenge is to investigate ways to extend collective agreements on wages to non-union members, particularly workers in non-standard employment or informal workers." (ILO, 2008, p.46)

The ILO Global Wage Report 2010/11 then argues that a wage policy needs to be holistic, and that forms of collective bargaining, and statutory minimum wages, should play a different but complementary role in this regard: "Low and decreasing union membership and the weakening of collective bargaining in many countries remain causes of concern. This is not just because of the difficulties which workers face in trying to organize themselves ... but also because unorganized workers often have access to few alternative mechanisms to secure fair and decent wages....during the crisis, there has been renewed interest in the role of the state in promoting collective bargaining through various incentive schemes...There has also been growing recognition of the relevance of collective bargaining in raising wages along with economic growth, including in Asian countries. If feasible and necessary, tripartite wage bargaining – while not collective bargaining per se – could also potentially benefit vulnerable workers, thanks to its comprehensive coverage...it is important to ensure that the minimum wage policy is more beneficial to low-paid workers. However, restoring the original goals of minimum wages must be accompanied by the creation of alternative mechanisms which facilitate meaningful wage negotiations for median-wage workers. In other words, there must be a system of wage policies which benefits all workers, irrespective of wage levels, union membership or employment status."(ILO, 2010, p.81)

So, there needs to be a coherent space for the two key legs of the system of wage determination to operate. Just as statutory minimum wages alone can't address the needs of different layers, collective bargaining by itself cannot deal with the problem of the most vulnerable and low-paid work. This was clearly demonstrated in a study, which compared wages in Germany, with 3 other countries which had less powerful collective bargaining structures, but had national minimum wages, and found that disparities in Germany were the greatest. Germany still lacks a national minimum wage. The effect of this omission is reflected in the figures of average earnings. In Germany, the most powerful economy of Europe, the spread of wages between well-paid and low-paid sectors is the highest of the four countries compared. The median hourly wage in German hotels and catering...compared to the median in the best paying sector is 91 per cent lower. In the Netherlands the pay gap between the lowest and

highest is 59 per cent, whereas Argentina (74 per cent) and Brazil (78 per cent) hold a position in between (Van Klaveren and Tijdens, 2010).

The proposal of this paper is to have one national minimum wage (with the possibility of an initial 2 tier approach discussed above) complementing a system of compulsory centralised bargaining. While this would overcome the problem of fragmented statutory minimum wages, and entrenchment of a strong system of collective bargaining, we will still confront the challenge of how to ensure sufficient union representivity in the most vulnerable sectors, to allow for effective collective bargaining. One possibility, which the Department of Labour seems to be open to, is to give statutory councils, provided for by the Labour Relations Act, the power to bargain over wages, and for our unions to trigger these councils in such sectors. This would have the advantage of allowing unions to achieve representivity at a much lower threshold, for example 30% - see section on collective bargaining below.

Establishing a 'poverty line' or basic income floor measure

One of the challenges confronting us in constructing a proposal for a national minimum wage is the fact that there is no established official poverty line or minimum living level which is generally accepted and used by the South African government or society. While the absence of such an agreed measure is not an absolute obstacle to the setting of a figure for a national minimum wage, it would be useful as a reference point as to what would constitute a basic income floor sufficient for a family to survive on. The connection between such a measure and a minimum wage is particularly important in South Africa, given the high levels of unemployment, and the fact that low wage earners are more likely to be single breadwinners in households. Further, in the absence of income support for the adult unemployed, the burden of support for the family falls on low-income earners. Therefore a minimum wage needs to be sufficient to support a family.

We won't go into the detail of the debate around poverty lines here. Ideally Statistics SA should play a central role in the construction of a poverty or basic income measure, as they have the most comprehensive data, including on consumption patterns of households. However, an initiative by Statistics SA and Treasury to develop a "national poverty line" for South Africa in 2007 appears to have been put on ice⁴⁷. Indications are that, as with processes to develop a comprehensive social protection system, this is a political hot potato, and Treasury is reluctant to confront the implications of a process that will expose the current minimum wage structure as being hopelessly inadequate to support people. This is particularly likely, given Treasury's ideologically driven offensive which seeks to argue that our "entry-level wages" are too high.

Therefore, the debate around the poverty line is highly contested. There is a massive variation in different calculations proposed from various quarters. Some commentators propose poverty measures, which are genuinely designed to combat poverty, and to raise living standards of the working poor. Others, who

⁴⁷ Statistics SA National Treasury (2007).

propose ridiculously low levels, seem to want to defend the low wage structure of our economy, and resist demands for a needs-based approach to determining minimum living levels. In fact, some calculations of a poverty line are based purely on the consumption of calories required to keep people alive! This is not very different from the approach historically used by slave owners, or managers of prisons, to minimise costs. For these reasons, and because of the different approaches taken to poverty, we propose moving away from the poverty line approach (which attempts to justify “acceptable levels of poverty”), to a basic income floor or minimum living level approach which focuses on peoples basic needs.

In taking this debate forward, the country should consider using measures, which have been historically well researched and widely used, as a guide, without adopting them, wholesale. Some proposals from Statistics SA, as well as institutions historically charged with calculating living levels, may assist in constructing a viable approach to this question. Despite limitations, measures developed by institutes based at University of South Africa (Unisa) and University of Port Elizabeth (UPE) universities (although now discontinued), such as the Supplemented Living Level, Household Subsistence Level, and Household Effective Level have some merit, as they aimed to construct a basket of basic needs which a family needs in order to live, and are not based on arbitrary calculations such as the World Bank \$1 or \$2 a day. Even if these need to be improved, they could constitute a basis for engagement. The Supplemented Living Level from Unisa's Bureau for Market Research for example, was last calculated in 2008 as R3357 per month for a family of five. In 2011 values, this would be about R 4000, close to the Labour Research Services proposed living level of R4105 (LRS, 2011, p.14).

UPE's household subsistence level was defined as “an estimate of the income needed by an individual household if it is to maintain a defined minimum level of health and decency in the short term. It is calculated at the lowest retail cost of a budget of necessities of adequate quality, comprising the total food, clothing, fuel, lighting and washing and cleansing materials needed by the household as a whole, the cost of rent, and of workers transport”. (Potgieter, 2004, p.3) It can be criticised as including no provision for medical expenses, education, savings, holidays/ recreation, insurance, buying household equipment and any transport beyond that of the breadwinner going to and from work. To address these needs, the basic Household Subsistence Level was augmented by the Household Effective Level which in effect increased the value of that line by 50%. The Household Subsistence Level would have been about R3700 for a family of five in 2011. Therefore the Household Effective Level would have been about R5550, which, while high by current levels, would be in the range discussed above, in line with international norms. The Household Effective Level, as well as the other living levels, and how they were constructed, should be looked at in more detail to develop a more viable basis for construction of a living level, inter alia to guide wage policies, and social protection measures.

It is therefore critical for the labour movement to both marshal scientific facts and evidence, and experience from the international situation, but also to approach this question of a minimum living level politically, as it is in essence a battle about allocation of the surplus. Labour needs to engage government, but can't be held ransom to a process, which Treasury wants to control for ideological purposes. In fact, responsibility for this issue should be allocated to an appropriate department that is competent to deal with the issues such as the Department of Social Development, the Economic Development Department, or both. At the same time, the process shouldn't be purely government driven. COSATU should look at the possibility of a worker driven project to construct a proposed minimum living level, together with our community allies. Participatory research could be conducted, as was done in the UK among workers, on what they regard as their basic needs, and taken forward in the form of a national campaign.⁴⁸

Design, implementation, and enforcement, of the system

We don't go into detail here about the design of the system, and its implementation. However, matters, which will need to be considered in taking it forward, include:

- The mechanism to determine the national minimum wage - should we retain the Employment Conditions Commission (ECC) as the mechanism, or a restructured version of it? The legislative provisions in the Basic Conditions of Employment Act governing the ECC, need to be evaluated, to assess whether its composition and mandate is appropriate, as outlined in Section 54(3) of the Act, particularly in the light of how this mandate has been interpreted in practice.
- A mechanism to ensure that "uprating" of the national minimum wage is done in a way which progressively increases its real value. Brazil has a policy for example which provides that the national minimum wage must at the minimum be adjusted annually to take account of past inflation and add up the average GDP growth of the two previous years.
- What legislative provisions are required to give effect to the national minimum wage, and how explicit effect can be given in legislation to a national wage policy which addresses poverty and inequality.
- Drawing on international experience, what penalties are provided to give real teeth to the national minimum wage, to ensure much greater compliance than is currently the case.
- What policy provisions should be put in place to ensure that all instruments of the state, including procurement, economic incentives etc. are dependent on adherence to this national wage policy.⁴⁹

48 Naledi and the SPII (Studies on Poverty and Inequality Institute) could be asked to design this project.

49 Benassi (2011, p.31) cites an innovative approach in Brazil to sanction abusive employers: "(a) method that deters employers from violating labour standards is the exclusion of employers from public and private credits. This approach is adopted in

- What capacity needs to be created, in particular in the Department of Labour, to guarantee that there is adequate, properly-trained inspection personnel to ensure compliance. The ILO recommends that there should be at least one labour inspector for every 15000 workers in industrialising economies, and 1/20000 in transition economies.⁵⁰ Assuming that we use the latter figure, we should have about 500 inspectors. We reportedly have 1018 inspectors⁵¹, so the question obviously arises as to why our system of enforcement is so ineffective. If it is not primarily the question of numbers, we need to look at where exactly the problem lies. For example our labour inspectors reportedly lack cars, so many of them are not effectively utilised.
- What technical international support is required, particularly from the ILO, to give the necessary backup and advice.⁵²
- What civil society mobilisation, including around a possible coalition for a national minimum wage, is needed to advance this campaign, and act against abuses in society.⁵³

Brazilian labour legislation, which empowers the Department of National Integration to suspend all lines of public and private credits for the companies whose names are present on the slave labour blacklist". Benassi (2011, p.32) also cites a number of international instruments by International Financial Institutions and the ILO which provide for labour clauses which make procurement dependent on observing certain standards.

⁵⁰ Benassi (2011) documents that Brazil for example has about 3050 labour inspectors. Brazil has followed a very determined and successful policy of rooting out abuses and non-compliance.

⁵¹ Information supplied by the Department of Labour, March 2012.

⁵² The ILO (2009a) notes that several African countries, including Namibia, Rwanda, Cape Verde, approached the ILO in 2010 for advice on issues such as the desirability of a national minimum wage versus sectoral minimum wage rates. We need to establish what type of support is available.

⁵³ Benassi (2011) outlines a number of such initiatives which have been taken by civil society internationally.

5. SOCIAL PROTECTION

The international literature emphasises that the minimum wage, particularly in a developing country context, and particularly in contexts of high unemployment, although a critically important anti-poverty measure, is only one element of a broader package of measures to ensure household income security. While a decent minimum wage is key to poor peoples' income, this has to be supplemented by income security for households which have no one employed, or access to remittances from outside the household; as well as to supplement the minimum wage where it is inadequate to meet the needs of the household. For the purposes of this paper, we only look at that aspect of social protection, which covers income security, since this is the focus of our discussion.

Box 4: ILO on Minimum Wages and Social Protection

"Minimum wages should not be determined and evaluated in isolation from other policies. In fact, minimum wages should be seen as only one component in a battery of measures against low pay, poverty and inequality. This is because minimum wages only benefit wage earners (and, moreover, only those wage earners who are covered by minimum wages legislation). In some countries, this can leave many poor people outside the reach of minimum wages. Therefore, minimum wages should be accompanied by a number of complementary policies, such as targeted income policies. Indeed, minimum wages alone cannot be used for targeted poverty reduction. Minimum wages are paid to individuals, whereas the key unit for poverty-reducing income transfers is the household or the family. Hence, minimum wages should be used in conjunction with income transfers... This emphasis on minimum wages and wage bargaining should be complemented by public intervention through income support measures. This would benefit poorer households. Furthermore... the majority of wage earners around the world are unorganized or not covered by collective agreements. In addition, the recent macroeconomic developments are likely to make wage bargaining more difficult, as pressures on enterprises are increasing. This means that wage bargaining alone is unlikely to be sufficient in coping with the current macroeconomic pressures..." (ILO, 2008, p.52-3)

"Even when low pay is inevitable, policies can be implemented to alleviate the financial difficulties for the families of low-paid workers. Indeed, while measures which directly influence wage outcomes, such as collective bargaining and minimum wages policies, play a useful role, the welfare of low-paid workers can also be improved through policies that increase net disposable income for poor households..." (ILO, 2010, p.74)

The growing level of unemployment in South Africa makes the question of household income security even more critical. Table 10 shows that a rapidly declining proportion of South African households have access to income from the employed: it reveals the shocking figure that while 70.6% of households relied on some income from workers in 1997 (including from remittances), by 2008 this had

declined to 58.9%. In other words, nearly 42% of households had no link to the labour market in terms of access to income from the employed, in 2008, and 55% of households had no-one employed. Given that this was before the economic crash, and the loss of over a million jobs, the picture since then is likely to have become a lot worse. The first 3 rows show the percentage of households with no one employed. The rows 3, 4 and 5 show the households with access to income from the employed. The share of households with no link to the labour market has risen sharply, from 30% in 1997 to 42% in 2008 (OECD, 2010, p.241).

Table 10: South African household labour market attachment and access to grants of the unemployed, in percentage^{a)}

	1997	2006	2008
No one employed, no remittances, no social grants	11.8	13.2	16.9
No one employed, no remittances, social grants	17.5	24.7	24.9
No one employed, remittances	21.3	11.2	12.9
One employed	35.8	39.4	36.6
Two or more employed	13.5	11.5	9.4
Total	100	100	100

a) This table is only done for selected years owing to the absence of data on either remittances or labour market status in other surveys.

Source: 1997 October Household Survey; September 2006 Labour Force Survey, Statistics South Africa and 2008 National Income Dynamics Study (NIDS) data

Table 10 shows the critical importance of social protection, as a complement to the minimum wage. Of the 42% in 2008 without access to income from the employed, only 24.9% had access to some social grant, and nearly 17% of households had no social grant, or any form of regular income - up from 12% in 1997. So actually despite the massive increase in social grants over this period, a growing proportion of households are falling through the cracks, in terms of income security. Why is this? Households receiving grants are largely only those with pensioners or children. In the face of growing unemployment, more households are without any form of income, as households with adult unemployed, but without pensioners or children, don't qualify for grants.

Therefore COSATU has been correct in arguing for a universal income guarantee such as a Basic Income Grant as the central pillar of a comprehensive social security system. It makes no sense to talk of a "comprehensive" system in South Africa, as many like to do, when adults from 18-60 are virtually completely excluded from income transfers. But this investment in income security must be seen, as it is in Brazil with bolsa familia, and a range of other income transfers⁵⁴, as

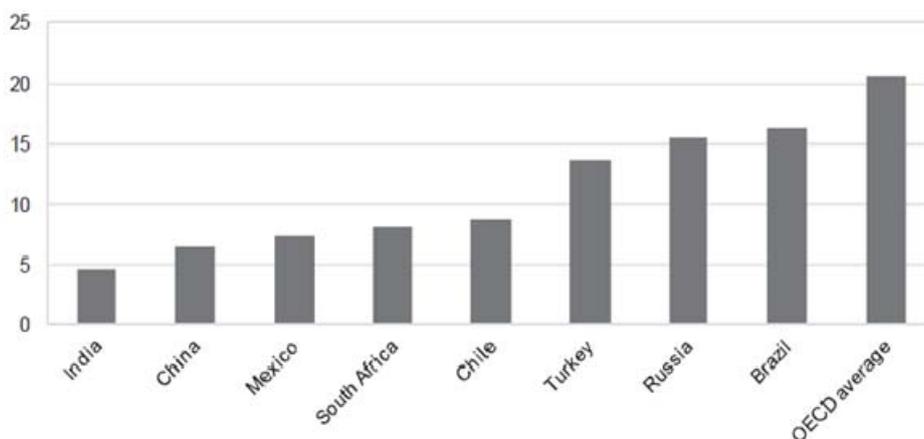
⁵⁴The Brazilian social security net includes in particular the rural pension (previdência rural), which provides benefits equal to the minimum wage to 8.4 million rural workers; the Benefício de Prestação Continuada (Continued Benefit Provision), which provides social assistance pensions equal to the minimum wage to 3.5 million elderly poor and disabled; and the flagship Bolsa Família conditional cash transfer programme, which provides modest benefits to a quarter of the population (ILO, 2011).

part of a drive for economic development and employment generation, not as a subtraction from it, as it is often seen in our country.

We have seen how Brazil in the last decade has adopted deliberate policies which combine a virtuous cycle of rising minimum wages, growing employment, and growing investment in social protection, and how this has slashed the levels of poverty and unemployment, as well as reduced inequality. This policy mix is designed to create a mutually reinforcing developmental stimulus, increasing economic productivity, improving social indicators, growing economic demand, domestic consumption and so forth. The inspiring thing about the Brazilian approach is that it has dramatically demonstrated the impact of these policies on Brazilian society, within a short space of time.

In South Africa we have largely had the opposite - policies which have led to a downward self-destructive economic spiral, of declining real wages, a collapse in domestic demand and production, growing unemployment, persistent high levels of poverty, and growing inequality. This is combined with a refusal to give income support to the potentially economically active sector of our society which is being marginalised from the economy, through no fault of its own. It is critical that the debate around social protection needs to shift to begin to realise that income transfers should be seen not as a pure welfare/crisis management tool, but part of this 3 pronged strategy (promoting a radical change in the wage structure and stimulating demand, employment supporting policies, and investment in social protection) of generating employment and raising living standards. This requires large scale social investment, which needs to be seen as being equally productive as investment in infrastructure and economic production, since these three forms of investment are all linked into one development organism. While much has been said in South Africa about the growing cost of social expenditure, and a common view expressed that it is "crowding out" infrastructure and economic investment, when compared to our peer countries, the statistics tell a different story. As Figure 3 shows, social expenditure in Brazil as a percentage of GDP is about double the percentage spent in South Africa.

Figure 5: Public social expenditure in selected OECD and BCIS countries, second half of 2000s)a) (as a percentage of GDP)



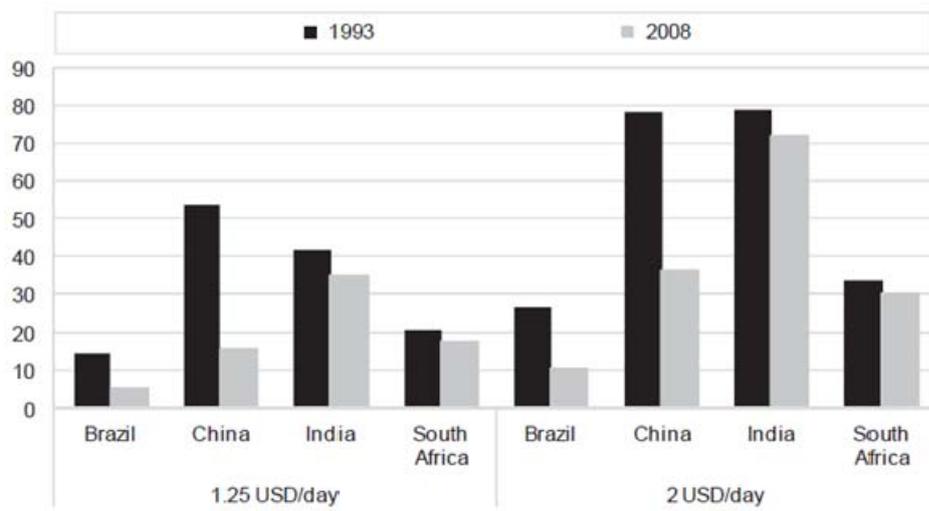
- a) 2005 for Brazil, Mexico, Turkey and OECD average, 2006-07 for India and South Africa, 2007 for Chile and the Russian Federation, 2008 for China.
- b) Data were taken and/or constructed from various sources, in an effort to approach as far as possible the definition used in the OECD Social Expenditure Database (SOCX), which covers old-age, survivors, and incapacity-related benefits, as well as family, health, active labour market policies, unemployment, housing and others.
- Source: OECD (2010, p.267)

The key debate is not just about amounts and percentages, but about the coherence of policy, and the effectiveness of those policies in directing these resources, when measured against their impact on society. Using this yardstick again, the Brazilian leadership has shown a degree of strategic cohesion and focus in addressing its objectives, which is revealed by the dramatic impact these social investments have had on society, combined with other policy interventions. Conversely, in South Africa our social investments have failed to impact on the intended scale, because of their frustration by policies which are incoherent or even contradictory - such as investment in income transfers, at the same time as pursuing macroeconomic policies which destroy employment, thereby negating the impact of these new income streams. The success of the Brazilian approach to combating poverty is revealed by the dramatic gains made in only 5 years, reducing the number of people living in poverty from 61.4 million people in 2003 to 41.5 million in 2008 (a decline from 34.3 per cent to 21.9 per cent of the total population). Those in absolute poverty fell from 26.1 million in 2003 to 13.9 million in 2008 (from 14.6 per cent to 7.3 per cent of the population)⁵⁵. ILO analysis reveals that these gains were the result of a combination of minimum wage increases, new employment, and social protection transfers.

⁵⁵ Baltar et al (2010).

When we compare the South African record of fighting poverty during the first 15 years of democracy with that of Brazil, we again see a sobering picture: Figure 4 shows that in 1993 nearly 30% of Brazilians, and slightly over 30% of South Africans lived on less than \$2 a day. By 2008 only 10% of the Brazilian population lived on less than \$2 a day, but 30% of the South African population still lived on less than \$2 a day. This discrepancy is a direct result of the economic and social protection policies followed in the two countries.

Figure 6: Extreme poverty has decreased but is still high in BCIS countries, percentage of population^{a)b)}



StatLink <http://dx.doi.org/10.1787/888932332189>

a) 2008 data refer to 2005 figures for China and India.

b) Headcount poverty is the share of the population living in households with consumption or income per person below the poverty line of USD 1.25 or USD 2/day (in purchasing power parity).

Source: OECD (2010, p.33)

Policy options for income protection

In the face of the social crisis outline above, in which growing sections of South African society are without any form of regular income, and where those with income from ultra-low wage employment are unable to effectively support the unemployed, it is of critical importance that we find effective mechanisms to ensure a basic income floor for all South African families. We have outlined the fact above that several million South Africans are without any form of regular income, from any legitimate source. This is a recipe for crime and social instability, not to mention the creation of *lumpen proletariat* groupings in society who are available for a range of problematic agendas, as we have seen throughout history. The raising of the income of low paid workers through the national minimum wage policy, combined with the introduction of universal income protection, would lead to a dramatic improvement in our peoples standard of living, and lay the basis in the short term for the eradication of extreme poverty.

There are three broad options available for introduction of universal income protection:

- A Basic Income Grant;
- A grant for unemployed adults and/or a large scale extension of the Unemployment Insurance Fund; or
- An Employment Guarantee Scheme, with the state as employer of last resort.

It may be that there could be variations on these three options or a partial combination of some of them, but they each represent slightly different policy solutions to the identified challenge, and therefore have different advantages and drawbacks.

The Basic Income Grant: This has been extensively discussed in COSATU and is well understood. As a non means-tested universal grant available to all South Africans it has numerous advantages. Economists have calculated the cost of a basic grant, which they have found to be affordable. Questions which arise include the level at which it would need to be pitched, particularly in conditions of growing economic stress and unemployment; and the political willingness of the movement to consider implementation of the Basic Income Grant. It remains however an important instrument, and deserves further discussion, in the light of the facts presented above. It needs to be considered together with the two other proposals, and the merits of the different options should be assessed.

A further option is to look at a variation of the Basic Income Grant which would be paid as a once off lump sum⁵⁶ - this could be packaged as a “democracy dividend”, possibly for the 20 year freedom anniversary - which would be deposited into accounts created for all South Africans. The capital sum would be invested, but people would only have access to the interest, except under specified conditions. Different financing instruments could be used for this, and initial advice is that this could be a viable option. It has certain potential advantages, including the reduction of bureaucratic administration because of its once off nature, leveraging the capital amount for collateral etc. Key questions would be its funding modalities, the size of the grant, and rules governing its administration. If it is agreed to investigate this option, a team of economists, including those who previously worked on the Basic Income Grant financing study, could be requested to look at it in more detail.

A grant for unemployed adults and/or a large scale extension of the Unemployment Insurance Fund (UIF): Unlike previously, there is now recognition in the ANC (African National Congress) and certain parts of government, that far from being comprehensive, our social security system has serious leaks. In particular, there is recognition that there needs to be some type of grant covering unemployed adults who are currently excluded. However this is highly contested in government, and initial recommendations to this effect, supported by the Department of Social Development, were blocked by Treasury, who are opposed

⁵⁶ Grants of this nature are given in some countries, including the baby boom grant in the UK, and the oil dividend in Alaska.

to any extension of the grant system, having reluctantly agreed to extension of the Child Support Grant, after years of resistance. The opposition of Treasury is one of the key reasons that government policy on Comprehensive Social Security has been delayed for the last several years.

President Zuma announced in June 2012 that the ANC is considering a jobseekers grant for young people, linked to work search and training. The labour movement needs to engage with this proposal, and determine whether all unemployed workseekers would qualify, since to limit it to those of a certain age would be discriminatory; further, whether conditions to be attached are reasonable, and would not lead to coercion of workseekers to accept unacceptable work; and finally, what the scale and duration of the benefits would be. On the face of it, if these matters are addressed satisfactorily, it would appear to be an important step forward towards comprehensive social protection.

There has also been some discussion about extension of the Unemployment Insurance Fund to more comprehensively cover the unemployed. This would both relate to extending the number of workers covered (according to Statistics SA (2012) only around 55% of workers are registered, and public sector workers are excluded), as well as radically extending the scale of benefits and period, for which workers can claim. The fund can certainly afford far more generous provisions, as it is currently sitting with a surplus of about R60 billion, which is a scandal given the conditions the unemployed are facing. While such a reform would be welcome, and has been a demand of COSATU, such an extension would still benefit a small proportion of the unemployed, as it is a contributory fund which only covers those who were previously employed (considerably less than 10% of the unemployed benefit from Unemployment Insurance Fund at any one time). Again this is a matter which needs to be linked to proposals for comprehensive social security.

An Employment Guarantee Scheme (EGS), with the state as employer of last resort: The COSATU (2010, pp. 58-61) document 'A Growth Path towards Full Employment' discusses this proposal at length. Modelled on the Indian Rural Employment Guarantee Scheme, the EGS guarantees employment for a certain number of days a year, at the minimum wage. The advantage of this is that it undercuts atypical employment, and non-compliance with the national minimum wage, because all workers would be able to get work at that wage. More importantly, it aims to create a situation of full employment. This is a very ambitious proposal, and serious engagement is needed, both politically and technically, to see how it can be taken forward, with a detailed plan for financing and implementation. While the COSATU document proposes transforming the Expanded Public Works Programme (EPWP) into an Employment Guarantee Scheme, there are major differences between what is envisaged and how the EPWP operates. The sister programme of the EPWP, the Community Works Programme (CWP) is probably closer to the Employment Guarantee Scheme idea, and in fact is modelled on it to a certain extent. However, although the CWP is longer term employment, unlike the EPWP, it pays a stipend which is far below

anything which could be considered as a minimum wage (it pays just over R60 per day, and only offers 2 days a week employment). Therefore, realistically an Employment Guarantee Scheme along the lines of what COSATU envisages would probably require a proposal for a completely new programme. This proposal could be developed, drawing on the international experience in India, Brazil and elsewhere.

Box 5: India's Rural Employment Guarantee Scheme

India has a long tradition of public works schemes, which have progressively evolved until the introduction in 2005 of the National Rural Employment Guarantee Act (NREGA), recently renamed the Mahatma Gandhi National Rural Employment Guarantee Act. While there were previous public works schemes, this is the first time that the government is guaranteeing work in India. The NREGA treats employment as an enforceable right that can be demanded by any adult (one per household) willing to do unskilled work for a maximum of 100 days per year, paid at the minimum wage. If no work is offered within 15 days after the demand is made, the claimant has the right to an unemployment allowance (30-50% of the minimum wage) and, if denied, the state can be pursued in court. By guaranteeing jobs during lean and distress seasons (within a five-kilometre radius) and by developing local infrastructures and creating productive assets in rural areas, the Indian public works programme also aims to curb the migration of rural workers to urban areas. Another important aspect of the NREGA is the empowerment of the rural poor, by involving them actively in listing and prioritising the works to be carried out at the local level.

Its budget for 2008/09 represented 0.5% of GDP, the highest share devoted to this kind of programme in emerging and OECD countries. It doubles the South African equivalent programme and is clearly above the OECD average (less than 0.1% of GDP in 2007) In 2008/09, around 45 million workers benefited from the programme (almost twice the level of two years earlier), representing around 10% of the labour force. (OECD, 2010, pp.286-7)

One danger of linking the employment guarantee to the minimum wage is that governments in this situation are very reluctant to set the minimum wage at a decent level. Following this same logic, the ILO and other international experts have advised against the Brazilian practice of linking the amount of social security payments to the level of the national minimum wage, since they believe this will repress the level of the minimum wage. According to the ILO (2008, pp.51-52) "when different aspects of social protection, such as pensions, disability payments or maternity benefits, are linked to the level of the minimum wage. ... (i)n practice, this means that retirement and other benefits will be adjusted upwards when the minimum wage increases. ... Although this may be useful in maintaining the purchasing power of the poorest pensioners, in practice it often prevents governments from increasing minimum wages for fear of the adverse impact on social security budgets..." Therefore this is a matter, which requires further consideration.

6. COLLECTIVE BARGAINING: THE NEED FOR A NEW ARCHITECTURE

In the face of recent attempts by employers to undermine collective bargaining in South Africa, particularly the offensive by clothing as well as other employers against centralised bargaining, labour needs to look at counter-strategies to defend its gains. However, it needs to go beyond purely defensive strategies, as this will be unsustainable in the long term⁵⁷. A more offensive strategic perspective is required. Indeed, the labour movement needs to confront the fact that the collective bargaining system, in its current form, has failed to meet its objectives, and that substantially restructured collective bargaining architecture is required.

Federation-wide collective bargaining strategies, in particular to reconfigure the apartheid wage structure, and deal with the challenges of job security, while critically important, are unlikely to make much headway within the current framework, which is overly voluntarist. The current structure needs to be reviewed, and new public policies and regulatory frameworks proposed to promote consolidation of wall-to-wall centralised bargaining, as well as a developmental bargaining framework which promotes wage equity, and alignment of centralised bargaining with industrial and economic development strategies.

The International Experience

The crisis facing centralised bargaining is not uniquely South African, but is part of a broader international trend. Systems of collective bargaining, and in particular centralised bargaining, have come under increasing stress in many countries as a result of the changes engineered in the labour market under neo-liberalism; and more recently, by the assault on worker rights following the financial crisis. This stress has amongst others been the result of the orchestrated growth of atypical and precarious employment, decentralisation of collective bargaining, the fall in trade union density, and pressure on unions to trade wages and working conditions for employment security.

However, this trend has not been uniform. Progressive governments, particularly in some countries of Latin America, but also in certain other parts of the South have asserted a growing role for different forms of collective bargaining (see Box 6 on Uruguay.) Unions themselves have responded in different ways, some more reactive and defensive; while others have asserted a more proactive collective bargaining agenda. Their responses have often reflected the broader socio-economic and political realities in their societies.

⁵⁷ International experience shows that where unions have been placed on the back foot, and without the necessary support from the state, employers have been able to systematically chip away at gains, and “temporary” tactical shifts have been transformed into long term strategic defeats.

Box 6: Uruguay: Reactivating collective bargaining and wage policy

In 2005, Uruguay's Government identified the promotion of social dialogue and collective bargaining as among its top priorities. This objective was pursued through a comprehensive strategy based on three main pillars: the adoption of a series of laws to promote collective bargaining and trade union activities; the development of national tripartite mechanisms for social dialogue; and the reactivation of collective bargaining and wage councils at sectoral level, in order to stimulate wage bargaining, including in the formerly excluded public sector and in agriculture. At the same time, the Government decided to play an active role in wage fixing, through two major means. First, the Government reactivated tripartite sectoral wage councils, which were asked to negotiate wage agreements and to adjust wages twice a year in line with past and expected inflation. Wage councils also were given the role of determining minimum wages for each category of workers. Second, the Government chose to uprate the national minimum wage so that it would recover its previous function, namely to provide a decent wage floor. For this purpose, the Government also stopped the official practice of using the minimum wage as the basis for calculating all social benefits. This shift in government policy had direct effects on both collective bargaining and wages. The return to collective bargaining rounds after many years led to a number of agreements being adopted by consensus between the three sides. A few agreements have introduced more refined wage-fixing criteria (such as enterprise size or geographic location) or have been extended to cover non-wage issues such as health and safety, training and non-wage benefits. In the context of economic recovery following a deep crisis, and with the reactivation of minimum wages and collective bargaining, the trend of deterioration of wages was stopped. In 2005–06, average wages in real terms increased by 9.1 per cent, while wage disparity also decreased. Together with increased employment and social protection plans, this may have contributed to the Government's success against poverty, which was reduced by 13.7 per cent in 2005–06. The gender pay gap, regional pay gaps and wage disparity between workers of different educational levels were also reduced. Wage dispersion, however, remains very high in Uruguay. (ILO, 2008, p.55)

In countries where centralised bargaining is under attack, or where economic restructuring is putting pressure on historic gains of workers, unions have broadly embarked on either one, or a combination of, approaches:

- Concessional bargaining, usually over wages - in which unions trade basic conditions, such as wages, in the face of this pressure. Often what are intended to be short term concessions are turned into long term concessions, which cannot be reversed. This tends to have long term implications in terms of undermining collective bargaining standards and structures, as it often undermines the union and acts

as a basis for further problematic concessions⁵⁸ (see Box 7 on the clothing agreement);

- Temporary measures to ensure job security - where in response to a broader economic crisis or a crisis specific to the company or sector, unions negotiate temporary measures, for example around working hours, to avert large scale job loss. This is increasingly accompanied by the use of state support measures. Such interventions have been particularly common in some countries since the 2008 financial crisis.
- An innovative long-term collective bargaining agenda - in which the union develops a long-term vision and bargaining strategy for a sector, using inter alia worker organisation, union technical expertise, and tactical alliances with the state, to drive a collective bargaining agenda which promotes greater equity, worker empowerment, employment security and job creation. This is in turn aligned with an economic development agenda for the sector and the economy. A particular challenge here is to combine organisation and bargaining at the sectoral and workplace level to achieve these objectives. A further challenge is to fashion a union-driven framework for productivity bargaining which secures workers a growing share of productivity gains, and to grow employment; as opposed to an employer driven productivity agenda, which uses productivity agreements to intensify exploitation, and to replace workers with technology or capital.

The model of voluntarism and self-regulation in Europe, where many countries have had strong systems of centralised bargaining, is increasingly under stress, as the crisis of capitalism grows in the traditional social democracies. This is the model that the architects of South Africa's new labour laws had attempted to copy. However, this model never really got off the ground here, for reasons, which will be discussed below.

⁵⁸ For a review of the international experience of concessional bargaining, see Haipeter and Lehndorff (2009).

Box 7: Concessional Bargaining and the Clothing Agreement

The November 2011 COSATU Central Executive Committee (CEC) memorandum on the clothing agreement outlined in detail how crisis conditions in the clothing industry gave rise to an agreement which provided for wages 20-30% lower than the industry minimum, for new employees. A critical element of this offensive was blackmail by employers who threatened to collapse centralised bargaining. They could only do this because bargaining is voluntary. The clothing agreement is a clear example of concession bargaining, since the agreement permanently places these workers on a lower wage grade (linked to the requirement of a 15% increase in employment in the industry over 3 years). Therefore the agreement is not a temporary measure to ensure job security, as outlined above.

Although the clothing agreement doesn't immediately trade wages of current workers, it cuts the wage bill by lowering wages of new entrants. Therefore it is likely to have long term implications for existing workers, by creating downward pressure on wages; and creating a two-tier structure of workers in the industry and the union, which could also have implications for worker unity.

Developments in the sector strongly suggest that reduction of (already ultra-low) wages will not resolve the crisis of employment and job security in the industry. Non-compliant and fly by night employers continue to pay way below the minima, despite repeated attempts to give them an opportunity to comply. A national minimum wage, if introduced, would take the lowest minimum wages, at current levels, out of bargaining for such ultra-low wage sectors, which would only have the choice of upward variation.

The solution for the crisis of the sector lies outside of wage reduction strategies: SA Clothing and Textile Workers Union (Sactwu) statements have clearly spelt out how the crisis in the industry needs to be addressed by other interventions, including mobilisation of state support, measures to reengineer the sector, promoting local procurement, supportive trade interventions, fighting customs fraud etc. The industry strategy, involving government, business and the union, aims to promote these and other interventions (Vlok, 2011). An assessment is needed as to whether this package is adequate, or whether more needs to be done.

At the same time the clothing union is under extreme pressure to use temporary crisis management interventions, and has sought state support on a number of fronts, including the use of governments training layoff scheme. Sactwu and other unions in crisis-hit sectors need to audit what other temporary interventions have been attempted internationally, especially creative strategies, often in collaboration with the state, to avert job losses, which don't involve wage cuts, are temporary in character, and assist unions to proactively determine the agenda.

At the beginning of May 2012 two developments took place, which threw the industry agreement deeper into crisis: Firstly the employer representative announced that the agreement on new employees was causing instability in the industry, because new employees were resigning as a result of unhappiness around being paid 30% less for doing the same work. Secondly they announced their refusal to negotiate wages in 2012 (so-called "disengagement" from the process), on the basis that about 40% of employers were defying the collective agreement by paying less than the minimum wage. Options floated include collapsing the bargaining council (Pakathi, 2012; Gleason, 2012). This places serious doubt on the viability of the crisis management strategy agreed to in 2011, and raises the need for decisive state intervention.

The Constitution and the Labour Relations Act

In the run-up to finalisation of the Labour Relations Act in 1995, and the new Constitution COSATU had demanded that the democratic state fashion a legislative and constitutional framework which entrenched a comprehensive system of centralised collective bargaining in the economy (see Box 8). In the end, the Labour Relations clause in the Constitution (Section 23) allowed for centralised bargaining, but didn't mandate it, as the ANC's advisors on this clause opposed COSATU's attempts to entrench centralised bargaining, and the battle around the lockout overshadowed this matter⁵⁹. Labour didn't win or lose the battle in the constitution, as the constitution left the matter of centralised bargaining open. Nevertheless a renewed legal opinion on this aspect of Section 23 of the Constitution may be needed, if COSATU decides to pursue the demand for a restructured system.

⁵⁹ The intention to entrench voluntarism in the Labour Relations Act would have been frustrated if the constitution had mandated compulsory centralised bargaining. However, the constitution is ambivalent on this matter, giving "every trade union, employers organisation, and employer ... the right to engage in collective bargaining" (Section 23 of the Constitution), but does not mandate the level at which that bargaining takes place. Halton Cheadle, an ANC advisor in the constitutional negotiations, was also Government's legal advisor and architect of the Labour Relations Act. Cheadle himself, in a review of the labour laws in 2005, acknowledges that the constitution leaves the question slightly open, stating: "The wording of the constitutional right was itself drafted to ensure that the guarantee was a freedom to bargain rather than a right to bargain (the corollary to the duty to bargain). But even if section 23 does grant a right to bargain, the grant of a right does not of itself mean that it has to be vindicated by a court or tribunal." (Cheadle, 2005, p.37)

Box 8: The COSATU Platform on Worker Rights

The Platform on worker rights adopted by COSATU's Special Congress 10-12 September 1993, spelled out the intention to fight for an overarching system of centralized bargaining, as these extracts show, stating that a new framework should include the following:

Centralised bargaining to promote equity for workers and increased trade union participation in decision making. There should be industry bargaining forums responsible for negotiating: Industry restructuring for growth and development as well as wages, working conditions, training and grading.

Agreements negotiated in such industry forums, should be extended through legislation to all workplaces in that industry.

The National Economic Forum (the forerunner to Nedlac) needs to consider macro-economic issues including the broad principles of industry restructuring and how industries relate to each other. Company or plant level negotiations to ensure work re-organisation, based on a nationally negotiated framework. Government should play an active role in facilitating the above through legislative and administrative reform...

New labour legislation must provide for the following:

There must be one single statute governing labour relations for all workers throughout the economy. There must be laws that set basic conditions of employment such as the Basic Conditions of Employment Act, wage determinations under the Wage Act, health and safety laws, etc. These must apply to all sectors of the economy and must allow workers to be centrally involved in determining minimum standards at the work places and in their industries. Provision should be made in legislation to put into place centralized bargaining arrangements in each industry. (COSATU, 1993, pp.2-5)

Engagements on the Labour Relations Act resulted in a compromise which purportedly promoted centralised bargaining but was dominated by a voluntarist framework⁶⁰, which was to create an inherent instability in the system. Organised labour had proposed fairly elaborate collective bargaining architecture in an attempt to achieve a range of COSATU's objectives, while keeping the smaller Federations on board. In relation to centralised bargaining, labour's proposal was that a duty to bargain be placed on employers "on all matters of mutual interest with trade unions who meet certain thresholds, at the highest level at which bargaining takes place (...)." Importantly, the submission pointed out, "the labour proposals are an attempt to resolve through regulation, rather than the use of

60 In fact, the Minister of Labour, in an interview with the ILO, stated that the Labour Relations Act "doesn't promote centralised bargaining at all", (quote from Standing, et al., 1996, p.177).

industrial action, the issue of levels of bargaining" (all quotes from COSATU, Nactu and Fedal submission 1995).⁶¹ This flagged the critical point that establishment and defence of centralised bargaining forums should not be subject to constant contestation. Rather the issues which should be settled by power would be the actual content and outcome of negotiations.

In the Submission, Labour proposed that "each industry be covered by a bargaining council, and that employers and labour negotiate at national industrial level. The content of the bargaining is left to the parties to resolve."⁶² Labour proposed that the establishment of centralised bargaining be arranged as follows:

Bargaining Councils should, in law, be set up in each industry.

- The National Economic Development and Labour Council (Nedlac)⁶³ should be required to demarcate the industrial scope of each council, and the role of the industrial registrar.
- A union should be entitled to representation at council level, once it has reached 30% membership in the agreed bargaining unit at industry level, unless otherwise agreed. All employers should be required to be represented at council level.
- Bargaining should take place at Bargaining Council level once the trade union party/parties have reached a 50%+1 level of representation.
- There shall be an annual audit of the membership of all unions represented in a Bargaining Council, covering the membership falling within the scope of the Bargaining Council, in order to determine representation.
- The agenda of negotiation shall be any matter agreed by the parties to the council. In the event of a dispute over the agenda, the parties shall be free to resort to industrial action.
- The mechanism of extension of agreements to non-parties falls away, because all employers will be party to the industrial council.
- Exemptions from bargaining council agreements could occur only by agreement of the parties to the council, with the right of appeal only on grounds that the application was not considered in good faith.

Despite mass mobilisation around these and other demands, labour was unable to achieve its objectives in all respects in the new Labour Relations Act. In relation to collective bargaining, the mix between voluntarism and state regulation tilted strongly in favour of voluntarism, and ultimately depended on the preparedness

61 Labour submission on the Labour Relations Act on May 1, 1995.

62 At the time, there were some debates in COSATU at the time about the implications of a duty to bargain. It may be important to revisit these, to throw light on concerns which were raised at the time.

63 The Tripartite negotiating forum established in 1995.

of employers to set up centralised bargaining forums. The compromise contained in the Labour Relations Act was therefore to result in an unwieldy combination, which would entrench, rather than challenge, the fragmented nature of South Africa's labour market, and labour relations framework. The establishment or retention of Bargaining Councils would continually face resistance, and undermining, by employers, and ultimately have to be settled by the exercise of power, or as in the Sactwu instance, by concessional bargaining, in which workers give away certain rights in order to maintain the bargaining council.

The current state of collective bargaining

The compromise in the Labour Relations Act (LRA) was to establish voluntarist bargaining councils as the main forum for collective bargaining, plus statutory councils, which had an element of 'compulsion'. The LRA mechanism of statutory councils, was apparently a compromise in response to labours demands for mandatory centralised bargaining. The Labour Relations Act provides that one party, providing it is at least representative of 30% of the sector, can trigger statutory councils. This mechanism never took off, and has only been established in about 3 areas, with no effective bargaining on core issues. While this could in theory have been used to compel employers to engage in sectoral bargaining, the agenda of statutory councils is limited to non-wage issues, unless the employers agree, or the unions in the statutory council manage to increase their representation to 50%+1.

The problem of representivity, particularly in vulnerable sectors, poses a challenge both in relation to Bargaining Councils and statutory councils. This has resulted in some unions using non-statutory sectoral bargaining fora, and forwarding the agreements for incorporation into Sectoral Determinations, for example in the contract cleaning sector, and civil engineering. This approach depends on the agreement of the Minister, and Employment Conditions Commission, which in practice have not always agreed to incorporate the agreements of the parties.⁶⁴ These forms of sectoral bargaining is further complemented by company level bargaining. Table 11 from OECD (2010, p.235) sets out this relationship between levels of bargaining.

⁶⁴ For example, the Minister refused in 2011 to incorporate an aspect of the collective agreement in the contract cleaning sector dealing with working hours, despite having incorporated other elements of the agreement in the sectoral determination.

Table 11: Levels of bargaining in South Africa under the Labour Relations Act

Governed by statute	Functions and powers	Registration
1. Bargaining Councils	Make and enforce collective agreements; Prevent and resolve labour disputes; Establish and manage a dispute resolution fund; Promote and establish training and education schemes; Establish and manage schemes or funds to benefit its parties or members; Make and submit proposals on policies and laws that affect a sector or area.	May be formed by one or more registered trade unions and one or more registered employers' organizations, given that these parties are "sufficiently representative". NEDLAC is assigned the task of determining their scope and area of justification.
2. Statutory Councils	Resolve labour disputes; Promote and manage education and training schemes; Form and manage schemes or funds for the benefit of its parties and members; Make collective agreements; May perform any other bargaining council functions.	May be formed by a registered trade union or employers' organization, which does not boast sufficient membership to meet the representivity requirement to form a bargaining council. Thus, registration is unilateral.
Outside of statute	Functions and powers	Description
1. Plant of firm level bargaining	Bargain over issues otherwise covered by Bargaining or Statutory Councils.	Collective bargaining between an individual employer and the trade unions(s) representing the employees of that particular employer.
2. Workplace forums	They promote the workers' interests by consulting and making joint decisions. Employers must provide relevant information to workplace forums. A workplace forum has the right to be consulted by the employer on: restructuring and new work methods; partial or total plant closure; mergers and ownership transfers; retrenching workers; job grading; criteria for merits and bonuses; education and training; product development plans; export promotions; health and safety measures.	Workplace forums may be formed when there are more than 100 by applying to the Commission for Conciliation, Mediation and Arbitration (CCMA).

Source: OECD (2010, p.235)

The evolution of our bargaining system has resulted in a very unsatisfactory patchwork of Bargaining Councils (covering a limited area of the labour market), statutory councils (which have largely failed to get off the ground), and Sectoral Determinations (which are in some instances becoming an uneasy hybrid of collective bargaining and minimum wage determination). Commentators on both sides of the dividing line, those supporting voluntarism⁶⁵, and those supporting compulsory bargaining, tend to agree that the Labour Relations Act has largely failed in achieving its objective of establishing comprehensive collective bargaining institutions. Below, we briefly summarise findings of researchers on the state of our collective bargaining system.⁶⁶

Godfrey, Maree and Theron (2006), who suggested that the bargaining council system could be in a crisis, asked how important Bargaining Councils are for regulation of the labour market; and whether they continue to be the main vehicles for setting wages and terms of conditions through collective bargaining. Table 12 shows that while the bargaining council system is important, in 2004 it covered only about 20% of all employees and a third (33%) of all workers that would normally fall within a collective bargaining unit (i.e. in grades 4 to 9, see Table 12). Four of the nine major sectors of the economy do not have a bargaining council, or the councils that do exist cover only a very small proportion of the workers in the sector.⁶⁷ A number of Bargaining Councils are present in another two sectors (construction and trade) but their coverage is very low - less than 15% in both cases. So, Bargaining Councils cover a significant proportion of employees in only three sectors, i.e. manufacturing; transport and storage; and, community services. The strength of the system in the latter two sectors is mainly because of the Transnet Bargaining Council and the five public service councils respectively, whereas the manufacturing sector comprises a quite large number of councils across a number of industries. The public sector Bargaining Councils⁶⁸ are probably equal to or of slightly greater importance than the private sector Bargaining Councils in terms of number of employees covered.

65 Cheadle, the architect of the Labour Relation Act argues that "the policy of deepening and expanding the coverage of bargaining councils is not achieved by legislative fiat – it required the social partners and particularly the State to drive the implementation of the policy. The sorry state of sectoral bargaining eight years after the commencement of the LRA is testimony to the failure to do so. The first problem that required attention was the fragmentary coverage of bargaining councils with most workplaces not covered by sectoral bargaining. Most councils were not truly sectoral. ... There is continuing failure to provide the subsidies that would assist councils to perform their dispute resolution functions effectively. There is little evidence of the councils giving effect to many of their roles and it falls to the Department to develop programmes to assist councils." (Cheadle, 2005, p.39)

66 This summary draws heavily on the CCMA-commissioned study by Labour and Enterprise Policy Research Group (LEP) and the National Labour and Economic Development Institute (NALEDI) Support for Bargaining Councils and Centralised Bargaining (2010).

67 I.e. agriculture and fishing; mining and quarrying; utilities; and, finance and business.

68 The public sector would include the public service bargaining councils and the bargaining council at a state-owned enterprise such as Transnet.

Table 12: Bargaining Councils and employee coverage by sector, 2004

Sector	Total employees (grades 4 –9) ^{a)}	Number of councils	Employees grades 4-9 covered by councils and (extensions)
Agriculture	688 620	2	10 522 (385)
Mining	376 501	0	0 (0)
Manufacture	1 230 177	18	569 441 (189 253)
Utilities	59 207	0	0 (0)
Construction	594 780	6	47 052 (20 485)
Trade	1 333 239	5	192 026 (63 968)
Transport	397 669	4	286 116 (54 245)
Finance, etc.	671 601	1	10 543 (1 290)
Community	1 890 157	13	1 285 568 (5 794)
Total	7 241 951	49 ^{b)}	2 401 268 (335 420)

a) Grades 4 – 9 cover those occupations that would normally be included in the bargaining unit, i.e. clerks; service workers and shop and market sales workers; skilled agriculture and fishery workers; craft and related trades workers; plant and machine operators; and, elementary occupations.

b) This figure includes the Wood and Paper Bargaining Council that was registered in 2005.
Source: Godfrey et al. (2006, p.22-23)

Further, Sectoral Determinations have overtaken Bargaining Councils as the main mechanism for setting wages and conditions of employment. Godfrey et al. (2006, p. 89) found that the Sectoral Determinations in existence in 2004 covered almost 3.5 million employees (and just over a million employers).⁶⁹ This is well over the approximately 2.4 million employees (and 50 000 employers) covered by the bargaining council system. This gap has widened considerably since then with the issuing of Sectoral Determinations for the forestry and hospitality sectors, whereas there have been no new Bargaining Councils of similar significance. However one cannot easily distinguish between Sectoral Determinations and collective bargaining because some Sectoral Determinations are strongly influenced by sector level collective agreements (i.e. private security services, contract cleaning, and civil engineering).

One cannot compare bargaining council coverage with coverage by collective bargaining outside the system (at centralised or decentralised levels) because figures do not exist with regard to the latter. But research tends to point to a decline in enterprise and plant-level bargaining, so it is probable that the bargaining council system remains the most important collective bargaining vehicle for setting wages and conditions of employment. The retail sector appears to be the main exception to this, where workplace agreements remain

⁶⁹ 1 006 500 employers and 3 445 726 employees.

dominant. Nevertheless, there are also parts of the manufacturing sector where workplace agreements constitute around 25% of collective agreements (Naledi, 2012).

The Commission for Conciliation Mediation and Arbitration (CCMA) study (LEP and Naledi 2010) argues that while the bargaining council system is made up of just fewer than 50 Bargaining Councils, there is considerable diversity in the system. Some features of this diversity are identified as follows:

- Bargaining Councils span the private and public sectors;
- Some councils were set up about 80 years ago while others are only a few years old;
- There are national councils that cover large numbers across the country in widely-defined sectors, whereas others cover a narrow sub-sector in a few magisterial districts;
- Some councils produce a wide range of agreements that cover wages and conditions of employment, different benefit schemes etc., while others have a single issue agreement;
- There are councils with multiple employer and employee parties while others have only one of each;
- Some councils are organised along either regional or sectoral lines with different bargaining chambers for each sector, whereas small councils have very simple unified structures;
- Some council agreements differentiate wages and conditions for different regions and sub-sectors. Others do not. Some even decentralise aspects of agreements to the enterprise level;
- Some councils negotiate multi-year agreements whereas others negotiate annually;
- Larger councils have various sub-committees to attend to specific functions and at others the council deals with all functions; and
- There are councils with large staff complements and those that have a single, part-time employee. There are councils contracting out administration, or administered by consultants.

The CCMA report concludes that: “All Bargaining Councils, however, share the common legislative framework provided by the Labour Relations Act. This gives Bargaining Councils certain systemic similarities, a basic shared architecture, the same core functions, and a common set of objectives. It is a system that accommodates considerable diversity. The legislative framework is an enabling framework only that rests on the principles of self-governance and voluntarism. The parties to councils therefore have leeway to structure councils in a way that best suits them and the sector in which they are located. The result has been a “patchwork” system. The question is whether this diversity is a strength or a

weakness. Clearly business see it as strength, whereas labours have sought a more prescriptive legislative framework that would lead to greater uniformity and more comprehensive coverage of the economy” (LEP and Naledi 2010, p. 32).

Bargaining Councils- weaker or stronger?

Researchers point to contrasting evidence on Bargaining Councils, which suggest both a trend towards consolidation of Bargaining Councils, as well as a trend towards weakening. Recent evidence, however, suggests an overall tendency toward stagnation, with Bargaining Councils having reached a peak, and actually declining in the private sector: As Table 13 shows, the number of Bargaining Councils has declined steeply in recent years, but the number of workers covered by Bargaining Councils increased until 2004, and has been declining since. Much of the increase is made up of the addition of the five public service councils after the new Labour Relations Act incorporated coverage of the public service. Worryingly, those covered by Bargaining Councils declined by about 70 000 between 2004 and 2010. This is consistent with the ILO (2012a: 41) estimate, in the 2012 World of Work Report, that the proportion of workers covered by all collective agreements in South Africa declined by about 4% between 2002/3 and 2008/9.

Table 13: Bargaining Councils and employee coverage

Year	Bargaining Councils	Number of employees covered
1983	104	1 171 724
1992	87	735 533
1996	77	810 589
2000	78	-
2004	57	2 358 012 (1 075 969 in the public sector)
2008	48	2 315 297
2010	47	2 290 600

Source: Du Toit et al (2006), and Godfrey (2012)

Du Toit et al. (2006: 44) and Godfrey (2007) argue that there are two main reasons why the number of Bargaining Councils has dropped. The first suggests a strengthening of centralised bargaining, while the second points to weakening. The first reason is the series of amalgamations of councils that took place to form bigger councils, e.g. the regional clothing councils and some related councils merged to form a single national clothing council, and much the same thing happened in the textile, electrical and the local government sectors. These developments contributed to a decline in the number of Bargaining Councils but did not alter the number of workers covered. So, it represents a strengthening of centralised bargaining.

Further evidence of a strengthening of centralised bargaining is the establishment of new Bargaining Councils. The first were the five new councils that were set up in the public service (adding a huge number of workers to the total covered by the council system). A few new councils have also been established in the private sector.⁷⁰ The addition of these new councils has, however, not off-set the sharp drop in the total number of councils. As noted above, one reason was the amalgamation of councils, but the second reason has been the collapse and deregistration of a number of councils. The building sector has been one of the worst hit, with most of the regional Bargaining Councils in the industry disappearing over the past decade. The building sector has been closely followed by the liquor and catering sector (i.e. hotels, restaurants, etc.) as far as collapse of councils is concerned. The CCMA study (LEP and Naledi 2010) argues that there are also a number of councils that continue to exist but are on very shaky ground,⁷¹ and it is probable that more councils will collapse in the years ahead, particularly smaller local councils.

Godfrey et al. (2006) argue that the bargaining council system might be teetering on the brink of a crisis. Although new councils have been formed and regional councils have merged to become national councils these were slow and difficult processes. Furthermore, once formed the new councils appear to struggle to get up to a reasonable level of representivity. At the same time they argue, there is an opposite and seemingly more rapid process of smaller councils disintegrating. What they don't document is the range of strategies used by employers to attempt to collapse centralised bargaining.

The failure of voluntarism

This brief overview demonstrates that the model of voluntarism contained in the Labour Relations Act has failed, in terms of its goal of establishing a comprehensive collective bargaining system, and even worse, the system of centralised bargaining has stagnated, and may ultimately collapse, if these trends are not arrested. The situation which has confronted Sactwu in the clothing industry is one which could potentially confront a number of other sectors, if the voluntarist model is retained:

- Employers use the voluntarist nature of centralised bargaining to either stay out of the bargaining council, or threaten to collapse it;
- Employers use a number of strategies to undermine the impact of the bargaining council agreement, and lack of effective enforcement inter alia by proliferation of atypical forms of work; informalisation and refusal to register etc.;
- Large scale exemptions from bargaining council agreements leave large number of workers outside the system;

70 In the chemical industry, the wood and paper sector, the fishing industry, and in the motor ferry industry.

71 For example, the Southern and Eastern Cape Building Industry Bargaining Council. It survived an attempt by employers to have it wound up but no longer functions as a collective bargaining forum.

- Employers exploit these conditions, and the position of workers in vulnerable sectors or areas of the country, to constantly pressure for downward variation of wages and conditions, including through threatening to collapse centralised bargaining.

This creates a situation where unions have to defend existing centralised bargaining against employers, rather than being able to extend centralised bargaining across the economy. Further, situations such as those in the clothing sector put pressure on unions to engage in concessional bargaining - to trade off wages and other rights in order to avoid the total collapse of centralised bargaining in the sector. Clearly, making centralised bargaining mandatory would only be one element of a strategy to deal with the conditions outlined above, and would have to be complemented by other strategies, for example to fight against atypical work, informalisation and non-registration of employers. But making sectoral bargaining mandatory would be an important element of such an approach, combined with a far more effective programme of enforcement by the state - as has happened in countries such as Brazil, which has systematically pursued the formalisation of employment and enforcement of employment standards.

Equally, it needs to be acknowledged that even if the architecture of the Labour Relations Act is changed; much more will need to be done by the parties to make the system work, particularly by unions and government. Much has been written about the failure of government to support Bargaining Councils, to set up the necessary sectoral architecture, or to police the legislation effectively. Similar challenges will remain, even if the Labour Relations Act is overhauled. There has equally been criticism of the failure of the parties to implement the role, which was envisaged for Nedlac in taking the system forward. Business has a contradictory relationship of co-operation and opposition, and that is likely to continue. But organised business will need to be challenged to bring employers on board, and mechanisms put in place both to compel business to comply, but also creating incentives for them to participate (see below).

Box 9: Labour Research Services on Experiences of bargaining

The Labour Research Services, which monitors all collective agreements from a pro-labour perspective, has made some scathing observations about certain trends in collective bargaining. Worrying examples, which they give, include the following three “stories”:

Story 1: What Agreements Tell Us?

It is quite common to find collective agreements that are no more than a couple of sentences. For example “The wage increase for 2009/2010 shall be 7.5%. For all other conditions of employment the status quo remains.” This kind of agreement provides an insight into likely bargaining dynamics: A very narrow range of issues are taken into bargaining; wage increments are the only real change resulting from bargaining; the union is unable to keep issues on the table even if they take them into negotiations.

Story 2: A Whispered Phone Call

A union negotiator is clearly in the middle of negotiations and is calling to find out what the latest inflation rate is. This suggests a number of possible situations: There is limited support for collective bargaining. There is limited space, resources and structure for proper preparation for bargaining. There is no framework for approaching collective bargaining. There is no structured approach to bargaining.

Story 3: Motivations and Quantifications

The third story involves unmotivated or unquantified demands. The employer responds to the union demand of 8% but the employer counter wage offer is structured in a particular way with staggered increase across certain occupations levels and a claim that it will make quicker progress to closing the wage gap than the union’s approach. It becomes clear that the union representatives are unable to interrogate the counter offer. At the heart of the problem is the issue of numerical literacy. The employer is using numbers and basic mathematical ability as a weapon against the worker representatives. There is also clear evidence that there is very limited preparation for bargaining and demands are underdeveloped. They are not quantified and motivated and alternative positions are completely undeveloped. Source: LRS (2011, pp.5-6)

An honest assessment is needed of strengths and weaknesses in labours engagement in collective bargaining. At a Federation level, unions have failed to develop a coherent strategy or overarching framework in this regard. Affiliates have developed their own approaches on a range of collective bargaining issues. Despite the Labour Relations Act’s limitations, more could have been done to take advantage of the space it created in relation to collective bargaining. Further, while unions had decided to oppose the route of workplace forums, they have

done little to take forward the option which they had created in the negotiations, for example that of the Statutory Councils. There is also a view that members in some sectors are becoming alienated from sectoral bargaining, because of inadequate participation by workers, and the perception that they are not benefiting from collective agreements. There is inadequate discussion of the relationship between sectoral and company level negotiations and how this articulation can be used to systematically improve conditions across the sector, at the same time as mobilising union membership. COSATU therefore needs a federation-wide collective bargaining strategy, linked to a coherent wage and sectoral development policy, to address challenges in the current model, and to take advantage of gains which would accrue from an overhaul in the system.

The labour movement needs to consciously overcome collective bargaining strategies which help to entrench existing labour market structures and inequalities. For example a concern was raised in the movement that across the board wage demands made in the 2010 public sector strike would have the effect of deepening existing wage inequalities, regardless of good intentions. It is therefore worrying that across the board demands were again made in 2012 in the Public Service Co-ordinating Bargaining Chamber. What are the pressures which are leading unions to use such bargaining strategies? At the other end of the spectrum, unions need to assess whether the historical collective bargaining strategies attempted for example in the engineering sector, to flatten hierarchies, close wage gaps etc. have had the desired impact, or whether they too need to be re-evaluated.⁷² Analysis of collective bargaining strategies needs to go beyond descriptions of surface trends.

Nevertheless, the fact that labour may have certain weaknesses in the way it has approached collective bargaining, doesn't detract from the fundamental point: A model of sectoral "self-regulation" by employers and trade unions through collective bargaining can only be effective if the institutional framework of centralised bargaining is put in place by legislation, and effectively enforced by the state. Unless the architecture of the system changes away from the current voluntarist system, the pressures which are undermining centralised bargaining are only likely to increase. Alternative models therefore need to be considered (see for example Box 10).

⁷² Kally Forests (2011) book, *Metal that will not bend*, suggests that some of the strategies developed by the National Union of Metal Workers (Numsa) historically may have been too complex and top-down, and therefore tended to alienate the membership. It would be important for the union to conduct an internal review of that experience, and its lessons not only for itself, but more broadly for the Federation. Other unions too would make a valuable contribution through such an exercise.

Box 10 : Latin America Changes in Labour Market Conditions and Policies

Trade unions and collective bargaining

Collective bargaining remains underdeveloped in much of Latin America and there is a general emphasis on enterprise-level bargaining...With the exception of Argentina, Brazil and Uruguay, the proportion of workers covered by collective agreements is low... The large informal economy, the predominance of small firms and enterprise-level bargaining are obstacles to collective bargaining... However, collective bargaining occurs largely at the municipal/territorial level in Brazil. Argentina and Uruguay have recently promoted collective bargaining at the sectoral level, and have thus reversed the enterprise-based emphasis typical in the 1990s. Besides, Uruguay brought under collective bargaining sectors previously excluded such as rural workers, domestic workers and groups of public sector employees.

The impact of collective bargaining in Argentina, Brazil and Uruguay is much greater than suggested by their levels of trade union density (which range from 22 per cent in Uruguay to 38 per cent of wage and salaried workers in Argentina); since collective agreements cover all the workers of the sector or area involved, whether they are union members or not, the coverage rate reaches 60 per cent in Argentina and Brazil, and 100 per cent in Uruguay of wage and salaried workers. ... The number of sectoral collective agreements jumped from an annual average of six in 2000-04 to more than 200 during 2007-08 in Uruguay. In Argentina, collective agreements went from an annual average below 200 in 1991-2002 to more than 1,000 in the late 2000s, and the number of private sector workers covered by them increased by 45 per cent between 1998 and 2008; finally, as the ratio of collective agreement wages to actual wages also rose in the meantime, from 55 per cent in 2001 to 81 per cent in 2009, collective bargaining has become more relevant. (Keifman/Maurizio 2012:20-1)

Formalization

In 2004, the Labour Ministry of Argentina launched the Regularización del Trabajo (national programme for labour regularization). The number of labour inspectors increased from 20 in 2003 up to 400 in 2010. Under this programme, more than 800,000 establishments that employed 2.6 million workers, were inspected. ...the number of registered workers increased 43 per cent between 1998 ... and 2010, and the percentage of non-registered workers fell from 50 per cent (of wage and salaried workers) in 2003 to 35 per cent in 2010 (Ministerio de Trabajo, 2011). (Keifman and Maurizio, 2012, p.21)

A restructured collective bargaining system? Strategic options:

Various researchers of collective bargaining have concluded that the South African bargaining council system in its current form is not working and is potentially in crisis. Drawing on previous work, the CCMA study outlines three options⁷³ going forward in order to strengthen the collective bargaining system (LEP and Naledi, 2010, pp. 2-3 and 63-64).

The first route is a limited approach that relies on the efforts of the Department of Labour and the employer and union parties to councils, rather than on any amendments to the Labour Relations Act. The Department should introduce more programmes to support Bargaining Councils and the Minister should take a much more flexible approach to what constitutes "sufficient representivity". Similarly, the parties to councils can contribute by improving representivity. This doesn't respond to the problem of employers systematically resisting and undermining Bargaining Councils and the labour relations framework.

The second route considered by the CCMA study relies on a duty to bargain enforced by the courts: The organisational rights regime should be dropped, the definition of "workplace" should be amended, and a duty to bargain should be reintroduced. The Labour Court would be empowered to issue an advisory "order" regarding the level at which bargaining would take place, which could be followed by power play if not complied with. Furthermore, framework agreements should be promoted, which would explicitly articulate with workplace bargaining. Such agreements should be automatically extended. Productivity bargaining should be promoted at the workplace level in order to complement framework agreements, while at the national level NEDLAC⁷⁴ and the Millenium Labour Council⁷⁵ should be playing a bigger role in coordinating sector level bargaining and macroeconomic objectives. Consideration should also be given to introducing something along the lines of conciliation boards as a way of supporting bargaining arrangements that fall short of bargaining council requirements, as in the cleaning, security and civil engineering sectors.

The third route considered by the CCMA study proposes compulsory centralised bargaining: The Minister of Labour should prescribe sectors for collective bargaining (in a way that NEDLAC might have done and in the way sectors have been prescribed for Sectoral Education and Training Authorities (SETAs)).⁷⁶ Policy

73 According to Godfrey (2007, p.105) the task team which designed the Labour Relation Act considered three essentially similar options, but proposed the voluntarist route. He supports the idea that the other options now need to be considered.

74 The CCMA ()study concluded: "NEDLAC has not played an effective role in collective bargaining, either in terms of demarcating the boundaries of bargaining councils in order to get a more coherent system of centralised bargaining or in terms of getting an overarching accord on investment, incomes and employment." (LEP and Naledi, 2010, p.63).

75 A high level voluntary social dialogue forum between organised labour and business, set up to complement discussions in the statutory forum, Nedlac.

76 According to Cheadle (2005, p.39) "there is no correlation between the sectors contemplated in the LRA and the use of the concept for sectoral determinations under the BCEA or sectoral training and education authorities under the Skills Development Act."

could then be developed to promote collective bargaining in each sector, which takes account of its specific features, and could include a determination of thresholds of representivity for the purposes of bargaining. Greater coordination between councils and SETAs in order to link skills with rewards would be a recommendation for such a system.

There could also be a number of variations of these options, as well as other options, which could be explored. Elements of all the options may be useful. For example, the proposal in scenario 1 for a programme of effective support by the Department of Labour for bargaining councils would be essential - as would the need for greater policing and implementation. Elements of the second scenario, for example relating to the question of framework agreements, and the articulation between sectoral and workplace bargaining should also be looked at; as should a restructured role for Sectoral Determinations. The same for scenario 3 around the Minister prescribing sectors for centralised bargaining, given the resistance of business to this at the level of Nedlac. However the fundamental question is to put in place a legislated, stable, wall to wall system of collective bargaining, which cannot be blocked by employers. It is of some concern that government has apparently not as yet responded to recommendations for an overhaul of the system: despite the 2007 Godfrey report being submitted to the Department of Labour, and the LEP and Naledi report (2010) being submitted to the CCMA, both advocating the need for structural change.

We do not make a detailed assessment of the 3 options as set out by the CCMA, since there may be other variants or options which need to be considered. However, an initial assessment suggests that each option raises a key concern:

- Option 1 retains the model of voluntarism, which we have said has failed.
- Option 2 seems overly complex and suggests an excessive role for courts.
- Option 3 may be opposed by some as unravelling the “carefully crafted” Labour Relations Act compromise. However, proponents of this option can convincingly argue that the voluntarist Labour Relations Act model for bargaining councils has been tried for 17 years, and has clearly failed to meet its objectives. Further, while the approach of self-regulation can be pursued, this can only work within a different architecture of regulated collective bargaining.

Option 3 seems to come closest to COSATU's historical demands, and responds to the weaknesses of the current system. In crafting a new model for collective bargaining COSATU would need to address a number of issues which usually arise in relation to collective bargaining debates. These include: The relationship of collective bargaining to small business⁷⁷; clarity on extension of agreements

⁷⁷ Contrary to popular perception, research on bargaining council reveals that the average employer member of bargaining councils is actually relatively small businesses. Godfrey (2012, p.18) has found that the average size of all firms covered by bargaining councils is only 18 employees, with the average size of party firms standing at 27 employees and non-party firms at 11 employees.

(COSATU's Labour Relations Act submission argued that this would fall away as in a compulsory system all employers would automatically be covered); exemptions from agreements (there is currently no uniform approach); how to achieve representivity, particularly in vulnerable sectors, and those characterised by atypical work; the role of Sectoral Determinations; the negotiation of "minima" vs "actuals"; and the relationship of sectoral collective bargaining to workplace bargaining. Other issues relate more to the tactics of collective bargaining, such as the negotiation of multi-year versus one-year agreements.

Proponents of this approach would also need to consider how to bring business to the table in terms of a restructured system.⁷⁸ International experience suggests that decisive action by the state, through interventions, which apply to all employers, is more likely to be accepted than a system with numerous loopholes. This seems to be confirmed by research on Bargaining Councils, which suggests that the biggest concern of employers was that some employers could use non-coverage by the system as a competitive advantage.

Another dimension is to provide incentives and benefits to employers to be in the system. Du Toit et al. (1995) made the important suggestion in the last days of the industrial council system that small firms could be induced to join party employers' organisations by the state channelling a range of incentives through industrial councils, e.g. "assisted access to procurement markets", "access to finance...", "tax incentives and specialised tax rates", "access to targeted assistance programmes", that would be accessible only if the firm complied with various policies, including being registered with an industrial council and being a member of a party employers' organisation (Du Toit, et al., 1995, p.63). This approach could be updated to current conditions.

In summary, elements of a new collective bargaining model should include:

- wall to wall and mandatory sectoral bargaining,
- coherent demarcation and definition of national sectors, to replace the current patchwork arrangement,
- alignment of sectoral bargaining with sectoral developmental strategies, industrial policy, skills, retirement funds etc.,
- an explicit mandate to address wage and income inequalities,
- creation of powerful collective bargaining institutions inter alia using the economic levers of state

⁷⁸ Business has argued strongly for example through their chief legal representative, that the Labour Relations Act represents the appropriate model, and would resist a shift away from the voluntarist approach: "Employers fundamentally support the manner in which the Labour Relations Act regulates collective bargaining, and for the reasons recorded in the Explanatory Memorandum, would be opposed to any proposal to introduce a judicially enforceable duty to bargain. Self-governance remains a legitimate and the most desirable mechanism to establish terms and conditions of employment and to resolve disputes, within the framework of a voluntarist structure."(Van Niekerk, 2006, p.51)

- negotiation of sectoral frameworks, supplemented by workplace bargaining,
- well-resourced structures backed up by effective state programmes to formalise and regulate the labour market.

A new policy and legislative framework would need to be crafted to give effect to this. There is a view, that a comprehensive investigation into the labour market is required in order for a systemic overhaul to take place. There is merit in this view, given the fact that the Presidential Labour Market Commission in 1996 followed the finalisation of the Labour Relations Act, rather than preceding it, as should have been the case. The Labour Market Commission took inter alia, the voluntarist model of the Labour Relations Act as a departure point, rather than considering other alternatives.

The CCMA (LEP and Naledi 2010, p.4) study argues that before problems in the system can be addressed "there needs to be a vision for the bargaining council system (and centralised bargaining more generally) and its role in labour market policy and related policies (e.g. social security, industrial and economic policies). Support for Bargaining Councils and centralised bargaining should be embedded in these policies. By implication the primary problem facing Bargaining Councils is the ambivalence with which government and the Department of Labour has treated the bargaining council system... What is required is a commission on labour relations and the labour market ... which will have the objective of developing a labour relations and labour market policy, in which the plan with respect to the bargaining council system... would be spelled out... One way of doing this would be to use the sectors prescribed for SETAs as a precedent, with the Minister of Labour prescribing sectors for collective bargaining. Policy could then be developed to promote collective bargaining in each sector..." While this proposal is worth considering, a concern may be that such a Commission would inordinately delay the process.

The labour movement needs to conduct its own review of the current state of the collective bargaining system, examine experiences of affiliates since 1996, and engage with sympathetic international and local experts on available options, including progressive economists and legal experts. The mandate should be on how to make mandatory centralised bargaining work, drawing on international and local research, with support from the ILO. Once COSATU has settled on a clear policy framework which addresses the questions outlined above, it should commission legal experts to embark on legal drafting⁷⁹, as an input into the engagements with the ANC, government, and business. COSATU further needs to seek agreement on an approach with the other Federations. A transitional strategy would be needed to move from the current system to a new system (including the possibility of triggering statutory councils), situated firmly in a framework for an innovative long term collective bargaining agenda.

⁷⁹ Including legal advice on the question to confirm that Section 23 of the Constitution is consistent with such a change.

Tactically, COSATU needs to consider what process should be pursued, whether in relation to a government commission as suggested above, amendments to existing legislation, the process of engagement with business etc. A policy shift of this magnitude would need to get support of the ANC, and ultimately government. Therefore, given that COSATU has decided to pursue this route, it will be essential to get the support of its allies and endorsement of this policy perspective by ANC national structures, as well as government.

7. CONCLUSIONS

COSATU is calling for nothing less than a radical overhaul of our labour market institutions, and for the development of an innovative new wage policy. This would require an integrated proposal, which connects transformation of collective bargaining, to a wage and incomes strategy, and a transformation of social protection. Therefore the recommendations on wages, social protection and collective bargaining need to be brought together into one coherent package.

A national wage policy and legislative framework would need to be developed, harnessing the various institutions, including collective bargaining, the minimum wage and minimum living level to achieve national targets aimed at transforming our wage structure. Such a policy would need to include requirements for Bargaining Councils to set targets for reducing wage gaps, and comply with minimum living levels within a certain period of time.

The Chapter on Brazil shows that we have an enormous amount to learn from the approach they have adopted. The labour movement should engage in further research and interaction with the movement there, to explore the lessons from that country, and the continent more broadly, and interact on ways to adapt the Brazilian approach to our conditions. In particular it would be useful to engage in more detail on their approach to minimum wages, social protection, formalisation of the labour market, and enforcement of labour regulation. Further to look at the relationship between their labour market restructuring, and broader economic strategy, particularly industrial strategy, the approach to the financial sector, rural development, and the role of the state in economic development.

To be effective, this overhauling of labour market structures, would need to be linked to a radical shift in economic policy, if it is to achieve its desired result of fundamentally tackling poverty and inequality, as well as generating the necessary levels of employment. The proposed labour market restructuring measures, as we have seen in Latin America, are a sharp instrument in the fight against poverty and inequality. But a developmental economic policy is the heavy artillery needed in the fight to create jobs, and to transform the inherited economic structure. The proposed package would therefore need to integrate these two key dimensions if it is to have the desired impact.

The proposals in this document on minimum wages, social protection and collective bargaining should form an important part of the New Growth Path framework discussions aiming at securing national agreement on a new deal for South Africa. Proposals on labour market restructuring and a new wage policy, combined with COSATU's demands around economic policy could form the basis for its engagement with the New Growth Path process.

Where employment is threatened in crisis hit industries, a package of rescue measures needs to be devised and implemented by the parties together with government. In the short term the labour movement needs to look at reviving the 2008 National Framework Agreement on responding to the financial crisis, and consider other measures to address the crisis in sectors hit by job loss, such as clothing and metals. Government should intervene to help drive sector strategies in these areas, with a key role for collective bargaining institutions. The South African labour movement needs, with its allies in the international labour movement, to review the international experience post crisis, particularly around bargaining strategies to secure job security, which don't sacrifice workers hard won gains.

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APPENDIX 1: MINIMUM WAGE SETTING IN BRAZIL

Definition: Minimum wage is defined as "the minimum pecuniary amount due and directly paid by the employer to every worker, including rural workers, without distinction of sex, by regular day of work, able to satisfy in each time and region of the Country, normal needs such as alimentation (nutrition), accommodation, dressing, hygiene and transportation." Codification of Labour Legislation §76

Mechanism: Government decides alone- From 2012 until 2015 the minimum wage will be decided by the Government (more specifically the Executive Power) and established by the Decree, determining the monthly, daily and hourly amount for the minimum wage. Act n. 12.382, 25th February 2011 fixing the new minimum wage and establishing new procedures §3 Supplementary Law No. 103/2000 §1

Collective agreements may not be lower than national minimum wage- Minimum wage set through decentralized collective bargaining: "Wage floors" may be set by collective agreement, provided that rates are not lower than the federal statutory minimum wage. Constitution of Federative Republic of Brazil §7(5) Supplementary Law No. 103/2000 §1

Scope: The Federal Constitution defines the minimum wage as the lowest pay that any worker can receive. It applies to all workers. Additionally, federal acts, collective agreements, or, in the absence of such, state level legislation can provide for "wage floors" not lower than the federal minimum wage for specific groups of workers (Constitution of Federative Republic of Brazil Section7).

Amount⁸⁰: The figures below give an indication both of the magnitude of the minimum wage in Brazil over a six year period (between 2008-2013), and their equivalent value in South African currency, and the deliberate policy of large annual real increases in the minimum wage.

678 R\$ per month (since 1 January 2013*)	= R3142
622 R\$ per month (since 1 January 2012*)	= R2894
545 R\$ per month (since 28 February 2011)	= R2535
510 R\$ per month (since 1 January 2010)	= R2373
465 R\$ per month (since 1 February 2009)	= R2164
415 R\$ per month (since 1 March 2008)	= R1939

Minimum wage level(s) in national currency (1 Brazilian Real = 4.67 ZA Rand as at 13/6/12)

*Updated to include 2012 and 2013 figures

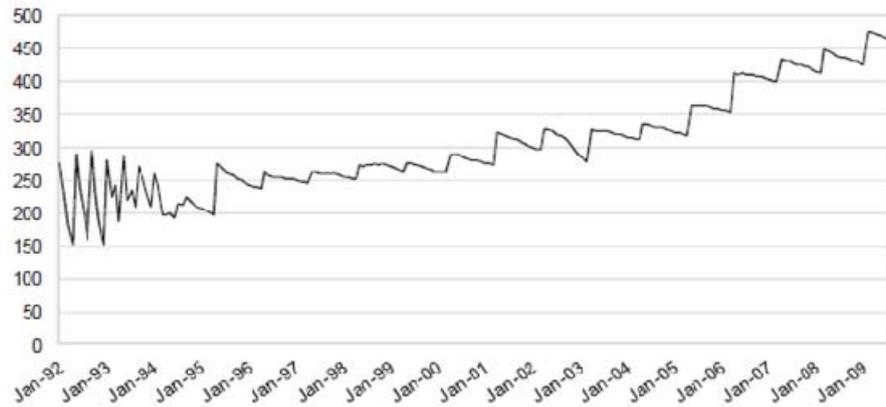
Source: ILO Conditions of Work and Employment Programme (2011a)

80 Note: the mechanism adopted by the Brazilian government to determine the value of minimum wage increases, is a policy of annual adjustment based on inflation plus the average GDP growth of the two previous years.

APPENDIX 2: MINIMUM WAGES AND EMPLOYMENT IN BRAZIL

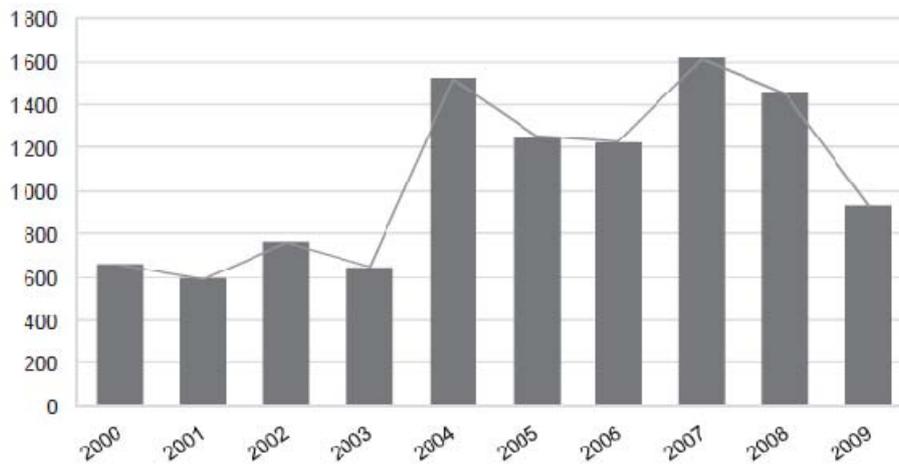
Brazil's Story: A rapidly rising minimum wage combined with rapidly rising employment

Brazil's real minimum wage monthly trend since 1992, in Brazilian Reais



(OECD 2010:61)

Net Annual creation of formal employment in Brazil 2000-2009^{a)}, in thousands



a) Up to September.

(OECD 2010: 87)

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