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INTRODUCTION

This year, 2009, is likely to prove memorable for both economic and political reasons. The fallout of the global financial crisis and ensuing economic recession is beginning to make itself felt in no uncertain terms in the South African economy. There is evidence of falling output and mounting job losses and the question is just how deep the crisis will bite. This year also saw the swearing in of Jacob Zuma as president of South Africa following a highly charged leadership contest within the ANC, a contest characterised as being both about leadership style and ideological orientation. There is a perception at least that the change in leadership reflects a shift to the left within the ruling party away from a strict neo-liberal vision of development. There is a further perception that the ANC - SACP - COSATU alliance has been revitalised, having fallen into disrepair under former president Thabo Mbeki.

Trade unions by their very nature are something of a bridge between the political and economic spheres and these twin themes are reflected to varying degrees in each of the papers in this edition of *Bargaining Indicators.* The substance of the trade unions ability to engage on either the economic or political terrain is however governed by their ability to organise and really it is this theme which dominates *Bargaining Indicators 2009.*

Implicit in almost all of the contributions is a conception of collective bargaining in its broadest sense as a site of struggle and a place where unions may root their responses to a range of critical challenges that they are faced with. The difficult economic conditions which we face can be put to good use if deployed as a stress test for established strategy and practice and can assist in exposing weaknesses that might not be apparent in more prosperous times.

We have witnessed a surge of industrial action by trade unions and workers in 2009 with strikes in most major industries including both the public and private sectors. A recent cover of the *Financial Mail* asks if Zuma and business are too weak (FM, July 2009), a clear indication that some are searching for an overtly political motive in trade union actions. Without pronouncing on the balance of the economic and the political in the strategic agenda of trade unions, *Hard Bargains in Hard Times – Revisiting the Bottom Line in Collective Bargaining* indicates that while average wage increases in 2008 compare well with inflation, in many cases this will not have compensated for losses incurred in 2007. The suggestion is that this year's strikes are more indicative of the efforts of unions to guard the real wages of workers, than a strictly political agenda, if indeed struggles over incomes and livelihoods can be considered to be apolitical.

Hard Bargains in Hard Times describes the wage outcomes of collective bargaining in South Africa for 2008 by exploring settlement levels for bargaining councils and company level bargaining as well as wage setting in sectoral determinations. This work draws on 266 collective agreements for the year and even greater number of individual wage rates.

Trenton Elsley observes that wages take the appearance of a bottom line issue for trade unions in that wages are one of the few consistent changes to conditions of employment resulting from collective bargaining. The author, however, goes on to argue that the union is more than the magnitude of the wage increase which it negotiates on behalf of workers. He argues that in the context of an economic recession there is all the more reason to develop the strategic thinking of the union in relation to collective bargaining.

> *"…we should not measure our strength by our achievements, but rather it is our strength which provides the basis for our achievements. The fundamental strength of trade unions is undoubtedly the extent and depth of their organisation in the workplace."*

The author proposes an assessment of how any particular demand in collective bargaining might serve the union's deeper organisational goals. Similarly, the union ought to consider how employer strategies in collective bargaining might impact its ability to organise now and in the future.

In the context of the current economic recession he urges unions to value that which they concede and that which they sacrifice in collective bargaining and extract quantifiable (but not necessarily monetary) concessions in return. Unions faced with companies in genuine distress must value that which they might forego in the interests of maintaining the company. Put another way they must ensure that they get something in return for their sacrifices. He calls it 'return on restraint', which is of course a perversion of the economic term, return on investment. The principles however are much the same.

Having explored the outcomes of collective bargaining with a focus on low wage employment we turn our attention to company executives. Trade union negotiators will be all too familiar with the argument that comparisons between the remuneration of workers and executives are ill conceived. While it is true that there are differences between a low skill worker and an executive director of a large corporation in terms of educational attainment, the complexity of the work they face and the responsibility they carry, what is not true is that there can be no comparison at all between the highly skilled manager and a less skilled worker.

Critics of efforts to close wage gaps draw some of their strength from the absence in South African society of a meaningful mainstream discourse, never mind consensus, on limits or norms in relation to remuneration. This applies to both the bottom and the top of the labour market. At what point is a wage so low that it is unacceptable or undesirable? At what point is remuneration so high that it is unacceptable or undesirable?

The Directors' Fees Survey 2009 makes an empirical contribution to this debate by considering executive pay at 71 companies listed on the JSE of which 43 are positioned in the top 100 by market capitalisation. Trade union negotiators may draw on detailed data for individual companies as well as a sector analysis.

This year the survey distinguishes between salaries, bonuses and long term incentives, providing further insight into how executive pay is structured and offering new possibilities for shifting the terrain in wage bargaining.

Consequences of the Global Economic Crisis – Early Reflections for South Africa examines a selection of indicators of the impact of the global economic crisis for the South African economy and finds that the effects have been uneven across industries and that agriculture and construction are the only likely growth industries in the coming quarters. It appears also that smaller companies are absorbing the brunt of the recession.

Haroon Bhorat notes there is the risk of skills development cut backs resulting from company cost management strategies as well as an 'artificial' easing of skills shortages by virtue of lower economic output. If this is the case, the ability of the economy to return to higher levels of growth will be undermined. Of particular concern is that a lower growth rate projection could mean broad unemployment rising as high as 45% by 2014.

The first three chapters effectively set the scene for a closer examination of a series of organisational challenges facing trade unions in South Africa. Chief amongst these is the shift by companies to more 'flexible' forms of employment. These changed and changing employment relationships have the effect of rendering work far more precarious with respect to the duration of employment, the benefits which accompany employment and by hollowing out much of our existing labour regulation.

By its very nature the construction industry has been a front line for the development of flexible employment in South Africa. *Flexibility and Precariousness* does much to add to the debate around labour broking by mapping out the character of employment practices in the construction industry in South Africa.

Pamhidzai Bamu (with Shane Godfrey) situates the practice of labour broking within the broader concept of flexibility and distinguishes between processes of casualisation and externalisation. What becomes clear is that labour broking provides companies with the best of all worlds in that they are able to maintain control of the worker in the workplace, while avoiding almost all administrative and legal responsibility for that same worker. At the same time the work which has been externalised is cheapened in terms of wages and benefits, precisely because it has become cut off from trade union organisation and regulation by labour law.

One of the more uncomfortable challenges facing unions in South Africa is that of reconfiguring the union as a home for women workers. In *Getting Organised – Making the Union a Home for Women Workers*, Nina Benjamin points the way by drawing our attention to what women are doing in trade unions rather than what trade unions are doing for women.

> *"The Mall committee allows for more women to organise and presents more chances of women participating, engaging with mall management rather than their specific company management in the mall. For women this is easier as it is difficult to go to union meetings after hours but mall meetings can be easier as they can be held during lunch times. Workers have different lunch times so there has to be a degree of flexibility allowing for the biggest numbers of workers to participate." - SACCAWU Shop Steward*

Getting Organised provides insights into the experiences of women within the union and without the union, women within the workplace and women within that other workplace, the home.

> *"…people are paid when they are on sick leave, when they take annual leave yet the employer does not have to pay you when you are on maternity leave." - Focus group participant*

> *"The activities of the union have been devised on the basis of women's interests and needs and in terms of their "life issues" like marriage, delivery and childcare and also to deal with demands to change the unequal power relations between men and women in the workplace and society – and most importantly to develop alternative ways of living." - Korean Women's Trade Union*

> *"Your ideas are dismissed and if you are building gender structures your programmes are suppressed, your budgets are not approved". - Focus group participant*

> *"Like other unions we have Congress, National Executive Committee, Branch executive committees and farm committees. The difference with other unions is that all our structures are open to everyone who has some kind of connection to the farm i.e. the unemployed who live on the farm, contract workers, pensioners etc. This can help us to keep our structures of becoming very bureaucratic and only serving a small group of workers." Members of Sikhula Sonke*

This piece draws on a rich vein of research spanning three years involving structured engagement with hundreds of women workers and perhaps that is why *Getting Organised* has the rare distinction of being both accessible and nuanced, both engaging and rigorous.

Space for Organisation – South African trade Unions and the Prospects for Renewal invites us to understand the 'new' challenge facing trade unions as products of the historical development of capitalism and the progressive trade unions in South Africa. Jan Theron argues that the groundwork for the sealing of spaces for trade union organisation is in evidence as early as 1983 and that spaces for organisation were still being sealed in the Labour Relations Act of 1995. The continuing fragmentation of the workforce has narrowed trade union membership enormously when compared to its broader membership constituency or those it seeks to organise.

Theron argues that *"trade unions should be the first to appreciate that the problem of triangular employment relationships (typified by labour broking) is at root and base a problem of organization.*

In the case of the informal economy, there may be no economic entity visible determining the conditions under which workers work. Yet the task of organisation is to make linkages visible, in much the same way the emergent unions made the links between different employers in different workplaces visible, underpinning its founding principle of 'one union, one industry.' In the case of the retail mall, the informal economy is literally outside the doors of the formal workplace."

Even if unions are successful in lobbying for the banning or regulation of labour broking it is imperative that they have a crisp understanding of this phenomenon and how it is situated in a broader trend towards the informalisation of work. Wars are rarely won in a single battle and the temporary employment industry is likely to reconstitute itself in response to banning or regulation. A rigorous understanding of the rationale and modalities of informalisation will be required to formulate viable responses to such developments.

The final chapter of Bargaining Indicators 2009 shifts our focus to an increasingly powerful presence in the global economy and on the African continent. *Developing Economies, Developing Solidarity* provides us with an insight into working class conditions in China and is best understood as a contribution to our understanding of the prospects for promoting real solidarity between trade unions in China and in Africa.

Apo Leung and Saliem Patel outline how the Chinese economy has changed over the last thirty years and attempt to describe the character of trade unions and labour support organisations and the conditions under which they operate in the country.

The authors suggest that they way forward is for labour activists in China and Africa to develop an independent agenda for engagement in order to deepen dialogue and move beyond exchanges that amount to little more than 'trade union tourism'. This implies that the progressive trade union movement in Africa ought to develop a more strategic approach to these exchanges. The authors believe that a conscious emphasis on building solidarity on concrete issues and through cultural exchange and mutual understanding at grassroots levels will assist in breaking down the barriers to cooperation which are manufactured and perpetuated under global economic competition.

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Hard Bargains in Hard Times

Revisiting the bottom line in collective bargaining

Trenton Elsley
Labour Research Service
July 2009

INTRODUCTION

The intention of this paper is to consider the implications of the current economic climate for trade union approaches to collective bargaining. Difficult times provide something of a stress test for established strategy and practice and can assist in exposing weaknesses that might not be apparent in more prosperous times. They also point to new directions for practical collective bargaining strategy.

It is in this light that we examine the outcomes of wage bargaining in 2008 in South Africa and relate wage increases to inflation in an effort to establish the real wage position of workers coming into negotiations in 2009. While the analysis is time bound the principles are not and we describe practical methods, some old and some new, for safeguarding the purchasing power of workers.

We also consider the Rand levels at which low-wage work are set in different industries and sectors in order to get behind the percentage talk which has come to dominate wage bargaining.

After focusing determinedly on wage bargaining and the issues which it raises we proceed to challenge the centrality of this area of engagement and invite unions to revisit the 'bottom line'. The likelihood that genuinely poor economic performance in some quarters will strip away or diminish many of the material advances the union might make through collective bargaining provides an opportunity to reacquaint ourselves with the deeper goals of these organisations of worker interest.

This line of thinking is developed by interrogating union and employer demands in collective bargaining and asking what aspects of the union's organisational ability any particular demand in collective bargaining might serve.

The final section translates the approach into practical recommendations by drawing on the deliberation of a workshop commission of trade unionists asked to consider a crisis situation in collective bargaining where the employer is proposing a wage freeze or retrenchments.

References to trade unions throughout this paper should be understood to include worker members, worker representatives, union officials and office bearers. The emphasis of course may vary with the subject of discussion.

THE SAMPLE

The table below describes our sample of wage agreements. In the case of bargaining councils the "strict" measure counts each bargaining council as they are formally constituted as one, whereas the "extended" measure counts significant sub-structures of bargaining councils. As an example, the National Bargaining Council for the Chemical Industry (NBCCI) has a number of distinct chambers which bargain separately and produce quite different results. In this case each of the chambers is counted. In selected instances area variations in outcomes are also counted. The same distinctions do not apply to the decentralised agreements in the sample.

Table 1: Sample of bargaining council agreements

Bargaining Council Agreements	2005/2006	2006/2007	2007/2008
Strict count of bargaining units	15	19	24
Extended count of bargaining units	34	45	49

Table 2: Sample of decentralised bargaining agreements

Decentralised Agreements	2007	2008
	217	217

The coverage of the bargaining council agreements in the 2008 sample is estimated at about 550,000 workers. That is the number of workers who are members of the trade unions party to the agreements rather than the total number of employees of the employers who are party to the agreement.

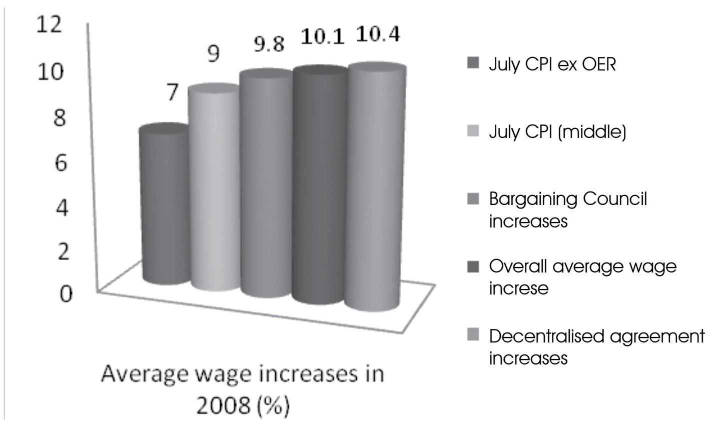
The coverage of the sample of decentralised agreements is far lower and estimated at a little over 150,000 workers.

The sample includes nine sectoral determinations, the theoretical coverage of which is estimated at roughly 3.5 million workers.[1]

SUMMARY

In 2008 the difference between the settlement levels for decentralised bargaining (10.4%), bargaining councils (9.8%) and a combined average (10.1%) are marginal.

Fig 1: Average wage increases in 2008 (%)



The choice of inflation benchmark is crucial in assessing real wage gains and losses. Using the closest measure to the old CPIX one could say that average wage increases in 2008 look like they beat inflation by upwards of three percent. On the other hand, using the infla-

[1] Godfrey et al (2005)

tion rate for what Statistics South Africa calls the 'middle' expenditure group, average wage increases for 2008 look like they will come in about one percent ahead of inflation.
If we take a slightly longer view what becomes clear is that wage increases in 2007 were well below the inflation rate for the period. This coincides with a sharp price increases beginning in mid 2007 and peaking in mid 2008.

The fact that unions appear not to have fully recovered the real wage losses of 2007 suggests that either they were not fully aware that real wages had declined significantly or that employers successfully resisted their efforts to bring this loss into negotiations in 2008.

The variation of settlement levels by industry and sector is visible every year and suggests that outcomes are somewhat flexible across the centralised bargaining system, although within a fairly narrow range.

Increases on minimum wages in sectoral determinations were generally lower than for bargaining councils and decentralised bargaining and ranged between 5.1% and 8.8%. Workers covered by these agreements will have lost out to inflation without exception.

The average minimum take-home wage in 2008 was R2841 per month. Once the hours of the ordinary working week have been standardised for a 40 hour week, the average wage is the lesser amount of R2642. Average ordinary hours worked per week are 43.2 hours.

It is almost exclusively minimums which are reflected in decentralised bargaining agreements rather than actual wages. This suggests that the trend to bargain over minimums has gone beyond bargaining councils and now includes decentralised bargaining.

The gap between the lowest and highest minimum wage for the bargaining councils which are considered here is almost 4 to 1.

An examination of 2007/2008 data arouses a suspicion that wage levels and to a lesser extent settlement levels might relate in some way to the size of bargaining councils as defined by their estimated coverage. On the other hand, trade union membership density does not appear to relate to either settlement levels or wage levels in 2008.The analysis does not allow for a definitive statement on any causality that might exist between minimum wage levels and bargaining council size, but does perhaps point the way for a more definitive exploration of the determinants of collective bargaining outcomes.

While sectoral determinations tend to set very low minima we see that minimum rates at the top end of the spectrum compare well with those at the lower end of the bargaining council range.

The absence of empirical benchmarks for a living wage should be of concern to unions. The preoccupation with poverty benchmarking is likely to put downward pressure on what is considered an 'acceptable' wage level and this has serious implication for wage benchmarking in collective bargaining, sectoral determinations and wage setting in public works programmes.

If we adjust the most recent survey estimate of a living wage by average CPI to bring it current at December 2008, which is admittedly a crude manipulation, we arrive at a monthly amount of R3382. It would appear then that on average minimum wage employment in South Africa is almost 30% shy of a "modest low-level standard of living" for a household.

A mutually accepted measure of inflation should be a benchmark of the lowest wage offer companies can bring to the table. Anything less is an attack on workers' the standard of living. The suggestion is that unions consider fighting for agreement on this principle.

Ideally, inflation linked increases would automatically be implemented (retrospectively) on a monthly or yearly basis as part of company payroll. If the formula were clear the extra administrative burden on most companies would be minimal. Collective bargaining would then only negotiate increases over and above inflation. All the energy wasted on chasing inflation could then be redirected towards issues more closely linked with the workers, the company and the industry. This could allow collective bargaining to be a more innovative exercise and one which was more responsive to the needs of stakeholders.

There are at least two alternative benchmarks for wage bargaining. There is the possibility of a wage bargaining strategy which matches the income level of a majority of workers in the bargaining unit to the inflation rate for a particular expenditure group, rather than using average inflation which is biased towards the higher expenditure groups.

Executive remuneration is another benchmark and the 2009 survey of directors' fees differentiates between salary, remuneration and long-term incentives. We consider how a trade union negotiator could make optimum use of these numbers to further their bargaining agenda.

One general, yet striking, observation emerges when looking at bargaining processes and the collective agreements which result. While the bargaining agenda is often broad, the terms of agreement are often narrow. The 'terms of agreement' refer to the range of issues that actually change year on year as a result of bargaining and are then reflected in the collective agreement. In this sense, wage increases are sometimes the only outcome of collective bargaining. The fact that there is little or no change in median conditions in the two year period supports this assertion. In some instances median conditions appear to have decreased.

This paper argues that guarding the organisational strength of the union is a higher order goal and one which makes all other gains possible, even if those gains appear at times to be deferred. The union is more than the magnitude of the wage increase which they negotiate.

A union is first and foremost an association of workers in a collective which represents their interests in the workplace. The distinction here is between representivity in the workplace and representation on particular issues. The implication is that an organisation should not measure its strength by its achievements. On the contrary, it is the level of organisation within the organisation which provides the basis for its achievements. The fundamental base of trade unions is undoubtedly the extent and depth of their organisation in the workplace. It is from this base that other strengths flow, be they political, social or economic.

In the context of an economic recession there is all the more reason to develop the strategic thinking of the union in relation to collective bargaining. One approach is to assess which aspects of the union's organisational goals any particular demand in collective bargaining might serve. Similarly, the union may consider the impact of employer strategies on its ability to organise now and in the future.

Unions must value that which they concede and that which they sacrifice in collective bargaining and extract quantifiable (but not necessarily monetary) concessions in return. Unions faced with companies in genuine distress must value that which they might forego in the interests of maintaining the company. Put another way they must ensure that they get something in return for their sacrifices. We call it 'return on restraint', which is of course a perversion of the economic term, return on investment. The principles however are the same.

A workshop commission of trade unionists asked to consider a crisis situation in collective bargaining where the employer is proposing a wage freeze or retrenchments, puts forward several ways of interrogating a company's claim (of financial difficulty) as well as measures for cost cutting prior to entertaining wage concessions.
The commission describes alternative demands that can be introduced, some of which have limited cost implications, but which contribute to the ability of the union to organise and in turn be organised by the people it represents.

- Demand a more aggressive stance by the company on skills development, multi-skilling of staff, transformation and employment equity.
- Place a group-wide ban on overtime, or where overtime cannot be avoided compensate staff with paid time off.
- Increase limits with respect to commutation of leave to alleviate negative impact of wage freeze.
- Management to be more flexible in the approval of staff loans, to assist workers in meeting financial responsibilities (rental, food, transport, electricity etc)
- Demand that a task team be put in place that assesses the company's performance, developments in the sector and the economy at large, but also to deal with any teething problems that may arise in the implementation of agreed cost cutting measures.

Further possibilities for demands in a recessionary environment that are strategic rather than defensive include:

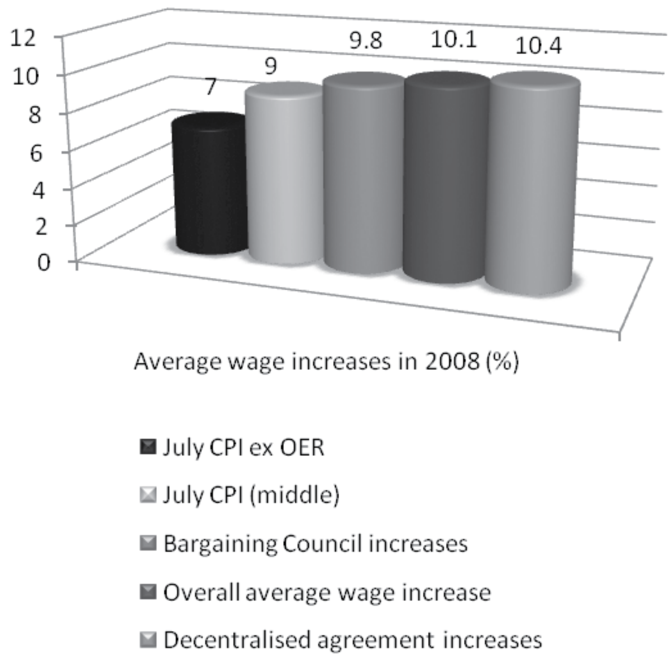
- A moratorium on retrenchment for specified time period, with consequences if the company breaks the agreement;
- Clauses which either prohibit or limit the use of labour brokers, but certainly equalise conditions of employment between workers inside and outside the company, thereby establishing disincentives for atypical employment;
- More leave days for shop stewards (for union work);
- Establishing (office) facilities for shop stewards in the workplace; and
- Establishing or extending full-time shop stewards in the workplace.

(1) WAGES AND INFLATION

We begin by considering the most visible exercise in collective bargaining, that of wage bargaining, and examine wage settlements in percentage terms and what this has meant for the purchasing power of workers. By contrasting the rate of increase in wages with the rate of increase in prices (inflation) we arrive at the real wage.

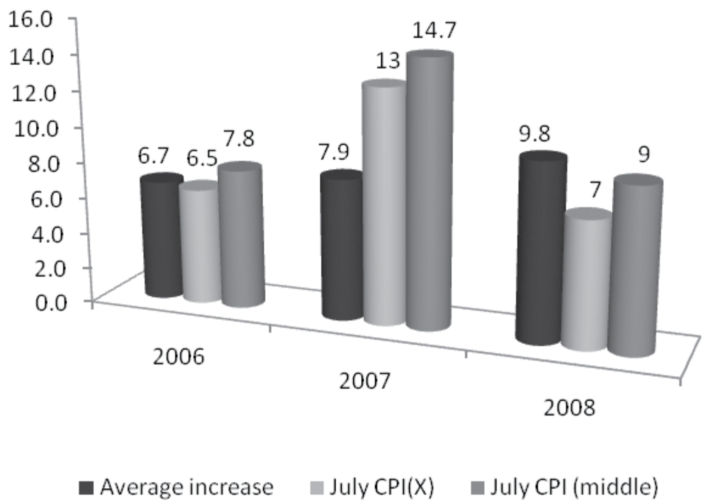
In 2008 the difference between the settlement levels for decentralised bargaining, bargaining councils and a combined average is marginal. The choice of inflation benchmark is crucial in assessing real wage gains and losses. Using the closest measure to the old CPIX one could say that average wage increases in 2008 look like they beat inflation by upwards of three percent. Using the inflation rate for what Statistics South Africa calls the 'middle' expenditure group, average wage increases for 2008 look like they will come in about one percent ahead of inflation. Our estimate of average minimum wages falls squarely within this expenditure range.

Fig 2: Average wage increases and inflation



If we take a slightly longer view what becomes clear however is that wage increases in 2007 were well below the inflation rate for the period. This coincides with a sharp price increases beginning in mid 2007 and peaking in mid 2008. We have noted elsewhere[2] that sudden shifts in inflation tend to take a while to find expression in wage settlements. Worker households that correspond with the middle expenditure group have sustained the heaviest losses.

Fig 3: Bargaining councils, wage increases and inflation



Increases in 2008 just beat both our inflation benchmarks, but this does not account for the heavy losses of the previous year. As much as a wage settlement in any year will not anticipate rapidly rising inflation, it should be apparent that inflation has outstripped the wage increase by the time of the next round of bargaining. We would expect the victim in this situation to try and play catch-up. The fact that unions appear not to have fully recovered the real wage losses of 2007 suggests that either they were not fully aware that real wages had declined significantly or that employers successfully resisted their efforts to bring this loss into negotiations in 2008. Negotiators need to take a longer view of bargaining and understand the real wage position of workers over the 2-3 years prior to current negotiations.

[2] Elsley, 2007, p85.

(2) COMPARING APPLES TO PEARS

Linking inflation rates to wage increases in collective bargaining presents us with a certain tension. While current inflation rates appear to inform current negotiations, the fact is that inflation data is backward looking while a wage increase is operational for the coming year (forward looking).

There is a tendency to compare wage increases with inflation rates published in the same period. So a 2008 wage increase is compared to the inflation rate published in 2008. There is in fact little overlap between the two measures. The 2008 wage increase might run from mid 2008 to mid 2009, while the inflation rate published in mid 2008 refers to the 12 months leading up to mid 2008. This is because inflation rates are reported as annualised inflation on a monthly basis, which means that the inflation is reported at the end of 12 month period and refers to that preceding 12 months.

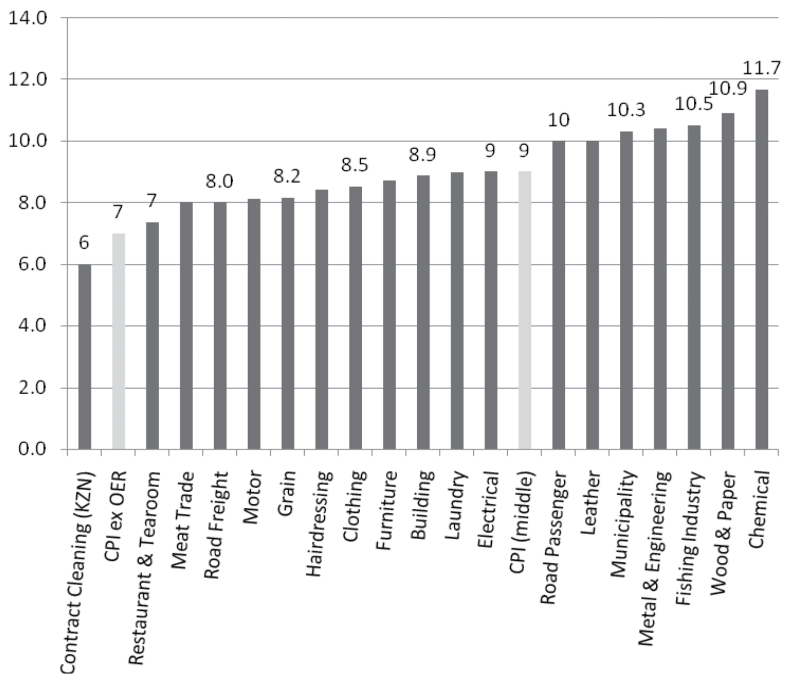
Where the 2008 inflation figures are useful is in assessing the previous wage increase against reported inflation before coming to a forecast of what inflation might be in the future. This allows the negotiator to assess the real wage losses or gains that workers are taking in to the current round of bargaining.

The majority of wage increases in our sample are implemented in July of each year, so the assessment of wages and inflation matches annualised inflation rates for July to wage increases rather than using an annual calendar average of inflation. Average inflation for the calendar year (January to December) can differ significantly from annualised inflation on a monthly basis.

(3) WAGE SETTLEMENTS BY INDUSTRY

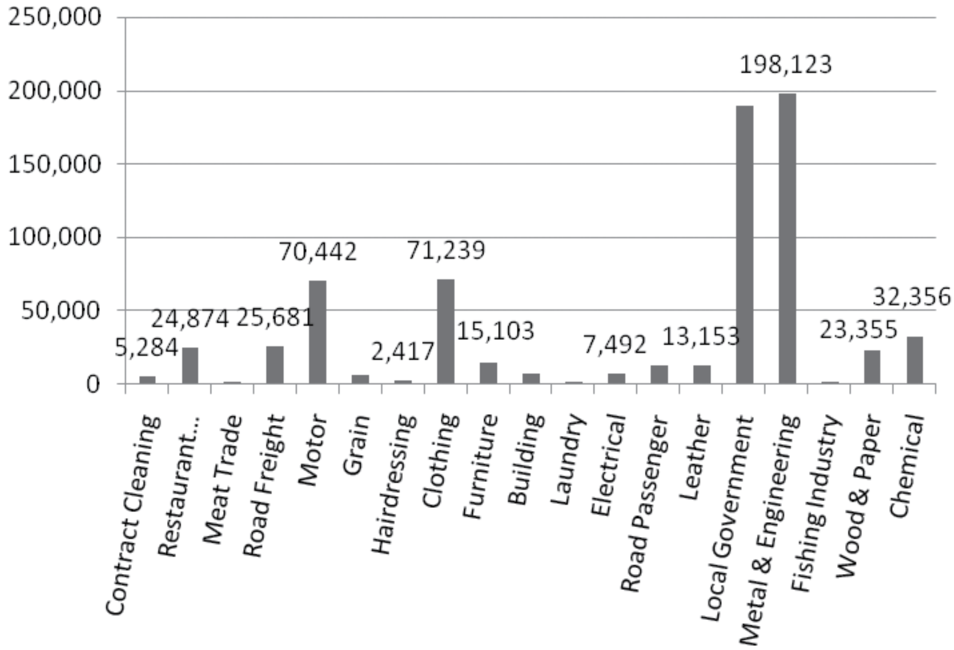
These averages do hide some variation in settlement levels between different industries. The next figure shows wage increases for the different bargaining councils. The variation of settlement levels by industry and sector is visible every year and suggests that outcomes are somewhat flexible across the centralised bargaining system, although within a fairly narrow range.

Fig 4: Bargaining councils: average wage increases by industry in 2008 (%)



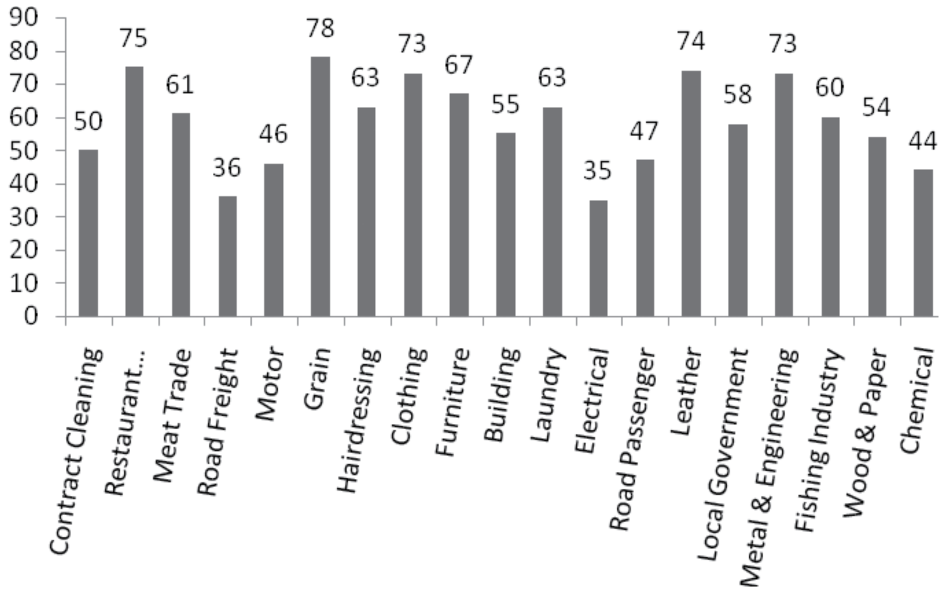
In order to put these wage increases into some perspective the figure below provides estimates of bargaining council coverage. The bargaining councils are arranged by smallest to largest wage settlement as in the preceding figure. There is a vague sense that bargaining council size relates to settlement levels. Settlements in the road freight, motor and clothing industries should howver be further to the right on the graph. We might also expect local government and the metal and engineering bargaining councils to be at far right given that they are the largest councils in the group by some distance.

Fig 5: Bargaining councils – estimated coverage[3]



Trade union membership is reflected in next figure. As before, the order is determined by settlement level, smallest to largest, left to right. A comparison of trade union membership density in each of the bargaining councils with settlement levels yields no discernable pattern. In other words it is not evident that trade union density relates to the level of settlement at all.

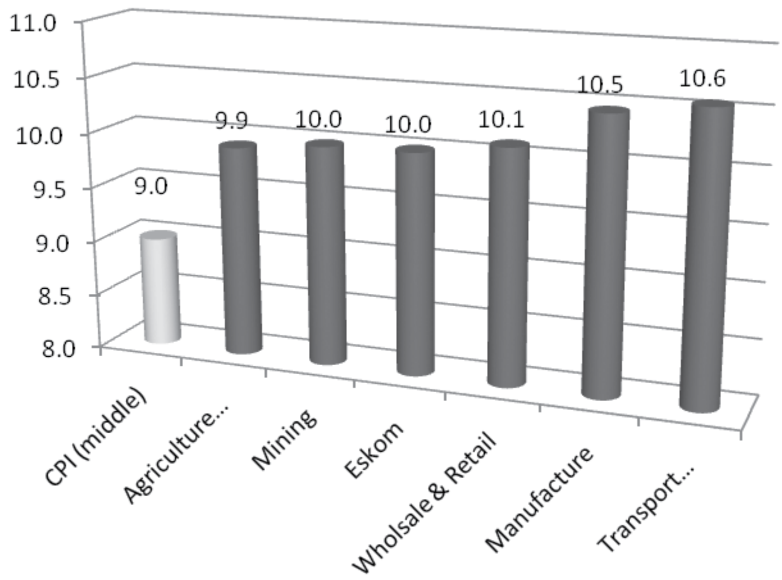
Fig 6: Trade union membership as a proportion of total employees of companies party to bargaining councils (%)



[3] Sources: Godfrey S et al, 2005 as well as bargaining council and trade union informants.

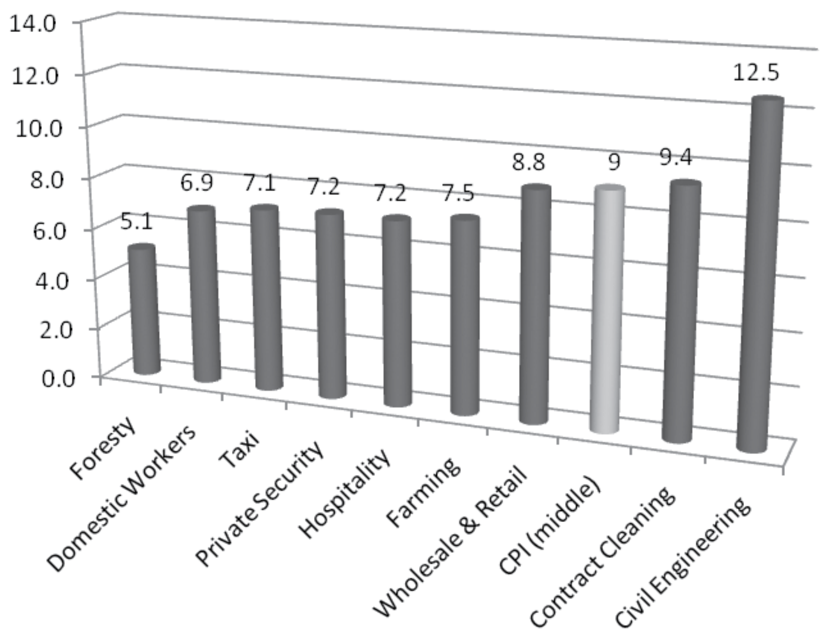
Our sample of decentralised bargaining agreements presents a similar picture of settlement levels 1-2 percent above inflation for 2008.The range of increases is somewhat tighter than for bargaining councils.

Fig 7: Decentralised agreement: average wage increases in 2008 (%)



Increases on minimum wages in sectoral determinations were generally lower than for bargaining councils and decentralised bargaining. Workers covered by these agreements lost out to inflation with the exception of contract cleaning and civil engineering.

Fig 8: Sectoral determinations – wage increases in 2008



(4) UNDER COVER OF PERCENTAGES - TEN PERCENT OF WHAT?

The discussion of wage increases and inflation has limited us to percentage talk. While percentages are useful insofar as they allow one to reduce the changes in different measures to a common denominator and allow for comparison, percentages hide the nominal amounts involved. So while we might say that a wage increase was 10%, this does not tell us anything about the wage amount in Rand terms.

The South African Commercial, Catering and Allied Workers' Union (SACCAWU) appears to recognise this dynamic and traditionally puts forward their demands for wage bargaining as an amount in Rands rather than as a percentage. This approach allows for a clear mandate from members and the possibility of escaping the confines of the percentage game where a high percentage is too high regardless of how much money it translates into.

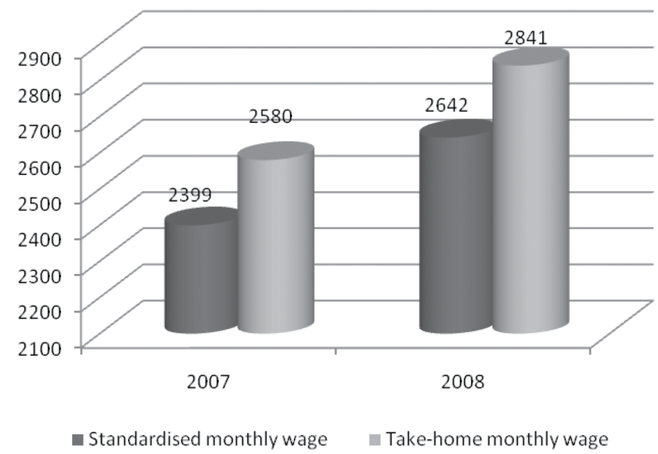
The importance of what workers actually earn, quite apart from the increases they might receive, should be clear. Increasing inflation can put pressure on workers, but it is the base amount they earn which truly decides how much pressure they are under to meet the needs of the household.

Generally speaking, the less you earn the less option you have for substituting away from inflationary items to other goods and services. As an example, low income households spend a greater proportion of what they have available on food items. If the prices of food items are increasing rapidly, as they have been in South Africa for some time now, households cannot easily substitute away from inflationary food items to non-food items whose prices are increasing only slowly.

The figure below distinguishes between monthly take-home wages (where the hours worked per week vary) and monthly wages standardised for a 40 hour working week. Take-home wages are important in that they provide an indication of what workers get paid at the end of month. Equalising the hours worked to earn those wages is also important as it shows what workers would earn if they all worked the same amount of hours.

The figure below indicates that the average take-home wage in 2008 was R2841 per month. Once the hours of the ordinary working week have been standardised for a 40 hour week, the average wage is the lesser amount of R2642. The average ordinary hours worked per week is 43.2 hours. This serves as a reminder to unions that winning a 40 hour week effectively raises the wages of those who work more than 40 hours per week, quite apart from the social dimension of working hours and the effect it has on family and safety.

Fig 9: Average minimum wages 2007-2008 (Rands)
(Bargaining councils and decentralised agreement)



The importance accorded to the setting of minimum wage rates is an example of unions reaching beyond their immediate constituency to those workers who will be employed in the future. These workers may be first time entrants to the labour market or those who are forced to re-enter as result of limited duration contracts, dismissal, or retrenchment. Minimum wages help to regulate what these new and relatively vulnerable entrants to the company or bargaining unit will be paid.

It is understood that bargaining councils only negotiate minimum wage rates and do not negotiate on actual wages. Wage increases expressed as percentages are applied to actual wages in the various workplaces which are covered by the council. Those actual wages are not set at the bargaining council and there is no evidence of them in bargaining council agreements. It is understandable that (employer) parties to a bargaining council would prefer the setting of actual wages at company level in order to guard their prerogative and to keep wages out of the public eye.

It is a little surprising that it is almost exclusively minimums which are reflected in decentralised bargaining agreements rather than actual wages. This suggests that the trend to bargain over minimums has gone beyond bargaining councils and now includes decentralised bargaining.

The worry is that unions are losing touch with what workers are actually earning. We argue that knowing what income bands your members are situated in can assist in developing and assessing wage bargaining strategies. This knowledge would help negotiators answer a number of important questions, all of which could contribute to negotiating strategy.

- What does this percentage increase mean in Rands and cents to the bulk of workers?
- What is the distance between minimums and actual wages?
- What is the wage gap between occupations?
- What is the likely effect of inflation on our members?
- How do actual wages at this company compare with wages at similar companies?
- What are the potential effects of a staggered wage increase on our ability to manage members at different wage levels?

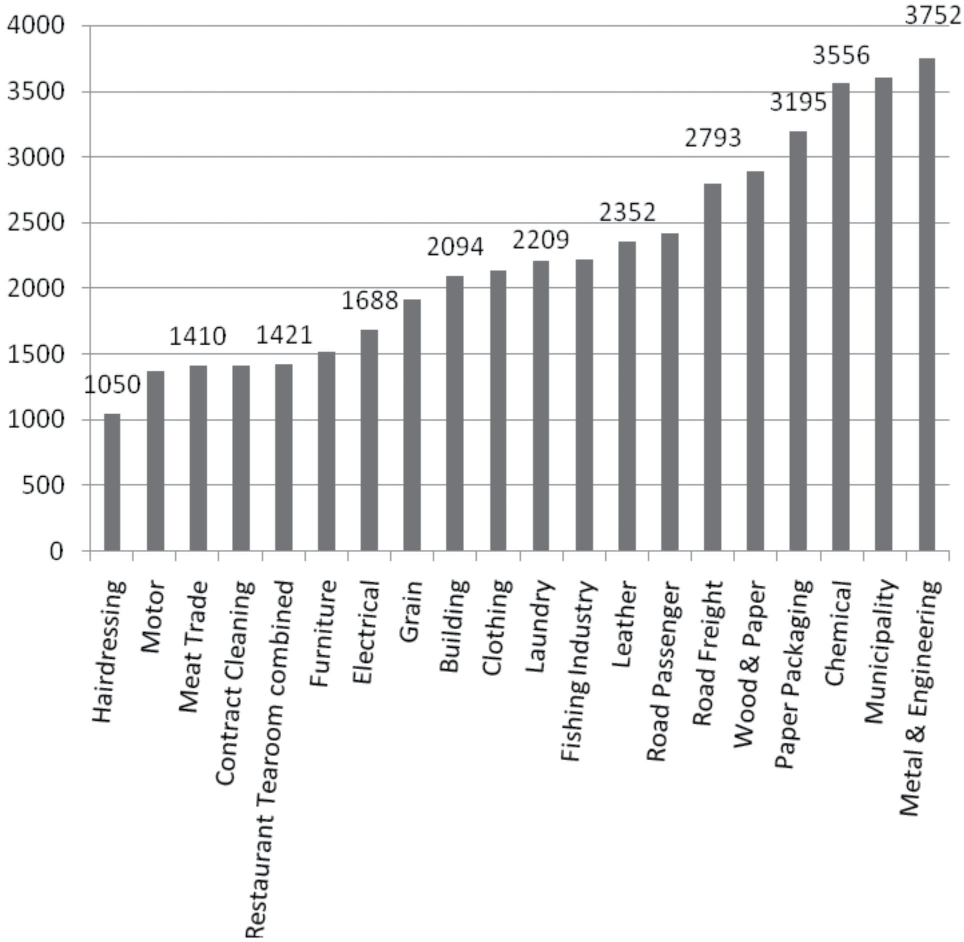
The suggestion is that company level negotiators should get actual wage rates set down in their agreements. This would make it clear what a percentage increase meant to workers at different income levels and make comparisons to other companies easier.

(5) MINIMUM WAGE LEVELS BY INDUSTRY

Where are minimum wages situated? To what extent do minimum wages vary by industry? What do all these numbers really mean?

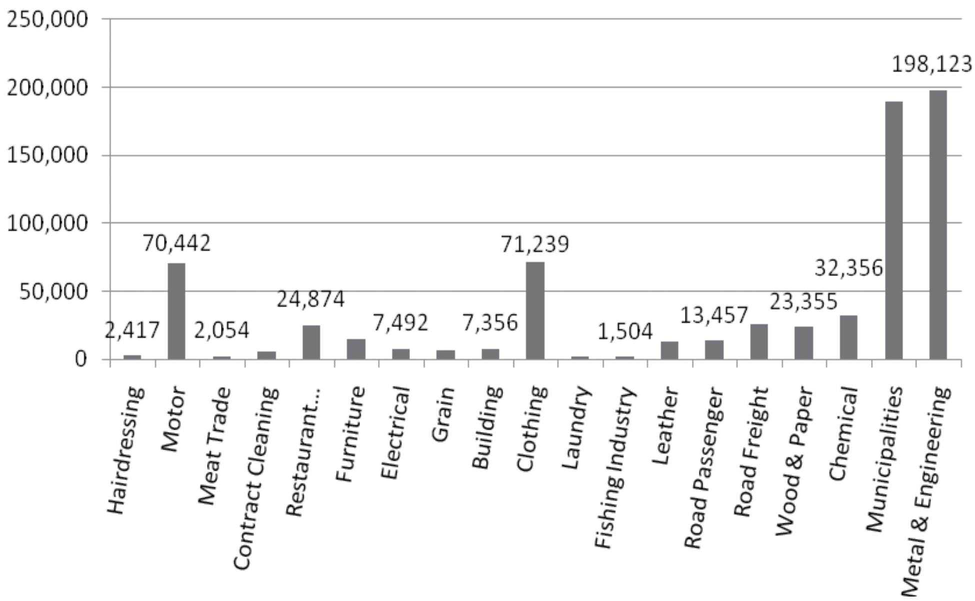
There is a great deal of variation in minimum wage levels across industries and sectors. If one considers the preceding analysis of wage settlements it is immediately noticeable that the range of wage levels is far greater than the range of wage increases negotiated each year. The gap between the lowest and highest minimum wage for the bargaining councils which are considered here is almost 4 to 1.

Fig 10: Bargaining council minimum monthly wages in 2008
(Standardised for a 40 hour week)



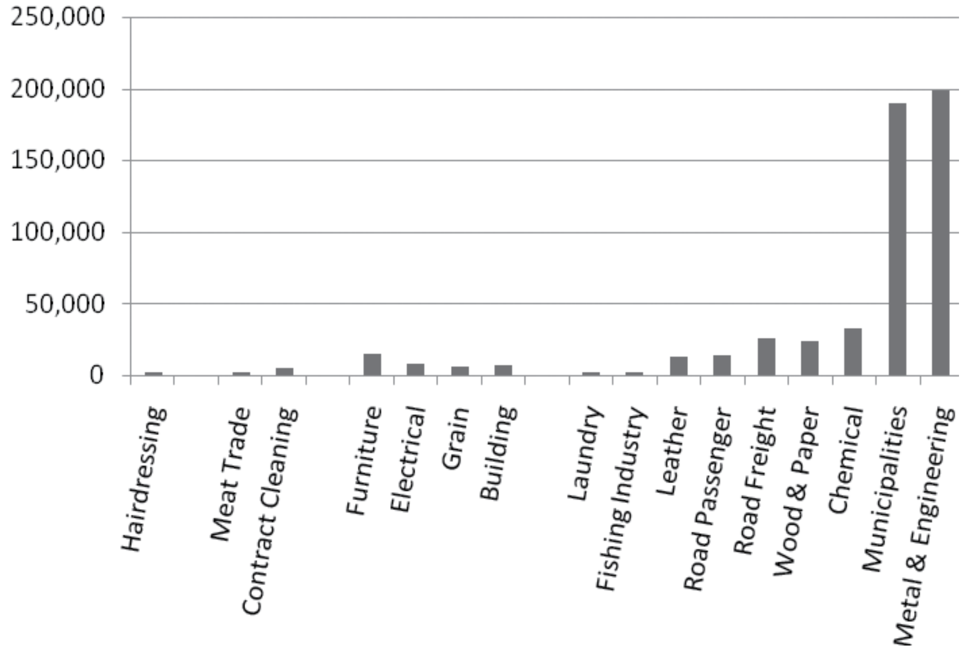
The graph below suggests that bargaining council size might relate to minimum wage levels, although the motor and clothing industries do break the pattern. Again, the Restaurant and Tearoom entry is a combination of two councils in the sector and fit the pattern better than this artificial amalgamation suggests. The bargaining councils are arranged from lowest to highest (minimum) wage.

Fig 11: Bargaining councils – estimated coverage
Arranged by minimum wage (lowest to highest, left to right)



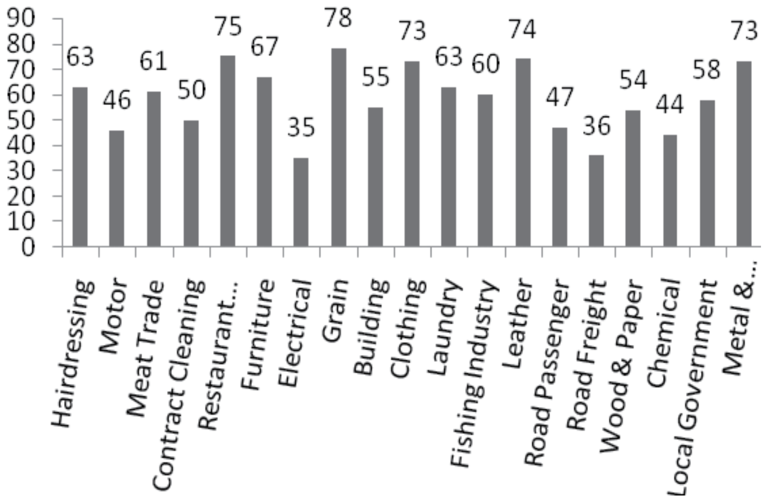
This next figure removes these outliers to give a clearer sense of the pattern which remains. While there appears to be a relationship between the two variables, this rather simple analysis does not allow for a definitive statement on any causality that might exist between minimum wage levels and bargaining council size. This does however point the way for a more determined exploration of the determinants of collective bargaining outcomes. A deeper analysis would require data for multiple years and consideration of the historical development of wages and wage setting in different industries and sectors.

Fig 12: Bargaining councils – estimated coverage
Arranged by minimum wage (lowest to highest) with outliers removed



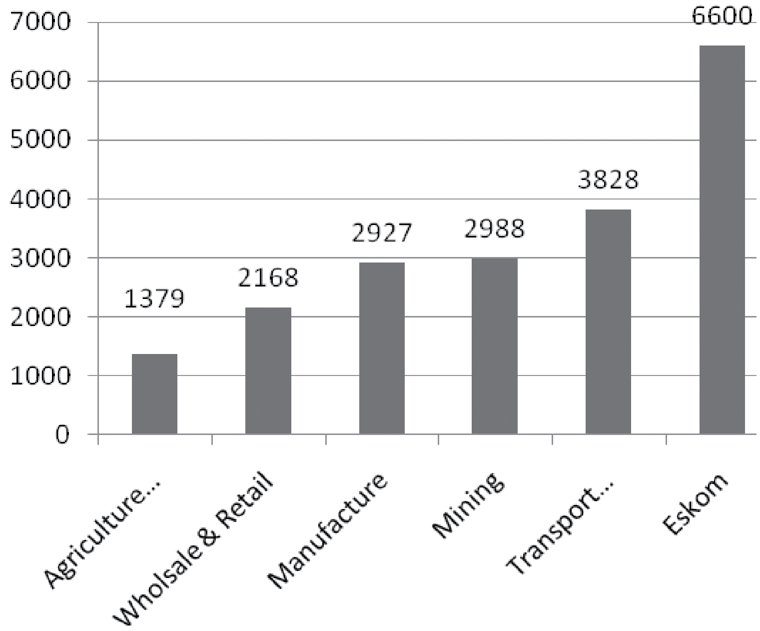
Again, trade union membership density in each of the bargaining councils does not appear to relate to minimum wage levels. Membership density does not appear to relate to either settlement levels or wage levels in 2008.

Fig 13: Trade union membership as a proportion of total employees of companies party to bargaining councils (%)
Arranged by minimum wage (lowest to highest, left to right)



This next figure shows minimum wages for decentralised bargaining. Unfortunately our estimates of coverage are currently too patchy to attempt to contrast with wage levels.

Fig 14: Decentralised bargaining – average minimum monthly wages in 2008 (Standardised for a 40 hour week)



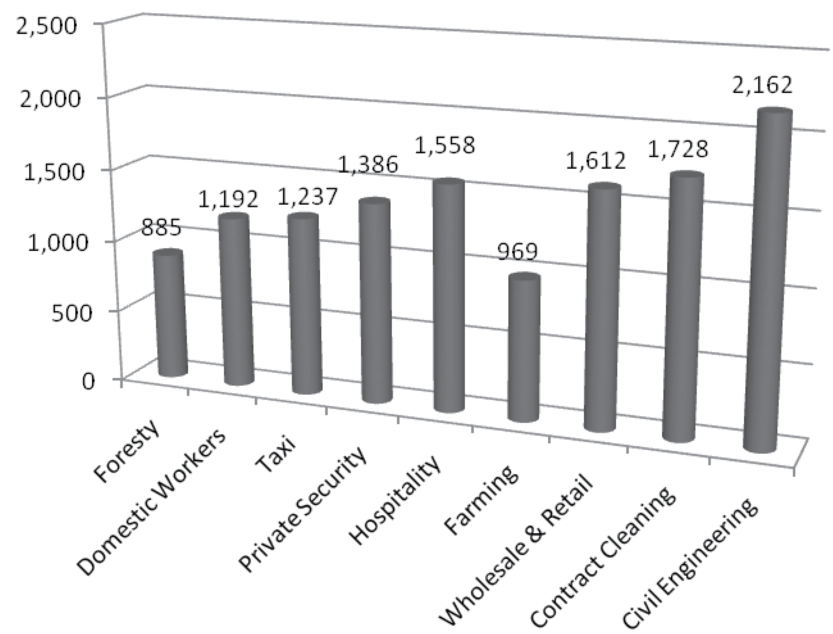
Minimum wages as set out in sectoral determinations target industries which are relatively unorganised, unregulated and where workers are viewed as particularly vulnerable. While sectoral determinations tend to set very low minima we see that some of the rates at the top end of the spectrum compare well with those at the lower end of the bargaining council range. The sectoral determination for the contract cleaning industry posted the highest minimum wage level in the series and is higher than those for the only bargaining council in the industry, a regional council for KwaZulu Natal.

This observation should not be interpreted to mean that sectoral determinations are overly generous. If anything it reflects how low minimum wages set by centralised bargaining structures can be.

Minimum wages for workers in agriculture (forestry and farming) are the lowest in the series and fall below R1000 per month. Domestic workers, the taxi and private security industries are not far off these levels.

With the exception of the sectoral determination for farm workers, the hierarchy of minimum wage levels in 2007 for the different sectors was perpetuated by the increases applied in 2008. The figure below indicates that higher the wage rates were generally associated with higher wage increases.

Fig 15: Sectoral determinations – minimum monthly wages in 2008 standardised for a 40 hour week
Arranged from smallest to largest wage increase (%)



(6) WAGES AND LIVING

It is one thing to put forward this wage or that wage, but what do these levels of income mean? How for instance do they compare to a "living wage", an amount of income on which your family could live a decent life?

There is a distinct lack of benchmarks for where a living wage might be situated. The most recent figure available is five years old and the study is fraught with methodological concerns to put it mildly. The absence of empirical benchmarks for a living wage should be of concern to unions. The preoccupation with poverty benchmarking is likely to put downward pressure on what is considered an 'acceptable' wage level and this has serious implications for wage benchmarking in collective bargaining, sectoral determinations and wage setting in public works programmes.

In March 2004, the so-called Supplemented Living Level, which attempts to describe a "modest low-level standard of living", was R2 549 a month for a family of four (Source: Minimum and Supplemented Living Levels, Bureau of Market Research, UNISA).

If we adjust this figure by average CPI to bring it current at December 2008, which is admittedly a crude manipulation, we arrive at a monthly amount of R3382. It would appear then that on average minimum wage employment in South Africa is almost 30% shy of a "modest low-level standard of living".

(7) INFLATED DEMANDS AND DEFLATED OFFERS

At the time of writing, August 2009, we have seen a number of disputes in collective bargaining and subsequent industrial action. While many observers are looking for political explanations, a more mundane point may be missed. Most of the disputes have centred on wage increases and the demands of the unions coincide with maintaining the real wage position of their members over a period of two or three years. This is no great demand, no great advance.

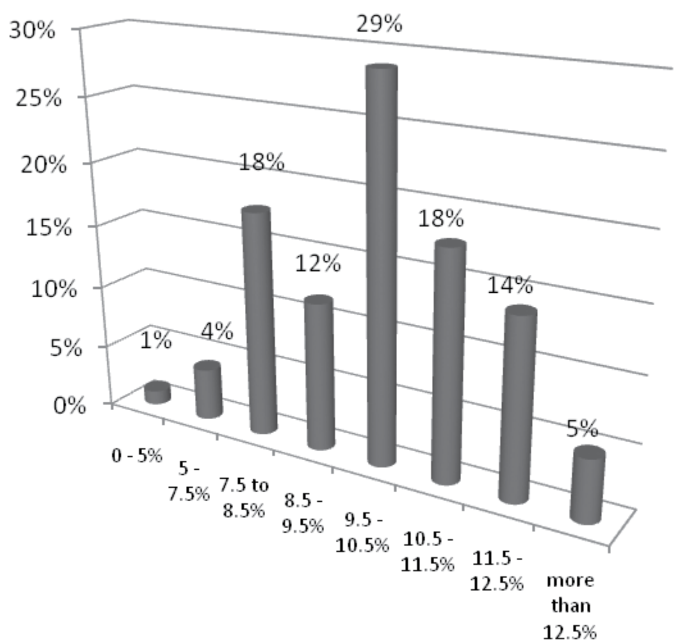
The trend in bargaining is for companies and unions to come in with first positions which are relatively far apart. Clearly both parties set an initial marker quite distant from where they might be willing to settle, giving them room to move in the course of negotiations, allowing them to avoid being criticised for being inflexible and not shifting their position.

While it is true that unions might come in with demands above inflation, it is not uncommon for companies to come to the table with a sub-inflation wage offer. No trade union can be expected to accept a sub-inflation increase (a decrease in the real value of wages) without compelling reasons. Negotiators can rightly argue that the company is asking them to agree to make their membership poorer.

A mutually accepted measure of inflation should be a benchmark of the lowest offer companies can bring to the table. Anything less is an attack on workers' standard of living. The suggestion is that unions consider fighting for agreement on this principle.

One possible drawback is that this approach sets up an expectation of settlement very close to inflation and holds back unions in a position to secure wage increases well ahead of inflation. Having said that, the fact is that outcomes are constrained as things stand and wage settlements already cluster in a narrow band of percentages. The figure below shows that a 2% range (9.5% - 11.5%) accounts for almost half (47%) of the wage increases in our sample. More than three quarters (77%) of settlements are found in a 4% range (7.5% - 11.5%).

Fig 16: The distribution of wage increases in 2008
(Bargaining councils and decentralised bargaining)



Ideally, inflation linked increases would automatically be implemented (retrospectively) on a monthly or yearly basis as part of company payroll. If the formula were clear the extra administrative burden on most companies would be minimal. Collective bargaining would then only negotiate increases over and above inflation. All the energy wasted on chasing inflation could then be redirected towards issues more closely linked with the workers, the company and the industry. This could allow collective bargaining to be a more innovative exercise and one which was more responsive to the needs of stakeholders.

(8) ALTERNATIVE BENCHMARKS FOR WAGE BARGAINING - MY INFLATION IS BIGGER THAN YOURS

The earlier discussion of wages in money rather than percentage terms leads us to a new possibility for inflation benchmarking.

What is not commonly known is that the inflation number that many of us pick up on is an average figure and that Statistics South Africa calculates inflation for five different expenditure groups. This is because we are not all equal in the eyes of inflation. 'Expenditure group' simply means 'how much you spend' and this is related to how much you earn.

Households spending different amounts also spend their money differently and as a result experience different rates of inflation. Here are May inflation rates for the different expenditure groups.

Table 3: CPI inflation by expenditure group - May 2009

Expenditure group	Expenditure range	Annualised monthly Inflation
CPI (average)		8.0%
Very low	From zero up to R1213 per month	11.1%
Low	From 'very low' up to R1939 per month	11.2%
Middle	From 'low' up to R3062 per month	10.7%
High	From 'middle' up to R6596 per month	9.1%
Very high	From R6957 upwards	7.2%

It shows how households in the lowest expenditure group are experiencing the highest rate of inflation and that this rate declines as one moves to the higher expenditure groups. Simply put, poorer households continue to experience significantly higher rates of inflation than the average. The structure of inflation in recent times has meant that the items which have been driving inflation (such as food) are precisely those items on which low income households spend a greater proportion of their total income.

Now that we have established that there is more than one inflation rate, there is then the possibility of a wage bargaining strategy which matches the income level of a majority of workers in the bargaining unit to the inflation rate of a particular expenditure group.

For example, if the majority of workers in a particular company or bargaining unit are earning between R2000 and R3000 per month we can consider using the inflation rate for the "middle" expenditure group instead of average CPI. The table above shows that this would produce a benchmark which was 2.7% more than average inflation. This is a significant amount in the context of inflation rates.

The strategy is perhaps not without its challenges. Unions would need to remain updated on the movements in these rates in order to successfully utilise them. The strategy is also similar in some respects to a staggered wage adjustment proposal in that it segments workers by suggesting that different increases should apply to different earnings bands. If the union were to apply the strategy in bargaining units or sectors where the vast majority of members fell in the same earnings band it would counteract this fragmenting tendency.

This is not to suggest that the approach should replace the staggered wage increases which some unions continue to pursue. The traditional staggered wage increase is intended to stop the wage gap growing between workers at different wage levels, which is exactly what it does with an across the board increase. The inflation-expenditure group approach is a way of matching the inflation rates that households at different levels of expenditure actually experience. It is a different tool for a different problem. I am not convinced that unions should be policing wage gaps within the bargaining unit in isolation of wage gaps within the broader company.

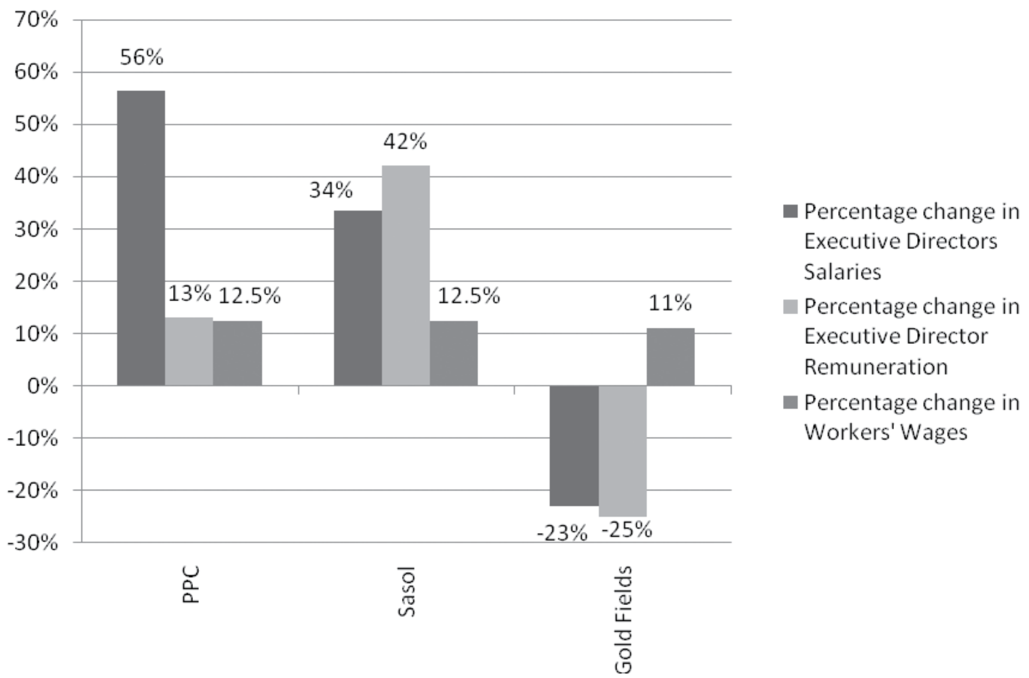
(9) ALTERNATIVE BENCHMARKS FOR WAGE BARGAINING - WHAT IS ED GETTING?

Executive pay provides unions with an alternative benchmark for wage negotiations. Readers should refer to the 2009 Directors' Fees Survey for a fuller analysis of executive pay and the possibilities for utilising this benchmark in collective bargaining.

The survey differentiates between salary, remuneration and long-term incentives. Salaries should be understood to refer to base salaries excluding bonuses and benefits. Remuneration includes all payments (salary, bonus and benefits) but excludes long-term incentives (LTI). LTIs include share options, share appreciation rights, performance share plans and share matching schemes. Workers' wages refers to basic wages only and excludes benefits and overtime.

The figure below compares increases for executive directors (EDs) and workers at selected companies in 2008 and the examples provided describe three possible scenarios. It is worthwhile considering how a negotiator could make optimum use of the numbers to further their bargaining agenda.

Fig 17: Salaries, remuneration and wages (2008)



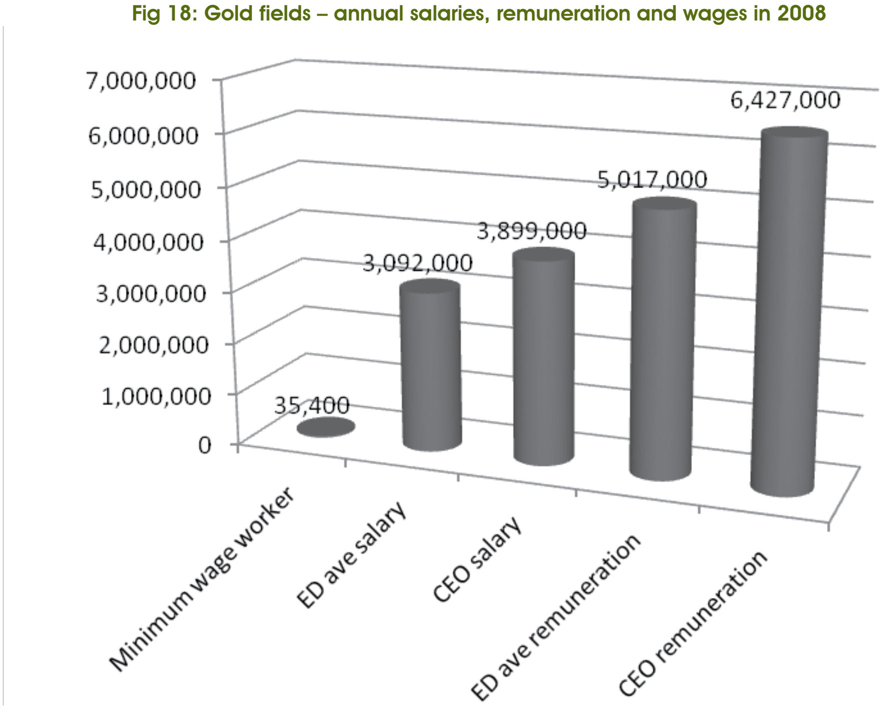
The figures for PPC show that the salary component paid to executive directors increased substantially (56%). The change in salary presents itself as the preferred benchmark for a trade union negotiator, since it exceeds the change in total remuneration by some margin.

At SASOL the salaries of executive directors have increased by a good margin (34%), but total remuneration has increased by an even greater margin (42%). Negotiators should therefore consider the change in remuneration as an alternative if salaries increased by a lesser amount in the financial year.

The Gold Fields numbers present the negotiator with a problem in that both average salaries and remuneration to executive directors have declined significantly. In this case the negotiator can move beyond these percentages and rather consider the actual Rand amounts involved.

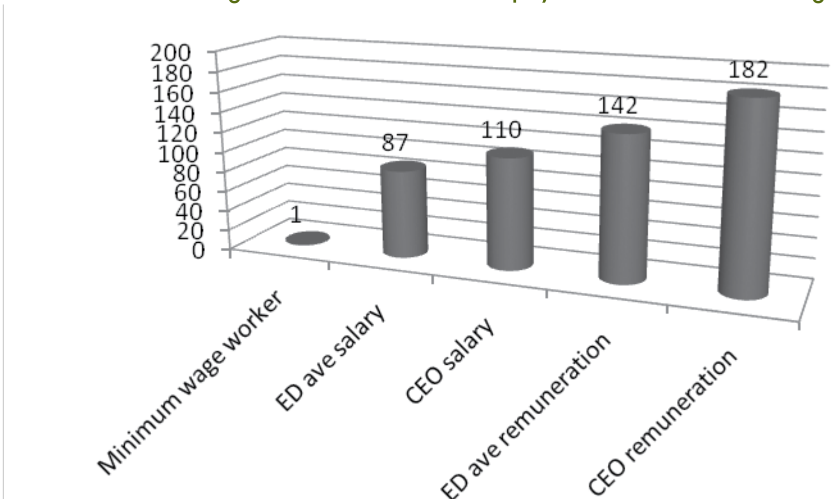
The next figure highlights the difference in average annual pay between directors and the low-wage worker, rather than percentage changes in these amounts. We see then that Executive Directors get over R5 million annually compared to the R35,400 of the worker.

Fig 18: Gold fields – annual salaries, remuneration and wages in 2008



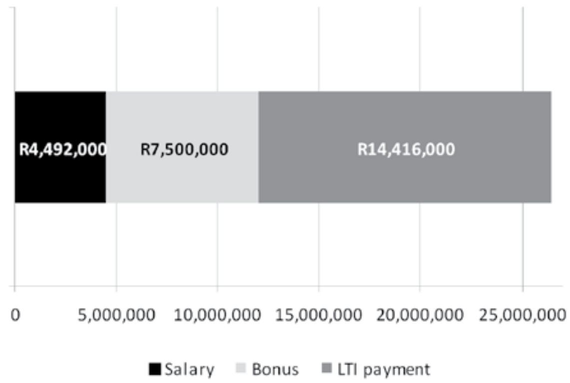
The next figure shows the same thing in a different way. Here executive pay is described as a ratio of the minimum wage. In plain English, this worker must work for 182 years to earn what the CEO of the company earns in a single year.

Fig 19: Gold fields - executive pay as a ratio of minimum wages in 2008



The figure below picks up on a further element of total remuneration to executives, long-term incentives (LTIs). In the case of the CEO of SANLAM we see that LTIs contributed almost 14.5 million to his total remuneration for the 2008 financial year. LTIs amount to 321% of the base salary to the CEO in the period.

Fig 20: The composition of total remuneration for the CEO of Sanlam in 2008



(10) REVISITING THE BOTTOM LINE

It is common cause that a global economic recession arising out of a global financial crisis is feeding into the South African economy. Even so, South African companies will be affected by the global and national recession in different ways and to a different extent. As an example, the civil engineering sector of the construction industry in South Africa has had a very profitable time of it in recent years and government's ongoing commitment to infrastructure spend will buoy the sector for the foreseeable future. Commercial and residential building however will be tied more closely to conditions in the national economy and their recovery is only likely to follow a generalised return to growth.

Despite varying company fortunes unions are likely to face very difficult bargaining conditions, since the general economic sentiment is decidedly negative. Difficult times provide something of a stress test for current practices and proposed strategies, and can assist in exposing weaknesses that might not be apparent in more prosperous times while also pointing to new directions for practical collective bargaining strategy.

A broader conception of collective bargaining might unearth a different approach in difficult economic circumstances. This section attempts to develop this line of thinking by relating it to the notion of the bottom line in collective bargaining.

In the context of collective bargaining, the bottom line is a position that the union will seriously considering pressing through industrial action if they cannot reach agreement with a company. It seems reasonable to think that the bottom line ought to provide some insight into what the union believes are priorities and perhaps even what it believes it must achieve in order to sustain itself. So what is the bottom line these days?

One general, yet striking, observation emerges when looking at bargaining processes and the collective agreements which result. While the bargaining agenda is often broad, the terms of agreement are often narrow. The 'terms of agreement' refer to the range of issues that actually change year on year as a result of bargaining and are then reflected in the collective agreement. In this sense, wage increases are sometimes the only outcome of collective bargaining.

The table below shows changes in selected conditions of employment between 2006 and 2008. These conditions of employment relate to hours of work, leave entitlements, maternity rights and family responsibility, health (including responses to HIV & AIDS) and education and training.

What is apparent is that there is little or no incremental change in median conditions in the two year period. In some instances the median has decreased.

Table 4: Change in median conditions of low-wage employment in the formal economy between 2006 and 2008

	2006	2008
Sample	392 bargaining units	241 bargaining units
WAGES		
Monthly wage in Rands	2400	2683
Additional amount needed to meet the basic needs of an average household	+20%	+30%
HOURS OF WORK AND PAY		
Ordinary hours of work per week	44	43.2
Night shift allowance as % of basic wage	12.5%	11.5%
Shift allowance as % of basic wage	10%	9%
ANNUAL LEAVE		
Annual leave in working days per annum	15 days	15 days
MATERNITY		
Duration of maternity Leave	4 months	4 months
Duration of paid maternity leave	4 months	4 months
Maternity pay	33% of basic	33% of basic
There is evidence of supplements to maternity pay	In 4.5% of agreements	In 1.8% of agreements
There is evidence that the company facilitates maternity pay	In 3.3% of agreements	In 1.8% of agreements
There is evidence that maternity leave treated as continuous service	In 5.8% of agreements	In 4.1% of agreements
There is evidence of leave provisions for ante- and post natal checkups	In 2% of agreements	In 2.8% of agreements
There is evidence of time-off and facilities for nursing	Zero	Zero
HEALTH		
Sick leave in days per annum	12 days	10 days

There is evidence of access to medical cover	In 8% of agreements	In 8.7% of agreements
There is evidence of promoting reproductive & sexual health	In 0.3% of agreements	In 0% of agreements
FAMILY RESPONSIBILITY		
There is evidence of the provision or subsidisation of childcare facilities	Zero	Zero
Duration of paid family responsibility leave	4 days	4 days
Duration of paid paternity leave	3 days	3 days
Duration of paid compassionate leave	5 days	5 days
RESPONSES TO HIV/AIDS		
There is evidence of awareness raising interventions	In 4.5% of agreements	In 5.5% of agreements
There is evidence of voluntary counselling & testing	In 0.75% of agreements	In 1.4% of agreements
There is evidence of promoting confidentiality	In 0.5% of agreements	In 2.8% of agreements
There is evidence of treatment programmes	In 1% of agreements	In 2.3% of agreements
EDUCATION & TRAINING		
There is evidence of learnerships	In 0.8% of agreements	In 1.4% of agreements
There is evidence of other skills development	In 4.3% of agreements	In 5.5% of agreements
Study leave in days per annum	3 days	6 days

Since wage increases are the only truly consistent outcome of collective bargaining they have the appearance of a bottom line issue for unions.

What might be some of the reasons for the seeming primacy of wages in collective bargaining?

- Basic wages almost always represent the largest portion of wage income to workers and as a result percentage increases on this amount should yield larger returns to workers than other components of pay.
- The effects of wage increases are immediate and increases are easily understood by workers, whereas some benefit areas are relatively technical and not easily understood and communicated to workers in a way that makes it clear what the cost, benefit, opportunity cost and administrative burden might be to the worker. Negotiators might in some instances be shy of tackling benefit areas that are difficult to understand and might make them appear incompetent in the eyes of workers or management.
- The fact that some benefits take the form of what can be called deferred payments also makes them far less immediate than wage increases and disguises what the benefit to the worker might be. Provident and medical insurance are examples of deferred payments which are only activated under certain circumstances, such as resignation or illness. The move away from pension to provident funds is further evidence of a preference for more immediate benefits. Pension funds can only be cashed in at retirement age, whereas a worker may convert their provident to cash when they choose.
- If negotiators push for non-wage items in collective bargaining, companies invariably want concessions on the proposed wage increase. This compromises the wage increase, the most 'popular' element of bargaining, which negotiators must take back to workers.
- This tendency to leverage a demand in one area with a concession in another area is reinforced under the total-cost-to-company approach (TCTC) which has become so prevalent. TCTC explicitly links the total cost of all demands to the company, so the company is likely to be defending a TCTC figure rather than a range of settlements on different issues.
- Employers sometimes simply ignore issues on the agenda other than wage increases. As time passes and pressure to settle mounts these other issues often disappear or get

postponed to the next round. Generally speaking time is on the side of the employer rather than the union. Every day beyond the normal implementation date amounts to the extension of credit to the company which may hold on to the money involved. Once negotiations go past the implementation date of an agreement it presents unions with new issues which they must resolve, all of which add to the pressure they are under. Now they must get agreement that the increase be back-dated to the implementation date. Workers themselves might become impatient to see their wages increase since they have been psychologically prepared for an increase.

Having explored some logical reasons why wages dominate collective bargaining, we now test the resilience of wage increases as an indicator of the true bottom line for unions.

Let us imagine a situation where a company is genuinely in crisis and cannot afford an increased wage bill at a particular point in time without becoming insolvent.[4] If the union is unable to secure a wage increase under these circumstances does it mean that the union is redundant?

Despite severe economic conditions the South African Clothing and Textile Workers Union (SACTWU) remains relevant and continues to represent worker interests on a number of levels and in increasingly innovative ways. Their work includes efforts to salvage troubled companies, representation at NEDLAC on trade issues and the campaign to encourage consumers to buy locally produced goods. The role of unions in promoting and enforcing fairness in industrial relations is also an important one. Some unions also administer benefit funds for workers, either through bargaining councils or in their own right.

There is ample evidence that even when a union is unable to secure a wage increase it does not cease to exist or be relevant to workers. Wage increases cannot therefore be considered to be a fundamental bottom line, a line below which the union faces extinction.

What would a broader conception of collective bargaining suggest the bottom line ought to be? Difficult economic conditions provide a clue. If we strip away the more material advances which the union might make through collective bargaining, what remains?

A union is first and foremost an association of workers into a collective which represents their interests in the workplace. The distinction here is between representivity in the workplace and representation on particular issues. Theron (2008) puts the matter quite elegantly.

> *"…the real gains made by the emergent unions, I would argue, were not the labour legislation adopted in the 1990,[5] but the organisational gains that made them possible." [6]*
>
> *"Anyway, legislation that is not underpinned by organisation is of very limited benefit for any section of workers, but particularly for unorganised and vulnerable workers." [7]*

The author is making the point that we should not measure our strength by our achievements, but rather it is our strength which provides the basis for our achievements. The fundamental strength of trade unions is undoubtedly the extent and depth of their organisation in the workplace. It is from this base that other strengths flow, be they political, social or economic.

[4] To be insolvent is to be unable to honour one's debts. Of course, the wage increase is a legitimate debt of the company to workers, albeit negotiated differently to the company's debts to its suppliers. A radical reform of remuneration structures is generally not entertained as a possible solution because, I suppose, it challenges a characteristic of capitalist organisation, which is that the owners of the means of production and their chief agents must get much, much more than those who sell their labour power.
[5] I.e. the Labour Relations Act of 1995.
[6] Theron J, 2008, Trade Unions and the Restructuring of Work, p62, in Bargaining Indicators 2008, Labour Research Service, Cape Town.
[7] Theron, 2008, p70.

Let us imagine an approach which embodies this idea of organisation as the fundamental goal of the union. But first a quick note of caution, it is not our intention to set up a dichotomy between material and organisational interests. If anything we seek to draw out the mutually reinforcing relationship between these two ways of thinking about trade union action. The intention is to explore ways of thinking about trade union goals, strategy and action, not to set forth the only way of thinking.

The set of questions which follow are a simple way of interrogating union demands in collective bargaining with a view to developing an appreciation of what aspects of this broader (organisational) goal collective bargaining strategies and demands serve.

Are trade union collective bargaining demands and strategies geared toward:
- *Defending* membership?
- *Maintaining* membership?
- *Facilitating growth* in membership now and in the future?

The questions distinguish between three aspects of organisation. The first is that of *defending membership* and in its most extreme form relates to a situation where employment itself is threatened. As the name implies it is generally a defensive stance. The second is concerned with *maintaining membership* and captures the role of servicing membership which includes negotiating incremental improvements to conditions of employment. The third broad goal is that of *facilitating growth* and includes measures which lay conditions for recruiting workers to the union.

Though these questions attempt to differentiate between three aspects of organisation, at times they can overlap. The question of labour broking for example can have a bearing on all three categories. A move toward labour broking could replace existing permanent jobs and thus undermine existing trade union membership. Under labour broking the place where a worker actually works is not considered their workplace just as the client is no longer regarded as their employer. This is a major obstacle to union organisation and representation (maintaining membership). The fragmentation of the workforce under labour broking obviously undermines the capacity of the union to recruit new workers and keep them organised.

The fact that these categories are porous should not be seen as a weakness. This overlap is a strength in that it helps one imagine the different forms that a 'single' strategy may take. Similarly, a single strategy or demand might serve more than one goal.

The case of women workers is another example in this regard. Women workers are not a homogenous grouping. As an example, the socially constructed and biologically reinforced role of women as primary care-givers can be correlated to some extent with age. A woman of 25 and woman of 45 are likely to hold different priorities. For the younger woman maternity provisions might be quite critical along with the possibility of organising work around her role as mother and home maker. An older woman might be more concerned with pay progression and insurance (which would include benefits such as provident and medical). So distinguishing between the varying needs of women workers could guide how the union sets about servicing membership and this in turn can establish conditions that draw women to the union.

In much the same way, this approach can assist in imagining a range of different ways of responding to a negative company strategy by understanding the ways in which it undermines organisation.

Consider the question of labour broking again. Left unchecked this practice will increasingly undermine trade union organisation and hollow out much of the existing industrial relation framework. Clearly it demands a response, yet unions seem torn between an organisational and a legal one. The desire to ban labour broking is, I believe, motivated by an ideological aversion to this ultra commodification of labour and is spurred on by recent developments in Namibia. Though appealing in principle and in its simplicity, this legal approach is perhaps a way of avoiding a more complex, and more contradictory, response which understands labour broking as but one face of a broader trend towards the informalisation of work. An overly principled approach rules out organising these workers directly, along with counter measures for disincentivising atypical employment by raising the cost to the employer, which could be achieved by extending all 'normal' or socially accepted conditions of employment and benefits to workers in precarious employment relationships.

The table below restates the three goals and puts forward examples of the strategies and the demands which would conceivably advance them. The entries do not necessarily correspond on the horizontal in the tables which follow.

Table 5: Bargaining for organisational capacity

TRADE UNION GOAL	STRATEGY	POSSIBLE DEMANDS
Defending current membership?	Extending security for workers out of employment	Increasing severance pay Promoting access to UIF Re-skilling programmes Provident funds
Maintaining membership?	Responding to labour broking (atypical work) Organising women Building capacity to service members	Prohibition on labour broking Limitations on the use of labour brokers Wage increases Medical insurance Full time shop stewards More leave days for shop stewards
Facilitating membership growth now and in the future?	Organising women Responses to atypical employment Building capacity to organise	Extending 'normal' benefits to atypical workers Developing benefit schemes for members Extending the bargaining unit establishing full-time shop stewards More leave days for shop stewards

The same questions can be turned around and used to interrogate employer strategies. Are the collective bargaining strategies of the employer geared toward:

- Attacking membership?
- Rolling back existing conditions of employment?
- Limiting trade union potential for growth now and in the future?

Table 6: Bargaining against organisational capacity

COMPANY GOAL	COMPANY STRATEGY	POSSIBLE APPROACHES
Attacking current membership?	Cost-cutting Reorganisation	Retrenchment
Rolling back existing conditions?	Undermining or pulling out of bargaining councils Informalisation of work	Challenging the representivity of parties to the council Externalising certain functions to intermediaries such as labour brokers or contractors. Limiting bargaining settlements through the total-cost-to-company approach
Limiting membership growth now and in the future?	Fragmenting the workforce Refusing to recognise a trade union Maintaining a narrow definition of the "bargaining unit" Institutionalising collective bargaining routines and industrial relations generally	Increasing the numbers of casuals employed Externalising work through the use of labour broking Peace clauses Multi-year agreement

(11) GETTING SOMETHING FOR NOTHING: RETURN ON RESTRAINT IN COLLECTIVE BARGAINING

Much of what has been said up to this point has been building to the idea that unions must value that which they concede and that which they sacrifice in collective bargaining and extract quantifiable (but not necessarily monetary) concessions in return.Unions faced with companies in genuine distress must value that which they might forego in the interests of maintaining the company. Put another way they must ensure that they get something in return for their sacrifices. I call it 'return on restraint', which is of course a perversion of the economic term, return on investment. The principles however are the same.

We asked a group[8] of unionists to reflect on a crisis situation in collective bargaining. It is instructive to consider the commission's response to the scenario as it provides a concrete example of a more strategic response to difficult bargaining conditions and what is more it comes from trade unionists themselves.

The commission suggests several means of interrogating the company's claim as well as a number of measures for cost cutting prior to entertaining wage concessions. The final section describes alternative demands that can be introduced, some of which have limited cost implications[9], but which contribute to the ability of the union to organise and in turn be organised by the people it represents. The considerations of the commission have the last word.

The Crisis Commission

The scenario

The company which you are bargaining with claims that it is in a genuine crisis. Management has proposed a wage freeze. They say that the alternative is 120 retrenchments. The aim of your commission is to put together a counter proposal.

How can you interrogate the company's claim that it is in crisis? If the claims are true, what can you get for exercising wage restraint? What kind of "non-cash" demands could you bring into this bargaining situation?

Report Of The Crisis Commission

HOW CAN YOU INTERROGATE THE COMPANY'S CLAIM THAT IT IS IN CRISIS?

- Union should request the following:
  - Audited financial statements over the last 3 years
  - The company's budget and plan for the next 3 years
  - Remuneration of top management and salary scales
  - If employers refuse to provide this information, then the union should declare a dispute in terms of section 16 of the LRA.

[8] Outcome of commissions at the LRS Negotiators' Conference, 24-26 March 2009, attended by a mix of worker representatives, union officials and office bearers.

[9] Here are further possibilities in this regard, demands that are strategic rather than defensive.
- A moratorium on retrenchment for specified time period, with consequences if the company breaks the agreement;
- Clauses which either prohibit or limit the use of labour brokers, but certainly equalise conditions of employment between workers inside and outside the company, thereby establishing disincentives for atypical employment.
- More leave days for shop stewards (for union work);
- Establishing (office) facilities for shop stewards in the workplace; and
- Establishing or extending full-time shop stewards in the workplace.

- Analyse the company's claims of crisis in conjunction with information specific to its competitors, the sector within which it operates as well as its supply side and demand side situation to establish if it is in genuine crisis. Also consider:
  - The finance minister's budget and projections
  - Analysts' projection of inflation, GDP, PPI and so on.
  - Information from Statistics SA and the SARB on the sector country etcetera.

IF THE CLAIMS ARE TRUE, WHAT CAN YOU GET FOR EXERCISING WAGE RESTRAINT?

- Guarantee of no retrenchments in return for the wage freeze
- Prior to accepting company proposal of a wage freeze, the following should happen:
  - Establish what measures have been put in place to alleviate or eradicate the crisis. Examples would include a moratorium on the payment of dividends to shareholders and the cancellation of executive bonus payments, cutting unnecessary expenditure (such as flights, extravagant lunches and dinners with clients).
  - Implementing a wage freeze on top management
  - Disposing of company assets to boost cash flow
  - A moratorium on recruitment
  - Putting growth strategies in areas affected by the crisis on hold
  - Termination of labour broking arrangements

- If these measures do not contain costs sufficiently then consider the following before agreeing to a wage freeze:
  - Look to reduce the headcount in top/senior management
  - Offer early retirement to those staff who are nearing retirement age
  - Cancel bonus payments to staff

- Only where retrenchments are unavoidable and all other efforts to reduce expenditure have failed to address the situation, would the union resort to accepting the company proposal of a wage freeze.

- In the event that the union does agree to a wage freeze the agreement should include a clause that allows the union to revisit the agreement, to renegotiate salary increases for its members, and to make up for lost increases to keep up with inflation when economic conditions improve.

WHAT KIND OF "NON-CASH" DEMANDS COULD YOU BRING INTO THIS BARGAINING SITUATION?

- Demand a more aggressive stance by the company on skills development, multi-skilling of staff, transformation and employment equity.
- Place a group-wide ban on overtime, or where overtime cannot be avoided compensate staff with paid time off.

- Increase limits with respect to commutation of leave to alleviate negative impact of wage freeze.

- Management to be more flexible in the approval of staff loans, to assist workers in meeting financial responsibilities (rental, food, transport, electricity etc.

- Demand that a task team be put in place that assesses the company's performance, developments in the sector and the economy at large, but also to deal with any teething problems that may arise in the implementation of agreed cost cutting measures.

LOOKING AHEAD

A preliminary look at wage settlements in 2009 suggests that unions are generally securing increases ahead of the latest inflation benchmarks . While an average settlement level of almost 10 percent compares well with average inflation which dipped below 7 percent in June 2009, we note that inflation for the middle expenditure group however clocked in at close to 9 percent.

The signs are that the consequences of the global economic crisis have been slow to impact the national economy and that the full weight is only likely to reveal itself in the course of 2009 and even 2010. Unions would do well to pay particular attention to how companies are structuring their offers. Most importantly they should be taking a proactive stance and strategising over the kinds of gains they wish to make in lingering hard times.

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APPENDIX 1: Wage increases in 2009

INDUSTRY	2009 % INCREASE
Civil Engineering	12.0
Coal	11.0
Communication (Telkom)	7.5
Diamonds (De Beers)	9.0
Electricity (Eskom)	10.5
Fast Moving Consumer Goods	9.0
Footwear	12.3
Furniture	8.0
Gold	10.5
Industrial Chemical	9.0
Media (SABC)	10.0
Metal & Engineering	8.8
Municipalities	13.0
Paper & Packaging	8.5
Passenger Rail Agency	8.0
Petroleum	10.0
Pharmaceutical	10.0
Pulp & Paper	9.0
Road Freight	11.0
Sasol Mining	9.0
Sawmilling	7.5
Median	9.0
Average	9.7

Directors' Fees Survey 2009

Executive remuneration in South Africa

Michelle Taal
Labour Research Service
July 2009

HIGHLIGHTS

This year's survey of directors' fees covers 71 JSE listed companies across fourteen sectors for the 2007/2008 financial year.

Our findings show that **executive director salaries**, across sectors, rose 11.6 percent on average, those of chief executive officers increased by on average 14 percent and **non-executive directors** saw their fees rise by 15 percent. The average **low-wage worker** saw an increase of 10.1 percent in 2008.

In 2008 the **average annual salary** for an executive director was R2, 641, 000, that of a chief executive officer was R4, 398, 000 while non-executive directors received R522, 000. The average income for a low-wage worker was R31, 704.

Executive director remuneration, which includes salaries, various benefit payments and bonuses, was down one percent in 2008 while **chief executive officers** saw an increase of three percent for remuneration. The figures for **non-executives** remain the same as they do not receive bonuses.

In 2008 the average annual **remuneration** for an executive director was R6, 439, 000; chief executive officers received R10, 460, 000 and non-executive directors earned R522, 000. A low-wage worker would therefore have to work 16.5 years, 203 years and 330 years to earn what an average non-executive director, executive director and CEO respectively were paid in 2008.

The average **bonus payment** for chief executives, where applicable, was 132 percent of salary, more than doubling the annual income for this position. The average **long-term incentive**, for those that exercised share options and the like in the year showed gains of over R10 million in the year which was around 308 percent of the average salary. Taken together bonus and LTI gains added an average of 265 percent to the directors' package.

The 70 CEOs in the sample earned a total of R732, 221, 000 in 2008 and the 282 executive officers took home a collective R1, 822, 339, 000. The 655 non-executive directors collectively earned R341, 614, 000 for their part-time work. All of these figures exclude gains made on long-term incentives (LTIs) which can increase a director's package substantially when it is exercised.

INTRODUCTION

The aim of the directors' fees survey this year is two-fold. Firstly it analyses and describes the director fees for the sample of 71 companies both across and within fourteen sectors. The analysis covers salaries, remuneration and elements of pay from various angles including percentage increases, Rand values and comparison to workers' wages. Secondly, the report this year aims to go beyond reporting on the figures to indicating how they might be used strategically by negotiators in the bargaining process. While the survey analyses directors' fees in various ways, the report also notes when and how each of these analyses may be most useful to negotiators by listing hints and strategies for the bargaining process.

Media, government and union outcries at the excesses of directors' fees are important for keeping the realities of wage inequality in the public eye. However, without a strategy on how to use them, directors' fee figures remain little more than a publicity tool. In order to be useful in supporting real improvements in the conditions of workers these figures have to be used strategically by negotiators based on a thorough understanding of companies and their actions.

Format of the report

Section one gives an overview of the results of the survey for executive director, non-executive director and chief executive officer fees for the year to 2008. It highlights the top earners in the sample in terms of increases and actual pay for both salaries and total annual remuneration. In section two we focus on the state of pay in 14 sectors in more detail by looking at salaries and remuneration, as well as the elements that make up remuneration including bonuses and long-term incentives. The different sectors do not all operate with the same pressures and within the same parameters and it was felt more useful for negotiators to understand the outcomes within their own sectors. This does result in companies of vastly varying sizes being grouped together, which should also be borne in mind when considering remuneration packages. The company performance table (Appendix 6) lists the company size by market capitalisation for each company as of 1 June 2009. Section three lists important hints and strategies for negotiators when analysing and addressing director fees in the bargaining context. The appendices include a detailed methodology of how we have gone about analysis as well as listing the full details of the directors' fees and company performance for the sample.

Sample

The sample includes 71 companies listed on the Johannesburg Stock Exchange (JSE) from 14 sectors, as well as one state-owned enterprise, Denel. While it is not a comprehensive sample, it does include over half the top 100 listed companies by market capitalisation as of the beginning of June 2009. 29 of the companies also have listings on stock exchanges outside of South Africa; six of these have primary listing on the London Stock Exchange with a secondary listing on the JSE. Sector coverage is not uniform as we focus on those sectors and companies of most interest to unions. The data has been extracted from the most recently published annual report and accounts as of 1 June 2009 and includes year ends from the end of February 2008 to the end of December 2008.

(1) DIRECTORS' FEES OVERVIEW

Average increases for executive directors, non-executive directors, and chief executive officers in terms of both salary and remuneration are shown in Charts 1 and 2 below where they are compared to average company performance in terms of profit, inflation for the year to December 2008 and the average increase for a low-wage worker in 2008. Wage increases for workers in 2008 were less than those for all directors as well as being below the average inflation for the year.

Fig 21: Percentage increases in salary: Workers and directors compared to company performance and inflation

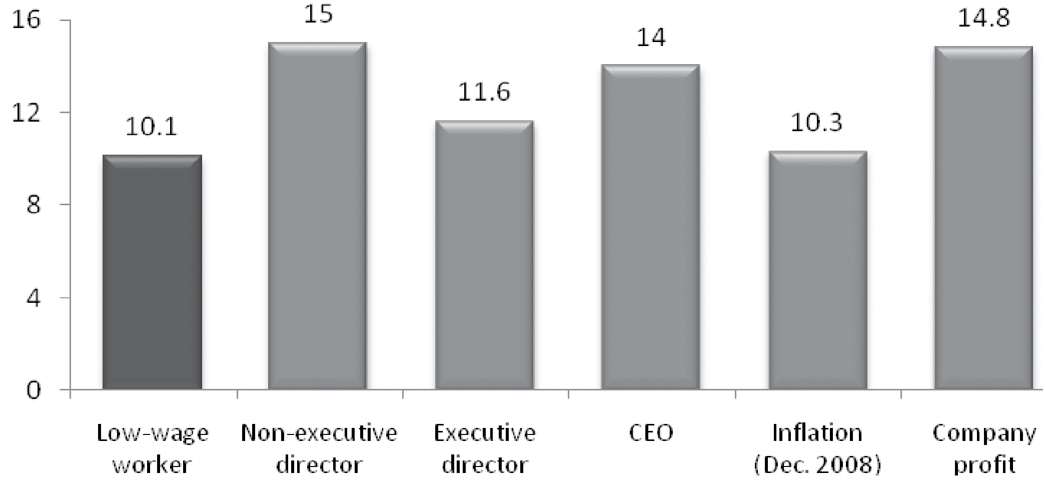
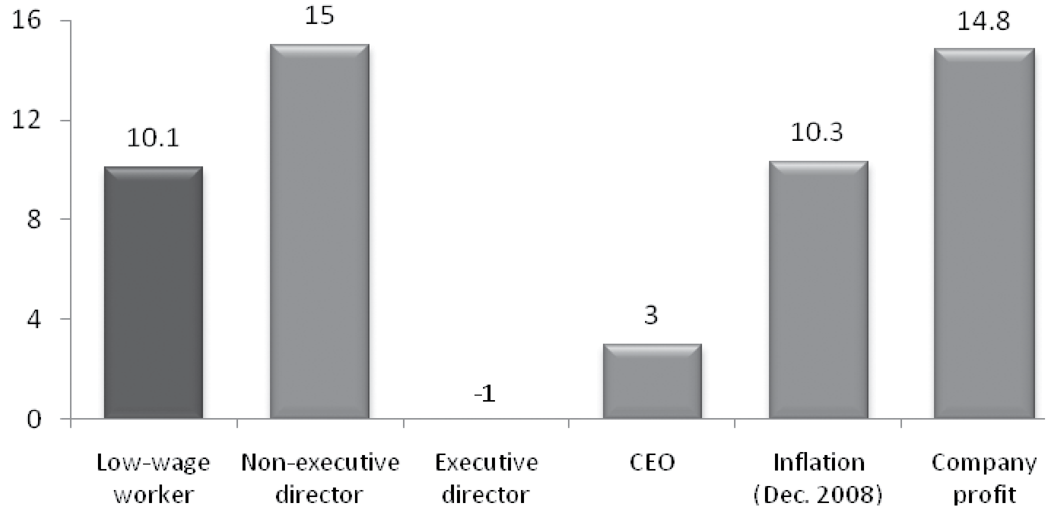
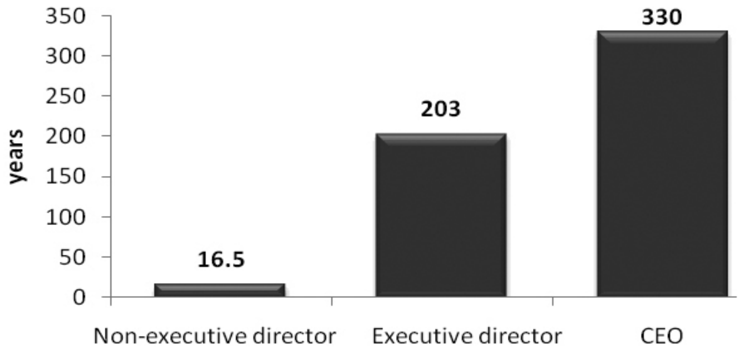


Fig 22: Percentage increases in remuneration: Workers and directors compared to company performance and inflation



While the average percentage wage increase is higher than the total remuneration increases for all except non-executive directors, the wage gap chart (3) shows that this has not in any way closed the gap in real earnings between directors and workers. In real terms these increases resulted in a wage gap that means a low-wage worker would have to work 16.5 years, 203 years and 330 years to earn what an average non-executive director, executive director and CEO respectively were paid in 2008.

Fig 23: The wage gap in 2008



Executive directors

While they exclude much of what executives receive in pay, salaries are the most easily comparable figures to workers' wages as they are the base pay of directors and increases in these are set at the start of the year as wages are. In 2008 executive directors earned an average salary of R2, 641, 000 compared to R2, 366, 000 in 2007. This is an 11.6 percent or a R275, 000 increase in their pay that is guaranteed. Only the financial sector showed a decrease in salary for the year while construction and paper and packaging showed increases in salary of nearly 25 percent. The five companies giving the highest percentage increase and those paying the highest salaries in 2008 are noted in Table 1 and Table 2 below.

Table 7: Companies with the highest percentage increase for executive director remuneration

Company	Sector	Ave. 2007 salary	Ave. 2008 salary	% incr.	Rand increase	Company performance
Anglo American plc	Mining	6, 578, 000	12, 979, 000	97.3	6, 401, 000	14%
Hosken Consolidated Inv.	Diversified holdings	1, 341, 000	2, 625, 000	95.7	1, 283, 400	109%
AngloGold Ashanti	Mining	4, 116, 000	7, 549, 000	83.4	3, 433, 400	Net loss
Tongaat-Hulett	Food & beverage	1, 688, 000	3, 087, 000	82.9	1, 399, 500	-76.1%
Anglo Platinum	Mining	2, 481, 000	4, 074, 000	64.2	1, 592, 800	-1%

Table 8: Companies with the highest executive directors' salary 2008

Company	Sector	Ave. 2007 salary	Ave. 2008 salary	% incr.	Rand increase	Company performance
Anglo American plc	Mining	6, 578, 000	12, 979, 000	97.3	6, 401, 000	14%
SAB Miller plc	Food & beverage	10, 195, 000	11, 715, 000	14.9	1, 520, 000	17.6%
AngloGold Ashanti	Mining	4, 116, 000	7, 549, 000	83.4	3, 433, 400	Net loss
Mondi	Paper & packaging	7, 830, 000	7, 224, 000	-7.7	-606, 100	96.9%
Lonmin plc	Mining	4, 576, 000	6, 869, 000	50.1	2, 292, 600	15.3%

Although Anglo American appears at the top of both lists it is not necessarily the case that the highest increase results in the highest actual salaries as Mondi showed a decrease in salaries year on year but still features in the top five companies for salaries in 2008. In this as in many cases below the highest figures in Rand value are often found in companies that are based in the UK and pay their directors in British Sterling. The high Rand values are therefore partly attributable to the exchange rate.

Remuneration includes not only salary but other payments made to directors in the year including bonuses and various benefits but excluding gains made on exercising long-term incentives (LTIs). These additional payments can greatly increase a director's annual package. In 2008 executive directors earned an average of R6, 439, 000 in total remuneration, compared to R6, 515, 000 in 2007. Although high, these figures indicate a decrease of one percent or R74, 000 year-on-year. This may imply that bonuses were down for the year. As with salaries the fall in pay was not universal so that while financial services showed a drop of 31 percent in remuneration, the food and beverage sector showed an increase of 36 percent and telecoms an increase of 34 percent for executive remuneration. The five companies giving the highest percentage increase and those paying the highest remuneration in 2008 are noted in Table 3 and Table 4 below.

Table 9: Companies with the highest percentage increase in executive directors' remuneration

Company	Sector	Ave. 2007 rem.	Ave. 2008 rem.	% incr.	Rand increase	Company performance
Telkom Limited	Info & telecoms	3, 926, 000	19, 109, 000	387	15, 183, 000	-5.2%
Tongaat-Hulett	Food & beverage	2, 426, 000	5, 089, 000	110	2, 663, 000	-76.1%
Foschini	Retail	2, 917, 000	6, 101, 000	109	3, 184, 000	0.2%
Lonmin plc	Mining	8, 420, 000	14, 591, 000	73	6, 171, 000	15.3%
Grindrod	Transport	5, 712, 000	9, 636, 000	69	3, 923, 000	92.9%

The top position for remuneration increases held by Telkom is due to the R13, 218,772 in benefits received by the incoming chief executive, Mr RJ September, in the year. This increase also places Telkom on the list of highest paid directors though the total is half of that paid on average to executives of Investec Bank. Of the companies with the highest remuneration all but Telkom are listed in London and their directors paid in British Sterling.

Table 10: Companies with the highest executive director remuneration 2008

Company	Sector	Ave. 2007 rem.	Ave. 2008 rem.	% incr.	Rand increase	Company performance
Investec Bank	Banks	37, 332, 000	37, 892, 000	2	560, 000	22.5%
SAB Miller plc	Food & beverage	25, 485, 000	30, 796, 000	21	5, 311, 000	17.6%
BHP Billiton plc	Mining	19, 359, 000	30, 459, 000	57	11, 100, 000	23.8%
Anglo American plc	Mining	30, 839, 000	22, 793, 000	-26	-8, 046, 000	14%
Telkom Limited	Info & telecoms	3, 926, 000	19, 109, 000	387	15, 183, 000	-5.2%

Non-executive directors

Non-executive director pay is not set in the same way as that of executives. They are paid a fee as a board member with additional payments for sitting on various committees, more if they chair them. They are generally not eligible for bonuses and other incentive payments though they do receive benefits, mostly in the form of travel allowances.

Increases are therefore said to be based on increased oversight responsibility brought on by a greater focus on governance than in the past and are traditionally not annual. Non-executive directors are intended to be independent of management on issues such as "strategy, performance, transformation, diversity and employment equity" (Group 5 Annual Report 2008).

It is also the argument of companies that the number of people available to fulfil these roles, independent and with the right skills, experience and expertise, is limited and therefore individuals are in high demand. However, with some non-executive directors sitting on two or more boards it is our contention that unless people from outside this pool, from labour or civil society, are drawn into the non-executive pool, it will remain small and questionably independent. With a lack of independence, the danger exists of one individual deciding on the corporate governance, including director pay, of a company where the executives might also have some influence on their own company governance.

In 2008 non-executives received an average increase of 15 percent in their total fees including benefits. In Rand terms this is an average increase from R454, 000 in 2007 to R 522, 000 in 2008. The transport sector showed the highest percentage increase of 17 percent while electronics showed a slight decrease in fees of one percent on average. Table 5 and Table 6 below note the highest increases and highest fees. While actual fees again put the UK listed companies at the top of the list, the increases show that even smaller companies have increased their fees to non-executives substantially.

Table 11: Companies with the highest percentage increase in non-executive director fees

Company	Sector	Average 2007	Average 2008	% increase	Rand increase	Company performance
1time Holdings	Transport	51, 000	194, 000	279	143, 000	Net loss
PPC	Construction	120, 000	273, 000	128	154, 000	3.3%
Mondi	Paper & packaging	2, 136, 000	4, 048, 000	89	1, 912, 000	96.9%
WBHO	Construction	109, 000	183, 000	68	74, 000	142.4%
AngloGold Ashanti	Mining	330, 000	547, 000	66	217, 000	Net loss

Table 12: Companies with the highest non-executive director fees 2008

Company	Sector	Average 2007	Average 2008	% increase	Rand increase	Company performance
Mondi	Paper & packaging	2, 136, 000	4, 048, 000	89	1, 912, 000	96.9%
BHP Billiton plc	Mining	1, 832, 000	1, 887, 000	3	55, 000	23.8%
Firstrand Banking Group	Banking	1, 134, 000	1, 841, 000	62	707, 000	23.7%
Anglo American plc	Mining	1, 590, 000	1, 624, 000	2	34, 000	14%
Investec Bank	Banking	1, 474, 000	1, 604, 000	9	130, 000	22.5%

Chief executive officers

Chief executive officers received an average salary of R4, 398, 000 in 2008. This is an increase of 14 percent or R542, 000 on the 2007 salary of R3, 856, 000. All the sectors except for industrial and chemicals showed a double digit increase with construction the highest at 23 percent. However, as is shown in Table 7, some increases were way above the average. Unsurprisingly those companies with the highest fees for CEOs are similar to those listed for executive directors generally with the noted exception of Shoprite.

Table 13: Companies with the highest increase in chief executive officer salaries

Sector and company	Sector	2007 salary	2008 salary	% incr.	Rand increase	Company performance
PPC	Construction	1, 045, 000	2, 917, 000	179	1, 872, 000	3.3%
Anglo Platinum	Mining	3, 732, 000	8, 147, 000	118	4, 414, 000	-1%
Hosken Consolidated Inv.	Diversified holdings	1, 866, 000	3, 606, 000	93	1, 740, 000	109.7%
Imperial Holdings	Transport	2, 144, 000	3, 787, 000	77	1, 643, 000	-40.7%
Basil Read	Construction	1, 708, 000	2, 686, 000	57	978, 000	80.5%

Table 14: Companies with the highest chief executive officer salaries 2008

Sector and company	Sector	2007 salary	2008 salary	% incr.	Rand increase	Company performance
Anglo American plc	Mining	12, 726, 000	15, 939, 000	25	3, 213, 000	14%
SAB Miller plc	Food & beverage	12, 700, 000	14, 617, 000	15	1, 917, 000	17.6%
Shoprite Holdings	Retail	9, 929, 000	13, 158, 000	33	3, 229, 000	44.1%
BHP Billiton plc	Mining	12, 798, 000	12, 226, 000	-4	-572, 000	23.8%
Mondi	Paper & packaging	9, 269, 000	11, 743, 000	27	2, 474, 000	96.9%

Remuneration increases indicate how high bonus and benefit payments may be as the companies listed with the highest increases are almost entirely different from those with high salary increases. The exception is PPC which shows a high increase in terms of both salary and remuneration. The fact that two of the companies paying the highest remuneration actually recorded a decrease on last year shows the impact of exchange rate fluctuations.

Table 15: Companies with the highest percentage increase in chief executive officer remuneration

Company	Sector	2007 remuneration	2008 remuneration	% increase	Rand increase	Company performance
Telkom Limited	Info & telecoms	3, 926, 000	19, 134, 000	387	15, 208, 000	-5.2%
Foschini	Retail	3, 851, 000	9, 123, 000	137	5, 272, 000	0.2%
Afrox Oxygen	Industrial /Chemicals	2, 380, 000	4, 490, 000	89	2, 110, 000	-15.5%
Basil Read	Construction	6, 961, 000	11, 353, 000	63	4, 392, 000	80.5%
PPC	Construction	3, 408, 000	5, 389, 000	58	1, 981, 000	3.3%

Table 16: Companies with the highest chief executive officer remuneration 2008

Company	Sector	2007 remuneration	2008 remuneration	% increase	Rand increase	Company performance
Investec Bank	Banks	47, 918, 000	48, 276, 000	1	358, 000	22.5%
SAB Miller plc	Food & beverage	33, 693, 000	46, 458, 000	38	12, 765, 000	17.6%
BHP Billiton plc	Mining	35, 382, 000	30, 826, 000	-13	4, 556, 000	23.8%
Anglo American plc	Mining	37, 711, 000	28, 569, 000	-24	9, 142, 000	14%
MTN	Info & telecoms	16, 257, 000	19, 958, 000	23	3, 701, 000	44.6%

While the limits of what a director can earn in bonus are often not disclosed, it is evident that the payments can easily double what are already large salary packages. The fact that remuneration increases for CEOs were lower that salary increases may indicate that bonuses were on average down on the year. 63 of the companies surveyed did reward their CEOs with a bonus in the year at an average value of 132 percent of their salaries. While this average more than doubles their take home pay, may companies paid much more than this with Investec awarding a bonus of nearly 9 times salary.

Table 17: Companies with the highest chief executive officer bonus as a percentage of salary 2008

Company	Sector	2008 salary	2008 Bonus	Salary plus bonus 2008	Bonus as % salary
Investec Bank	Banks	4, 740, 000	42, 456, 000	47, 196, 000	896
Coronation Fund Managers	Financial	770, 000	3, 956, 000	4, 726, 000	514
WBHO	Construction	1, 112, 000	5, 655, 000	6, 767, 000	509
Invicta Holdings Limited	Industrial / Chemicals	1, 455, 000	6, 900, 000	8, 355, 000	474
Basil Read	Construction	2, 686, 000	8, 333, 000	11, 019, 000	310

Beyond bonuses, 36 executives also exercised some long-term incentives in the year. Though this is not an annual payment, when incentives are exercised the gains can be considerable. Table 12 shows the CEOs who made the greatest gains on their long-term incentives in the year.

Table 18: Companies with the highest CEO long-term incentive gain 2008

Company	Sector	2008 salary	2008 LTI gain	LTI as % of salary
SAB Miller plc	Food & beverage	14, 617, 000	41, 609, 000	285
African Rainbow Minerals	Mining	1, 906, 000	39, 362, 000	2065
Murray & Roberts	Construction	3, 168, 000	37, 430, 000	1182
Pick 'n Pay Stores	Retail	2, 672, 000	33, 000, 000	1235
Aveng	Construction	3, 425, 000	25, 410, 000	742

(2) DIRECTORS' FEES BY SECTOR

Banking

Table 19: Sample and summary*

Banks	Change in profit before tax 2007 - 2008	Average percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Average percentage change in non-executive director remuneration 2007 - 2008	Average percentage change in wages for low-wage occupations 2007 - 2008
Absa Group	8.0%	30%	-3%	23%	10.1%
African Bank Investments	17.1%	-3%	-18%	0%	10.1%
Firstrand Banking Group	23.7%	-5%	-5%	62%	10.1%
Investec Bank	22.5%	2%	1%	9%	10.1%
Nedbank Group	-1.2%	-14%	-11%	2%	10.1%
Standard Bank	-5.9%	-24%	-24%	-11%	10.1%
AVERAGE	**10.7%**	**-3%**	**-7%**	**12%**	**10.1%**

**For Rand amounts see Appendices*

Salaries and wages

The average salary for an executive director in the banking sector increased from R2.9 million to R 3.5 million, 20 percent, in the period, with an increase from R3.9 million to R4.2 million, seven percent, for CEOs. The pay of a low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008

Fig 24: Percentage salary/ wage increases

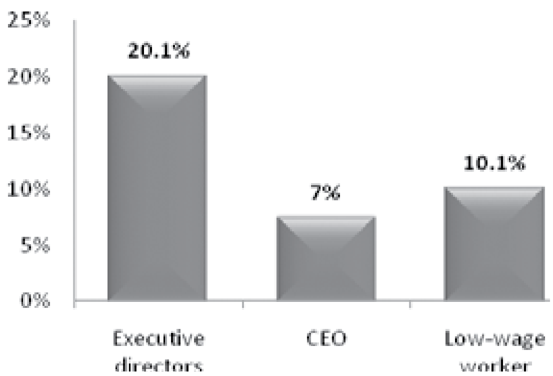
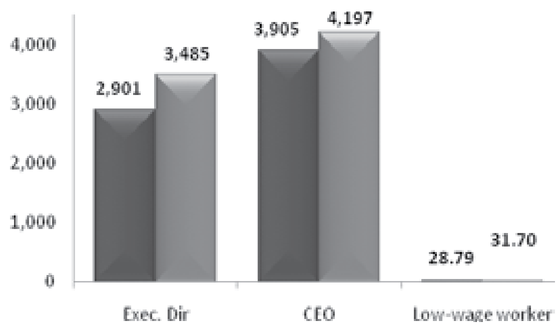


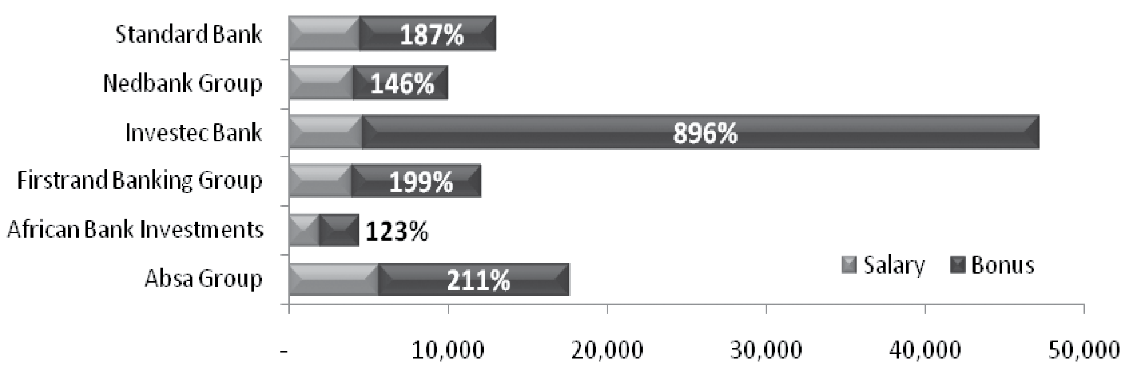
Fig 25: Actual salary / wage increases (R'000)



Bonuses

In the banking sector, average bonuses for chief executives were around 295 percent the value of salaries.

Fig 26: Salary and bonus for banking sector chief executives indicating bonus as a percent of salary 2008 (R'000)



Remuneration

In 2007/8 the average remuneration of executive directors in the banking sector increased by four percent, that of CEOs decreased by seven percent and non-executive directors' increased by 12 percent. Looking at both sets of figures, the smaller increases for remuneration suggests that bonuses have fallen while salary, which is set at the beginning of the year, has continued to rise. The four percent increase for executive directors still means an average annual remuneration of R15.6 million, where the 10.1 percent for workers indicates an increase of R2, 916 per annum to R31, 704.

Fig 27: Percentage remuneration / wage increases

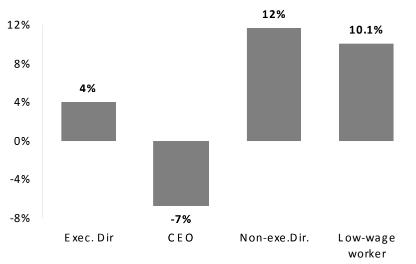
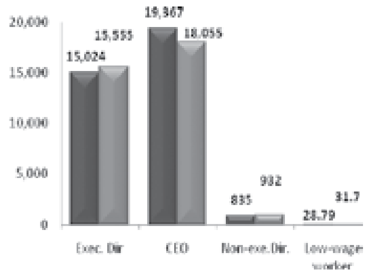


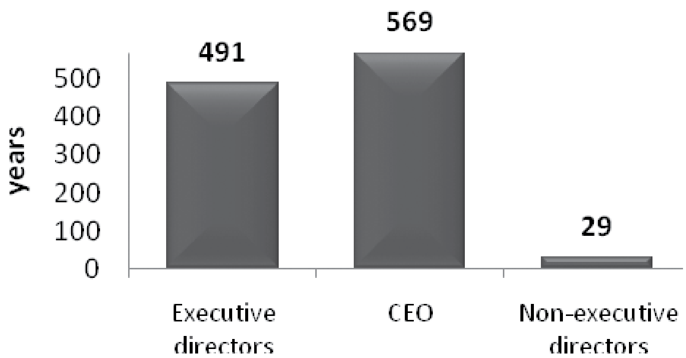
Fig 28: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration of an executive director in the banking sector was R15.6 million, while it was R18 million for a chief executive officer and R932, 000 for a non-executive director. The average minimum wage across sectors was R31, 704.

It will therefore take a low-wage worker about 569 years, 491 years and 29 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

Fig 29: The wage gap - how long it will take a worker to earn what a banking sector director earned in 2008



The six CEOs in the sample collectively earned R108 million in 2008 while the 18 executive directors of the six companies collectively earned R280 million. The 86 non-executive directors collectively earned R80 million in the same year. These amounts, high in themselves, exclude gains from share options and dividends earned by these company directors.

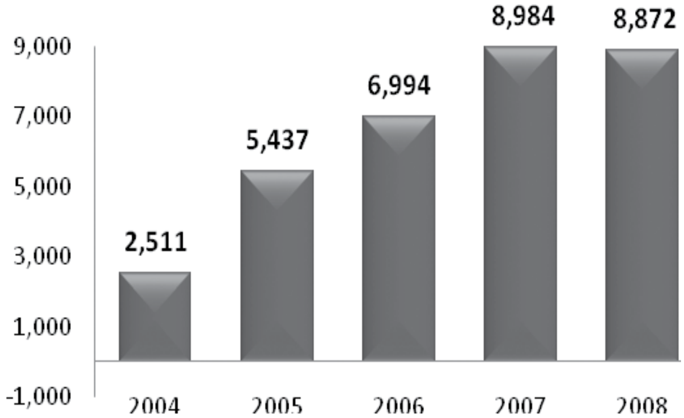
Long-term incentives (LTIs)

An example of the impact of LTI payments on income: Tom Boardman, CEO of Nedbank received salary and benefits of R4.1 million in 2008. His bonus of R6 million increased this package by 146 percent. His long-term incentive payout of R5.8 million is 141 percent on top of his salary so that bonus and long-term incentive payments together added 287 percent income to his salary. This does also not include pension contributions which amounted to R309, 000 in the year.

Company performance: profit

In the banking sector, fortunes have varied which may indicate the different markets in which the banks operate. However, a fall in profits is not always indicative of long-term poor performance. While company profits may have dropped off slightly at Nedbank in the year, Chart 10 shows that they are still up on the average for the years since 2004. The CEO still collected a R6 million bonus for the year despite the slight fall so any argument for stifling worker demands based on a fall company profits should be questioned.

Fig 30: Nedbank profit before tax over five years (R millions)



News from the banking sector is that Investec has cut the pay of chief executive Stephen Koseff by half following talks with the Reserve Bank on "toning down" executive compensation. Koseff was paid £1.66 m (R21.4m), including a bonus of £1.25m, in the year to March 2009... He was paid £3.3m (R48.3m), including a bonus of £2.9m (R42.5 m), for the 2008. "We met the remuneration committee of every bank last year," Errol Kruger, the registrar of banks, said in an interview yesterday. "They did get the message that we think it should be toned down a bit." ...[T]he remuneration committee said the current year's bonuses for the bank's executive directors would be cut by 52 percent. Those directors would not receive pay increases, while fees for non-executive directors would remain unchanged, it added. Standard Bank, South Africa's biggest lender with a market value more than four times greater than Investec's, paid chief executive Jacko Maree a third less than Koseff. Maree received R14.1m in 2008 (Business Report, 2 July 2009).

Construction

Table 20: Sample and summary*

Construction	Change in profit before tax 2007 - 2008	Percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Percentage change in non-executive director remuneration 2007 - 2008	Percentage change in wages for low-wage occupations 2007 - 2008
Aveng	-58.2%	-9%	50%	-30%	10.1%
Basil Read	80.5%	63%	63%	25%	10.1%
Cashbuild	27.6%	28%	18%	1%	10.1%
Group Five	78.6%	9%	-45%	18%	10.1%
Murray & Roberts	99.2%	17%	15%	7%	10.1%
PPC	3.3%	13%	58%	128%	10.1%
WBHO	142.4%	50%	55%	68%	10.1%
AVERAGE	**53%**	**14%**	**21%**	**15%**	**10.1%**

**For Rand amounts see Appendices*

Salaries and wages

The average salary for an executive director in construction increased from R1.5 million to R1.8 million, 24.6 percent, in the year with an increase from R2 million to R2.5 million, 23 percent, for CEOs. The pay of the average low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008.

Fig 31: Percentage salary / wage increases

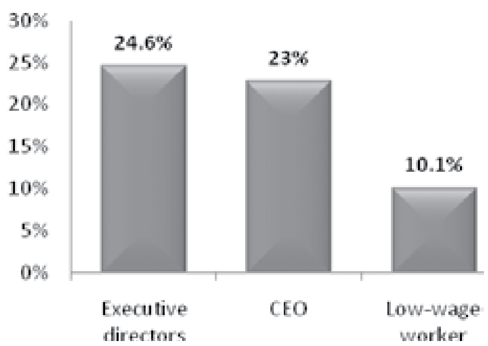
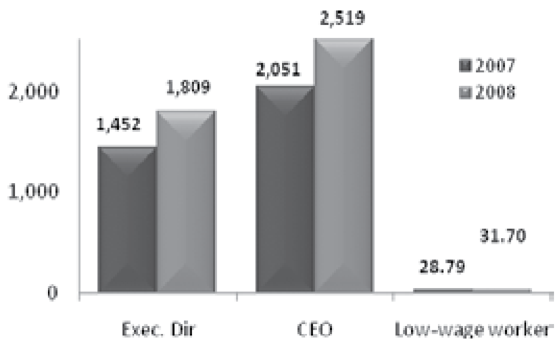


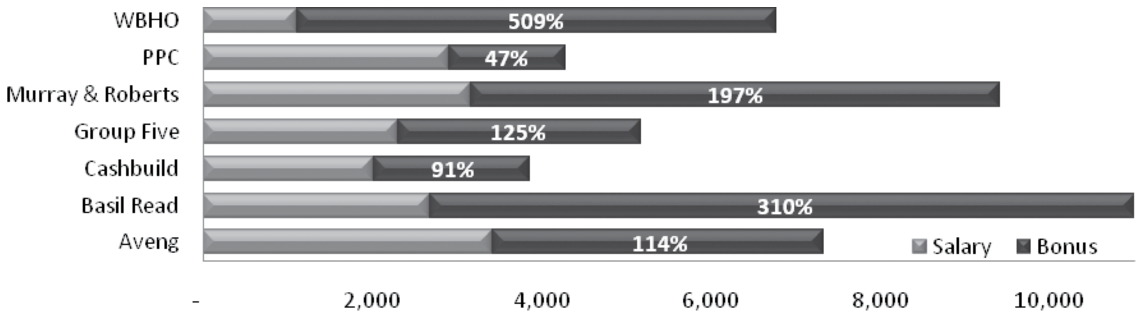
Fig 32: Actual salary / wage increases (R'000)



Bonuses

In the construction sector, bonuses were on average equal to 200 percent of salary, thus tripling the annual income of the director.

Fig 33: Salary and bonus for construction sector chief executives indicating bonus as a percent of salary 2008 (R'000)



Remuneration

In 2007/8 the average remuneration of executive directors in construction increased by 14 percent, chief executives by 21 percent and non-executive directors by 15 percent. The increase for executive directors' averages R596, 000 per annum; 10.1 percent for a worker indicates an increase of R2, 916 per annum.

Fig 34: Percentage remuneration / wage increases

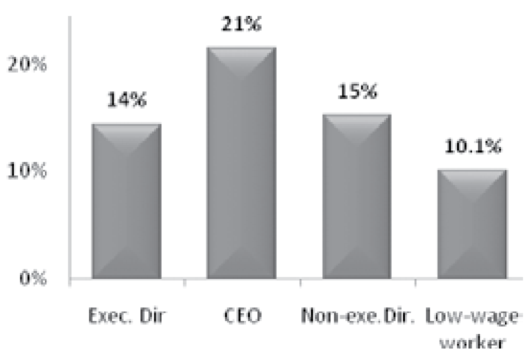
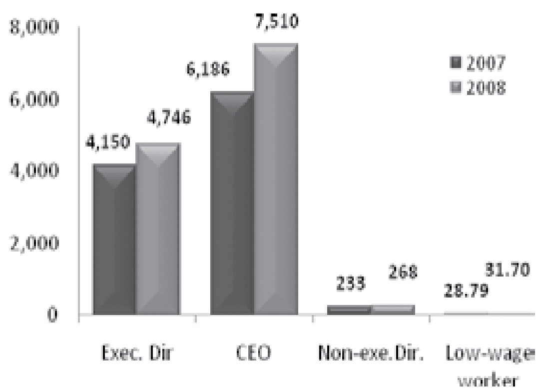
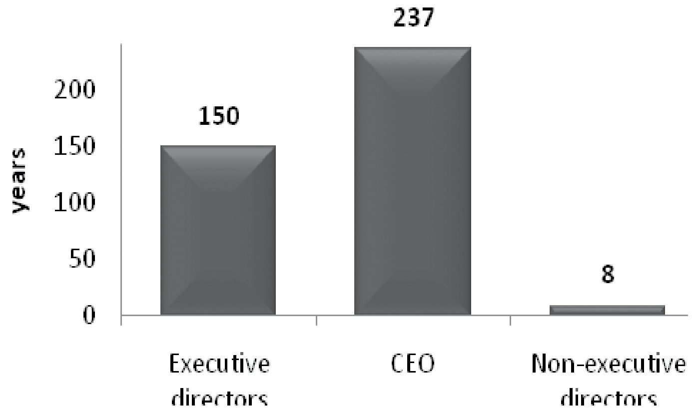


Fig 35: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration in the construction sector of an executive director was R4.7 million, while it was R7.5 million for a chief executive officer and R268, 000 for a non-executive director. The average minimum wage across sectors was R31, 704. It will therefore take a low-wage worker about 237 years, 150 years and 8 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

Fig 36: The wage gap - how long it will take a worker to earn what a construction sector director earned in 2008

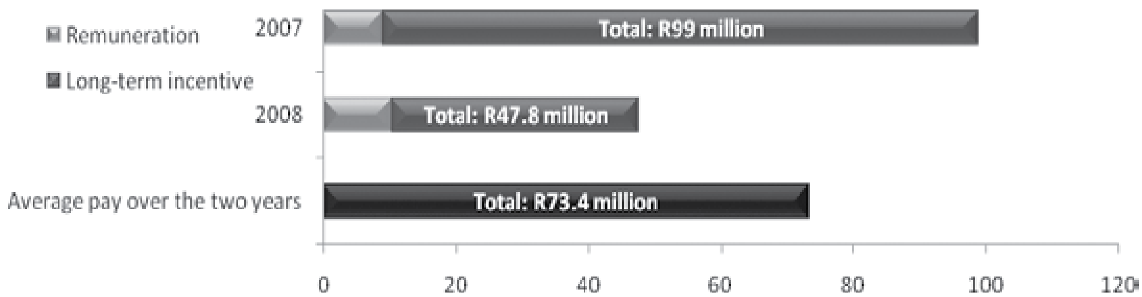


The seven CEOs in the sample collectively earned R52.6 million in 2008 while the 24 executive directors of the seven companies collectively earned R114 million. The 48 non-executive directors collectively earned R13 million in the same year. These amounts, high in themselves, exclude gains from share options and dividends earned by these company directors.

Long-term incentives (LTI)

Although long-term incentives are not necessarily exercised every year, they may be exercised in consecutive years thus adding substantially to a director's remuneration. As an example, the CEO of Murray & Roberts, Brian Bruce, received remuneration of R 10.4 million including bonus and benefits in 2008. Once the payout of his long term awards is added to this, the total increases 360 percent to R47.7 million. And while LTI payouts are not generally considered annual, this payment must be seen in the light of the LTI payout of over R90 million that Bruce received in 2007. This brings his average pay for the two years to R73.4 million.

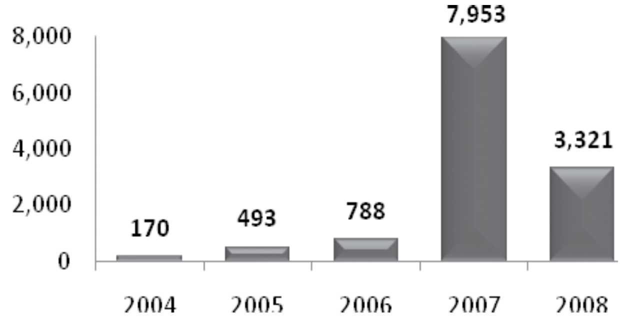
Fig 37: Long-term incentive (LTI) payments 2007 and 2008 – Murray & Roberts chief executive officer



Company performance: profit

All the companies in the sample have shown an increase in profits over the last year except for Aveng which shows a fall. The rise in profits is unsurprising given the current boom in construction projects. The construction boom has been evident for some years now; company performance, as well as pay should therefore be considered over a longer period than the latest two years. The profits for Aveng, for example, have fallen over the past year which may lead one to assume that company performance is under pressure. However, taking the longer view it can be seen that 2007 showed a record increase in profits of 909 percent on those of 2006. The figures for 2008 are therefore still comparably strong and a 321 percent increase on 2006.

Fig 38: Aveng profit before tax over five years (R millions)



Diversified holdings

Table 21: Sample and summary*

Diversified Holdings	Change in profit before tax 2007 - 2008	Percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Percentage change in non-executive director remuneration 2007 - 2008	Percentage change in wages for low-wage occupations 2007 - 2008
Barloworld Limited	-8.4%	-6%	-17%	0%	10.1%
Bidvest	18.7%	34%	16%	22%	10.1%
Hosken Consolidated Inv.	109.7%	-1%	-26%	52%	10.1%
Remgro	41.1%	5%	0%	-1%	10.1%
RMB Holdings	-1.5%	-1%	-45%	35%	10.1%
Seardel Limited	-	-26%	24%	6%	10.1%
Steinhoff	45.4%	-12%	-1%	-6%	10.1%
AVERAGE	34.2%	2%	-2%	5%	10.1%

**For Rand amounts see Appendices*

Salaries and wages

The average salary for an executive director increased from R2.4 million to R2.97 million, 23.5 percent, in the year with an increase from R4.4 million to R5.2 million, 18 percent, for CEOs. The pay of the average low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008.

Fig 39: Percentage salary / wage increases

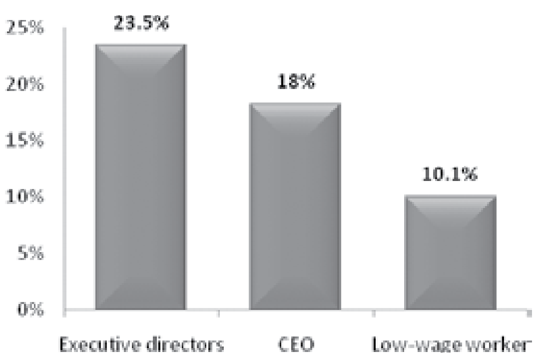
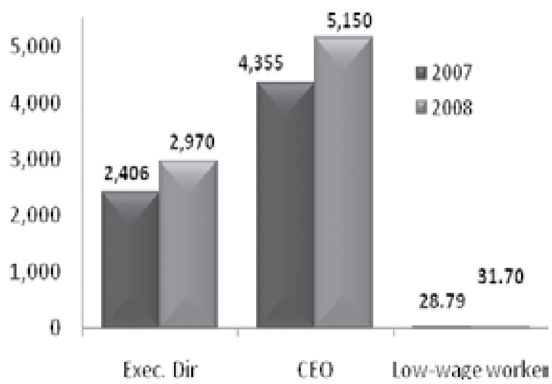


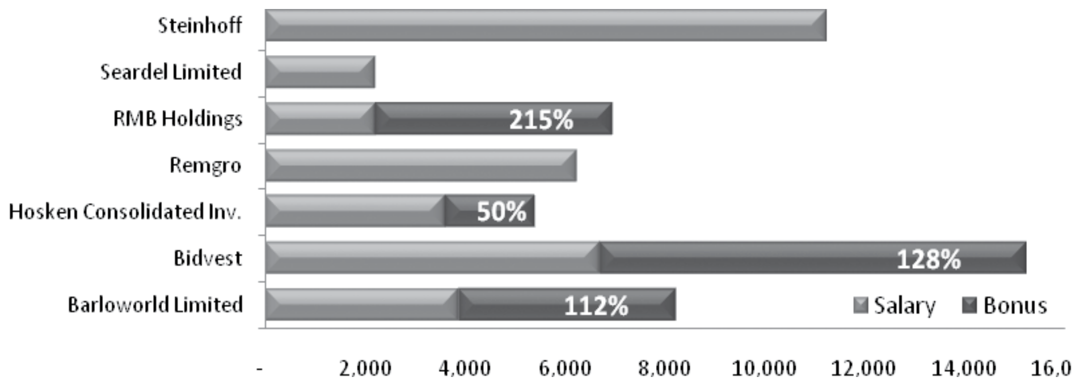
Fig 40: Actual salary / wage increases (R'000)



Bonuses

Although three of the companies in the sample did not pay bonuses to their chief executives for the year under review, among those that did the average payment was 126 percent of salary.

Fig 41: Salary and bonus for diversified holdings chief executives indicating bonus as a percent of salary 2008 (R'000)



Remuneration

In 2007/8 the average remuneration of executive directors in diversified holdings increased by two percent, that of chief executives decreased by two percent and that of non-executive directors increased by five percent. This is not surprising given that three companies did not pay bonuses in the year. The two percent increase for executives indicates an increase of R101, 000 per annum on average, 10.1 percent for workers indicates an increase of R2, 916 per annum.

Fig 42: Percentage remuneration / wage increases

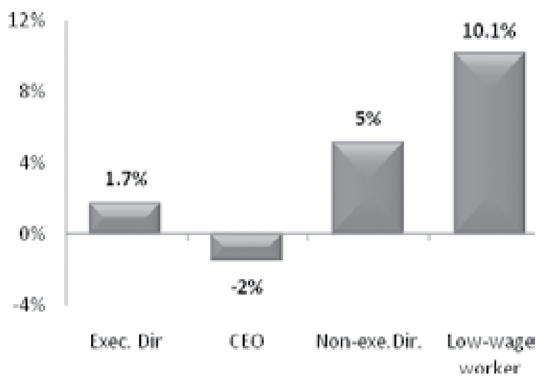
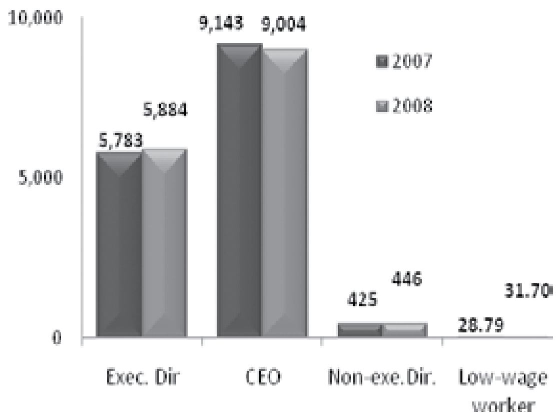
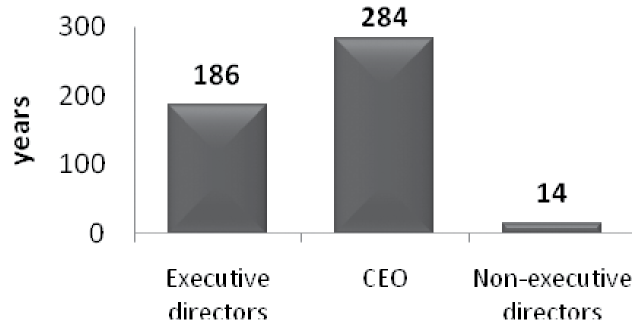


Fig 43: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration in diversified holdings for an executive director was R5.9 million, while it was R9 million for a chief executive officer, and R 446, 000 for a non-executive director. The average minimum wage across sectors was R31, 704. It will therefore take a low-wage worker about 284 years, 186 years and 14 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

Fig 44: The wage gap - how long it will take a worker to earn what a diversified holdings director earned in 2008

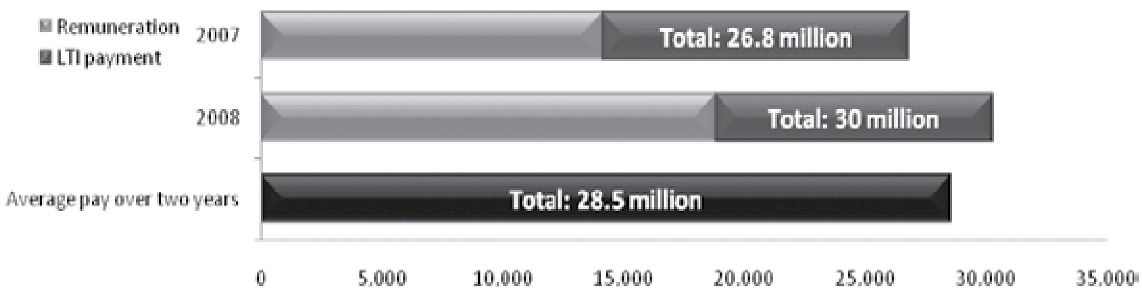


The seven CEOs in the sample collectively earned R63 million in 2008 while the 40 executive directors of the seven companies collectively earned R235 million. The 57 non-executive directors collectively earned R25 million in the same year. These amounts, high in themselves, exclude gains from long-term incentives and dividends earned by these company directors.

Long-term incentives LTIs)

As an example of the impact that long-term incentive (LTI) payments can have on a director's income, one company is highlighted. The CEO of Bidvest, Brian Joffe, received remuneration of R18 million including bonus and benefits. Once the payment of his LTI payment is added to this, the total increases 61 percent to R30.3 million. And while LTI payments are not generally considered annual, this payout must also be seen in the light of the LTI payout of over R12 million that Joffe received in 2007. Over the two years therefore he averaged an annual income of around R28.5 million.

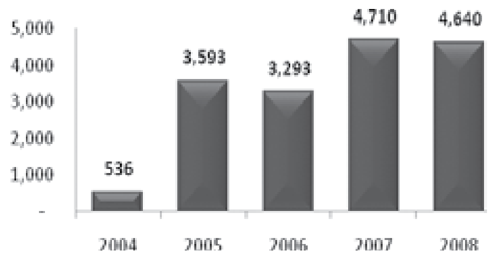
Fig 45: Long-term incentive (LTI) payments 2007 and 2008 - Bidvest chief executive



Company performance: profit

The companies in the sample have had varying fortunes over the year with Seardel Limited showing a loss even from its small profit of 2007. The chief executive in the year did in fact take no bonus for the year with executive salaries rising only 4.5 percent, although this still represents an increase of R76, 000 per annum. Decreases in profits can be deceptive; analysing five years of data it becomes clear that while company profits may have dropped off slightly at RMB Holdings in the year, they are still up on the average for five years.

Fig 46: RMB Holdings profit before tax over five years (R millions)



Electronics

Table 22: Sample and summary*

Electronics	Change in profit before tax 2007 - 2008	Percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Percentage change in non-executive director remuneration 2007 - 2008	Percentage change in wages for low-wage occupations 2007 - 2008
Altron	23.8%	28%	27%	28%	10.1%
Reunert	76.5%	4%	-2%	4%	10.1%

**For Rand amounts see Appendices*

Salaries and wages

The average salary for an executive director increased from R1.97 million to R2.4 million, 22 percent, in the year with an increase from R3 million to R3.5 million, 16 percent, for CEOs. The pay of the average low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008.

Fig 47: Percentage salary / wage increases

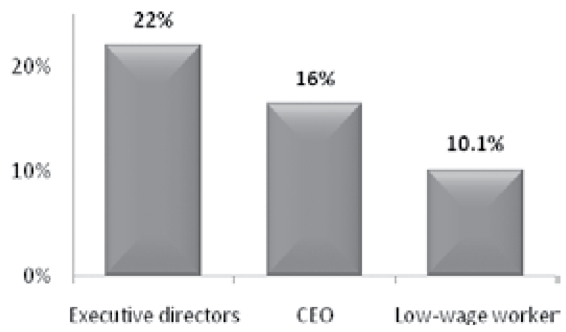
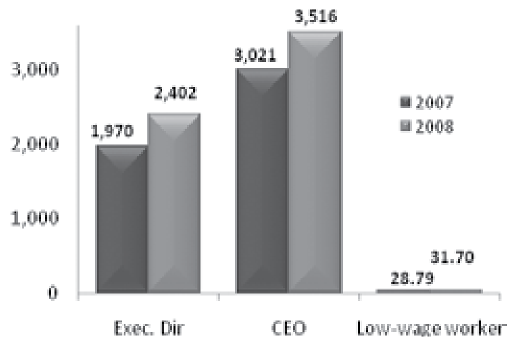


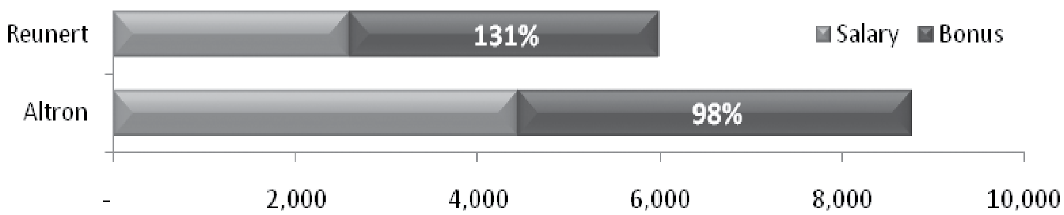
Fig 48: Actual salary / wage increases (R'000)



Bonuses

On average, the bonuses to chief executives in the sample were 114 percent of their base salary.

Fig 49: Salary and bonus for electronics sector chief executives indicating bonus as a percent of salary 2008 (R'000)



Remuneration

In 2007/8 the average remuneration of executive directors in electronics increased by 20 percent, chief executives by 14 percent and non-executive directors decreased by one percent. The parity between salary and total remuneration increases, and that both increases are high, suggests that both the base pay and bonuses for executives in the sector have been substantially increased in the year. The 20 percent for executives indicates an increase of R907, 000 per annum on average for executive directors, 10.1 percent for workers indicates an increase of R2, 916 per annum.

The two CEOs in the sample collectively earned R17. 96 million in 2008 while the 12 executive directors of the two companies collectively earned R65 million. The 17 non-executive directors collectively earned R2.9 million in the same year. These amounts, high in themselves, exclude gains from share options and dividends earned by these company directors.

Fig 50: Percentage remuneration / wage increases

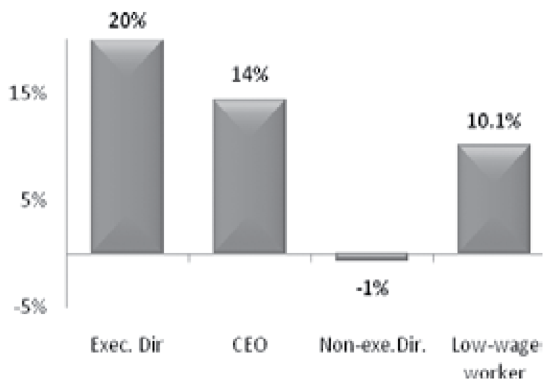
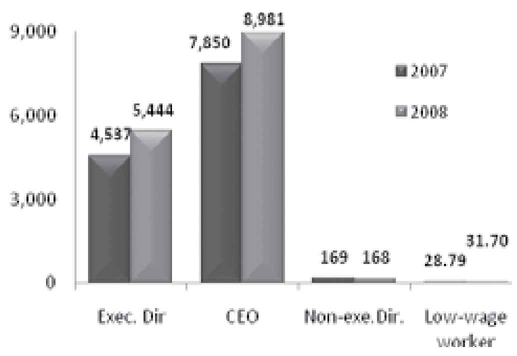


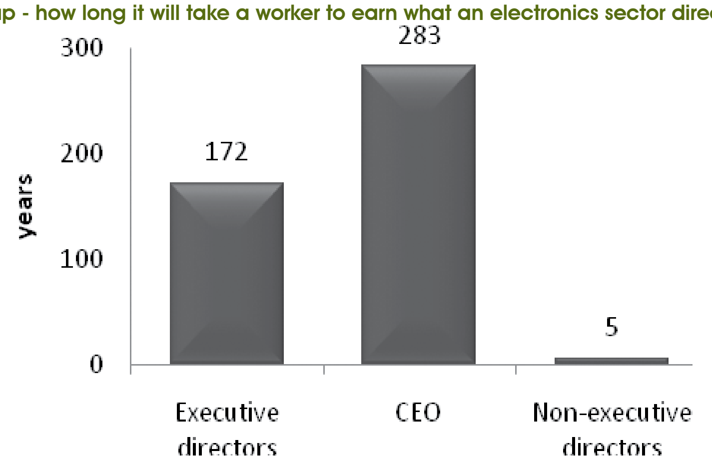
Fig 51: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration in the electronics sector of an executive director was R5.4 million, R8.98 million for a CEO and R168, 000 for a non-executive director. The average minimum wage across sectors was R31, 704.

It will therefore take a low-wage worker about 283 years, 172 years and 5 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

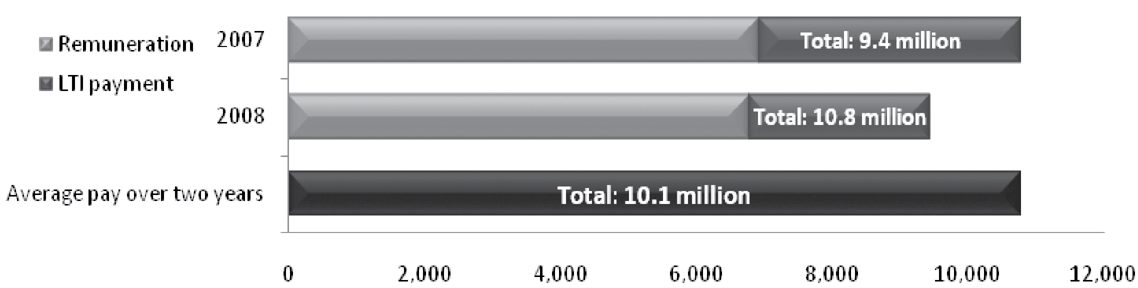
Fig 52: The wage gap - how long it will take a worker to earn what an electronics sector director earned in 2008



Long-term incentives

The CEO of Reunert, Gerrit Pretorius, received remuneration of R6.8 million including bonus and benefits in 2008. Once the payout of his long-term awards is added to this, the total increases 56 percent to R10.8 million. And while LTI payments are not generally considered annual, this payout must also be seen in the light of the payment of nearly R3 million that Pretorius received in 2007. Over the two years therefore he averaged an annual income of around R10.1 million.

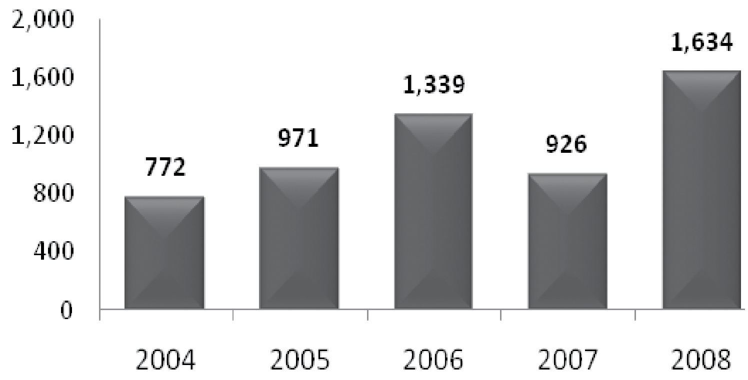
Fig 53: Long-term incentive (LTI) payments 2007 and 2008 - Reunert chief executive



Company performance: profit

Both companies in the sample have shown good profit growth over the period. Looking at Reunert in particular, 2008 is has been a year of record growth in the period while 2007 was a bit of an anomaly in an otherwise increasingly successful time.

Fig 54: Reunert profit before tax over five years (R millions)



Financial

Table 23: Sample and summary*

Financial	Change in profit before tax 2007 - 2008	Percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Percentage change in non-executive director remuneration 2007 - 2008	Percentage change in wages for low-wage occupations 2007 - 2008
Coronation Fund Managers	-43.7%	-46%	-6%	-51%	10.1%
Liberty Life	-55.4%	-12%	-13%	39%	10.1%
Sanlam	-60.9%	-29%	-8%	11%	10.1%
AVERAGE	**-53.3%**	**-31%**	**-9%**	**7%**	**10.1%**

**For Rand amounts see Appendices*

Salaries and wages

The average salary for an executive director in the financial sector decreased from R2.2 million to R1.99 million, 7.6 percent, in the year with an increase from R2.5 million to R2.8 million, 11 percent, for CEOs. The pay of the average low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008.

Fig 55: Percentage salary / wage increases

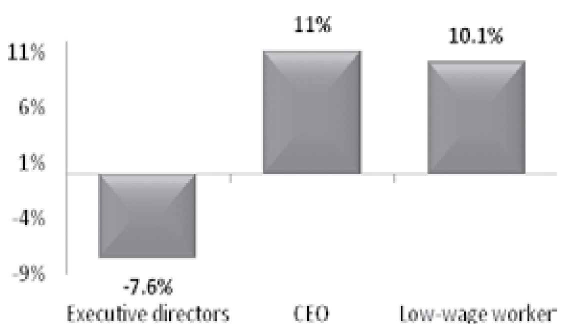
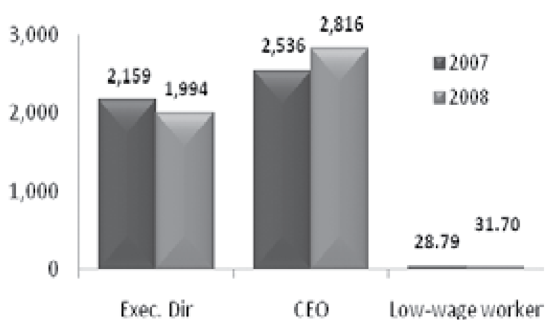


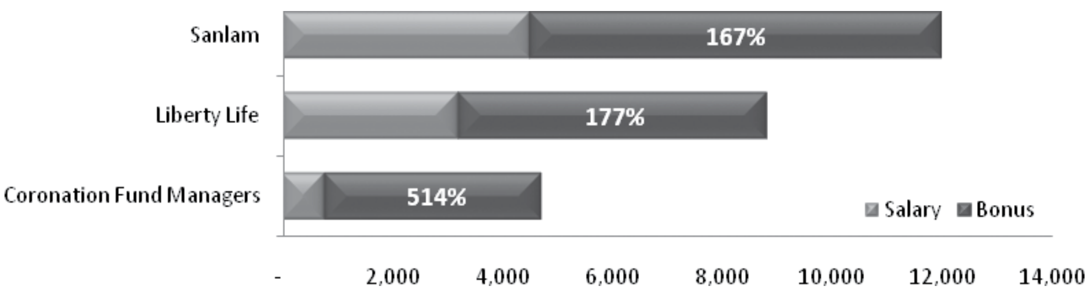
Fig 56: Actual salary / wage increases (R'000)



Bonuses

Despite the low increases in the year, the average bonus for chief executives still added an average of 286 percent to their salary.

Fig 57: Salary and bonus for financial sector chief executives indicating bonus as a percent of salary 2008 (R'000)



Remuneration

In 2007/8 the average remuneration of executive directors in the financial sector decreased by 31 percent, chief executives decreased by nine percent and non-executive directors increased by seven percent. This suggests that even the substantial bonuses they received this year are down on what was awarded to them in 2007. The decrease of 31% for executives indicates still indicates an average remuneration of R6.8 million for executive directors, 10.1 percent for workers indicates an increase of R2, 916 per annum to R31, 704

Fig 58: Percentage remuneration / wage increases

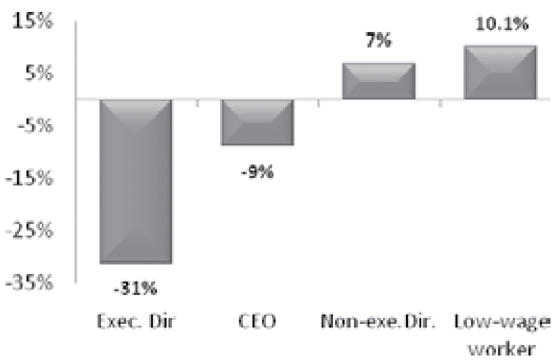
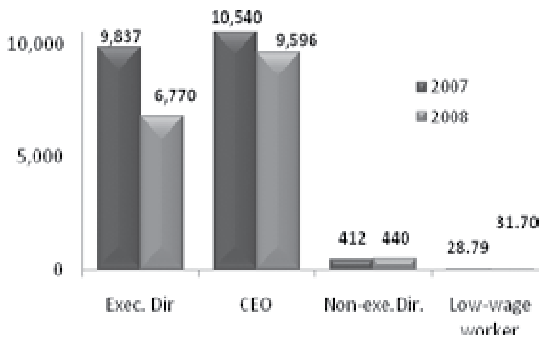
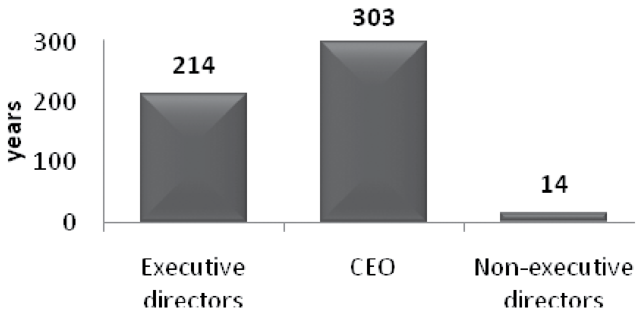


Fig 59: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration in the financial sector of an executive director was R6.8 million, R9.6 million for a chief executive officer, and non-executive director was R440, 000. The average minimum wage across sectors was R31, 704. It will therefore take a low-wage worker about 303 years, 214 years and 14 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

Fig 60: The wage gap - how long it will take a worker to earn what a financial sector director earned in 2008

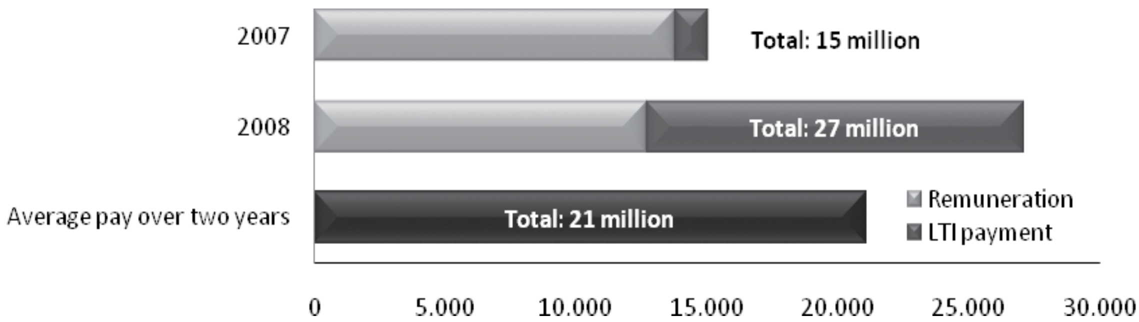


The three CEOs in the sample collectively earned R28.8 million in 2008 while the eight executive directors of the three companies collectively earned R54 million. The 31 non-executive directors collectively earned R13.6 million in the same year. These amounts, high in themselves, exclude gains from share options and dividends earned by these company directors.

Long-term incentives

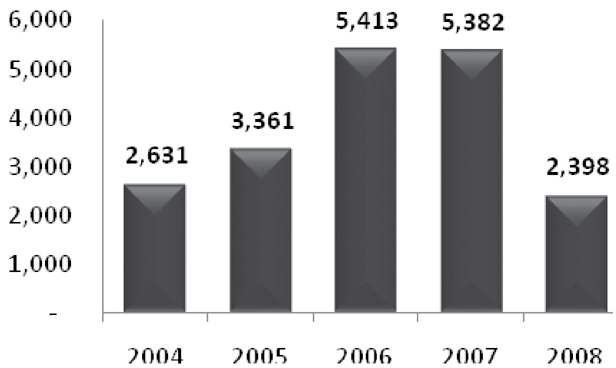
The CEO of Sanlam, Johan van Zyl, received remuneration of R12.7 million including bonus and benefits. Once the payout of his long-term awards is added to this, the total increases 114 percent to R27 million. And while LTI payments are not generally considered annual, this payout must also be seen in the light of the LTI payout of around R1.3 million that van Zyl received in 2007. Over the two years therefore he averaged an annual income of around R21 million. In this case as before a longer view is essential to see the trend in payments.

Fig 61: Long-term incentive (LTI) payments 2007 and 2008 - Sanlam chief executive officer



Company performance: profit

Fig 62: Liberty Life profit before tax over five years (R millions)



The fall in company profits over the year is perhaps unsurprising in a sector that has been heavily hit by the prevailing global downturn. Looking more closely at Liberty Life it is clear that 2008 is an anomaly in the company trend that has been generally upward. Nonetheless the continuing fall in profits has been reflected in the news as it was announced that Liberty Life has now cut the CEO's 2009 bonus by 25 percent as profits continue to slide in the most recent year. This still indicates a bonus of R5.6 million for the year to 2009 (Bloomberg, 9 March 2009).

Food and beverage manufacture

Table 24: Sample and summary*

Food and Beverage	Change in profit before tax 2007 - 2008	Percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Percentage change in non-executive director remuneration 2007 - 2008	Percentage change in wages for low-wage occupations 2007 - 2008
Anglo-Vaal Industries	10.7%	43%	41%	13%	10.1%
Crookes Brothers	40.5%	39%	6%	13%	10.1%
Distell	13.7%	9%	-9%	12%	10.1%
Illovo Sugar	-5.1%	33%	0%	16%	10.1%
SAB Miller	17.6%	21%	38%	16%	10.1%
Tiger Brands	7.8%	-17%	-6%	62%	10.1%
Tongaat-Hulett	-76.1%	110%	35%	21%	10.1%
AVERAGE	**1.3%**	**36%**	**24%**	**24%**	**10.1%**

**For Rand amounts see Appendices*

Salaries and wages

The average salary for an executive director increased 20 percent from R2.2 to R2.6 million, with an increase from R4.4 million to R4.6 million, three percent, for CEOs. The pay of the average low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008.

Fig 63: Percentage salary / wage increases

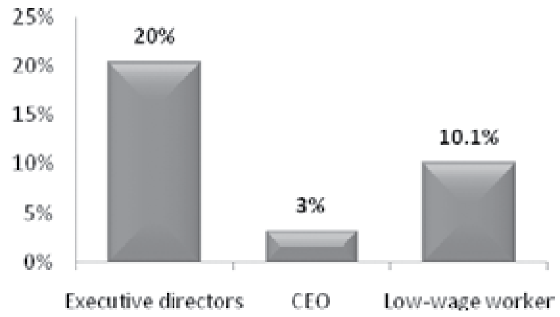
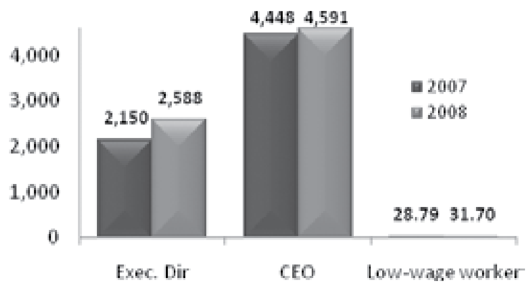


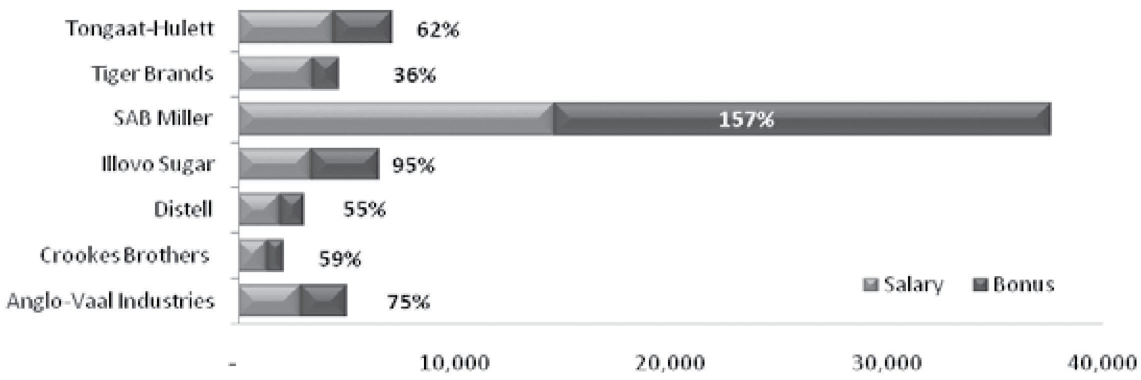
Fig 64: Actual salary / wage increases (R'000)



Bonuses

In this sector the average bonus to chief executives was 77 percent of salary.

Fig 65: Salary and bonus for food and beverage sector chief executives indicating bonus as a percent of salary 2008 (R'000)



Remuneration

In 2007/8 the average remuneration of executive directors in food and beverage manufacture increased by 36 percent, chief executives increased by 24 percent, and non-executive directors increased by 24 percent. Which seems to indicate high bonuses in the year, particularly for chief executives.

The 24 percent for executives indicates an increase of R1.6 million on average for executive directors, 10.1 percent for workers indicates an increase of R2, 916 per annum.

Fig 66: Percentage remuneration / wage increases

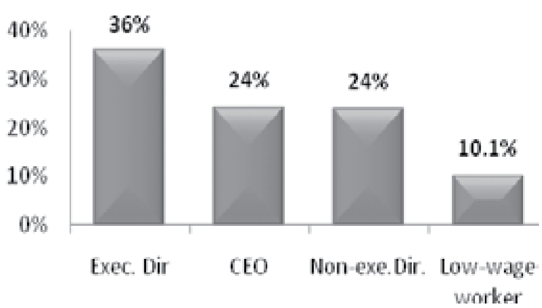
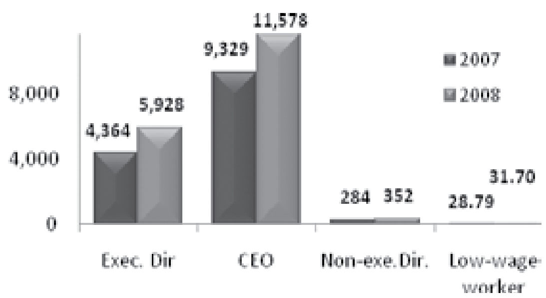
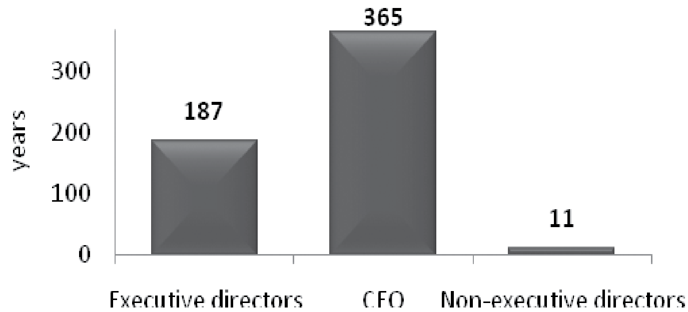


Fig 67: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration in food and beverage of an executive director was R5.9 million, R11.6 million for a chief executive officer and R352, 000 for a non-executive director. The average minimum wage across sectors was R31, 704. It will therefore take a low-wage worker about 365 years, 187 years and 11 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

Fig 68: The wage gap - how long it will take a worker to earn what a food and beverage director earned in 2008

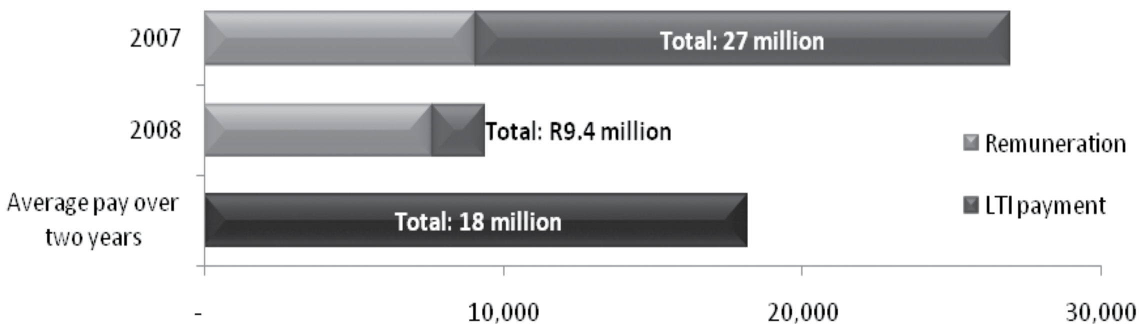


The seven CEOs in the sample collectively earned R81 million in 2008 while the 24 executive directors of the seven companies collectively earned R142 million. The 75 non-executive directors collectively earned R26.4 million in the same year. These amounts, high in themselves, exclude gains from share options and dividends earned by these company directors.

Long-term incentives

The CEO of Tongaat-Hulett, Peter Staude, received remuneration of R7.65 million including bonus and benefits in 2008. Once the payout of his long-term awards is added to this, the total increases 23 percent to R9.4 million. And while LTI payments are not generally considered annual, this payout must also be seen in the light of the LTI payout of around R17.8 million that Staude received in 2007. Over the two years therefore he averaged an annual income of around R18 million.

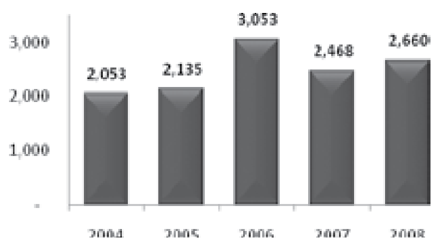
Fig 69: Long-term incentive (LTI) payments 2007 and 2008 – Tongaat-Hulett chief executive officer



Company performance: profit

Tiger Brands has shown consistent profits over the past five years. While 2008 does not show the record profits of 2006, it is still part of a steady trend of profit making in the company.

Fig 70: Tiger Brands profit before tax over five years (R millions)



Health

Table 25: Sample and summary*

Health	Change in profit before tax 2007 - 2008	Percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Percentage change in non-executive director remuneration 2007 - 2008	Percentage change in wages for low-wage occupations 2007 - 2008
Aspen	19.7%	13%	13%	5%	10.1%
Discovery-Health	14.1%	-22%	-28%	3%	10.1%
Medi-Clinic	12.7%	-22%	-26%	26%	10.1%
Network Healthcare	6.5%	-1%	1%	1%	10.1%
AVERAGE	13.3%	-12%	-6%	8%	10.1%

For Rand amounts see Appendices

Salaries and wages

The average salary for an executive director in the health sector increased from R1.8 million to R1.9 million, 7.4 percent, in the period, with an increase from R2.8 million to R3 million, 10 percent, for CEOs. The pay of the average low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008.

Fig 71: Percentage salary / wage increases

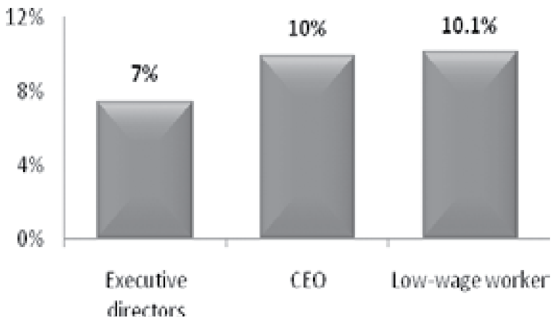
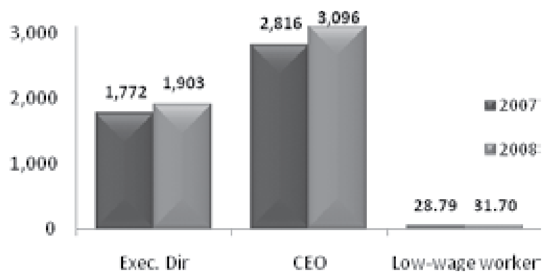


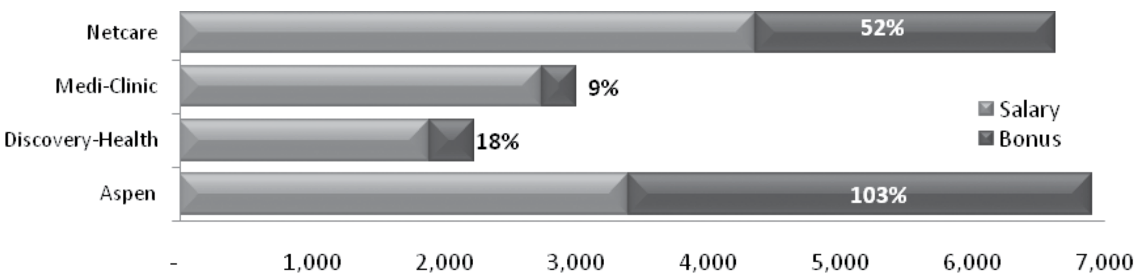
Fig 72: Actual salary / wage increases (R'000)



Bonuses

In the health sector, bonuses increase the value of the package by on average 46 percent. The wide disparity between Aspen and the other companies in the sample is indicative perhaps of the differences between conditions in the pharmaceutical sector as opposed to the health service sector.

Fig 73: Salary and bonus for health sector chief executives indicating bonus as a percent of salary 2008 (R'000)



Remuneration

In 2007/8 the average remuneration of executive directors in the health sector decreased by twelve percent, that of CEOs decreased by six percent and non-executive directors' increased by eight percent. In real terms, twelve percent decrease for executives indicates average remuneration of R3 million per annum for executive directors, where the 10.1 percent for workers indicates an increase of R2, 916 per annum to R31, 704.

Fig 74: Percentage remuneration / wage increases

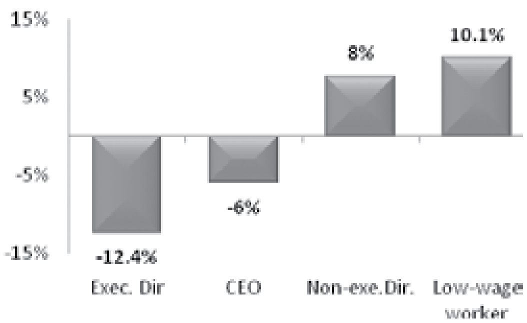
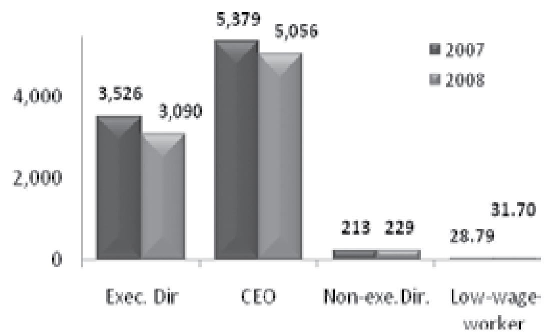
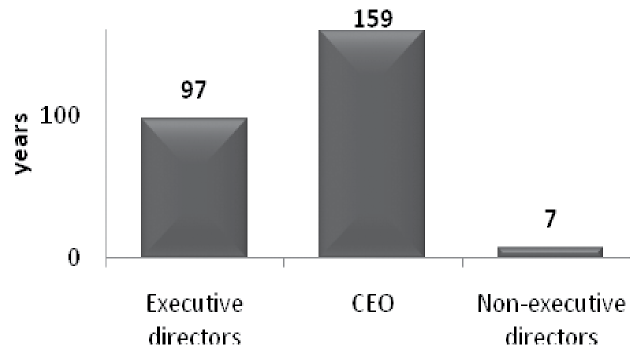


Fig 75: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration in the health sector of an executive director was R3 million, while it was R5 million for a chief executive officer and R229, 000 for a non-executive director. The average minimum wage across sectors was R31, 704. It will therefore take a low-wage worker about 159 years, 97 years and 7 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

Fig 76: The wage gap - how long it will take a worker to earn what a health sector director earned in 2008



The four CEOs in the sample collectively earned R20.2 million in 2008 while the 21 executive directors of the six companies collectively earned R64.9 million. The 42 non-executive directors collectively earned R9.6 million in the same year. These amounts, high in themselves, exclude gains from share options and dividends earned by these company directors.

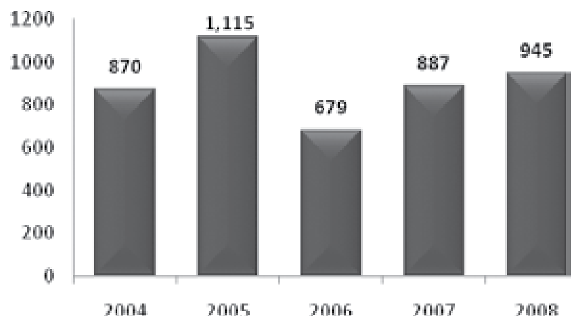
Long-term incentives

Long term incentives are exercised by directors in different years and in different proportions and are therefore not a good way of gauging annual income for the purposes of wage negotations. Nonetheless they cannot be ignored as the payments, when they come, can be substantial.

No CEO in the health sector took any long-term incentive payments in the year under review.

Company performance: profit

Fig 77: Network Healthcare Holdings (Netcare) profit before tax over five years (R millions)



All the companies in the sample have shown at least a slight rise in profits over the last year. Looking more closely at Netcare, the five year chart shows that profits are on a rise at the company after a poor year in 2006; a longer term success which should translate into a better deal for workers.

Industrial and chemical

Table 26: Sample and summary*

Industrial/Chemicals	Change in profit before tax 2007 - 2008	Percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Percentage change in non-executive director remuneration 2007 - 2008	Percentage change in wages for low-wage occupations 2007 - 2008
AECI	10.1%	1%	-17%	49%	10.1%
Afrox Oxygen	-15.5%	-42%	89%	43%	10.1%
Arcelor Mittal SA	62.1%	35%	45%	8%	10.1%
Denel	-	22%	8%	32%	10.1%
Invicta Holdings	42.3%	58%	51%	-22%	10.1%
Sasol	30.9%	42%	13%	38%	10.1%
AVERAGE	26%	10%	22%	31%	10.1%

For Rand amounts see Appendices

Salaries and wages

The average salary for an executive director in the industrial and chemical increased from R1.9 million to R2.1 million, 7.4 percent, in the period, with an increase from R2.7 million to R2.9 million, seven percent, for CEOs. The pay of the average low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008.

Fig 78: Percentage salary / wage increases

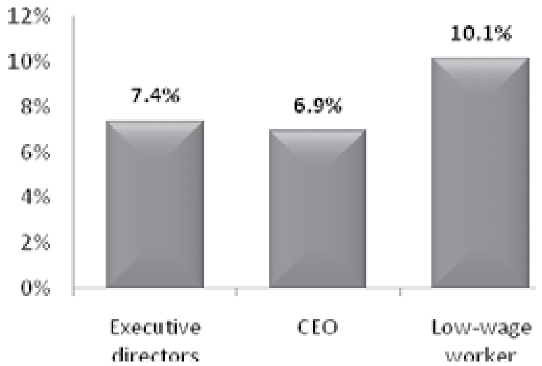
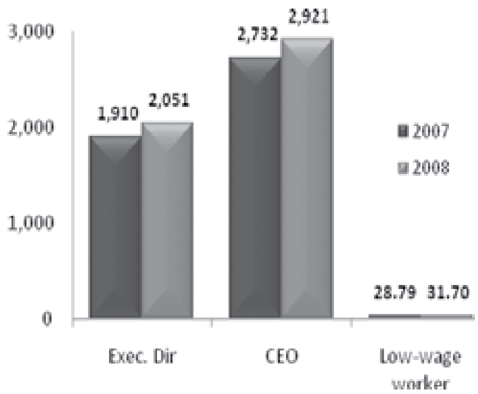


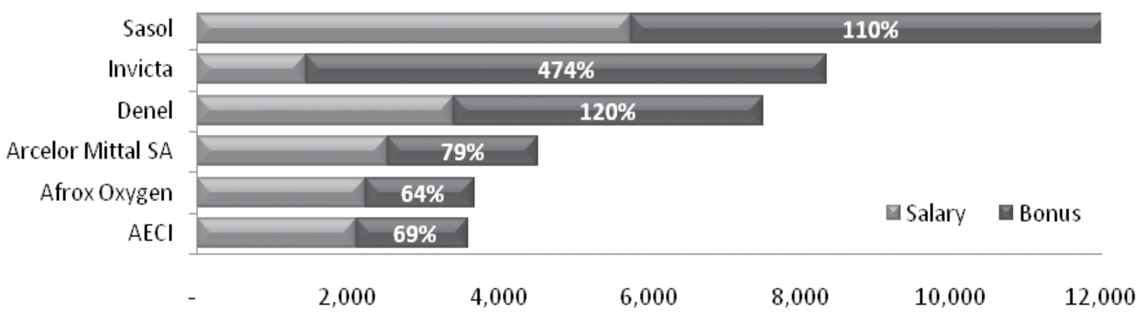
Fig 79: Actual salary / wage increases (R'000)



Bonuses

In industrial and chemicals, bonuses increased the value of the CEO package by on average 153 percent.

Fig 80: Salary and bonus for industrial and chemicals chief executives indicating bonus as a percent of salary 2008 (R'000)



Remuneration

In 2007/8 the average remuneration of executive directors in industrial and chemicals increased by ten percent, that of CEOs increased by 22 percent and non-executive directors' increased by 31 percent and. The higher increase in total remuneration suggests that additional payments, such as annual bonuses and pension contributions have been substantial in the year.

The ten percent for executives indicates an increase of R43, 000 on average for executive directors, 10.1 percent for workers indicates an increase of R2, 916 per annum.

Fig 81: Percentage remuneration / wage increases

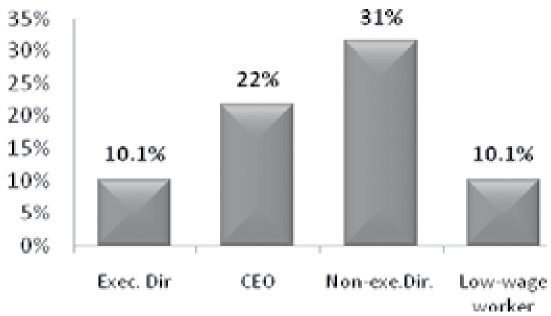
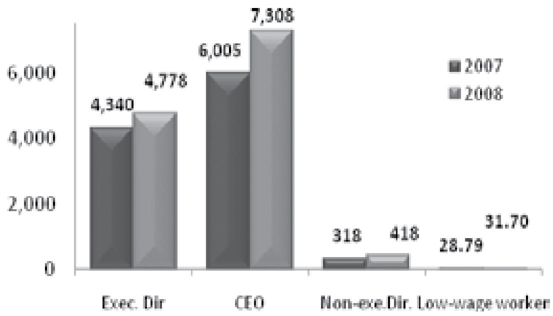
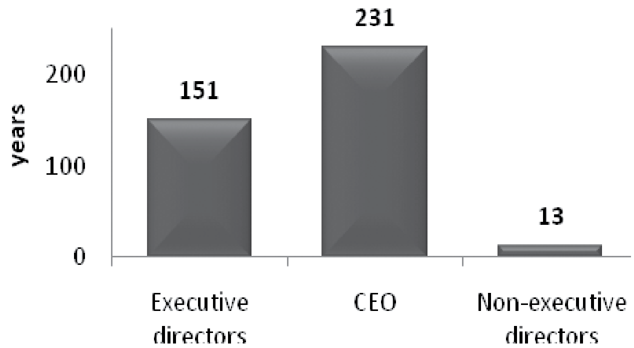


Fig 82: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration of an executive director in industrial and chemicals was R4.8 million, while it was R7.3 million for a chief executive officer and R418,000 for a non-executive director. The average minimum wage across sectors was R31, 704. It will therefore take a low-wage worker about 231 years, 151 years and 13 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

Fig 83: The wage gap - how long it will take a worker to earn what an industrial and chemicals sector director earned in 2008

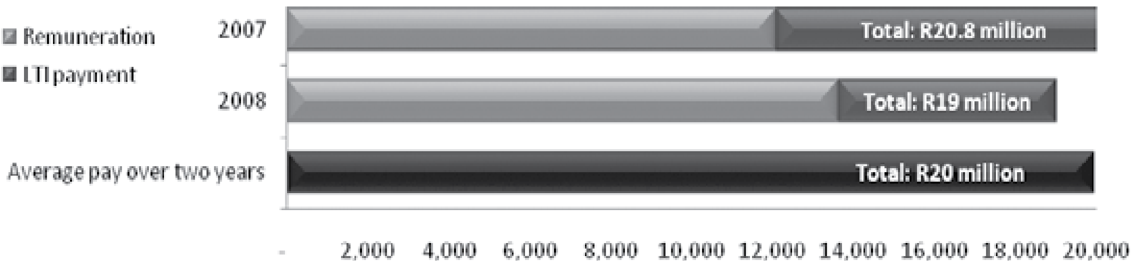


The seven CEOs in the sample collectively earned R43.8 million in 2008 while the 21 executive directors of the seven companies collectively earned R100 million. The 44 non-executive directors collectively earned R 18.4 million in the same year. These amounts, high in themselves, exclude gains from share options and dividends earned by these company directors.

Long-term incentives (LTIs)

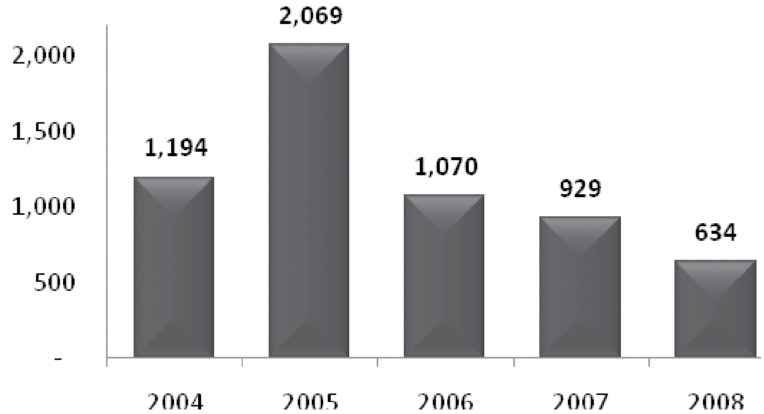
The CEO of Sasol, Pat Davies, received remuneration of R 13.6 million including bonus and benefits in 2008. Once the payout of his long-term awards is added to this, the total increases 40 percent to R19 million. And while LTI payments are not generally considered annual, this payout must also be seen in the light of the LTI payout of around R9 million that Davies received in 2007. Over the two years therefore he averaged an annual income of around R20 million. In this case as before a longer view is essential to see the trend in payments.

Fig 84: Long-term incentive (LTI) payments 2007 and 2008 - Sasol chief executive officer



Company performance: profit

Fig 85: Afrox Oxygen profit before tax over five years (R millions)



The companies in the group have shown varying profit fortunes, perhaps reflecting the variation in industries in the sample. Denel in particular has shown a consistent loss over the past years. Looking more closely at Afrox, it is clear that the company fortunes have been declining for some time which perhaps raises the question as to why the CEO received a R2 million bonus in the year and a 30 percent salary increase.

Information and telecommunications

Table 27: Sample and summary*

Info & Telecoms	Change in profit before tax 2007 - 2008	Percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Percentage change in non-executive director remuneration 2007 - 2008	Percentage change in wages for low-wage occupations 2007 - 2008
Didata	32.2%	1%	7%	47%	10.1%
MTN	44.6%	33%	23%	-23%	10.1%
Telkom	-5.2%	387%	387%	32%	10.1%
AVERAGE	**23.9%**	**34%**	**59%**	**-5%**	**10.1%**

**For Rand amounts see Appendices*

Salaries and wages

The average salary for an executive director in information and telecommunications increased from R3.5 million to R3.8 million, 9.5 percent, in the period, with an increase from R4.2 million to R4.7 million, 11 percent, for CEOs. The pay of the average low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008.

Fig 86: Percentage salary / wage increases

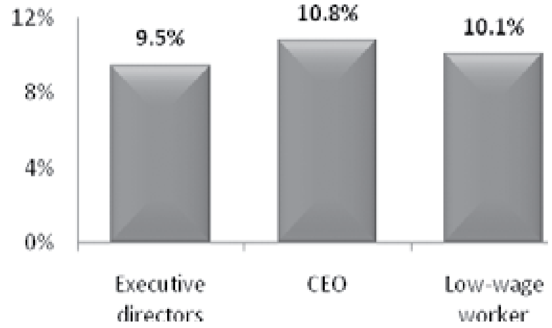
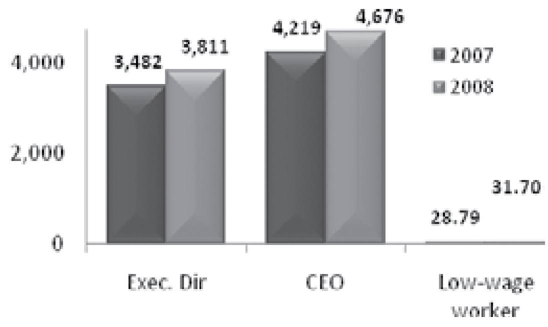


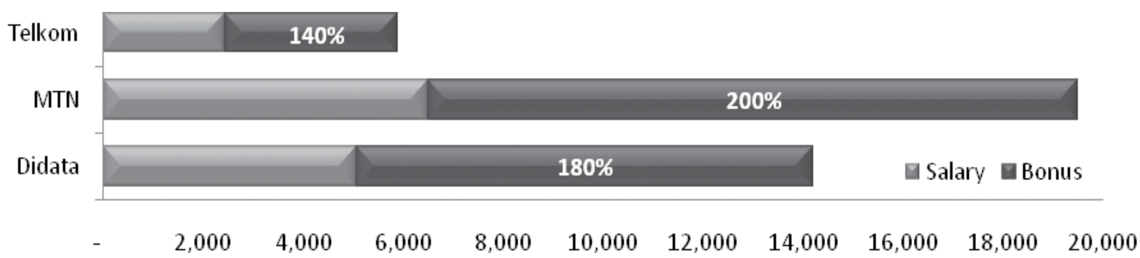
Fig 87: Actual salary / wage increases (R'000)



Bonuses

In information and telecommunications, bonuses increased the value of the package by on average 173 percent.

Fig 88: Salary and bonus for information and telecommunications chief executives indicating bonus as a percent of salary 2008 (R'000)



Remuneration

In 2007/8 the average remuneration of executive directors in information and telecommunications increased by 34 percent, that of CEOs increased by 59 percent and non-executive directors' decreased by five percent. The substantially higher increase in total remuneration suggests that additional payments, such as annual bonuses and benefits have been substantial in the year. In this case, the CEO of Telkom received R13.3 million in benefits which has pushed the average up.

The 34 percent for executives indicates an increase of R2.9 million on average for executive directors, 10.1 percent for workers indicates an increase of R2, 916 per annum.

Fig 89: Percentage remuneration / wage increases

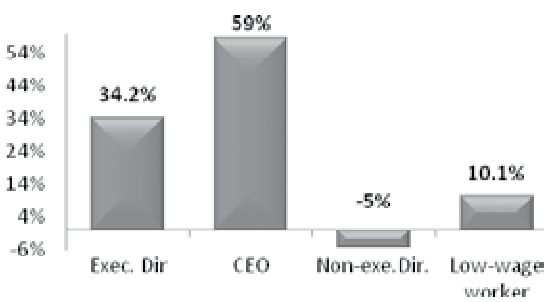
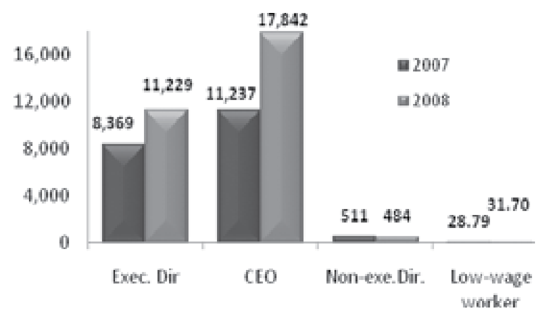


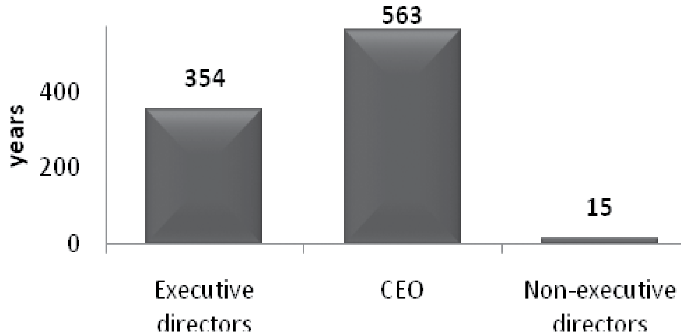
Fig 90: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration of an executive director in information and telecommunications was R11.2 million, while it was R17.8 million for a chief executive officer and R484, 000 for a non-executive director. The average minimum wage across sectors was R31, 704.

It will therefore take a low-wage worker about 563 years, 354 years and 15 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

Fig 91: The wage gap - how long it will take a worker to earn what an information and telecommunications director earned in 2008



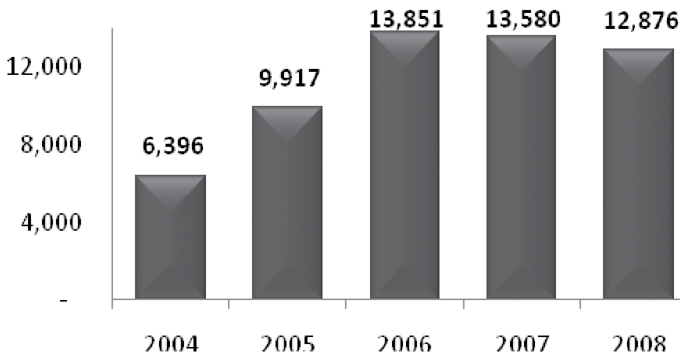
The three CEOs in the sample collectively earned R53.5 million in 2008 while the nine executive directors of the three companies collectively earned R101 million. The 35 non-executive directors collectively earned R 17 million in the same year. These amounts, high in themselves, exclude gains from share options and dividends earned by these company directors.

Long-term incentives

Brett Dawson, CEO of Dimension Data Holdings received a salary of R5.1 million in 2008 (excluding benefits and other payments). His bonus of R9.125 million increased this package by 180 percent. His long-term incentive payout of R4.843 million is 95 percent on top of his salary so that bonus and long-term incentive payouts together add 275 percent to his salary. This does also not include pension and off-shore payments which amount to R233, 000 on top of this. (These figures have been converted from US Dollars in which the company reports).

Company performance: profit

Fig 92: Telkom Limited profit before tax over five years (R millions)



The companies in the group have shown varying profit fortunes, perhaps reflecting the variation in industries in the sample. Looking more closely at Telkom, while profits have fallen slightly over the last year, they are still on a high over the period, though the trend seems to indicate a downward direction.

Media

Table 28: Sample and summary*

Media	Change in profit before tax 2007 - 2008	Percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Percentage change in non-executive director remuneration 2007 - 2008	Percentage change in wages for low-wage occupations 2007 - 2008
Caxton	5.5%	30%	19%	-55%	10.1%
Naspers**	62.6%	5%	-	18%	10.1%

**For Rand amounts see Appendices*
***Note that Naspers had no CEO in the year under review*

Salaries and wages

The average salary for an executive director in media increased from R1.6 million to R1.9 million, 15.4 percent, in the period, the CEO at Caxton saw an increase of 19 percent from R2.1 to R2.5million. The pay of the average low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008.

Fig 93: Percentage salary / wage increases

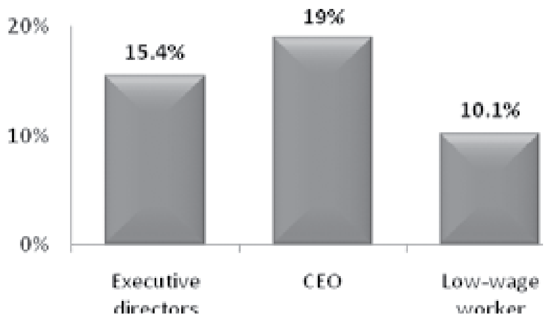
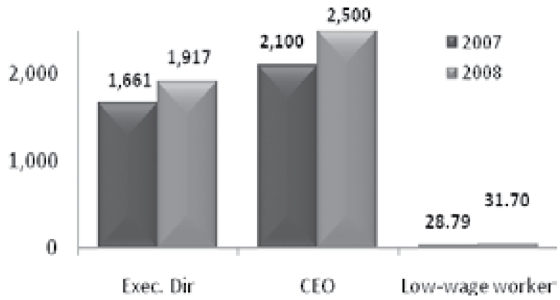


Fig 94: Actual salary / wage increases (R'000)



Bonuses

In the media companies surveyed this year, the executive director at Naspers received a bonus equivalent to 100 percent of his salary, thus doubling his annual income. No other directors in the sector surveyed received a bonus.

Remuneration

In 2007/8 the average remuneration of executive directors in media increased by 20 percent; that of the Caxton CEO is as for his salary, 19 percent, as he received no bonus or benefits that are disclosed for the year, and non-executive directors' remuneration decreased by three percent.

The 20 percent increase for executives indicates per annum raise of R511, 000 on average for executive directors, 10.1 percent for workers indicates an increase of R2, 916 per annum.

Fig 95: Percentage remuneration / wage increases

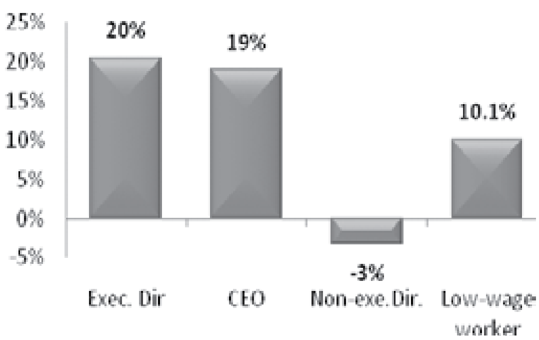
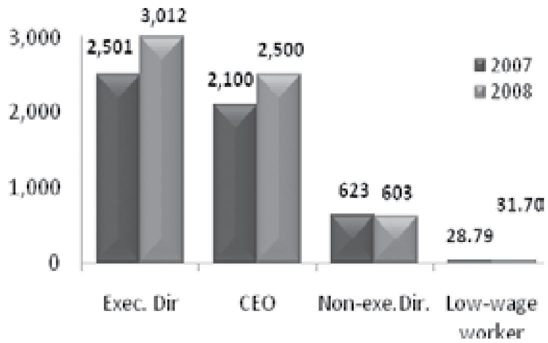
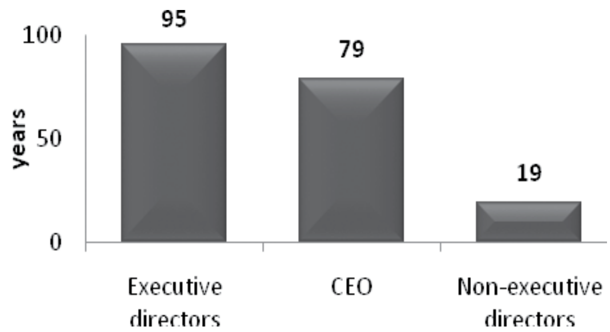


Fig 96: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration of an executive director in media was R3 million, while it was R2.5 million for a chief executive officer and R603, 000 for a non-executive director. This higher average income for executive directors above the CEO remuneration is indicative of the Naspers figures which are those for a far larger company. The average minimum wage across sectors was R31, 704. It will therefore take a low-wage worker about 79 years, 95 years and 19 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

Fig 97: The wage gap - how long it will take a worker to earn what a media sector director earned in 2008



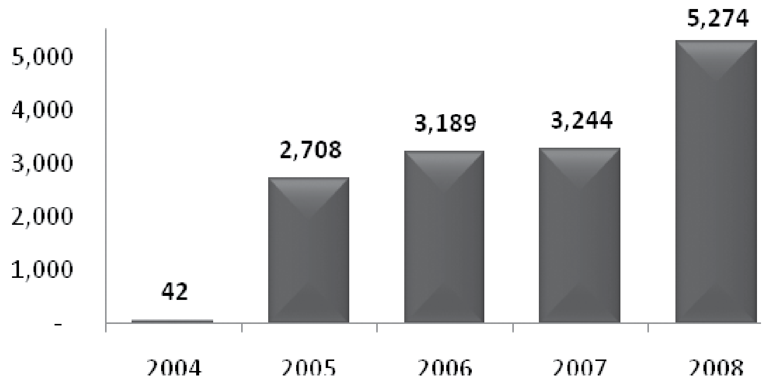
The CEO of Caxton Publishers received R2.5 million in 2008 while the five executive directors of the two companies collectively earned R15 million. The 15 non-executive directors collectively earned R8 million in the same year. These amounts, high in themselves, exclude gains from share options and dividends earned by these company directors.

Long-term incentives

Terry Moolman, CEO of Caxton Publishers received a salary of R2.5 million in 2008. His long-term incentive payout of R5.67 million adds 227 percent to his income so that despite not receiving a bonus in the year his income for the year was just over R8 million.

Company performance: profit

Fig 98: Naspers profit before tax over five years (R millions)



Naspers has shown a steady increase in profit over the last four years with 2008 a record year for the company.

Mining

Table 29: Sample and summary*

Mining	Change in profit before tax 2007 - 2008	Percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Percentage change in non-executive director remuneration 2007 - 2008	Percentage change in wages for low-wage occupations 2007 - 2008
African Rainbow Minerals	220.8%	-4%	20%	-2%	10.1%
Anglo American	14.0%	-26%	-24%	2%	10.1%
Anglo Platinum	-1.0%	26%	27%	42%	10.1%
AngloGold Ashanti	-	-31%	-36%	66%	10.1%
BHP Billiton	23.8%	57%	-13%	3%	10.1%
Gold Fields	57.3%	-25%	-22%	10%	10.1%
Impala Platinum	103.4%	-17%	32%	10%	10.1%
Lonmin	15.3%	73%	23%	26%	10.1%
Trans-Hex	-63.5%	-23%	22%	15%	10.1%
AVERAGE	**46.2%**	**-25%**	**-10%**	**19%**	**10.1%**

**For Rand amounts see Appendices*

Salaries and wages

The average salary for an executive director in mining increased from R3.6 million to R3.8 million, 4.4 percent, in the period, with an increase from R6.2 million to R7.4 million, 20 percent, for CEOs (which saw some turnover in the last two years. The pay of the average low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008.

Fig 99: Percentage salary / wage increases

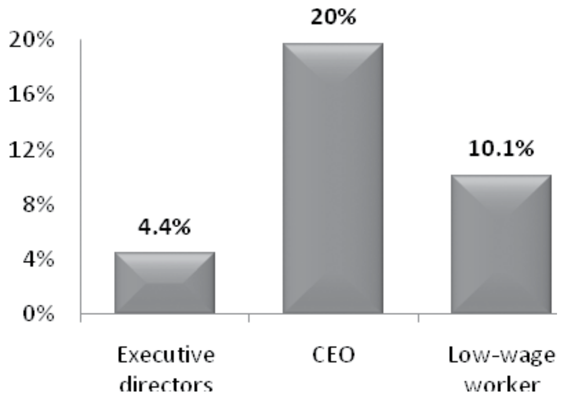
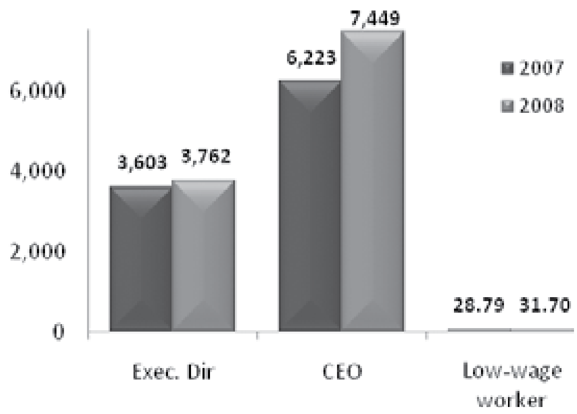


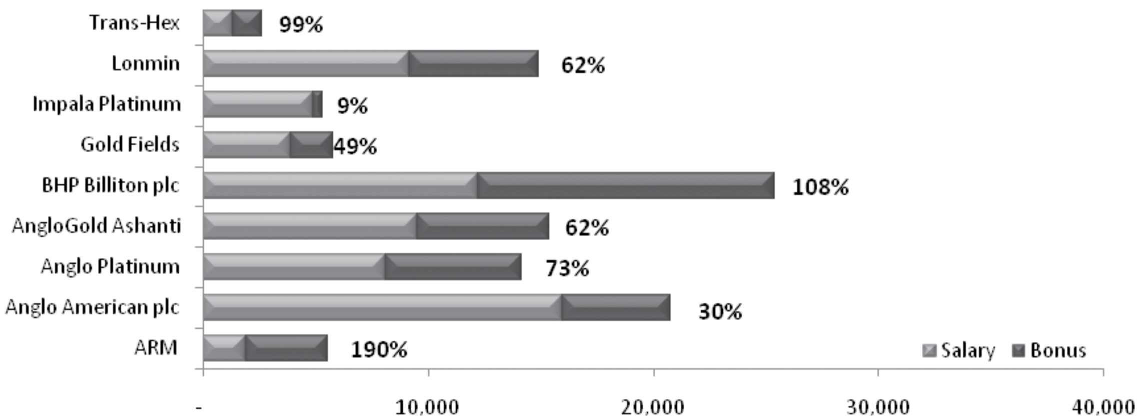
Fig 100: Actual salary / wage increases (R'000)



Bonuses

In mining, bonuses increased the value of the CEO package by on average 76 percent.

Fig 101: Salary and bonus for mining sector chief executives indicating bonus as a percent of salary 2008 (R'000)



Remuneration

In 2007/8 the average remuneration of executive directors in mining decreased by 25 percent, that of CEOs decreased by 10 percent and non-executive directors' increased by 19 percent.

In real terms, 25 percent decrease for executive directors indicates an average remuneration of R8.6 million per annum, 10.1 percent for workers indicates an increase of R2, 916 per annum to R31, 704.

Fig 102: Percentage remuneration / wage increases

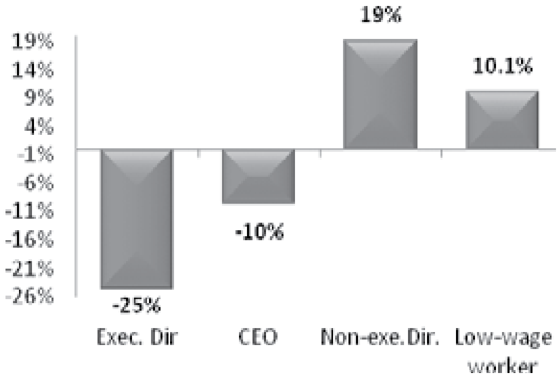
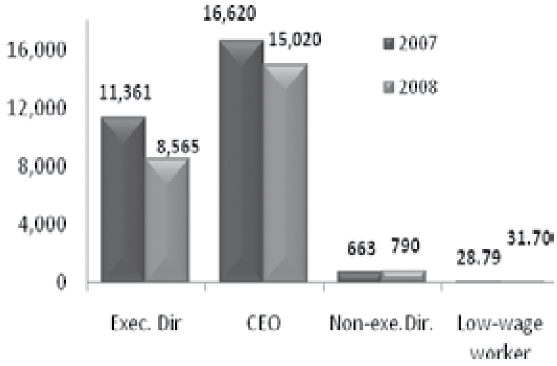


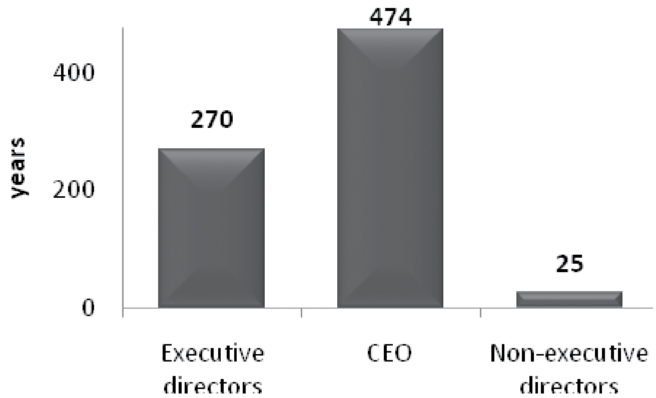
Fig 103: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration of an executive director in mining was R8.6 million, while it was R15 million for a chief executive officer and R790, 000 for a non-executive director. The average minimum wage across sectors was R31, 704.

In this sector it will therefore take an ordinary worker 474 years, 270 years and 25 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

Fig 104: The wage gap - how long it will take a worker to earn what a mining sector director earned in 2008



The nine CEOs in the sample collectively earned R135 million in 2008 while the 31 executive directors of the nine companies collectively earned R266 million. The 90 non-executive directors collectively earned R71 million in the same year. These amounts, high in themselves, exclude gains from share options and dividends earned by these company directors.

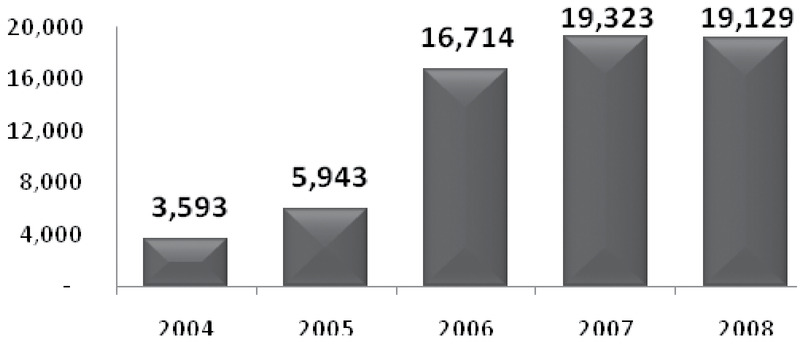
Long-term incentives

Andre Wilkens, CEO of African Rainbow Minerals received a salary of R1.9 million in 2008 (excluding benefits and other payments). His bonus of R3.6 million increased this package by 190 percent. His long-term incentive payout of R39.4 million is 2065 percent on top of his salary so that bonus and long-term incentive payouts together add 2256 percent to his salary. This does also not include pension and benefits which amount to R1.2 million on top of this.

Company performance: profit

The companies in the group have shown varying profit fortunes, reflecting the prices of the resources they mine. Looking more closely at Anglo Platinum, while profits have fallen slightly over the last year, they are coming off a record year in 2007 and are still way above average for the last five years.

Fig 105: Anglo Platinum profit before tax over five years (R millions)



Paper and packaging

Table 30: Sample and summary*

Paper and packaging	Change in profit before tax 2007 - 2008	Percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Percentage change in non-executive director remuneration 2007 - 2008	Percentage change in wages for low-wage occupations 2007 - 2008
Mondi	96.9%	-36%	-30%	89%	10.1%
Nampak	-51.6%	4%	-37%	25%	10.1%
Sappi	-21.8%	2%	31%	61%	10.1%
AVERAGE	**-16.9%**	**4%**	**-22%**	**52%**	**10.1%**

**For Rand amounts see Appendices*

Salaries and wages

The average salary for an executive director increased 25 percent from R3.8 million to R 4.8 million in the year, with an increase from R5.6 million to R6.6 million, 17 percent, for CEOs. The pay of the average low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008.

Fig 106: Percentage salary / wage increases

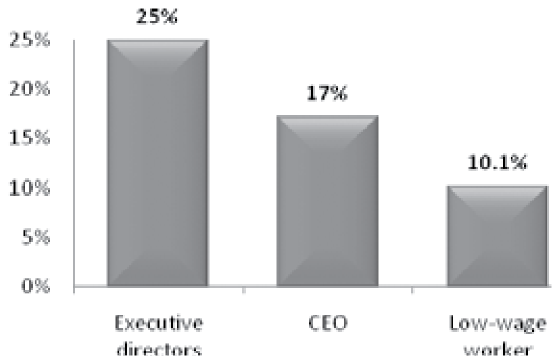
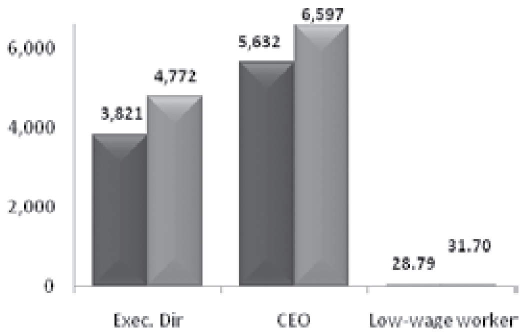


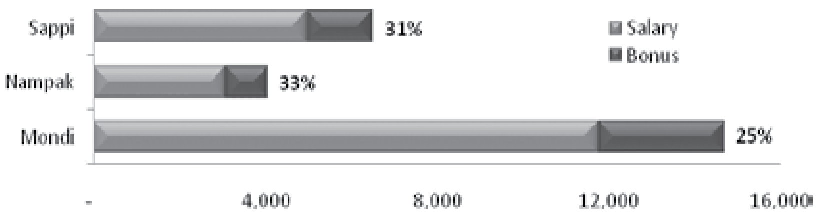
Fig 107: Actual salary / wage increases (R'000)



Bonuses

Bonuses awards in the sector may have decreased in the year. Nonetheless, the chart shows they still amount to an additional 30 percent on top of salary on average.

Fig 108: Salary and bonus for paper and packaging chief executives indicating bonus as a percent of salary 2008 (R'000)



Remuneration

In 2007/8 the average remuneration of executive directors in paper and packaging increased by three percent, chief executives decreased by 22 percent, and non-executive directors' pay increased by 52 percent. The difference in these figures indicates that bonuses and benefits in a particular year may be down and so mask the fact that the guaranteed package of salary has in fact increased substantially.
The three percent increase for executives indicates an increase of R357, 095 on average for executive directors, 10.1 percent for workers indicates an increase of R 3,249 per annum.

Fig 109: Percentage remuneration / wage increases

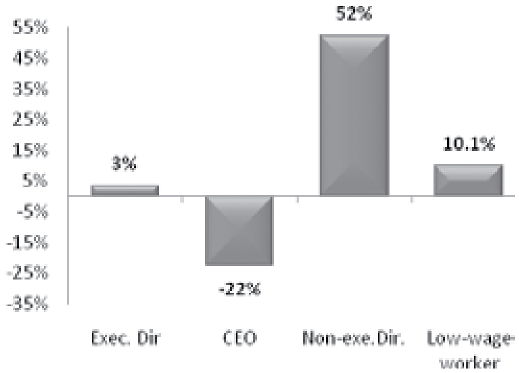
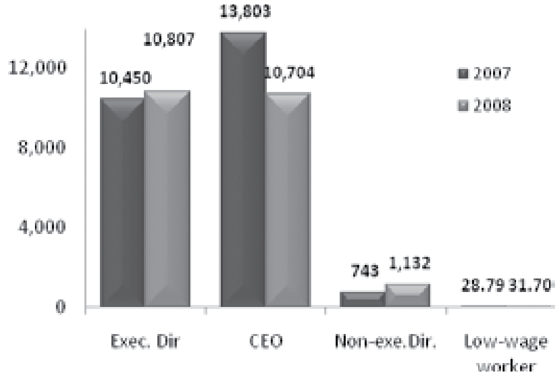


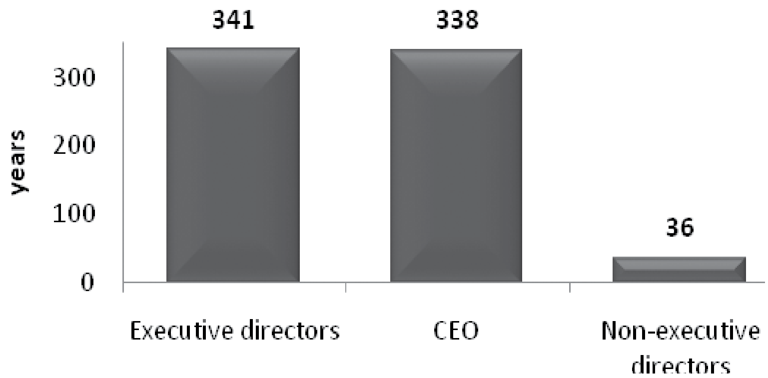
Fig 110: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration in paper and packaging of an executive director was R 10.8 million, while it was R10.7 million for a chief executive officer and R1.1 million for a non-executive director. The average minimum wage across sectors was R31, 704.

It will therefore take a low-wage worker about 338 years, 341 years and 36 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

Fig 111: The wage gap - how long it will take a worker to earn what a paper and packaging director earned in 2008



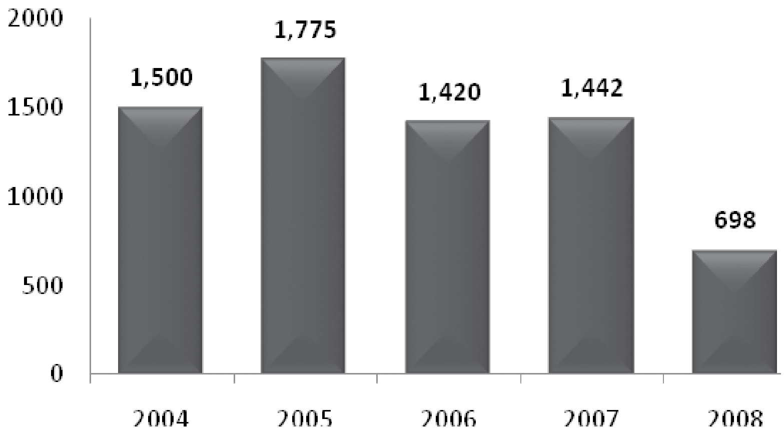
The three CEOs in the sample collectively earned R32 million in 2008 while the nine executive directors of the three companies collectively earned R97 million. The 25 non-executive directors collectively earned R28.3 million in the same year. These amounts, high in themselves, exclude gains from share options and dividends earned by these company directors.

Long-term incentives

John Bortolan, CEO of Nampak, received a salary of R3.1 million in 2008 (excluding benefits and other payments). His bonus of R1 million increased this package by 33 percent. His long-term incentive payout of R6.1 million is 200 percent on top of his salary so that bonus and long-term incentive payouts together add 233 percent to his salary. This does also not include pension and benefits which amount to R1.4 million on top of this.

Company performance: profit

Fig 112: Nampak profit before tax over five years (R millions)



The profit history of Nampak shows that 2008 was a particularly poor year for this company. However, this has had little impact on the bonus awarded to the CEO at R1 million.

Retail

Table 31: Sample and summary*

Retail	Change in profit before tax 2007 - 2008	Percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Percentage change in non-executive director remuneration 2007 - 2008	Percentage change in wages for low-wage occupations 2007 - 2008
Foschini	0.2%	109%	137%	1%	10.1%
Pick 'n Pay	24.0%	-48%	-64%	9%	10.1%
Shoprite	44.1%	18%	32%	0%	10.1%
Spar	25.7%	26%	16%	4%	10.1%
Truworths	16.3%	10%	12%	17%	10.1%
Woolworths	-1.1%	-23%	-15%	23%	10.1%
AVERAGE	**18.2%**	**-1%**	**6%**	**13%**	**10.1%**

**For Rand amounts see Appendices*

Salaries and wages

The average salary for an executive director in retail increased from R2.1 million to R2.4 million, 13.3 percent, in the period, with an increase from R4.1 million to R4.6 million, eleven percent, for CEOs. The pay of the average low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008.

Fig 113: Percentage salary / wage increases

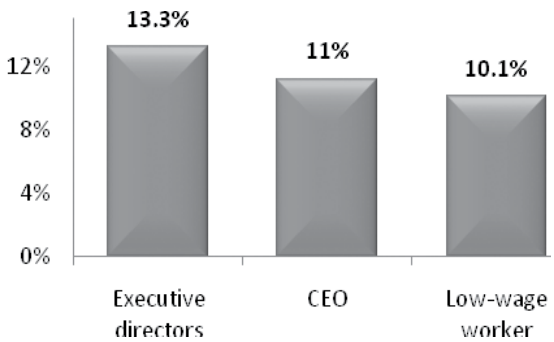
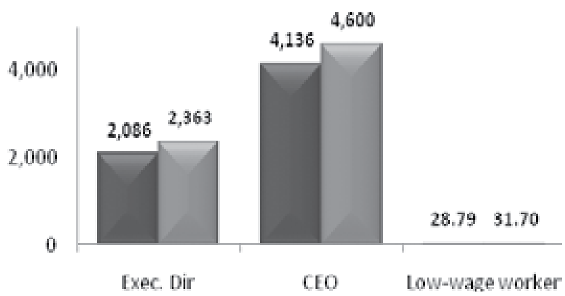


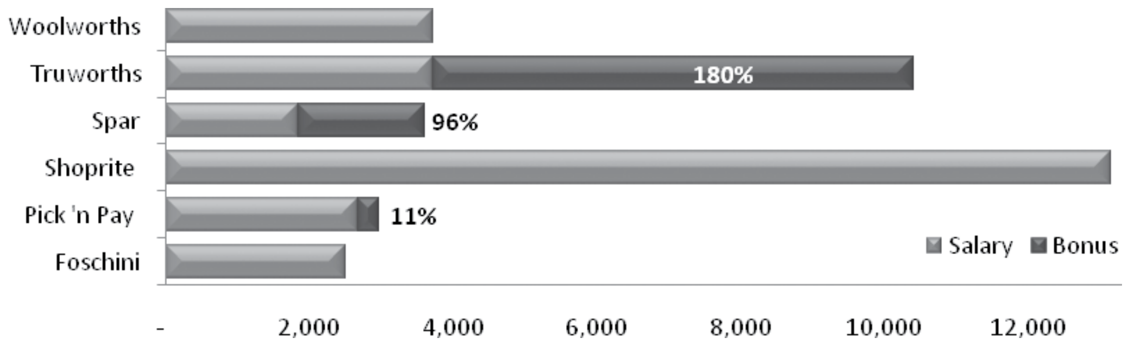
Fig 114: Actual salary / wage increases (R'000)



Bonuses

The chart shows that few bonuses were awarded in the year; nonetheless, where they were awarded they added an average of 96 percent to the salary paid. Note that even without a bonus, the CEO of Shoprite earned well and above his peers at R13 million.

Fig 115: Salary and bonus for retail sector chief executives indicating bonus as a percent of salary 2008 (R'000)



Remuneration

In 2007/8 the average remuneration of executive directors in retail decreased by one percent, that of CEOs increased by six percent and non-executive directors' increased by 13 percent. The figures suggest that while salaries have risen in the year, other payments may have decreased.

In real terms, a one percent decrease for executives indicates average remuneration of R4.8 million per annum for executive directors, where the 10.1 percent for workers indicates an increase of R2, 916 per annum.

Fig 116: Percentage remuneration / wage increases

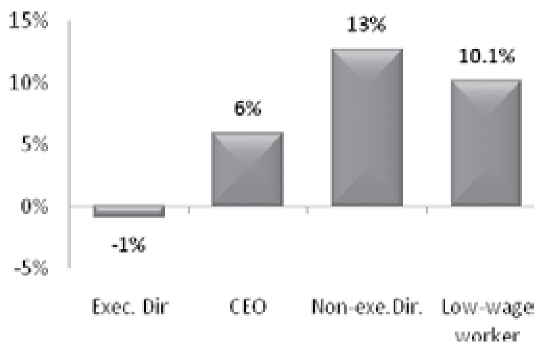
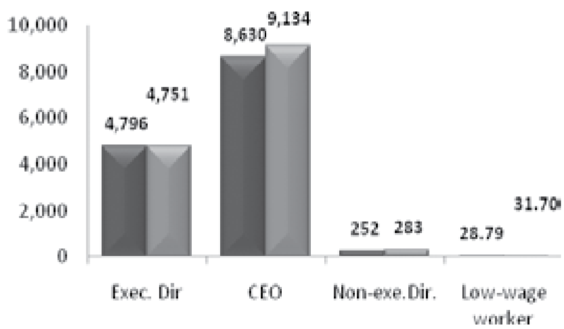


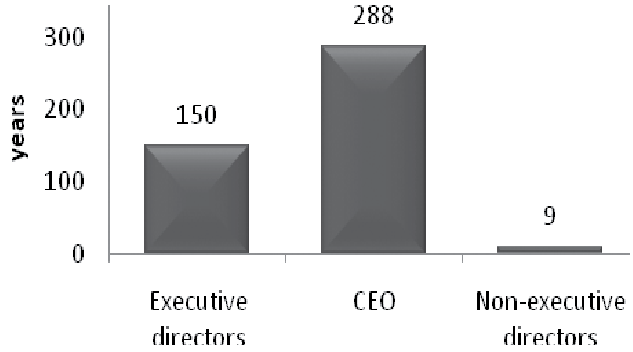
Fig 117: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration of an executive director in retail was R4.8 million, while it was R9.1 million for a chief executive officer and R283, 000 for a non-executive director. The average minimum wage across sectors was R31, 704.

It will therefore take a low-wage worker about 288 years, 150 years and 9 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

Fig 118: The wage gap - how long it will take a worker to earn what a retail sector director earned in 2008



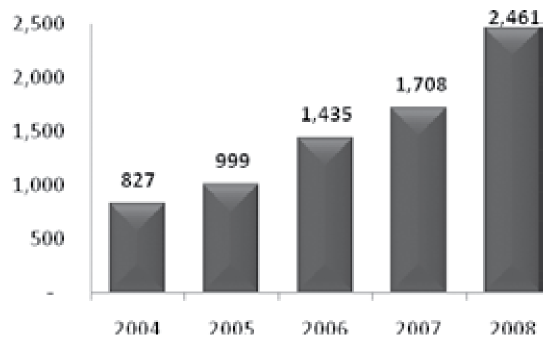
The six CEOs in the sample collectively earned R54.8 million in 2008 while the 26 executive directors of the nine companies collectively earned R123.5 million. The 43 non-executive directors collectively earned R12 million in the same year. These amounts, high in themselves, exclude gains from share options and dividends earned by these company directors.

Long-term incentives (LTIs)

Nick Badminton, CEO of Pick 'n Pay Stores received a salary of R2.7 million in 2008 (excluding benefits and other payments). His bonus of R300, 000 increased this package by 11 percent. His various LTIs paid out R33 million, which is 1235 percent on top of his salary so that bonus and LTI payments together add 1246 percent to his salary. This does also not include pension contributions and benefits which amount to R851, 000 in the year.

Company performance: profit

Fig 119: Shoprite profit before tax over five years (R millions)



Overall the retail sector is healthy and showing good profits over the period. Shoprite in particular continues to increase its profits year on year over the last five years by an average of 30 percent per annum.

Transport

Table 32: Sample and summary*

Transport	Change in profit before tax 2007 - 2008	Percentage change in executive director remuneration 2007 - 2008	Percentage change in CEO remuneration 2007 - 2008	Percentage change in non-executive director remuneration 2007 - 2008	Percentage change in wages for low-wage occupations 2007 - 2008
1time Holdings	-	1%	0%	279%	10.1%
Cargo Carriers	28%	-13%	-13%	0%	10.1%
Comair	-34%	-45%	-42%	-60%	10.1%
Grindrod	93%	69%	25%	10%	10.1%
Imperial Holdings	-41%	8%	51%	44%	10.1%
Super Group	-90.3%	10%	30%	-30%	10.1%
Trencor	-18%	2%	-1%	45%	10.1%
AVERAGE	**-9%**	**17%**	**3%**	**17%**	**10.1%**

**For Rand amounts see Appendices*

Salaries and wages

The average salary for an executive director in transport increased from R1.8 million to R1.9 million, 8.2 percent, in the period, with an increase from R2.4 million to R2.9 million, 22 percent, for CEOs. The pay of the average low-wage worker increased on average by 10.1 percent from R28, 788 in 2007 to R31, 704 in 2008.

Fig 120: Percentage salary / wage increases

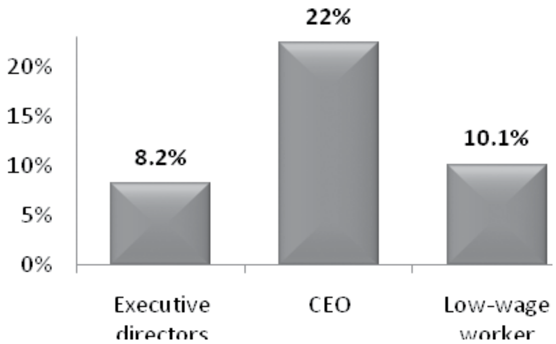
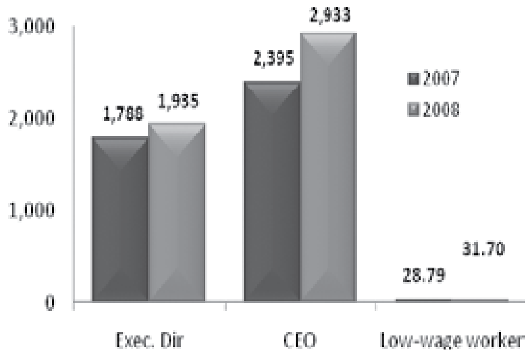


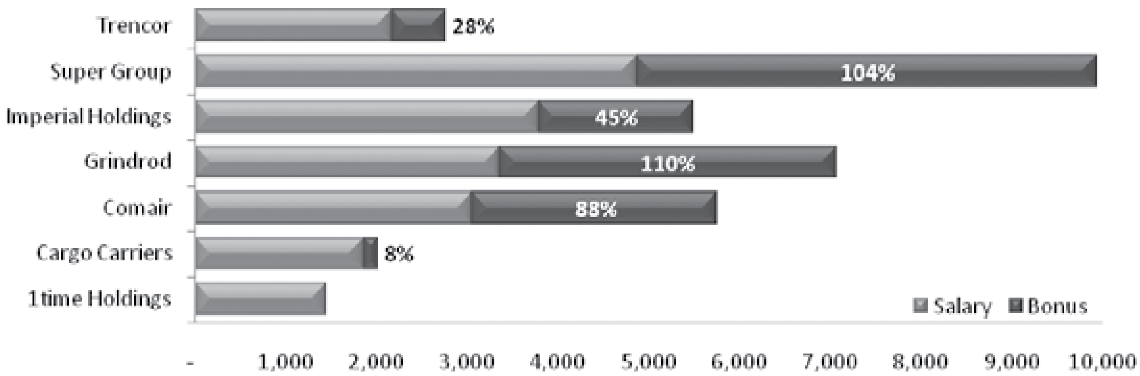
Fig 121: Actual salary / wage increases (R'000)



Bonuses

In transport, bonuses increased the value of the CEO package by on average 64 percent of salary.

Fig 122: Salary and bonus for transport sector chief executives indicating bonus as a percent of salary 2008 (R'000)



Remuneration

In 2007/8 the average remuneration of executive directors in transport increased by 17 percent, that of CEOs increased by three percent and non-executive directors' increased by 17 percent.

The 17 percent for executives indicates an increase of R668, 000 on average for executive directors, 10.1 percent for workers indicates an increase of R2, 916 per annum.

Fig 123: Percentage remuneration / wage increases

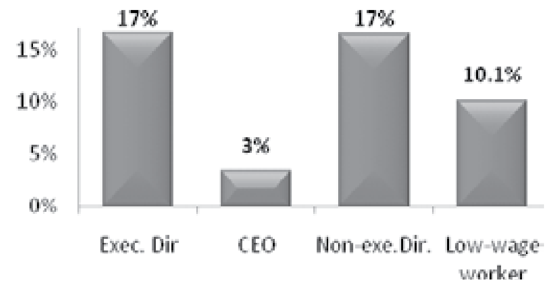
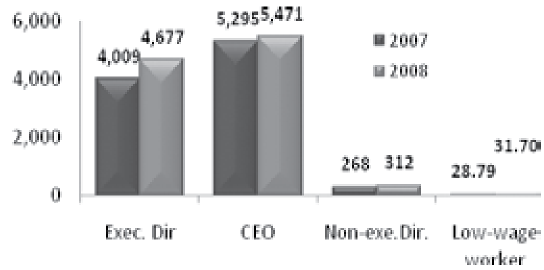


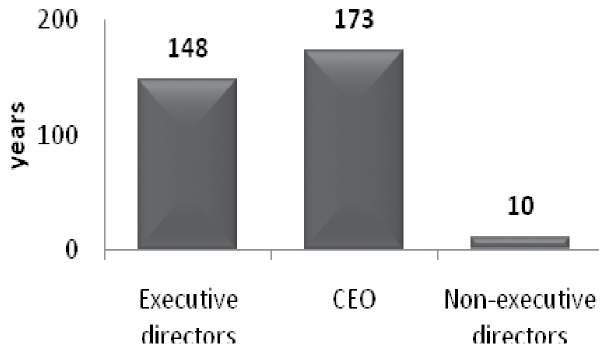
Fig 124: Actual remuneration / wage increases (R'000)



In 2007/8 the average annual remuneration of an executive director in retail was R4.7 million, while it was R5.4 million for a chief executive officer and R312, 000 for a non-executive director. The average minimum wage across sectors was R31, 704.

It will therefore take a low-wage worker about 173 years, 148 years and 10 years to earn what a CEO, an executive director and a non-executive director respectively earned in the year 2007/8.

Fig 125: The wage gap - how long it will take a worker to earn what a transport sector director earned in 2008



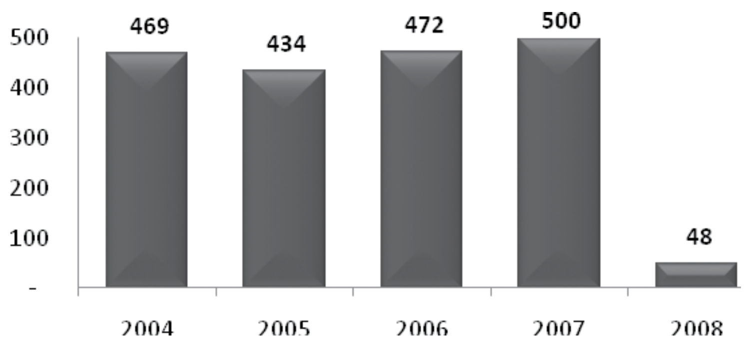
The seven CEOs in the sample collectively earned R38.3 million in 2008 while the 35 executive directors of the seven companies collectively earned R163.7 million. The 47 non-executive directors collectively earned R 14.7 million in the same year. These amounts, high in themselves, exclude gains from share options and dividends earned by these company directors.

Long-term incentives

Hubert Brody, CEO of Imperial Holdings received a salary of R3.8 million in 2008 (excluding benefits and other payments). His bonus of R1.7 increased this package by 45 percent. His long-term incentive payout of R4.6 million is 123 percent on top of his salary so that bonus and long-term incentive payouts together add 168 percent to his salary. This does also not include pension and benefits which amount to R689, 000 on top of this.

Company performance: profit

Fig 126: - Super Group profit before tax over five years (R millions)



The companies in the group have shown varying profit fortunes, perhaps reflecting the variation in industries in the sample. Looking more closely at Super Group, 2008 has been a terrible year profit-wise which perhaps raises the question as to why the CEO received a R5 million bonus in the year and a 22 percent salary increase.

(3) SUMMARY

The data shows that remuneration for directors declined in percentage terms over the last year. A recent report notes that executives and top management can expect to take lower increases than originally budgeted for... *'Executives could expect increases of about 8,6% in 2009/2010. Particularly in the banks and financial sector companies there is a current show of pay freezes and bonus cutting in the face of falling earnings'. (Business Day, 7 May 2009).*

However, this seeming austerity can be deceptive as the bonus cuts, thus leading to a fall in total remuneration, are often off the back of extremely high bonuses in previous years. For example, Johan van Zyl, the CEO of Sanlam had his bonus cut by 18 percent for 2008 due to a fall in profit. However, this 18 percent cuts still leaves him with a bonus of R7.5 million for the year. And while the CEO of Nedbank, Tom Boardman saw his bonus cut from R6.6 million to R6 million because of declining earnings, the lost bonus was awarded to him as deferred shares which he can cash in after a few years. These kinds of cuts should therefore not be used to convince workers to take similar percentage cuts in pay as the actual amounts are so vastly different and executives are consistently compensated in other ways. Moreover, cuts in executive fees hardly affect their ability to feed and house their families. As we have noted before, the remuneration earned here by the few is completely at odds with South Africa's poverty reduction and developmental challenges (Bargaining Indicators 2007).

Cuts in executive pay, however much they may be required, are not enough to impact on a system which perpetuates inequality and injustice. However, using the information gained from studying directors' fees can form part of a strategy of engaging with companies on various issues of concern to workers. In the current economic climate, workers are not alone. Outrage among shareholders at the vast fees directors pay themselves may result in calls for shareholder input on what and how executive pay is decided. While shareholders often represent other corporate, rather than worker, interests, their complaints do keep the spot-light on this area of inequality and it should be an avenue that unions are prepared to utilise to push the cause of the workers.

(4) BARGAINING HINTS: WHAT YOU NEED TO KNOW

These recent outcries against the excesses of director pay in the face of recession have once again brought the issue of income inequality to the attention of the public and governments from the USA to the UK and here in South Africa. Unions have also highlighted the enormous inequality between the wages paid to workers and executive directors in this country. While this is a useful publicity tool in the current situation, union negotiators must also bargain when there has been no such outcry and little publicity surrounding the payments to directors. Negotiations take place in good times and bad, when companies have fared well and when there has been a fall in profits. Likewise some years will see directors' salaries rise slowly or bonuses cut. Negotiators therefore need to understand the pay figures and percentages in order to decide which will be most useful in various bargaining situations. Here are some hints on how to approach the process:

Choosing your angle:

Depending on how director fees have been structured in the year, different elements of director pay will be most useful in highlighting the variance between theirs and workers' wages. Negotiators need to look at all the angles before deciding which will best support their demands for more equitable wage structures.

1. First look at the **percentage increase in salary** as salaries are the most comparable to workers' wages and most likely to see a steady rise year-on-year. If directors' salaries have increased by a greater percentage than that of workers that is a strong position to bargain from as it shows that the guaranteed pay of the directors is increasing at the higher rate.
2. If the salary is not showing a high increase look at the **percentage increase in remuneration**, that is the increase of directors' full annual package including salary, bonus, benefits and the like. A high increase here can be used in negotiations instead of the salary increase. It would also indicate that in the year the directors received substantial bonuses.
3. These **bonuses** can be interrogated further as shown in the survey:
   - What percentage of salary do they represent? Do they double or even triple the director's annual income?
   - What are the limits on the amounts (as a percentage of salary) that directors can receive in bonuses and how different are these from the limits for workers?
   - If directors can receive such high percentage bonuses then can workers not also receive substantial rewards for the year's work?
   - What were the performance criteria for those bonuses and how have the directors met those goals?
4. If both salary and remuneration increases for directors are high then both these figures can be used to highlight that not only is guaranteed pay increasing for directors but that bonuses are following the same trend leading to substantial packages.
5. Question how the increases for directors compare to the **fortunes of the company**. Company profits are often cited as a reason for restricting wages. Looking at company performance in the form of profits can give an indication of whether it has any impact on director remuneration: when company profits fall, can we expect to see the same in director bonuses in particular? Will director salaries be affected by a bad year? Do workers receive the benefits of company profits in a good year?
6. If the company is showing a good profit for the year is this reflected in the directors' bonuses? If so, why it should not also be reflected in workers' income. If the profit is down, have the directors' still taken substantial rewards? If so, this should be explained, particularly if they are then arguing for lower worker wage increases.
7. If both salary and remuneration increases for executives are low for the year then look at the actual Rand figures for those increases as these will show how much these increases mean in real terms even if the percentages are not high. As shown in the report, a ten percent increase on a director's salary is a lot more money than a twelve percent increase on the average worker's wage.
8. The actual figures for directors can also be used to highlight the wage gap showing how many years a worker would have to work to earn what a director has received in one year.
9. Although not considered annual income, the gains made by directors when exercising long-term incentives (LTIs) should be analysed. As shown above these can be more than substantial and should be highlighted in negotiations if companies are arguing from a position that all employees, including directors, are taking a hit.

Long-term view:

Looking beyond one year's figures can be a powerful negotiating tool. Profits may be down slightly in one year but if you look back over the trend of three to five years you will get a better idea of company performance. The same method can be applied to directors' salaries, bonuses and LTI payments. Salary plus bonus, benefits and other payments (excluding long-term incentives) indicates how much the company has spent on director positions in the year. This may vary from year to year. The totals may increase massively in one year on the back of a good bonus and then seem to decrease when bonuses are less generous. The negative percentages should be seen in this light and figures can be compared to earlier years as well as viewing the totals those percentages represent.

Getting hold of relevant director fee figures:

In this survey we have analysed director fees for 2007/2008 as these are the latest publically available. This is useful in order to identify trends and to note bonus, benefit and LTI payment levels. However, to make the best comparison unions need to know the salary increases that directors will be getting for the same year for which they are negotiating – the year going forward. These are not published in the annual reports and should be requested well in advance of negotiations so that they can be properly analysed. If these cannot be obtained use the latest available figures. If the company states that these are out of date then note with them that more up to date figures were requested and denied.

CONCLUSION

What we know is that the income inequality is real and impacting on the ability of workers to live and support their families. How this is exposed in any particular year will depend on how well negotiators understand remuneration figures in order to use them in the best possible way for the current situation. This survey shows that there are a variety of ways of addressing the issue of director pay in these situations depending on how the company has fared and paid out in any one year. The key is to know the company and the sector with whom you have to engage so that the best strategy for engaging on director fees becomes clear. This survey highlights that whether overall pay has gone up or not, whether companies appear to have performed well or poorly, there are always arguments that can be made for a more equitable pay structure across the company based on the figures as they present themselves. This only becomes apparent with a proper understanding of the companies involved. It is important to note where the changes are taking place and how the pay is put together – remuneration increases may be low in one year but what kind of salary increase does this mask, did directors cash in share options?

To achieve a fair agreement in good times is not enough, though it is important to take advantage of the opportunities they offer. Unions, even in sectors that are successful in a particular year or period have to work for provisions that do not simply hold in good times but that protect workers in bad times also. This work is should not be viewed as applying to one session of negotiations and should involve the pursuit of a wage structure that ensures a decent wage in stormy weather too.

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APPENDIX 2: Methodology

Sample

The sample includes 71 companies listed on the Johannesburg Stock Exchange (JSE) from 14 sectors, as well as one state-owned enterprise, Denel. While it is not a comprehensive sample, it does include over half the top 100 listed companies by market capitalisation as of the beginning of June 2009. Twenty nine of the companies have listings on stock exchanges outside of South Africa; six of these have a primary listing on the London Stock Exchange with a secondary listing on the JSE. Sector coverage is not uniform as we have focussed on those sectors and companies of most interest to unions. The data has been extracted from the most recently published annual report and accounts as of 1 June 2009 and therefore includes year ends from the end of February 2008 to the end of December 2008. Particularly in the context of company performance, this needs to be borne in mind as those with earlier year ends might have been less affected by the current global downturn when it comes to company performance.

Likewise, with the year ends in February and March 2008, the pay packages disclosed here would have been set over two years ago in February and March 2007. Though some companies do disclose the agreed salaries of executives for the coming year, this remains a rare occurrence.

Survey method

Companies do not disclose director fees in a uniform way. The report has drawn and analysed figures in a manner that we believe make them most comparable to each other.
Individual directors join and leave positions and companies throughout the year. The report's objective is to show how much was spent on the director positions in the year rather than on individual directors. In the case of aggregated figures, averages may be higher or lower if a director serves only part of the year. In the case of chief executives where an individual position is analysed we have attempted to reconcile figures for both individuals who have occupied a position in the year. This is of necessity an estimate.

Foreign currency

In ten cases, company profit is not disclosed in South African Rand and in seven the directors' fees are reported in a different currency. In cases where the average exchange rate with the South African Rand for the financial year has been disclosed in the annual report of the company, these rates are used. Where these have not been disclosed the annual average exchange rate for the financial year in question has been calculated from the currency converter website http://www.oanda.com. These of course vary depending on the financial year end.

Format of the report

Different sectors have different pressures and outcomes; the report therefore focuses on companies within their sectors as well as across sectors as it is felt this would be most useful to negotiators. This does result in companies of vastly varying sizes being grouped together, which should also be borne in mind when considering remuneration packages. The company performance table lists the company size by market capitalisation of each company as of 1 June 2009.

Remuneration defined

Remuneration is made up of many elements – salary or fees, benefits such as medical aid and petrol allowances, pension contributions, annual performance bonuses, long-term incentives and other occasional payments. Unless otherwise indicated the figures in this report do not include payments directors may receive in the year on the exercise of long-term incentives such as share option plans or performance share plans. However, these can form a considerable boost to an individual's remuneration and must therefore be considered when analysing director income.

Elements of pay

Apart from benefits including medical aid, car allowances, pension contributions and other expenses, a large part of director remuneration is "performance pay" which covers both annual performance, in the form of bonuses and also the paying out of long-term incentive plans (LTIs) through, most commonly, share options, but increasingly through other plan types like performance share plans and share matching plans. Bonuses too are increasingly being used as long-term retention plans where a portion of the bonus earned is deferred for three years and possibly also matched in value at that point with or without further performance conditions attached. In this report, where possible, we have noted that actual cash paid to a director in the year as the deferred element will be accounted for in long-term payments when they are cashed in. Nonetheless, it should be remembered that the cash element is not always the full bonus.

Workers' wages

The comparative figure used here for workers' wages are drawn from the Labour Research Service AWARD database which is discussed further in the Collective Bargaining report included in this publication. The figure used here represents the average minimum low-wage occupation income across all sectors for 2007 and 2008.

APPENDIX 3: Executive directors' salary and remuneration 2007 – 2008

Sector and company	No. 2007	No. 2008	Salary 2007 (R '000)	Salary 2008 (R '000)	Average 2007 (R '000)	Average 2008 (R '000)	Salary change 2007-2008	Rem. 2007 (R '000)	Rem. 2008 (R'000)	Ave. 2007 (R '000)	Ave. 2008 (R '000)	Rem. change 2007 – 2008
Banks	***19***	***18***	***55,117***	***62,724***	***2,901***	***3,485***	***20.1%***	***285,454***	***279,982***	***15,024***	***15,555***	***4%***
Absa Group	5	4	12,253	14,569	2,451	3,642	48.6%	46,914	48,771	9,383	12,193	30%
African Bank Investments	5	5	9,411	11,503	1,882	2,301	22.2%	21,685	21,050	4,337	4,210	-3%
Firstrand Banking Group	2	2	7,776	8,560	3,888	4,280	10.1%	29,886	28,248	14,943	14,124	-5%
Investec Bank	4	4	15,729	17,159	3,932	4,290	9.1%	149,327	151,568	37,332	37,892	2%
Nedbank Group	2	2	5,473	6,386	2,737	3,193	16.7%	19,012	16,264	9,506	8,132	-14%
Standard Bank	1	1	4,475	4,547	4,475	4,547	1.6%	18,630	14,081	18,630	14,081	-24%
Construction	***25***	***24***	***36,299***	***43,418***	***1,452***	***1,809***	***24.6%***	***103,743***	***113,906***	***4,150***	***4,746***	***14%***
Aveng	4	5	8,634	11,349	2,159	2,270	5.2%	23,781	27,175	5,945	5,435	-9%
Basil Read	1	1	1,708	2,686	1,708	2,686	57.3%	6,961	11,353	6,961	11,353	63%
Cashbuild	5	5	3,994	5,738	799	1,148	43.7%	9,001	11,564	1,800	2,313	28%
Group Five	3	1	4,466	2,395	1,489	2,395	60.9%	15,707	5,687	5,236	5,687	9%
Murray & Roberts	5	5	10,086	10,254	2,017	2,051	1.7%	26,850	31,396	5,370	6,279	17%
Pretoria Portland Cement Company	5	5	5,848	9,146	1,170	1,829	56.4%	14,769	16,709	2,954	3,342	13%
WBHO	2	2	1,563	1,850	782	925	18.4%	6,674	10,022	3,337	5,011	50%
Diversified Holdings	***47***	***40***	***113,078***	***118,808***	***2,406***	***2,970***	***23.5%***	***271,800***	***235,346***	***5,783***	***5,884***	***2%***
Barloworld Limited	12	8	21,782	16,828	1,815	2,104	15.9%	85,496	53,588	7,125	6,699	-6%
Bidvest	14	11	28,425	29,861	2,030	2,715	33.7%	75,138	79,187	5,367	7,199	34%
Hosken Consolidated Inv.	5	5	6,706	13,123	1,341	2,625	95.7%	22,171	22,045	4,434	4,409	-1%

Sector and company	No. 2007	No. 2008	Salary 2007 (R '000)	Salary 2008 (R '000)	Average 2007 (R '000)	Average 2008 (R '000)	Salary change 2007-2008	Rem. 2007 (R '000)	Rem. 2008 (R'000)	Ave. 2007 (R '000)	Ave. 2008 (R '000)	Rem. change 2007 – 2008
Remgro	5	5	12,087	12,669	2,417	2,534	4.8%	15,736	16,571	3,147	3,314	5%
RMB Holdings	1	1	2,050	2,211	2,050	2,211	7.9%	7,506	7,454	7,506	7,454	-1%
Seardel Limited	3	3	5,101	5,329	1,700	1,776	4.5%	9,192	6,828	3,064	2,276	-26%
Steinhoff	7	7	36,927	38,787	5,275	5,541	5.0%	56,561	49,673	8,080	7,096	-12%
Electronics	**13**	**12**	**25,606**	**28,828**	**1,970**	**2,402**	**22.0%**	**58,984**	**65,326**	**4,537**	**5,444**	**20%**
Altron	9	8	19,668	22,213	2,185	2,777	27.1%	42,357	48,045	4,706	6,006	28%
Reunert	4	4	5,938	6,615	1,485	1,654	11.4%	16,627	17,281	4,157	4,320	4%
Financial	**6**	**8**	**12,952**	**15,951**	**2,159**	**1,994**	**-7.6%**	**59,019**	**54,159**	**9,837**	**6,770**	**-31%**
Coronation Fund Managers	2	3	1,560	1,960	780	653	-16.2%	20,660	16,797	10,330	5,599	-46%
Liberty Life	2	2	4,860	5,610	2,430	2,805	15.4%	18,788	16,483	9,394	8,242	-12%
Sanlam	2	3	6,532	8,381	3,266	2,794	-14.5%	19,571	20,879	9,786	6,960	-29%
Food & Beverage	**30**	**24**	**64,496**	**62,102**	**2,150**	**2,588**	**20.4%**	**130,921**	**142,263**	**4,364**	**5,928**	**36%**
Anglo-Vaal Industries	3	3	5,267	6,051	1,756	2,017	14.9%	7,803	11,134	2,601	3,711	43%
Crookes Brothers Limited	2	1	1,788	1,363	894	1,363	52.5%	3,599	2,504	1,800	2,504	39%
Distell	3	3	3,621	3,961	1,207	1,320	9.4%	6,749	7,388	2,250	2,463	9%
Illovo Sugar	7	5	9,069	10,133	1,296	2,027	56.4%	23,299	22,199	3,328	4,440	33%
SAB Miller (plc)	2	2	20,389	23,430	10,195	11,715	14.9%	50,970	61,591	25,485	30,796	21%
Tiger Brands	5	7	10,862	7,903	2,172	1,129	-48.0%	19,094	22,179	3,819	3,168	-17%
Tongaat-Hulett	8	3	13,500	9,261	1,688	3,087	82.9%	19,407	15,268	2,426	5,089	110%
Health	**20**	**21**	**35,432**	**39,973**	**1,772**	**1,903**	**7.4%**	**70,515**	**64,886**	**3,526**	**3,090**	**-12%**
Aspen	2	2	5,770	6,196	2,885	3,098	7.4%	11,810	13,345	5,905	6,673	13%
Discovery-Health	6	7	9,946	11,264	1,658	1,609	-2.9%	19,060	17,406	3,177	2,487	-22%
Medi-Clinic	6	7	7,826	12,218	1,304	1,745	33.8%	17,220	15,601	2,870	2,229	-22%
Network Healthcare Holdings	6	5	11,890	10,295	1,982	2,059	3.9%	22,425	18,534	3,738	3,707	-1%
Industrial & Chemicals	**22**	**21**	**42,029**	**43,069**	**1,910**	**2,051**	**7.4%**	**95,479**	**100,338**	**4,340**	**4,778**	**10%**
AECI	5	5	7,778	6,663	1,556	1,333	-14.3%	16,590	16,689	3,318	3,338	1%
Afrox Oxygen	3	2	4,292	3,531	1,431	1,766	23.4%	17,801	6,940	5,934	3,470	-42%
Arcelor Mittal SA	3	4	5,197	7,445	1,732	1,861	7.5%	8,148	14,658	2,716	3,664	35%
Denel	2	2	4,592	5,429	2,296	2,715	18.2%	9,836	12,002	4,918	6,001	22%
Invicta Holdings Limited	3	4	3,292	4,984	1,097	1,246	13.5%	7,959	16,774	2,653	4,194	58%
Sasol	6	4	16,878	15,017	2,813	3,754	33.5%	35,145	33,275	5,858	8,319	42%
Info & Telecoms	**9**	**9**	**31,334**	**34,302**	**3,482**	**3,811**	**9.5%**	**75,318**	**101,062**	**8,369**	**11,229**	**34%**
Didata	5	5	16,676	18,489	3,335	3,698	10.9%	40,917	41,447	8,183	8,289	1%
MTN	3	3	12,386	13,359	4,129	4,453	7.9%	30,475	40,506	10,158	13,502	33%
Telkom Limited	1	1	2,272	2,454	2,272	2,454	8.0%	3,926	19,109	3,926	19,109	387%
Media	**5**	**5**	**8,303**	**9,584**	**1,661**	**1,917**	**15.4%**	**12,504**	**15,059**	**2,501**	**3,012**	**20%**
Caxton	4	4	6,164	7,242	1,541	1,811	17.5%	7,751	10,082	1,938	2,521	30%
Naspers	1	1	2,139	2,342	2,139	2,342	9.5%	4,753	4,977	4,753	4,977	5%
Mining	**43**	**31**	**154,928**	**116,611**	**3,603**	**3,762**	**4.4%**	**488,513**	**265,517**	**11,361**	**8,565**	**-25%**
African Rainbow Minerals	7	8	10,241	11,109	1,463	1,389	-5.1%	31,179	34,176	4,454	4,272	-4%
Anglo American plc	5	2	32,890	25,958	6,578	12,979	97.3%	154,197	45,586	30,839	22,793	-26%
Anglo Platinum	8	2	19,846	8,147	2,481	4,074	64.2%	48,262	15,221	6,033	7,611	26%
AngloGold Ashanti	5	2	20,578	15,098	4,116	7,549	83.4%	98,509	27,093	19,702	13,547	-31%
BHP Billiton plc	4	2	30,725	12,226	7,681	6,113	-20.4%	77,435	60,918	19,359	30,459	57%
Gold Fields	2	3	8,018	9,277	4,009	3,092	-22.9%	13,396	15,050	6,698	5,017	-25%
Impala Platinum	6	4	12,567	11,632	2,095	2,908	38.8%	27,361	15,087	4,560	3,772	-17%
Lonmin plc	4	3	18,306	20,607	4,576	6,869	50.1%	33,678	43,773	8,420	14,591	73%
Trans-Hex	2	5	1,758	2,557	879	511	-41.8%	4,496	8,613	2,248	1,723	-23%

Sector and company	No. 2007	No. 2008	Salary 2007 (R '000)	Salary 2008 (R '000)	Average 2007 (R '000)	Average 2008 (R '000)	Salary change 2007-2008	Rem. 2007 (R '000)	Rem. 2008 (R'000)	Ave. 2007 (R '000)	Ave. 2008 (R '000)	Rem. change 2007 – 2008
Paper & Packaging	**9**	**9**	**34,388**	**42,945**	**3,821**	**4,772**	**24.9%**	**94,046**	**97,260**	**10,450**	**10,807**	**3%**
Mondi	2	4	15,660	28,895	7,830	7,224	-7.7%	52,267	66,554	26,133	16,638	-36%
Nampak	3	3	6,771	6,850	2,257	2,283	1.2%	17,788	18,478	5,929	6,159	4%
Sappi	4	2	11,957	7,200	2,989	3,600	20.4%	23,991	12,228	5,998	6,114	2%
Retail	**25**	**26**	**52,157**	**61,431**	**2,086**	**2,363**	**13.3%**	**119,891**	**123,537**	**4,796**	**4,751**	**-1%**
Foschini	2	3	4,630	6,684	2,315	2,228	-3.8%	5,833	18,302	2,917	6,101	109%
Pick 'n Pay Stores	5	5	9,083	8,829	1,817	1,766	-2.8%	23,483	12,096	4,697	2,419	-48%
Shoprite Holdings	7	7	18,538	22,336	2,648	3,191	20.5%	33,564	39,444	4,795	5,635	18%
Spar	3	3	3,781	4,598	1,260	1,533	21.6%	8,325	10,484	2,775	3,495	26%
Truworths	3	3	5,681	6,423	1,894	2,141	13.1%	17,168	18,872	5,723	6,291	10%
Woolworths Holdings	5	5	10,444	12,561	2,089	2,512	20.3%	31,518	24,339	6,304	4,868	-23%
Transport	**35**	**35**	**62,597**	**67,735**	**1,788**	**1,935**	**8.2%**	**140,304**	**163,699**	**4,009**	**4,677**	**17%**
1time Holdings	6	6	7,585	7,860	1,264	1,310	3.6%	8,004	8,122	1,334	1,354	1%
Cargo Carriers	2	2	1,735	1,857	868	929	7.0%	2,926	2,540	1,463	1,270	-13%
Comair	5	5	5,186	5,868	1,037	1,174	13.2%	20,449	11,171	4,090	2,234	-45%
Grindrod	7	7	12,706	14,277	1,815	2,040	12.4%	39,986	67,449	5,712	9,636	69%
Imperial Holdings	8	8	20,120	23,501	2,515	2,938	16.8%	40,281	43,596	5,035	5,450	8%
Super Group	4	4	9,539	8,917	2,385	2,229	-6.5%	20,490	22,515	5,123	5,629	10%
Trencor	3	3	5,726	5,455	1,909	1,818	-4.7%	8,168	8,306	2,723	2,769	2%
Average percentage increase	308	282	728,716	747,481			11.6%	2,006,490	1,822,339			-1%
Average annual increase (R'000)					2,366	2,641	275			6,515	6,439	-74
Average monthly increase (R'000)					197	220	23			543	537	-6

APPENDIX 4: Chief executive officer salary and remuneration 2007 – 2008

Sector and company	CEO surname	Salary 2007 * (R '000)	Salary 2008 (R '000)	Change in salary 2007 - 2008	Remuneration 2007* (R '000)	Remuneration 2008 (R '000)	Change in remuneration 2007 - 2008
Banks		**3,905**	**4,197**	**7%**	**19,367**	**18,055**	**-7%**
Absa Group	Booysen	5,306	5,697	7%	18,774	18,153	-3%
African Bank	Kirkinis	2,064	2,031	-2%	5,684	4,689	-18%
Investments							
Firstrand Banking Group	Nxasana	3,684	4,065	10%	13,433	12,720	-5%
Investec Bank	Koseff	4,403	4,740	8%	47,918	48,276	1%
Nedbank Group	Boardman	3,499	4,104	17%	11,762	10,413	-11%
Standard Bank	Maree	4,475	4,547	2%	18,630	14,081	-24%
Construction		**2,051**	**2,519**	**23%**	**6,186**	**7,510**	**21%**
Aveng	Band & Grim	3,136	3,425	9%	5,700	8,550	50%
Basil Read	Heyns	1,708	2,686	57%	6,961	11,353	63%
Cashbuild	Goldrick	1,768	2,025	15%	3,428	4,059	18%
Group Five	Upton	3,065	2,301	-25%	10,094	5,579	-45%
Murray & Roberts	Bruce	2,694	3,168	18%	9,000	10,350	15%
Pretoria Portland Cement Company	Gomersall	1,045	2,917	179%	3,408	5,389	58%
WBHO	Wylie	944	1,112	18%	4,709	7,292	55%
Diversified Holdings		**4,355**	**5,150**	**18%**	**9,143**	**9,004**	**-2%**
Barloworld Limited	Thomson	3,003	3,873	29%	10,803	9,009	-17%

Sector and company	CEO surname	Salary 2007 * (R '000)	Salary 2008 (R '000)	Change in salary 2007 - 2008	Remuneration 2007* (R '000)	Remuneration 2008 (R '000)	Change in remuneration 2007 - 2008
Bidvest	Joffe	5,836	6,692	15%	16,249	18,800	16%
Hosken Consolidated Inv.	Copelyn	1,866	3,606	93%	7,353	5,406	-26%
Remgro	Visser	6,347	6,225	-2%	7,880	7,904	0%
RMB Holdings	Cooper	2,050	2,211	8%	7,506	7,454	-1%
Seardel Limited	Searll	2,278	2,201	-3%	4,535	2,494	-45%
Steinhoff	Jooste	9,102	11,240	23%	9,676	11,958	24%
Electronics		***3,021***	***3,516***	***16%***	***7,850***	***8,981***	***14%***
Altron	Venter	3,714	4,439	20%	8,783	11,169	27%
Reunert	Pretorius	2,327	2,593	11%	6,917	6,792	-2%
Financial		***2,536***	***2,816***	***11%***	***10,540***	***9,596***	***-9%***
Coronation Fund Managers	Nelson	780	770	-1%	7,369	6,949	-6%
Liberty Life	Hemphill	2,673	3,186	19%	10,495	9,164	-13%
Sanlam	van Zyl	4,154	4,492	8%	13,755	12,676	-8%
Food & Beverage		***4,448***	***4,591***	***3%***	***9,329***	***11,578***	***24%***
Anglo-Vaal Industries	Crutchley	2,500	2,913	17%	4,051	5,695	41%
Crookes Brothers Limited	Clarke	1,296	1,363	5%	2,364	2,504	6%
Distell	Scannell	1,787	1,986	11%	4,113	3,743	-9%
Illovo Sugar	MacLeod	2,887	3,383	17%	7,375	7,406	0%
SAB Miller (plc)	Mackay	12,700	14,617	15%	33,693	46,458	38%
Tiger Brands	Dennis & Matlare	4,895	3,445	-30%	8,033	7,591	-6%
Tongaat-Hulett	Staude	5,070	4,430	-13%	5,671	7,650	35%
Health		***2,816***	***3,096***	***10%***	***5,379***	***5,056***	***-6%***
Aspen	Saad	3,164	3,402	8%	6,470	7,309	13%
Discovery-Health	Gore	1,770	1,886	7%	3,673	2,639	-28%
Medi-Clinic	Alberts	2,242	2,739	22%	4,424	3,261	-26%
Network Healthcare Holdings	Friedland	4,088	4,355	7%	6,948	7,016	1%
Industrial & Chemicals		***2,732***	***2,921***	***7%***	***6,005***	***7,308***	***22%***
AECI	Edwards	2,652	2,124	-20%	5,060	4,221	-17%
Afrox Oxygen	Kruger	1,731	2,245	30%	2,380	4,490	89%
Arcelor Mittal SA	Nyembezi-Heita	2,245	2,530	13%	3,422	4,949	45%
Denel	Liebenberg	3,261	3,415	5%	7,397	7,972	8%
Invicta Holdings Limited	Goldstone	1,555	1,455	-6%	5,685	8,587	51%
Sasol	Davies	4,945	5,758	16%	12,084	13,629	13%
Information & Telecoms		***4,219***	***4,676***	***11%***	***11,237***	***17,842***	***59%***
Didata	Dawson	4,414	5,075	15%	13,527	14,433	7%
MTN	Nhleko	5,971	6,498	9%	16,257	19,958	23%
Telkom Limited	September	2,273	2,454	8%	3,926	19,134	387%
Media		***2,100***	***2,500***	***19%***	***2,100***	***2,500***	***19%***
Caxton	Moolman	2,100	2,500	19%	2,100	2,500	19%
Mining		***6,223***	***7,449***	***20%***	***16,620***	***15,020***	***-10%***
African Rainbow	Wilkens	1,574	1,906	21%	5,616	6,729	20%
Minerals							
Anglo American plc	Carroll	12,726	15,939	25%	37,711	28,569	-24%
Anglo Platinum	Nicolau, Mbazima & Wanblad	3,732	8,147	118%	12,005	15,222	27%
AngloGold Ashanti	Cutifani	6,623	9,513	44%	26,195	16,891	-36%
BHP Billiton plc	Kloppers	12,798	12,226	-4%	35,382	30,826	-13%
Gold Fields	Holland	5,040	3,899	-23%	8,255	6,427	-22%

Sector and company	CEO surname	Salary 2007 * (R '000)	Salary 2008 (R '000)	Change in salary 2007 - 2008	Remuneration 2007* (R '000)	Remuneration 2008 (R '000)	Change in remuneration 2007 - 2008
Impala Platinum	Brown	3,931	4,884	24%	5,625	7,427	32%
Lonmin plc	Mills	8,514	9,198	8%	16,051	19,741	23%
Trans-Hex	Delport	1,067	1,328	24%	2,743	3,346	22%
Paper & Packaging		***5,632***	***6,597***	***17%***	***13,803***	***10,704***	***-22%***
Mondi	Hathorn	9,269	11,743	27%	26,668	18,721	-30%
Nampak	Bortolan	2,629	3,070	17%	8,693	5,471	-37%
Sappi	Boettger	4,997	4,978	0%	6,047	7,921	31%
Retail		***4,137***	***4,600***	***11%***	***8,630***	***9,134***	***6%***
Foschini	Murray	3,111	2,508	-19%	3,851	9,123	137%
Pick 'n Pay Stores	Badminton	3,306	2,672	-19%	10,617	3,823	-64%
Shoprite Holdings	Basson	9,929	13,158	33%	12,638	16,640	32%
Spar	Hook	1,634	1,838	12%	3,561	4,135	16%
Truworths	Mark	3,411	3,712	9%	11,572	12,964	12%
Woolworths Holdings	Susman	3,428	3,709	8%	9,542	8,121	-15%
Transport		***2,395***	***2,933***	***22%***	***5,295***	***5,471***	***3%***
1time Holdings	Orsmond	1,440	1,440	0%	1,487	1,479	0%
Cargo Carriers	Bolton	1,735	1,857	7%	2,926	2,540	-13%
Comair	Novick & Venter	2,443	3,052	25%	10,719	6,239	-42%
Grindrod	Olivier	2,729	3,360	23%	6,376	7,953	25%
Imperial Holdings	Brody	2,144	3,787	77%	4,102	6,176	51%
Super Group	Lipschitz	4,005	4,871	22%	8,401	10,895	30%
Trencor	van der Merwe	2,272	2,166	-5%	3,056	3,018	-1%
Total increases		269,954	307,880	14%	709,313	732,221	3%
Average annual increase (R '000)		3,856	4,398	542	10,133	10,460	327
Average monthly increase (R '000)		321	367	45	844	872	27

***2007 figures may be for the previous incumbent**

APPENDIX 5: Non-executive director remuneration 2007 – 2008

Sector and company	No. 2007	No. 2008	Total 2007 (R'000)	Total 2008 (R'000)	Average 2007 (R'000)	Average 2008 (R'000)	Percentage change
Banks	***85***	***86***	***70,957***	***80,160***	***835***	***932***	***12%***
Absa Group	22	20	11,347	12,663	516	633	23%
African Bank Investments	9	10	2,801	3,103	311	310	0%
Firstrand Banking Group	7	8	7,941	14,730	1,134	1,841	62%
Investec Bank	13	13	19,166	20,858	1,474	1,604	9%
Nedbank Group	16	16	11,370	11,563	711	723	2%
Standard Bank	18	19	18,332	17,243	1,018	908	-11%
Construction	***46***	***48***	***10,719***	***12,886***	***233***	***268***	***15%***
Aveng	7	8	2,781	2,228	397	279	-30%
Basil Read	6	7	1,495	2,176	249	311	25%
Cashbuild	4	4	1,094	1,109	274	277	1%
Group Five	7	7	1,325	1,559	189	223	18%
Murray & Roberts	9	10	2,521	2,985	280	299	7%
Pretoria Portland Cement Company	8	7	958	1,913	120	273	128%

Sector and company	No. 2007	No. 2008	Total 2007 (R'000)	Total 2008 (R'000)	Average 2007 (R'000)	Average 2008 (R'000)	Percentage change
WBHO	5	5	545	916	109	183	68%
Diversified Holdings	***56***	***57***	***23,777***	***25,445***	***425***	***446***	***5%***
Barloworld Limited	12	11	9,965	9,148	830	832	0%
Bidvest	14	12	2,782	2,900	199	242	22%
Hosken Consolidated Inv.	6	6	630	960	105	160	52%
Remgro	8	9	5,018	5,604	627	623	-1%
RMB Holdings	7	8	813	1,255	116	157	35%
Seardel Limited	3	3	680	720	227	240	6%
Steinhoff	6	8	3,889	4,858	648	607	-6%
Electronics	***15***	***17***	***2,535***	***2,852***	***169***	***168***	***-1%***
Altron	7	7	1,301	1,431	186	204	10%
Reunert	8	10	1,234	1,421	154	142	-8%
Financial	***32***	***31***	***13,176***	***13,629***	***412***	***440***	***7%***
Coronation Fund Managers	3	6	635	621	212	104	-51%
Liberty Life	11	9	4,349	4,948	395	550	39%
Sanlam	18	16	8,192	8,060	455	504	11%
Food & Beverage	***80***	***75***	***22,738***	***26,382***	***284***	***352***	***24%***
Anglo-Vaal Industries	9	10	1,330	1,676	148	168	13%
Crookes Brothers Limited	8	8	747	847	93	106	13%
Distell	14	13	1,654	1,715	118	132	12%
Illovo Sugar	11	10	2,740	2,890	249	289	16%
SAB Miller (plc)	10	10	10,509	12,177	1,051	1,218	16%
Tiger Brands	12	11	2,812	4,180	234	380	62%
Tongaat-Hulett	16	13	2,946	2,897	184	223	21%
Health	***37***	***42***	***7,870***	***9,623***	***213***	***229***	***8%***
Aspen	10	10	2,141	2,248	214	225	5%
Discovery-Health	10	13	2,574	3,440	257	265	3%
Medi-Clinic	8	8	1,153	1,454	144	182	26%
Network Healthcare Holdings	9	11	2,002	2,481	222	226	1%
Industrial & Chemicals	***51***	***44***	***16,235***	***18,402***	***318***	***418***	***31%***
AECI	9	8	1,763	2,328	196	291	49%
Afrox Oxygen	8	5	1,084	968	136	194	43%
Arcelor Mittal SA	6	6	2,035	2,194	339	366	8%
Denel	11	10	957	1,149	87	115	32%
Invicta Holdings Limited	4	5	1,073	1,052	268	210	-22%
Sasol	12	10	9,323	10,711	777	1,071	38%
Information & Telecoms	***32***	***35***	***16,360***	***16,929***	***511***	***484***	***-5%***
Didata	9	8	3,142	4,105	349	513	47%
MTN	11	11	10,577	8,190	962	745	-23%
Telkom Limited	12	16	2,641	4,634	220	290	32%
Media	***13***	***15***	***8,103***	***9,044***	***623***	***603***	***-3%***
Caxton	3	5	1,251	944	417	189	-55%
Naspers	10	10	6,852	8,100	685	810	18%
Mining	***96***	***90***	***63,655***	***71,105***	***663***	***790***	***19%***

Sector and company	No. 2007	No. 2008	Total 2007 (R'000)	Total 2008 (R'000)	Average 2007 (R'000)	Average 2008 (R'000)	Percentage change
African Rainbow Minerals	8	9	2,101	2,307	263	256	-2%
Anglo American plc	11	11	17,491	17,867	1,590	1,624	2%
Anglo Platinum	15	12	3,115	3,528	208	294	42%
AngloGold Ashanti	15	10	4,951	5,470	330	547	66%
BHP Billiton plc	10	11	18,316	20,754	1,832	1,887	3%
Gold Fields	12	12	4,586	5,053	382	421	10%
Impala Platinum	9	10	3,578	4,359	398	436	10%
Lonmin plc	8	8	8,766	11,010	1,096	1,376	26%
Trans-Hex	8	7	751	757	94	108	15%
Paper & Packaging	***29***	***25***	***21,559***	***28,307***	***743***	***1,132***	***52%***
Mondi	6	4	12,816	16,191	2,136	4,048	89%
Nampak	11	10	2,343	2,652	213	265	25%
Sappi	12	11	6,400	9,464	533	860	61%
Retail	***43***	***43***	***10,819***	***12,189***	***252***	***283***	***13%***
Foschini	8	9	1,888	2,154	236	239	1%
Pick 'n Pay Stores	7	7	2,850	3,100	407	443	9%
Shoprite Holdings	6	6	658	658	110	110	0%
Spar	7	7	1,754	1,823	251	260	4%
Truworths	6	6	885	1,037	148	173	17%
Woolworths Holdings	8	8	2,784	3,417	348	427	23%
Transport	***49***	***47***	***13,118***	***14,660***	***268***	***312***	***17%***
1time Holdings	3	2	153	387	51	194	279%
Cargo Carriers	4	4	390	390	98	98	0%
Comair	8	7	2,233	780	279	111	-60%
Grindrod	9	8	1,437	1,411	160	176	10%
Imperial Holdings	14	15	4,240	6,539	303	436	44%
Super Group	6	6	2,160	1,521	360	254	-30%
Trencor	5	5	2,505	3,632	501	726	45%
Total increases (R'000)	664	655	301,622	341,614	454	522	15%
Average annual change (R'000)					454	522	68
Average monthly change (R'000)					38	43	5

APPENDIX 6: CEO bonus and long-term incentives 2008

Sector and company	CEO surname	Salary 2008 (R '000)	Bonus 2008 (R '000)	Bonus as percent of salary	Salary plus bonus 2008	LTI payment 2008 (R '000)	LTI as percent of salary	Bonus plus LTI as percent of salary
Banks		***4,197***	***13,262***	***294%***	***17,459***	***4,182***	***89%***	***383%***
Absa Group	Booysen	5,697	12,000	211%	17,697	4,498	79%	290%
African Bank Investments	Kirkinis	2,031	2,500	123%	4,531		-	123%
Firstrand Banking Group	Nxasana	4,065	8,100	199%	12,165	-	-	199%
Investec Bank	Koseff	4,740	42,456	896%	47,196	2,264	48%	943%
Nedbank Group	Boardman	4,104	6,000	146%	10,104	5,783	141%	287%
Standard Bank	Maree	4,547	8,516	187%	13,063		-	187%
Construction		***2,519***	***4,317***	***199%***	***6,836***	***21,219***	***653%***	***852%***
Aveng	Band & Grim	3,425	3,900	114%	7,325	25,410	742%	856%
Basil Read	Heyns	2,686	8,333	310%	11,019	-	-	310%
Cashbuild	Goldrick	2,025	1,834	91%	3,859	-	-	91%
Group Five	Upton	2,301	2,874	125%	5,175	818	36%	160%
Murray & Roberts	Bruce	3,168	6,250	197%	9,418	37,430	1182%	1379%
Pretoria Portland Cement Company	Gomersall	2,917	1,371	47%	4,288	-	-	47%
WBHO	Wylie	1,112	5,655	509%	6,767	-	-	509%
Diversified Holdings		***5,150***	***4,861***	***126%***	***7,927***	***6,297***	***187%***	***313%***
Barloworld Limited	Thomson	3,873	4,348	112%	8,221	1,876	48%	161%
Bidvest	Joffe	6,692	8,545	128%	15,237	11,503	172%	300%
Hosken Consolidated Inv.	Copelyn	3,606	1,800	50%	5,406	340	9%	59%
Remgro	Visser	6,225	-	-	6,225	-	-	-
RMB Holdings	Cooper	2,211	4,750	215%	6,961	11,469	519%	734%
Seardel Limited	Searll	2,201	-	-	2,201	-	-	-
Steinhoff	Jooste	11,240	-	-	11,240	-	-	-
Electronics		***3,516***	***3,864***	***114%***	***7,380***	***2,649***	***102%***	***216%***
Altron	Venter	4,439	4,331	98%	8,770		-	98%
Reunert	Pretorius	2,593	3,396	131%	5,989	2,649	102%	233%
Financial		***2,816***	***5,694***	***286%***	***8,510***	***14,416***	***321%***	***607%***
Coronation Fund Managers	Nelson	770	3,956	514%	4,726		-	514%
Liberty Life	Hemphill	3,186	5,625	177%	8,811	-	-	177%
Sanlam	van Zyl	4,492	7,500	167%	11,992	14,416	321%	488%
Food & Beverage		***4,591***	***4,900***	***77%***	***9,491***	***16,879***	***230%***	***307%***
Anglo-Vaal Industries	Crutchley	2,913	2,179	75%	5,092	-	-	75%
Crookes Brothers Limited	Clarke	1,363	799	59%	2,162	-	-	59%
Distell	Scannell	1,986	1,096	55%	3,082	7,240	365%	420%
Illovo Sugar	MacLeod	3,383	3,214	95%	6,597	-	-	95%
SAB Miller (plc)	Mackay	14,617	23,013	157%	37,630	41,609	285%	442%
Tiger Brands	Dennis & Matlare	3,445	1,250	36%	4,695	-	-	36%
Tongaat-Hulett	Staude	4,430	2,746	62%	7,176	1,789	40%	102%
Health		***3,096***	***1,595***	***46%***	***4,691***	***-***	***-***	***52%***
Aspen	Saad	3,402	3,500	103%	6,902	-	-	103%
Discovery-Health	Gore	1,886	344	18%	2,230	-	-	18%

Sector and company	CEO surname	Salary 2008 (R '000)	Bonus 2008 (R '000)	Bonus as percent of salary	Salary plus bonus 2008	LTI payment 2008 (R '000)	LTI as percent of salary	Bonus plus LTI as percent of salary
Medi-Clinic	Alberts	2,739	260	9%	2,999	-	-	9%
Network Healthcare Holdings	Friedland	4,355	2,276	52%	6,631		-	52%
Industrial & Chemicals		***2,921***	***3,702***	***153%***	***6,623***	***2,824***	***52%***	***205%***
AECI	Edwards	2,124	1,475	69%	3,599	-	-	69%
Afrox Oxygen	Kruger	2,245	1,429	64%	3,674	252	11%	75%
Arcelor Mittal SA	Nyembezi-Heita	2,530	2,000	79%	4,530	-	-	79%
Denel	Liebenberg	3,415	4,095	120%	7,510	-	-	120%
Invicta Holdings Limited	Goldstone	1,455	6,900	474%	8,355		-	474%
Sasol	Davies	5,758	6,314	110%	12,072	5,395	94%	203%
Information & Telecoms		***4,676***	***8,520***	***173%***	***13,196***	***4,843***	***95%***	***269%***
Didata	Dawson	5,075	9,125	180%	14,200	4,843	95%	275%
MTN	Nhleko	6,498	13,000	200%	19,498	-	-	200%
Telkom Limited	September	2,454	3,436	140%	5,890		-	140%
Media		***2,500***	***-***	***-***	***2,500***	***5,663***	***227%***	***227%***
Caxton	Moolman	2,500	-	-	2,500	5,663	227%	227%
Mining		***7,449***	***4,759***	***76%***	***12,208***	***17,541***	***626%***	***701%***
African Rainbow Minerals	Wilkens	1,906	3,630	190%	5,536	39,362	2065%	2256%
Anglo American plc	Carroll	15,939	4,842	30%	20,781		-	30%
Anglo Platinum	Nicolau, Mbazima & Wanblad	8,147	5,977	73%	14,124	9,565	117%	191%
AngloGold Ashanti	Cutifani	9,513	5,877	62%	15,390	-	-	62%
BHP Billiton plc	Kloppers	12,226	13,165	108%	25,391	-	-	108%
Gold Fields	Holland	4,884	427	9%	5,311	9,269	190%	199%
Impala Platinum	Brown	9,198	5,703	62%	14,901	11,968	130%	192%
Lonmin plc	Mills	1,328	1,313	99%	2,641	-	-	99%
Trans-Hex	Delport	3,899	1,898	49%	5,797		-	49%
Paper & Packaging		***6,597***	***1,830***	***29%***	***8,427***	***6,133***	***200%***	***229%***
Mondi	Hathorn	11,743	2,968	25%	14,711	-	-	25%
Nampak	Bortolan	3,070	1,000	33%	4,070	6,133	200%	232%
Sappi	Boettger	4,978	1,521	31%	6,499	-	-	31%
Retail		***4,600***	***2,921***	***96%***	***6,060***	***33,000***	***1235%***	***1331%***
Foschini	Murray	2,508	-	-	2,508	-	-	-
Pick 'n Pay Stores	Badminton	2,672	300	11%	2,972	33,000	1235%	1246%
Shoprite Holdings	Basson	13,158	-	-	13,158	-	-	-
Spar	Hook	1,838	1,764	96%	3,602	-	-	96%
Truworths	Mark	3,712	6,700	180%	10,412	-	-	180%
Woolworths Holdings	Susman	3,709	-	-	3,709	-	-	-
Transport		***2,933***	***2,321***	***64%***	***4,922***	***2,105***	***60%***	***124%***
1time Holdings	Orsmond	1,440	-	-	1,440	-	-	-
Cargo Carriers	Bolton	1,857	155	8%	2,012	-	-	8%
Comair	Novick & Venter	3,052	2,700	88%	5,752	1,469	48%	137%
Grindrod	Olivier	3,360	3,706	110%	7,066	-	-	110%
Imperial Holdings	Brody	3,787	1,700	45%	5,487	4,666	123%	168%
Super Group	Lipschitz	4,871	5,062	104%	9,933	-	-	104%
Trencor	van der Merwe	2,166	600	28%	2,766	179	8%	36%
Average		4,336	4,976	132%	8,752	10,745	308%	265%

APPENDIX 7: Company performance 2007 - 2008

Company and sector	Year end	Market Cap 1 June 2009 (R 'm)	NPBT 2007 (R 'm)	NPBT 2008 (R 'm)	Percentage change in NPBT
Banks					
Absa Group	2008/12/31	69,534	14,077	15,209	8.0%
African Bank Investments	2008/09/30	21,471	2,129	2,492	17.1%
Firstrand Banking Group	2008/06/30	78,085	7,193	8,895	23.7%
Investec Bank	2008/03/31	12,234	6,545	8,019	22.5%
Nedbank Group	2008/12/31	44,624	8,984	8,872	-1.2%
Standard Bank	2008/12/31	132,736	22,804	21,454	-5.9%
Construction					
Aveng	2008/06/30	14,626	7,954	3,321	-58.2%
Basil Read	2008/12/31	1,194	164	296	80.5%
Cashbuild	2008/06/30	1,801	192	245	27.6%
Group Five	2008/06/30	4,075	373	666	78.6%
Murray & Roberts	2008/06/30	17,026	1,284	2,558	99.2%
Pretoria Portland Cement Company	2008/09/30	17,790	2,194	2,266	3.3%
WBHO	2008/06/30	7,290	446	1,081	142.4%
Diversified Holdings					
Barloworld Limited	2008/09/30	9,019	2,031	1,860	-8.4%
Bidvest	2008/06/30	32,122	3,820	4,535	18.7%
Hosken Consolidated Inv.	2008/03/31	5,719	1,299	2,724	109.7%
Remgro	2008/03/31	32,214	7,127	10,053	41.1%
RMB Holdings	2008/06/30	27,217	4,710	4,640	-1.5%
Seardel Limited	2008/03/31	254	52	-256	
Steinhoff	2008/06/30	18,076	2,615	3,802	45.4%
Electronics					
Altron	2008/02/29	2,536	1,570	1,944	23.8%
Reunert	2008/09/30	8,669	926	1,634	76.5%
Financial					
Coronation Fund Managers	2008/09/30	1,718	481	271	-43.7%
Liberty Life	2008/12/31	17,018	5,382	2,398	-55.4%
Sanlam	2008/12/31	37,260	9,040	3,533	-60.9%
Food & Beverage					
Anglo-Vaal Industries	2008/06/30	6,065	692	766	10.7%
Crookes Brothers Limited	2008/03/31	570	42	59	40.5%
Distell	2008/06/30	10,555	1,212	1,378	13.7%
Illovo Sugar	2008/03/31	9,229	942	894	-5.1%
SAB Miller (plc)	2008/03/31	273,312	19,796	23,272	17.6%
Tiger Brands	2008/09/30	25,086	2,468	2,660	7.8%
Tongaat Hullett	2008/12/31	7,773	3,731	892	-76.1%
Health					
Aspen	2008/06/30	18,059	1,009	1,208	19.7%
Discovery-Health	2008/06/30	16,575	1,458	1,664	14.1%
Medi-Clinic	2008/03/31	11,742	963	1,085	12.7%
Network Healthcare Holdings	2008/09/30	14,584	887	945	6.5%
Industrial & Chemicals					
AECI	2008/12/31	5,497	646	711	10.1%

Company and sector	Year end	Market Cap 1 June 2009 (R 'm)	NPBT 2007 (R 'm)	NPBT 2008 (R 'm)	Percentage change in NPBT
Afrox Oxygen	2008/12/31	5,828	750	634	-15.5%
Arcelor Mittal SA	2008/12/31	45,912	8,171	13,246	62.1%
Denel	2008/03/31	-	-501	-316	
Invicta Holdings Limited	2008/03/31	1,665	256	364	42.3%
Sasol	2008/06/30	195,632	25,703	33,657	30.9%
Information & Telecoms					
Didata	2008/09/30	12,744	1,075	1,421	32.2%
MTN	2008/12/31	220,784	19,707	28,490	44.6%
Telkom Limited	2008/03/31	19,373	13,580	12,876	-5.2%
Media					
Caxton	2008/06/30	5,601	830	876	5.5%
Naspers	2008/03/31	79,689	3,244	5,274	62.6%
Mining					
African Rainbow Minerals	2008/06/30	30,015	2,192	7,031	220.8%
Anglo American plc	2008/12/31	335,060	62,188	70,882	14.0%
Anglo Platinum	2008/12/30	139,892	19,323	19,129	-1.0%
AngloGold Ashanti	2008/12/31	118,319	-3,320	-18,058	
BHP Billiton plc	2008/06/30	457,380	138,326	171,191	23.8%
Gold Fields	2008/06/30	75,363	4,224	6,644	57.3%
Impala Platinum	2008/06/30	126,316	11,220	22,817	103.4%
Lonmin plc	2008/09/30	38,656	5,034	5,804	15.3%
Trans-Hex	2008/03/30	170	126	46	-63.5%
Paper & Packaging					
Mondi	2008/12/31	5,435	517	1,018	96.9%
Nampak	2008/09/30	9,346	1,442	698	-51.6%
Sappi	2008/09/30	15,496	1,786	1,396	-21.8%
Retail					
Foschini	2008/03/31	12,001	1,782	1,786	0.2%
Pick 'n Pay Stores	2008/02/29	17,811	1,205	1,494	24.0%
Shoprite Holdings	2008/06/30	30,538	1,708	2,461	44.1%
Spar	2008/09/30	9,694	795	999	25.7%
Truworths	2008/06/29	17,546	1,617	1,880	16.3%
Woolworths Holdings	2008/06/30	10,304	1,521	1,504	-1.1%
Transport					
1time Holdings	2008/12/31	90	36	-11	
Cargo Carriers	2008/02/29	161	39	50	28.2%
Comair	2008/06/30	840	157	103	-34.4%
Grindrod	2008/12/31	7,925	1,302	2,512	92.9%
Imperial Holdings	2008/06/30	13,046	3,565	2,114	-40.7%
Super Group	2008/06/30	338	500	48	-90.3%
Trencor	2008/12/31	3,561	955	1,126	17.9%
Total Net Profit for 71 Companies (R million)			478,293	549,233	14.8%
Average Net Profit			6, 643	7, 628	14.8%

Notes: Blanks indicate that either in one or both years the company experienced a loss and therefore the percentage increase in profit could not be calculated. Negative percentages indicate that the company did make a net profit before tax in 2008; however, the profit was less than that in 2007 by the percentage reported.

Consequences of the Global Economic Crisis

Early reflections for South Africa

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April 2009

INTRODUCTION

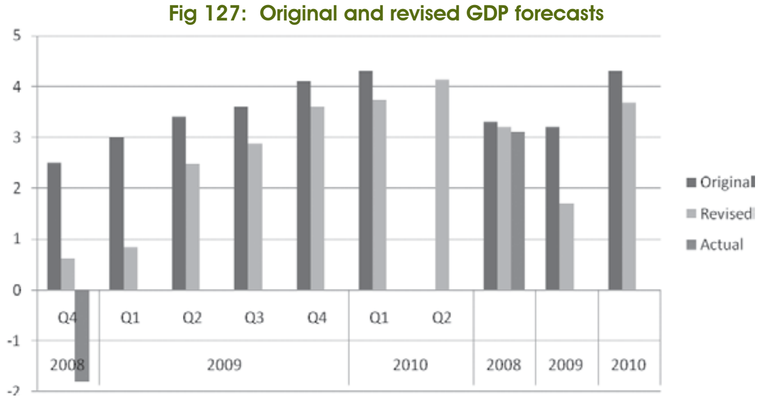
This report aims to understand, firstly through descriptive data and secondly through recent and admittedly incomplete evidence, the impact of the global economic crisis on the South African economy. It should be noted however, that given the paucity of evidence and data, the predictive power of the analysis is to be viewed as indicative at best. To this end we aim to be severely succinct in what follows and the reporting-style format reflects this. The report has three broad sections: Section II provides a macroeconomic review assessing the domestic impact of the global crisis through a series of relevant indicators. Section III assesses the short-run labour market consequences of the crisis, whilst also attempting a very simple projection of labour demand outcomes. Section IV considers the implications of such a challenging economic environment for skills development and training at the firm level, where Section V concludes.

(1) ANATOMY OF A CRISIS: A BRIEF OVERVIEW

The figure below presents forecasted GDP estimates for the short to medium-term, sourced from the June and November 2008 Reuter's Surveys of Economists. The survey polls leading economists both in South Africa and abroad on their projections of key macroeconomic indicators over a seven-quarter period. Importantly then, we are able to observe how the forecasted estimates for GDP were revised by these economists after the onset of the global financial crisis, since both the original and revised estimates for GDP are included. Of interest is the fact that the original pre-crisis estimates clearly project an increasing GDP for all seven quarters, while the revised estimates of GDP post-crisis were revised significantly downwards across the seven quarters.

When actual GDP figures for quarter four of 2008 are noted, it is evident that the revised estimates for GDP completely underestimated the effects of the global financial crisis on the South African economy. The decline in GDP of -1.8% reported for the last quarter of 2008, therefore signals the high probability of a pending economic recession in South Africa. Certainly we are entering a period of low and possibly multi-quarter negative economic growth – for the first time since democracy.

Fig 127: Original and revised GDP forecasts



Source: Reuters Surveys of Economists, July & November 2008 & StatsSA 2009

[1] This report was first prepared for JIPSA

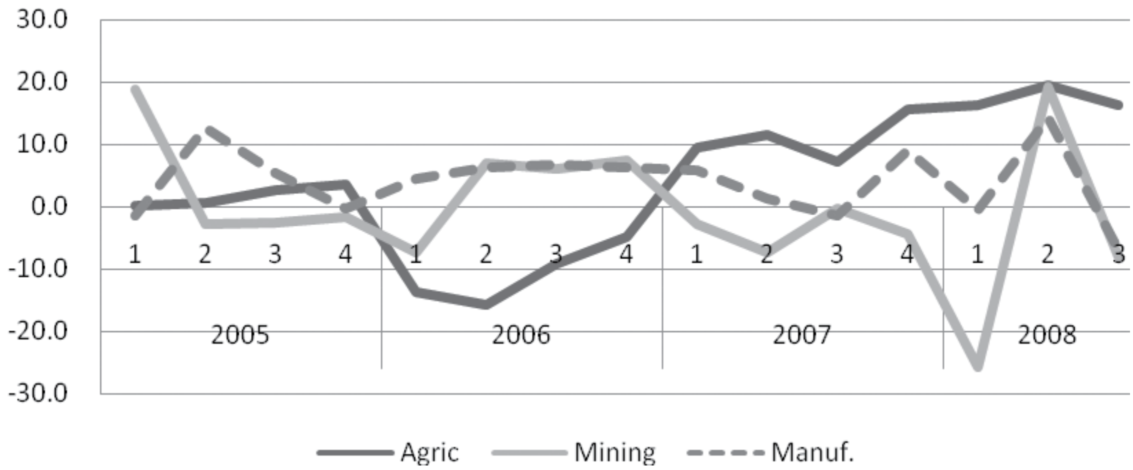
Ultimately then, as noted above the GDP growth forecast for South Africa has been revised significantly downwards since the onset of the global financial crisis. The estimates for the seven quarters indicate that for every quarter, post the economic crisis, the revised estimates are lower than the original prediction by this sample of economists. In addition, when the actual estimates for the fourth quarter of 2008 are included, it is clear that even the revised Reuters poll significantly deviated from the reported growth rate. While the growth prospects for South Africa was expected to be weaker than previous years, these recent growth forecast do not bode well for South Africa's short-term growth performance.

The figures below and on the next page illustrate how the primary, secondary, and tertiary sectors have performed. The estimates provided show of course that behind the aggregate estimates of growth, there remains significant sectoral variation. Our data reveals that while most sectors have seen no growth gains since the global crisis, a few sectors such as agriculture and construction have maintained their output performance. Indeed it is possible that these sectors may be viewed as the 'output anchors' around which the country's growth performance over the next 12 – 18 months will depend.

The figure below provides quarterly growth figures for agriculture, mining and manufacturing. It should be very clear that from the second quarter of 2008, manufacturing and mining experienced a dramatic decline in output performance. Of course, the most visible casualty within the manufacturing has been the motor industry. It should be remembered however firms across the motor industry value added chain have also been deleteriously affected by the decrease in output performance. Vehicle sales have of course reflected this sharp decline in fortunes since January 2009: Fewer than 60,000 vehicles were sold for January and February, while over 90,000 were sold in the same period of 2008. This translates into a decline in overall vehicle sales of 39.9 percent. In addition to the domestic collapse, there has been a decrease in demand for vehicles and commodities from South Africa's major trading partners. This directly affected the output performance of both the mining and manufacturing Industries. It appears as if the mining industry has had an almost immediate reaction to the global financial crisis, as global demand from growing, resource-hungry economies halted sharply.

The decline in output performance in the agricultural industry was less dramatic and unlike its counterparts its output performance has in fact strengthened significantly since the second quarter of 2006.

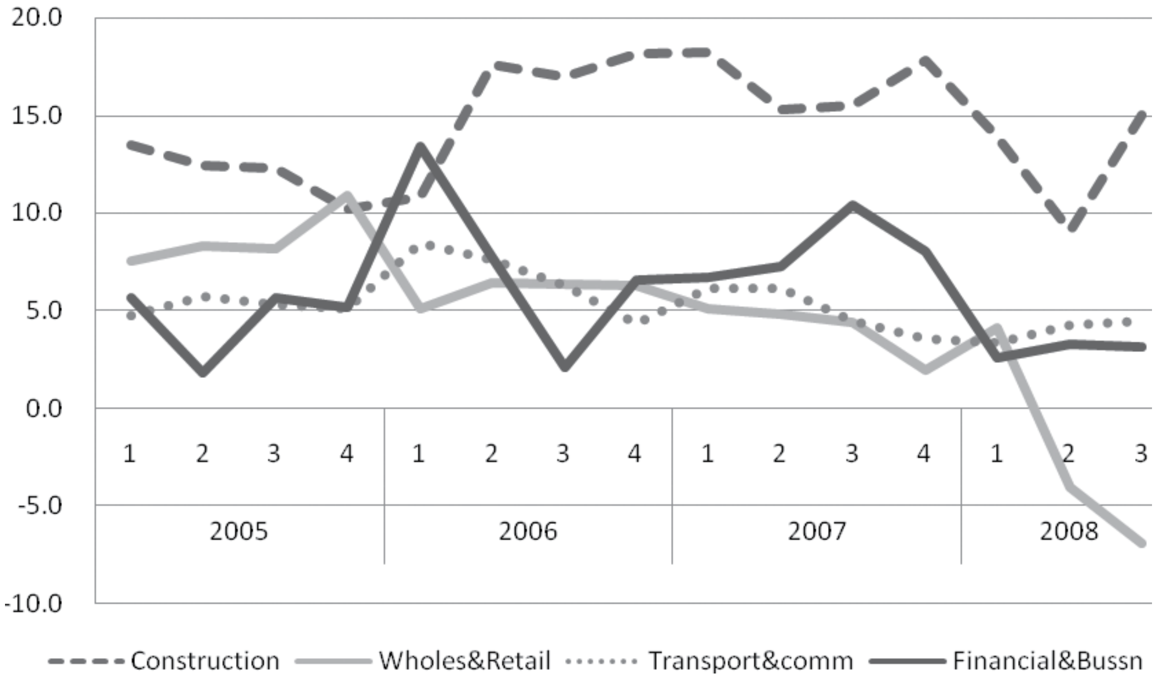
Fig 128: Primary sector and manufacturing output performance: 2005-08



Source: StatsSA; Author's own calculations

The services sectors output performance has in general been consistently declining, with Wholesale and Retail being the industry experiencing the most dramatic decrease. Whilst maintaining an output growth in the 3 – 5% range for about eight quarters, 2008 witnessed a sharp decline in the wholesale and retail trade growth. The Financial and Business Industry in turn also performed well in 2007, but then had a flat output performance throughout 2008. Despite being able to avert the worst excesses of the banking crisis then, the financial and business services sector has managed only modest growth in 2008. As noted above it has been the construction sector which has had the strongest output performance when compared to the Services Sector. This outperformance can be attributed to Government's investment in infrastructure such as the Gautrain and the construction of the 2010 World Cup Stadia across South Africa. Indeed this almost fortuitous counter-cyclical fiscal expenditure has served to raise average national growth levels. Moreover in the third quarter of 2008, construction grew by 15 percent on an annualised basis. It should be noted that the construction Industry is faced with a more stringent domestic credit market. Banking behaviour towards the construction industry, particularly those firms involved in the residential sector, has become more risk averse.

Fig 129: Construction and services sectors' output performance: 2005-08

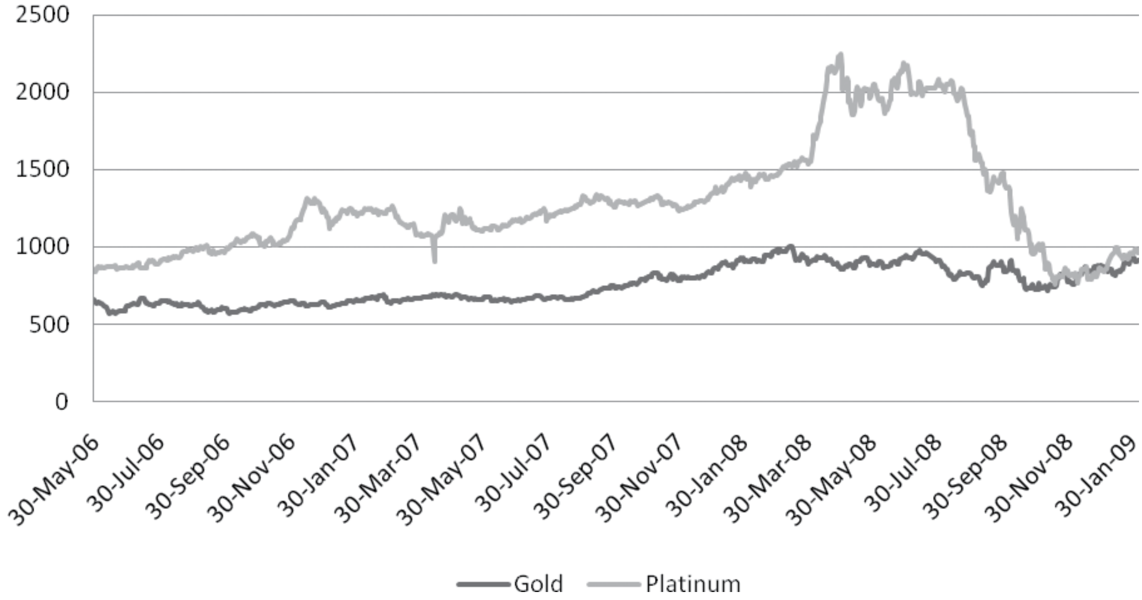


Source: StatsSA; Author's own calculations

Given South Africa's dependence on natural resources as a source of export revenue, the severe decline in demand for commodities as a consequence of the global economic crisis is important to assess. Declining world commodity prices, assuming a constant normal exchange rate, can of course potentially test the current account balance. We consider then, with the above in mind, the world US dollar-denominated prices of gold and platinum and examine how the global recession may have affected this sub-sector of the mining industry.

In terms of the data below, the gold price has remained fairly stable through the crisis. Gold is seen as a safe haven by investors, and thus the US-dollar price has remained relatively stable over the 2006 -2009 period. Early evidence also indicates that apart from holding its own, the nominal US-dollar gold price has risen during 2009. This is partly a function of investors searching for the safer haven of gold in the face of a volatile and weakening dollar, together and a general uncertainty around US treasury bonds as a haven amidst a rising US deficit. The search for alternative investment havens, has witnessed the gold price steadily approaching the $1000 per ounce mark. For South Africa then, the rising gold price amidst a depreciating Rand remains an important source of revenue to finance import demand.

Fig 130: Platinum and gold price shifts, monthly, us dollar nominal

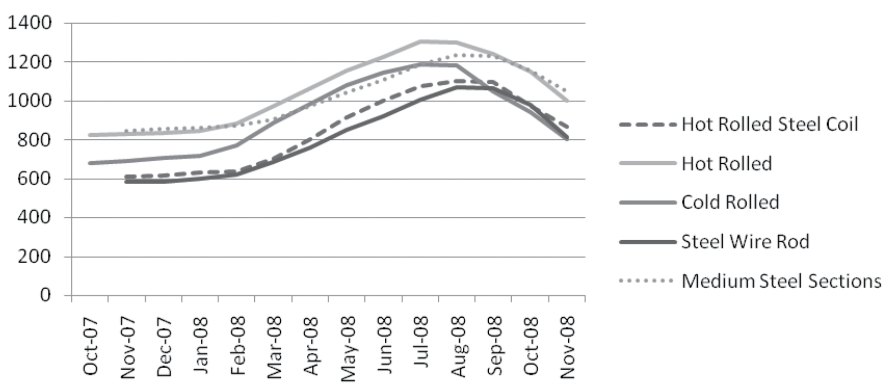


Source: McGregor BFA, 2009

Platinum is mostly used in the production of automotives and the jewellery industry, and since both these industries have been negatively affected by the global economic crisis, the global platinum price has collapsed. The decline in the price of platinum (figure above) has been dramatic. It dropped very sharply from a peak of over $2000 per ounce in May 2008, to just under $1000 per ounce in February 2009. This represents a decrease of 57 percent in less than twelve months. It should be noted that the weakened Rand, ceteris paribus, should ameliorate some of the erosion in foreign exchange revenues associated with this freefall in the platinum price. Indeed it is ironic how foolhardy the claim amongst some commentators that 'platinum was the new gold' now appears.

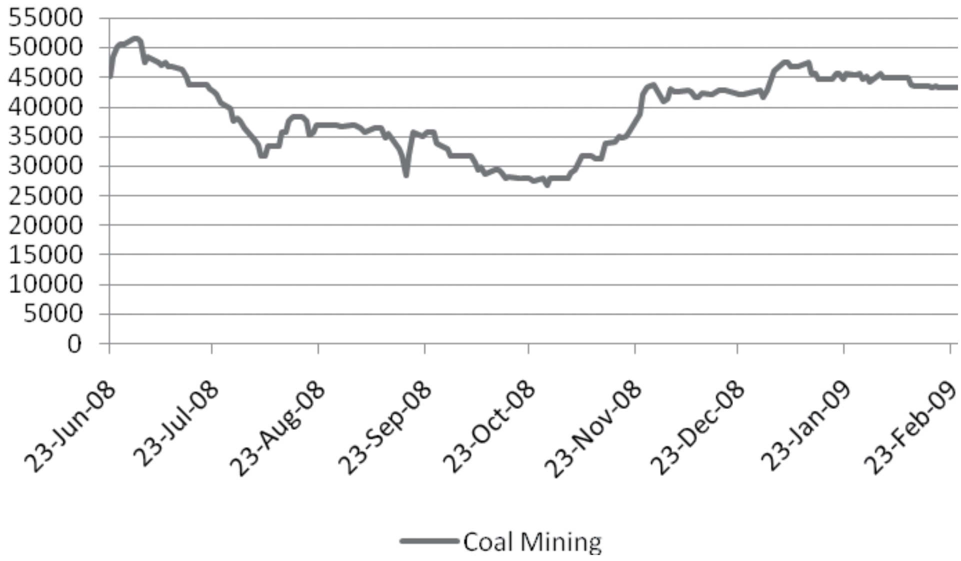
Steel and coal are two additional key commodities which have experienced a significant decline in price. The figure below shows the price of steel from October 2007 to October 2008, and clearly shows that the price of steel increased steadily throughout 2007, peaking in July 2008 and then declined sharply for the rest of the period. The coal index (figure next page) for the period June 2008 to February 2009, displays a similar trend as the price of steel. The index peaked at just over 50 000 units in June 2008, and quite similarly to both the price of steel and platinum, reached its lowest point at almost 28 000 units in October 2008, a decline of almost 45 percent. The steady decrease in the price of platinum, steel and the coal index all reflect reduced demand in these commodities as growth has slowed down internationally.

Fig 131: World steel prices (us$s), 2007-2008



Source: Data based on information provided at www.steelonthenet.com

Fig 132: Coal index, South Africa 2008 - 2009



Source: McGregor BFA, 2009

The decline in both the demand and price for steel internationally will of course impact on expected earnings of the firms in this sector. It is also probable that any planned capital projects and therefore expenditure will be decreased drastically or postponed until there are more favourable economic conditions for this sector. While the weakened Rand may again have mitigated impacts of the decline in price, firms will still operate in a more cautionary manner in the foreseeable future.

The real economy consequences of the downward adjustments in resource prices such as platinum and steel have their most powerful expression of course, in the almost instantaneous reductions in employment. Jobs are often the first casualty in commodity cycle downturns, and already the evidence is deeply worrying.

Evidence of the decline in employment in the mining sector can be seen quite clearly in Table 1, which shows a significant drop in employment of 27.4%, over the 12 month period 2007-8 – representing a total of 118,603 jobs.

Table 33: Employment in the platinum and gold sector

Mining	2007	Share of Total Mining Employment	2008	Share of Total Mining Employment	Percentage Change
Platinum	140,765	32.6%	129,258	41.2%	-8.2%
Gold	180,764	41.8%	77,506	24.7%	-57.1%
Total Employment (Mining)	432,183		313,580		-27.4%

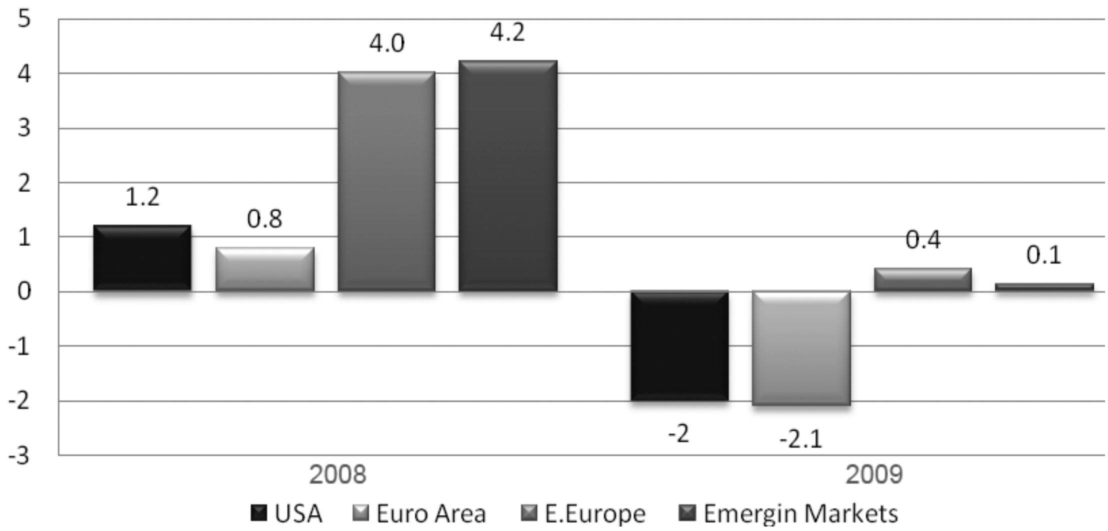
Source: Labour Force Surveys, September 2007, Quarterly Labour Survey, September 2008; Author's own calculations

It is important to note that the employment figure for platinum miners also include all non-ferrous metal ores such as chrome, copper, manganese and other metal ore. The employment figure for platinum miners is thus overrepresented and should be used as an indicative number at best. In turn though, all the most recent retrenchments noted in the media together with the delays in new ventures also represent significant employment shocks emanating from the platinum industry. Table 1 however does show an undeniable decline in the employment numbers for the mining industry generally and for the platinum and gold sub-sectors specifically. The gold mining employment declines are all the more worrying as they have occurred amidst a fairly steady gold price.

(2) GLOBAL EVENTS AND LOCAL REAL EFFECTS

There has to some extent, in media and possibly academic circles, been a growing view that China, India and other emerging markets had a growth dynamic and trajectory which existed independently of the industrialised world. Indeed data appeared to confirm this view as advanced economies growth stagnated against rapid GDP growth in numerous emerging markets.

Fig 133: GDP Forecasts: 2008 & 2009, by region

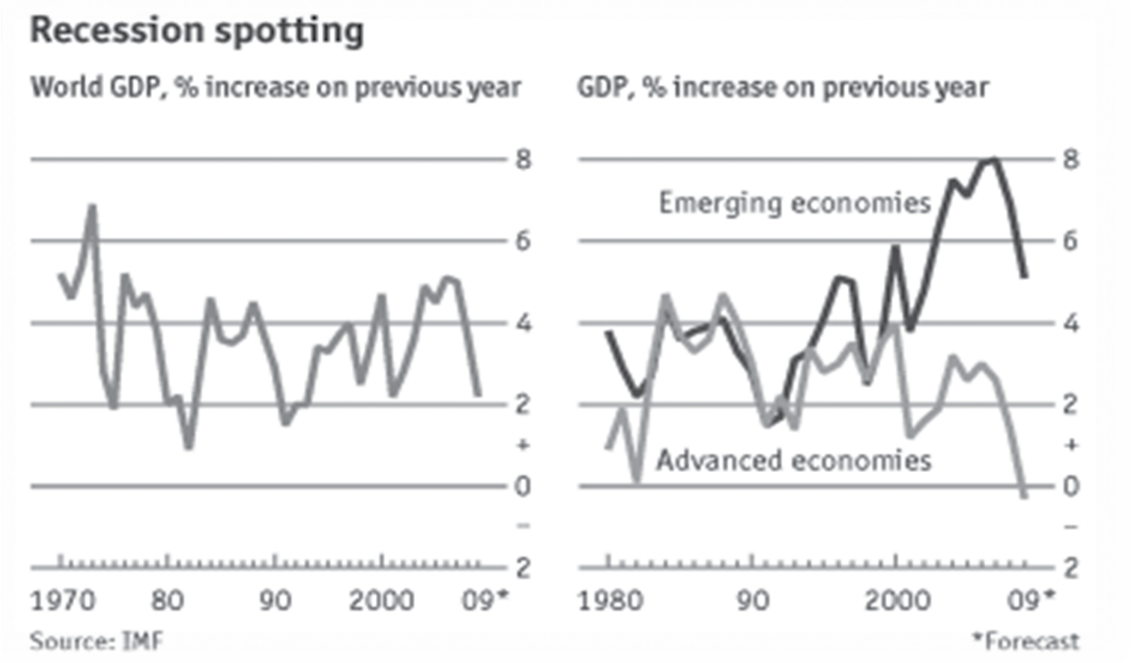


Source: Datastream 2009

The figure above thus, at first glance appears to reinforce this view. The data shows GDP projected for 2009 for the various markets. While Eastern Europe and the emerging markets are expected to maintain positive GDP growth rates, albeit at a slower pace than the previous year, the USA and the Euro Area are projected to be in a recession. This forecast shows that the developed countries are expected to take the brunt of the effects of the financial crisis, with a possible case to be made for this notion that emerging markets have become 'decoupled' from the industrialised world.

The figure on the next page however, challenges this view in a very powerful manner. The graph is visually striking. While the weighted average of emerging economy GDP far outstrips those of advanced economies, they are highly correlated. A fillip to growth in the industrialised world in early 2000 resulted in rising growth rates in the emerging markets. Of course, this data simply reinforces the notion of how interdependent and interlinked economies in the developed and developing world have become. Any view therefore that somehow the global recession will not have a negative impact on emerging markets (including South Africa) through this 'decoupling' notion is simply erroneous.

Fig 134: Evidence of decoupling between advanced and emerging markets

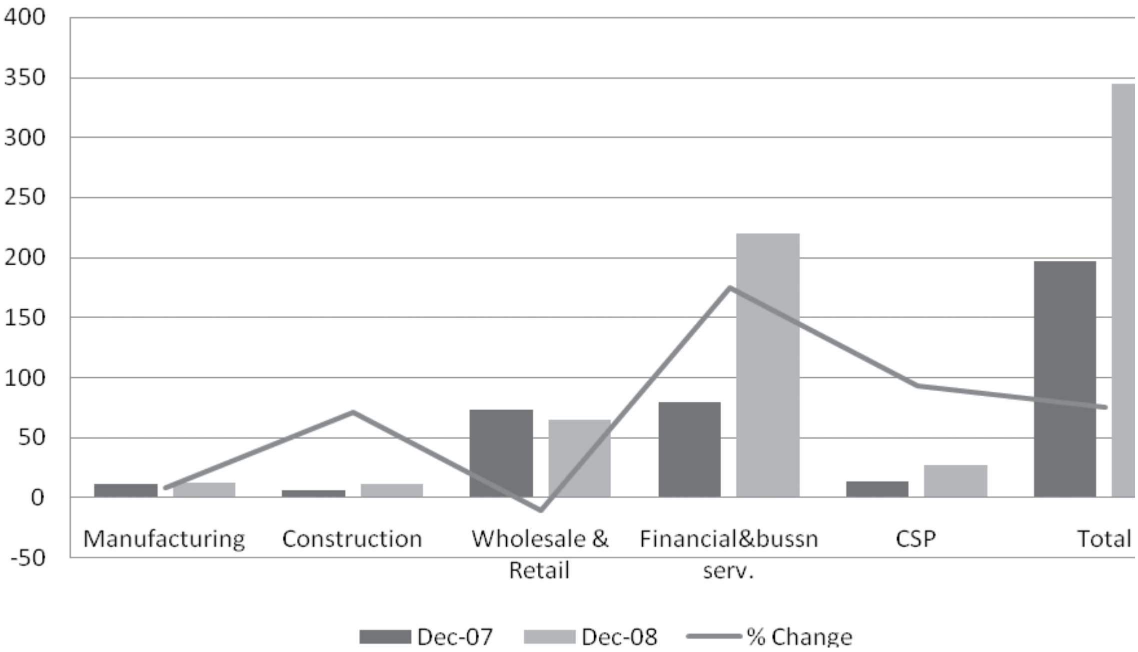


Source: The Economist, November 2008

(3) THE SMALL BUSINESS IMPACT: ESTIMATES OF RECENT LIQUIDATIONS

Another key early indicator of the impact of the global crisis on the domestic economy would be the change in the number of voluntary and involuntary liquidations. These data of course represent a window into the supply-side response to the severe and fairly rapid decline in economic growth.

Fig 135: Number of liquidations by sector, all companies (year on year)

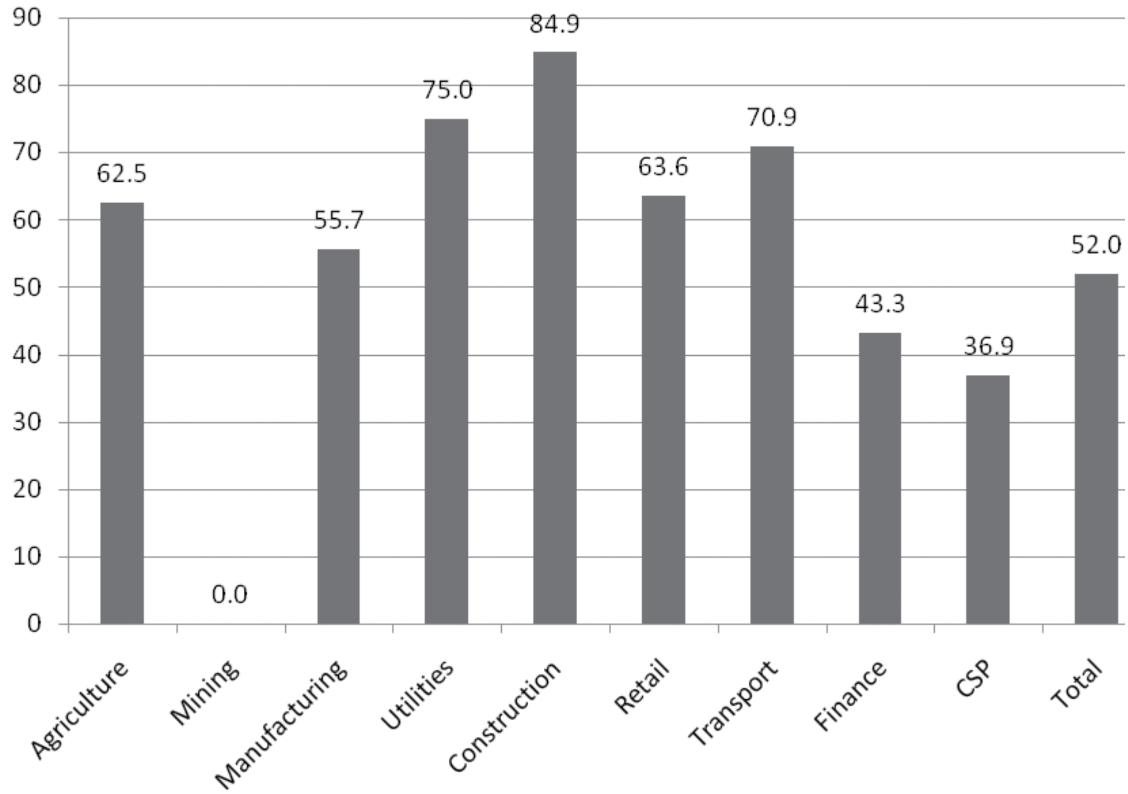


Source: StatsSA; Author's own calculations

The figure on the previous page therefore shows the total number of liquidations by sector for the period December 2007 to December 2008. The aggregate data suggests that there has been a 75 percent increase in the total number of liquidations between December 2007 and December 2008 in the South African economy. A disproportionate number of these liquidations occurred in the Financial and Business Services Sector, with 228 out of 347 liquidations attributed to this industry. Interestingly the data for wholesale and retail trade suggest a decrease in liquidations, although other industries captured in the CSP sector did see a significant rise in liquidations.

Aggregate trends and average values often mask the details of additional, and possibly more important underlying economic outcomes or events. This is clearly seen by the total share of the number of liquidations for closed corporations in the figure below. The data therefore illustrates that closed corporations are disproportionately affected, and in the majority of the sectors we find that they bear the brunt of the number of liquidations which have occurred for the period under consideration.

Fig 136: Share of closed corp. liquidations, by sector: 2007-08



Source: StatsSA; Author's own calculations

Simply put, this data suggests that it is small businesses and not large companies who are currently disproportionately affected by the economic downturn. Specifically the data suggests that the share of liquidations of Closed Corporations in the Construction, Utilities and Transport Industries has been very high, with 84.9 percent; 75.0 percent and 70.9 percent of all liquidations in the respective industries attributed to these small and medium enterprises. Indeed it is ironic that in the clamour for bailout funds from industry associations, this hard-hit segment of the economy has not been mentioned or specifically isolated as a possible beneficiary.

The figure above also reveals that while the Banking Sector might appear to be stable, it is evident in fact that this may be only true for the larger financial institutions which remain relatively unscathed by the growth slowdown in the South African economy. Smaller financial institutions on the other hand, are not as lucky, as 43 percent of liquidations which have occurred in the Finance and Businesses Services Sector are closed corporations. Closed corporations operating in the Wholesale and Retail Industry are facing a similar environment as those in the Finance and Businesses Services Sector.

Section II showed through a selection of indicators, how the global economic recession would affect the South African economy. Importantly, the forecasted GDP estimates showed that the global financial crisis, will witness a noticeable contraction in GDP growth for the next seven quarters. While the revised estimates predicted a significant reduction for the GDP estimates, in reality, the actual GDP estimate for the one quarter we have, was much worse than the revised forecasted estimates foretold. Underlying this aggregate growth is of course the performance of the various sectors. The data revealed that there was significant sectoral variation; with some industries such as mining and manufacturing underperforming while other industries such as agriculture and construction acting to support a struggling economy.

The contraction in the economy is not unique to South Africa, as economies across the globe are experiencing a slowdown in growth in one form or the other, with advanced economies being hit particularly hard by the global financial crisis. It was first believed that the emerging markets had their own dynamic growth path and would not be affected by the global economic crisis. This notion is strongly negated evidence indicates how highly correlated advanced economies and emerging markets are.

In an attempt to assess the micro-economic supply-side effects of the global economic crisis in South Africa, we evaluated the total number of liquidations that occurred domestically for the period 2007-2008. The data reflects that there has been a 75 percent increase in liquidations for the period, with the financial and business services sector bearing the brunt of the downturn in the economy. In addition to this, it appears as if it is SME's, across all sectors that have been disproportionately affected.

(4) THE LABOUR MARKET IMPACT OF THE CRISIS

Income generation is central to the poverty alleviation goals of the present government, and higher economic growth remains the dominant factor in generating enhanced employment opportunities available in the domestic economy. The slowdown in economic growth within South Africa suggests that there is a strong possibility that there will be a significant decline in both the number of employment opportunities available, and possibly the number of currently employed individuals within the labour market.

Table 34: Employment shifts by main sector ('000's), 2006-08

Industry	2006	2007	Percentage Change (06-07)	Q3 2008	Percentage Change (07-08)
Agric.	1,088	1,041	**-4.30%**	767	-26.32%
Mining	398	432	8.50%	314	-27.41%
Manuf.	1,737	1,757	1.20%	1,918	9.14%
Utilities	119	98	**-17.60%**	99	0.52%
Construction	1,024	1,054	2.90%	1,107	4.99%
Retail Trade	3,055	2,936	**-3.90%**	3,179	8.27%
Transport	611	696	13.90%	770	10.59%
Financial	1,309	1,482	13.20%	1,634	10.23%
CS P	2,319	2,560	10.40%	2,606	1.78%
Private Hhs	1,108	1,196	7.90%	1,274	6.54%
Total	12,801	13,307	4.00%	13,669	2.72%

Source: Labour Force Surveys, September 2006 & 2007, Quarterly Labour Survey, September 2008; Author's own calculations.

The official data, in the current economic climate, is misleading and it is not useful in providing predictive information on employment losses. The Quarterly Employment Survey data is not much better as it reveals a fairly steady employment creation. The data presented in Table 2 show that while most sectors experienced positive employment growth, it was not the general trend across the various industries. Sectors such as the Agricultural, Utilities and Retail Trade encountered negative employment growth between 2006 and 2007.

Whilst the agricultural sector has demonstrated a strong output growth, we do not observe a similar trend in employment, since Table 2 reflects a steady decline in employment for the agricultural sector between 2006 and 2008. Of special interest is the significant decline in employment in the mining industry. The negative trend of employment described for the mining industry clearly shows that this industry was the first sector to be significantly affected by the global economic crisis. A likely explanation for the almost immediate effects of the global economic crisis being felt by the mining industry could be due to the sudden decline in demand and subsequent decline in global prices of commodities. Other industries such as manufacturing, wholesale and retail trade, financial and business services sectors ostensibly do not reflect a similar decline in employment figures, possibly indicating that later quarterly results will reveal this lagged effect from the decline in demand and GDP.

Table 3 shows the GDP 'elasticity' of total employment for the period 2000 – 2005. The GDP 'elasticity' of total employment is an indicator which demonstrates how sensitive employment shifts are to changes in GDP. This indicator is particularly useful in the current context as it gives one an idea of how employment will respond in the current low growth environment, on the basis of recent historical evidence.

Table 35: Simple GDP 'elasticity' of total employment 2000 - 2005

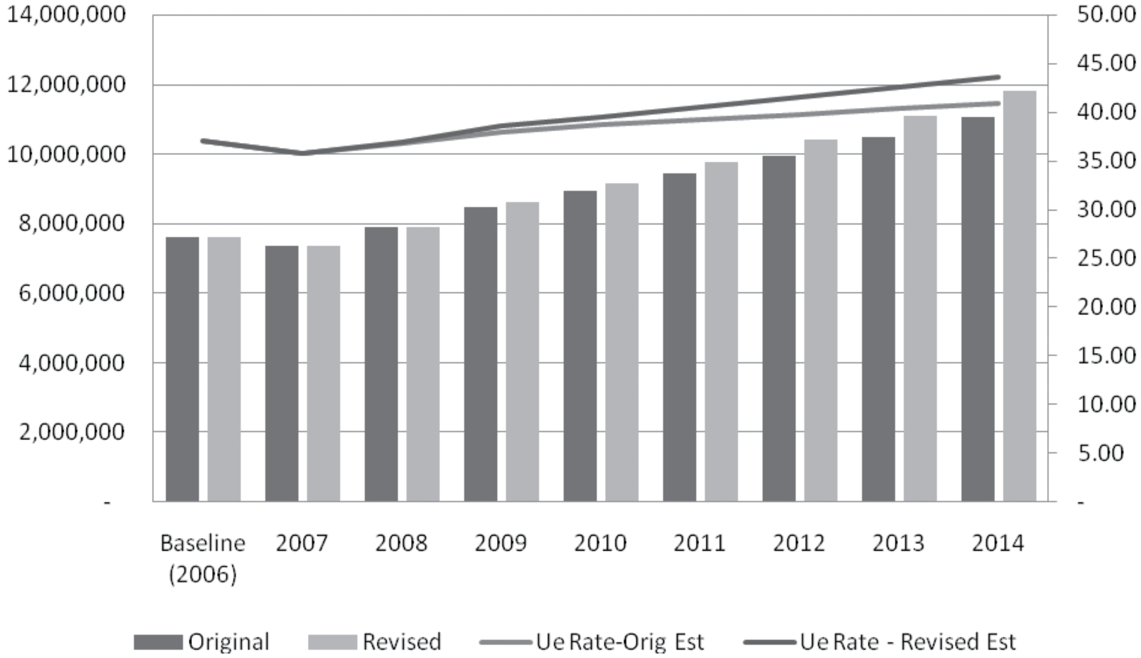
Province	Percentage Growth In: Total Employment	GDP(R)	Simple Employment Elasticity
Gauteng	2.83	4.30	0.66
Mpumalanga	-1.09	3.10	-0.35
Limpopo	-1.02	4.30	-0.24
South Africa	**2.50**	**4.00**	**0.63**

Source: Labour Force Surveys, September 2006 & 2007; Author's own calculations

The data therefore shows that the economy's 2.5% annual growth in employment in the five years since 2000 was supported by a growth rate of 4% per annum. South Africa's output-employment elasticity is healthy by middle-income standards, and it suggests that the economy is able to match positive growth rates with significant employment opportunities. In a similar vein though, lower growth rates will mean a substantial contraction in projected employment growth. Simply put, declining output growth, given that almost always in economies, output-employment elasticity is positive- must translate into a decline in employment levels. Whilst this effect may be lagged, job losses will loom large as possibly the most worrying (and in a positive sense, urgent) outcome for South Africa emanating from this global economic crisis.

In attempting to project, very simplistically, how lower growth rates will impact on unemployment levels in the long-run we provide a basic set of annual projections over a 6 year period. We assume that the labour force will grow annually at 1.68% as a response to the growth projections provided above. In turn we assume an output employment elasticity of 0.63. These three variables then, the GDP projections, the output-employment elasticity and labour force projections, enable us to provide a very basic projection of the impact on unemployment from this deterioration in economic growth, over the 2009-14 period.

Fig 137: Impact on unemployment of the crisis: a cheap crystal ball



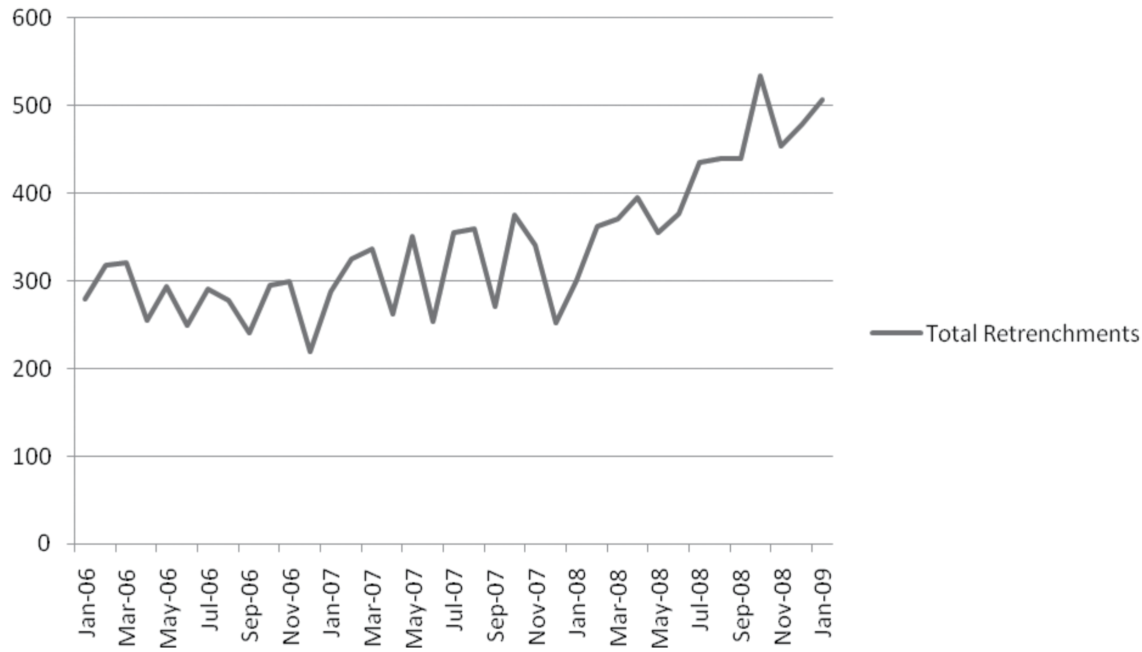
Source: StatsSA, Reuters Economic Poll of Economist & Author's own calculations

The figure above presents a very simple calibration of these outcomes. Comparing the two unemployment outcomes then it is clear, that with the lower growth rate scenario, South Africa's unemployment figures and rates are expected to increase substantially. Additionally, under the lower growth rate scenario, in the long term the two unemployment rates move increasingly further apart showing that the lower growth rate will affect both present and future levels of unemployment. For example, the original unemployment figures for 2009 is expected to be 8.456 million while the revised estimated for unemployment is 8.600 million people, an increase of 1.7 percent in the unemployment figures for 2009. In absolute terms as well, the data here suggests that the long-run cost of this domestic economic recession may lie in the fact that average broad unemployment numbers will increase from 9.15 million in 2010 to 11.80 million in 2014. Put differently, based on this lower growth projection, the unemployment rate by the end of the period could be as high as 45%.

(5) RETRENCHMENTS AS SHORT-RUN JOB LOSS INDICATOR

Retrenchment data, based on firm responses, represent possibly the earliest set of indicators (relative for example to the LFS or QES) of the labour market impact of the recession. We utilise therefore, data from the CCMA's CMS data which reports all Section 189 retrenchments, brought before the CCMA. It is crucial to note however, that given the fact that these layoffs are only those brought through the CCMA, the figures are an under-estimates of the true level of retrenchments in the South African economy.

Fig 138: Total s189 retrenchments



Source: CCMA Case Management System (CMS) Data, 2006-2009.

The figure above therefore provides data on monthly retrenchments since January 2006. Total retrenchments have remained fairly stable, with approximately 220 to 375 retrenchments per month occurring for the period January 2006-December 2007. January 2008 however marked a step-change in retrenchments as the 12 month period, thereafter witnessed a steady monthly rise in the number of retrenchments.

Table 4 presents the shares of the total retrenchments for each year from January 2006 to January 2009, to indicate this changing labour market environment more accurately.

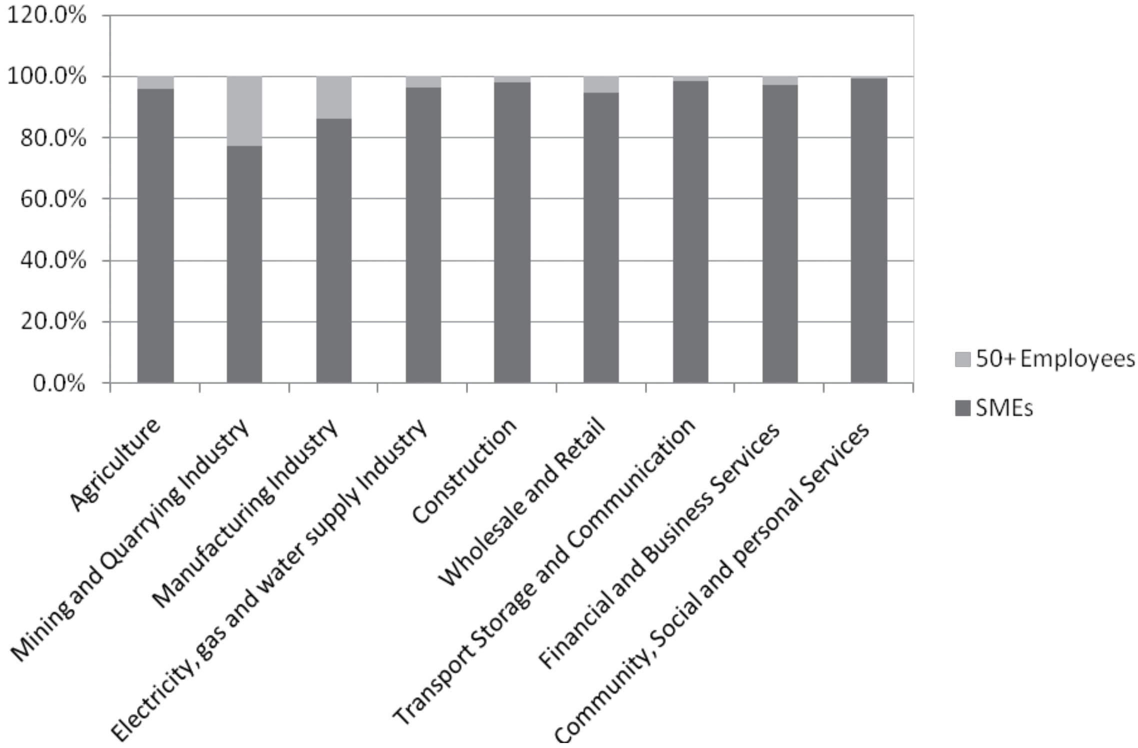
Table 36: Share of total retrenchments by year

Year	Share of Retrenchments
2006	27.2%
2007	30.8%
Feb 08/Jan 09	42.0%
Total Retrenchments 06-09	100.0%

CCMA Case Management System (CMS) Data, 2006-2009

The table clearly shows that 42.0 percent of total retrenchments for the period January 2006 to January 2009 occurred during the period of February 2008 to January 2009. While, the share of retrenchments has increased year on year, possibly indicating a weakening economy or a slowdown in economic growth within South Africa, the effect of the global economic crisis can unambiguously be seen by the sizeable share of total retrenchments that occurred in the 2008/09 period. The data provides preliminary evidence of the effect of the global economic crisis, on current employment levels. Ultimately though, it is clear that close to half of total retrenchments undertaken through the CCMA, numbering 5.448 jobs, occurred in the 12 month period, as the world economy steadily slipped into a crisis.

Fig 139: Share of retrenchments for SME's and companies with more than fifty employees, by sector



Source: CCMA Case Management System (CMS) Data, 2006-2009.

The figure above shows how retrenchments are differentiated according to small and medium enterprises (SME) and companies with more than fifty employees. A similar trend is found with the retrenchment of staff and the liquidation of companies, in that it is the smaller companies which are disproportionately absorbing the impact of the recession. It is apparent that across sectors, it is SMEs who are burdened with most of the affects of the recession, with the exception of the mining and the manufacturing industry, since a significant portion of the retrenchments originate from SMEs. Given those retrenchments not managed through the CCMA processes however, it is entirely possible that large company retrenchments are not contained in the data here. Ultimately though, it should be evident that a close analysis, by necessity on a monthly basis, of retrenchments remains essential for tracking, analysing and appreciating the labour market impact of this crisis.

(6) IMPLICATIONS OF THE CRISIS FOR SKILLS DEVELOPMENT AND TRAINING

One of the key dangers with the downturn of the economy is that firms may rapidly downsize their internal budgetary and other commitments to training and staff development. In short, in-house skills development initiatives may suffer significantly at the firm level. We provide below a brief overview of existing investment within firms on training and employment and then consider some of the early responses from firms to training interventions, amidst the recession.

The table below provides us with a snapshot of the number of staff that has received training in the Private Sector for the year 2007. The data draws from a report written for the NBI as an input into the JIPSA process. The report investigates the role that businesses are playing with respect to education, training and skills development within South Africa, and is based on a sample of 78 companies across sectors and provinces.

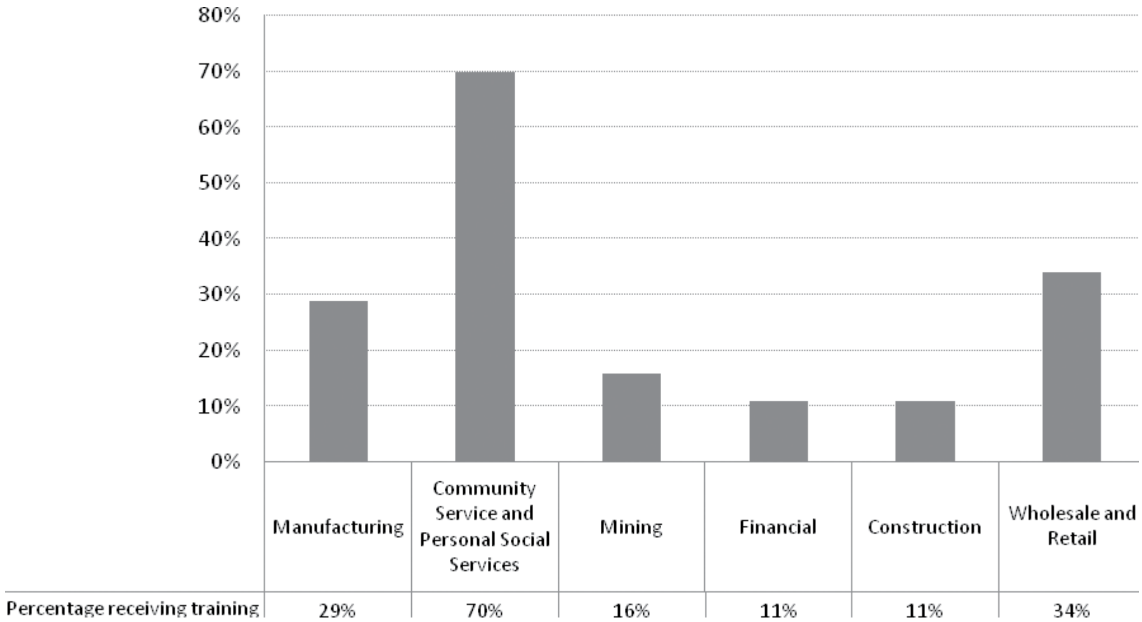
Table 37: Training in the private sector

	All sectors
Total no. of staff	816,853
Total no. of staff receiving training	197,351
Total no. of staff not receiving training	619,502
Percentage of staff receiving training	24.2%
Percentage of staff not receiving training	75.8%
Total number of unemployed receiving training	26,631
Ratio of staff to employed receiving training	4:1
Ratio of staff to unemployed receiving training	31:1

Source: NBI, 2007

Of the 817,000 staff in the sample, 24.2 percent are receiving training, meaning that approximately one in every four staff employed in the private sector receives some sort of training. This suggests in summary, a private sector which is fairly actively engaged outside of the SETA system, in training and skills development in the workplace.

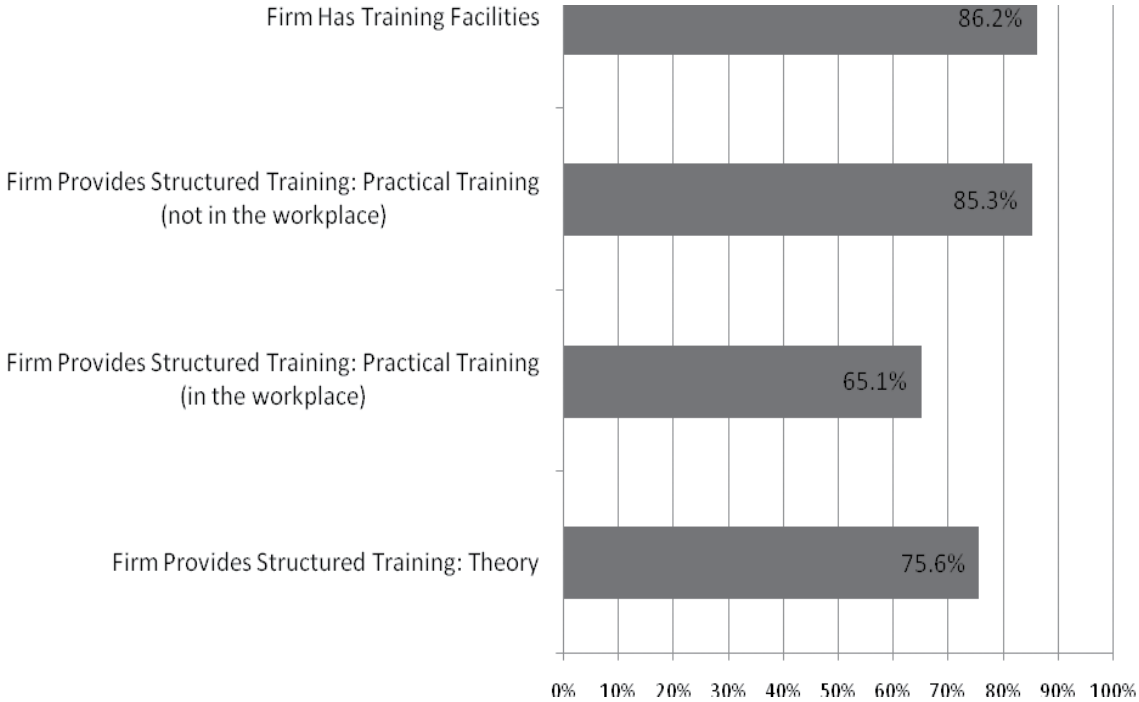
Fig 140: Percentage of workforce receiving training, by sector



Source: NBI, 2007

Data by sector indicates that the percentage of workforce receiving training by sector ranges from 11 to 70%. The quantum of training received in the workforce is dependent on the nature of the sector and the type of programmes being offered. The community service and personal social services; wholesale and retail; and manufacturing industries are the three sectors that provide employees with the most training. This figure could be inaccurate description of the percentage of employees trained in each sector as the duration and depth of training is specific to the industry, and hence should be treated at best as a proxy.

Fig 141: Provision of training structure

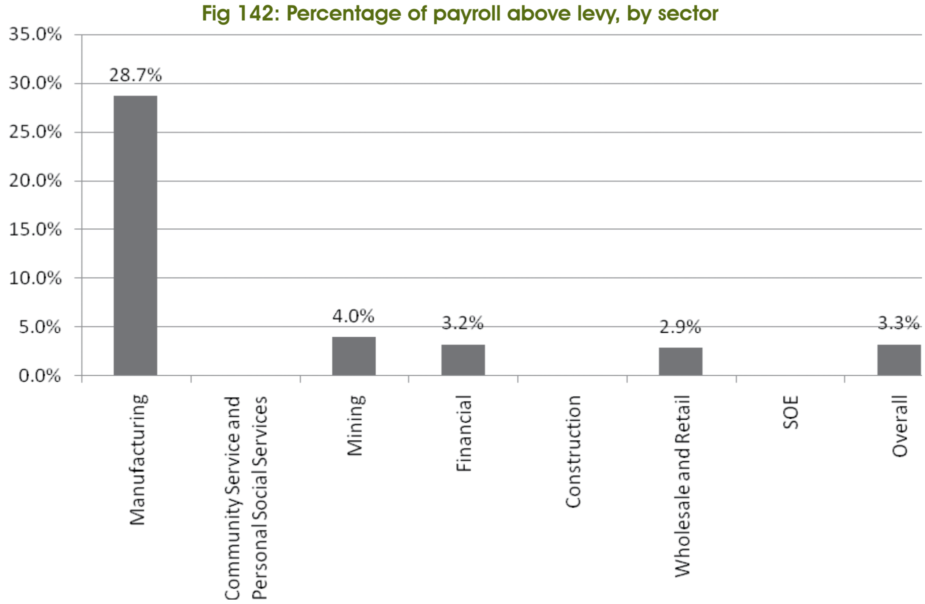


Source: NBI, 2007

The evidence presented in the table above clearly shows that a large majority of private sector companies are in a position to provide training, with 86.2 percent of firms having internal training facilities. While most companies have the infrastructure in place to provide training, an intervention should be implemented to ensure that the recessionary pressures do not jeopardise the training provided by firms. It is entirely possible therefore that with severe internal financial pressures, companies under utilise their training facilities and resources. Surely, as we argue below, this outcome should be obviated through the provision of deliberate, targeted state assistance to companies.

The figure below presents the percentage of payroll paid by firms for skills training, above the legislated payroll levy. These percentages vary from industry to industry, with manufacturing contributing the highest above the legislated amount. In the aggregate, the data suggests that private sector firms on average are spending 3.3% above the legislated levy, on training.

Fig 142: Percentage of payroll above levy, by sector



Source: NBI, 2007

It is not clear whether data unavailability or the nature of the construction; and SOE sectors explains the zero expenditure estimates. The manufacturing industry contributes the most (in percentage terms) above the legal amount, but it is probable that this estimate will decline in the foreseeable future, as this is one of the industries likely to be most affected by the economic downturn. The key point here of course is that there are a fair number of firms who are spending on training over and above the official levy. The risk that such additional training expenditure will be threatened is extremely high.

Indeed the initial evidence from engagement with small number of companies in respect of training initiatives suggests that

a. Companies are being instructed by Financial Management divisions to stop recruitment for training and planned HR expenditure, with immediate effect.
b. Urgent budget and cash flow reviews are being undertaken with serious downward adjustments being made. Key core business expenditure will be a priority.
c. Decisions on expenditure will be guided by financial directives rather than national skills needs
d. Trainers, mentors, coaches, supervisors – these positions will all be reconsidered within the current economic climate.

The above suggests that investment in training could be severely affected. Whilst economic downturns reduces skills shortage pressures – the latter will re-occur when growth recovers, and there is of course the danger of under-investing in training and skills again. The momentum being built in terms of skills development through JIPSA and other initiatives has the significant risk of being lost, as recession fears legitimately dominate company activities.

(7) TRAINING AND SKILLS DEVELOPMENT: TWEAKING THE BAILOUTS?

NEDLAC, comprised of various constituents representing government, business, labour and civil society seeking to create partnership agreements which enables economic growth and development, has suggested in the agreement *Framework for SA's Response to the International Economic Crisis* various measures which could stave off retrenchments and maintain the current level of training and skills development in the current economic environment. Some suggestions include a budgetary reallocation and reorganisation in the form of a National Employment Initiative (NEI) of R10 billion within the MTEF; prioritising training and skills development; improving the quality of learnership programmes and training retrenched workers. Funding for the training of the retrenched workers would be provided by the NSF and SETAs. Further suggestions include streamlining various aspects of the SETAs to reduce administration costs and special consideration be given to SMMEs to alleviate some consequences of the global economic crisis disproportionately borne by this segment of the economy. Moreover, the agreement has recognised vulnerable sectors in need of specific strategies such as the prevention of retrenchments and recouping lost production capacity due to the global economic crisis.

The NEDLAC *Framework for SA's Response to the International Economic Crisis* agreement then, does make some provision for SME support as well as some sectoral allocations, although the latter of course is open to debate both with regard to the principle of allocation itself and the choice of sectors. More importantly for our purposes here however, it could be argued that that the NEI needs to develop a more explicitly targeted intervention – *A Recessionary Training Fund* if you will - around skills development. Specifically, this intervention could be targeted at firms who are already investing in training over and above their levy commitments, to ensure that their ongoing training initiatives are not marginalised amidst the global meltdown. This threat, as we have argued above, is not insignificant. Such a

Recessionary Training Fund could for example be managed through government in conjunction with employer associations. A role for the NSF could also possibly be found, including revisiting the use of unspent NSF funds. In addition, the Fund could exist outside the remit of the SETA system to explicitly identify those 'above-levy' firms. Ultimately though, whilst the NEI is an excellent starting point as a response to the crisis, within the context of training, we would argue that if there is no rapid, focused intervention from the state – the threat of a rollback of many of the gains in recent years around in-firm training looms large.

CONCLUSIONS

South Africa's economic growth projections over seven consecutive quarters, starting from the fourth quarter of 2008, and continuing to the second quarter of 2010, have been revised significantly downwards. The lower forecasted estimates for GDP is in response to the significant decline in demand for our export products, the deterioration of key commodity prices and cautious investors seeking an investment haven away from unpredictable emerging markets such as South Africa. Moreover, the actual GDP estimate for the last quarter of 2008 was much lower than the revised forecasted estimates, indicating very worryingly that the consequences of the global economic recession were more dramatic than expected.

Certain sectors, such as mining, manufacturing and the services sectors have experienced a decline in their output performance. A direct result of the weakening output performance has been a significant loss in employment. A related concern remains the projected negative impact of lower growth on future employment creation. Economic growth over the next few quarters would appear to be disproportionately dependent on a few sectors, most notably construction and agriculture.

From the evidence presented in the report, it appears as if SMEs are bearing the brunt of the global economic crisis, since it is primarily SMEs being liquidated, and the majority of retrenchments that have been facilitated through the CCMA have originated from smaller businesses. The policy response to these ailing SMEs needs to be stronger, so that they are able to regain any lost production capacity, and curtail the retrenchments stemming from an inability to cope with severe economic downturn. Retrenchments in turn are occurring in the 'non-traditional' sectors. The financial and business services sector in particular is witnessing a significant increase in the number of retrenchments. Moreover, it is SMEs within financial and business services which have suffered excessive job losses.

Recent evidence suggests that firms who are active trainers will be cutting back training expenditure heavily, and will instead be focusing on key core business expenditure. While the pressure for training and skills development is expected to ease in the recessionary environment, once the economy recovers, there is a strong possibility that the skill pool available to firms would have shrunk. A rapid, pointed response from the State which is explicitly defined and funded so that the shortage of skills, both present and future, is avoided remain a critical ingredient in the response to the crisis in South Africa.

Flexibility and Precariousness

Exploring labour broking in the construction industry in South Africa

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April 2009

INTRODUCTION

Competition among businesses has increased over the past few decades. This has taken place in the context of globalisation, which encompasses a number of interlinked processes resulting in the lowering of barriers between states through enhanced communication and technology, and the opening up of commodity, labour and financial markets.

"Flexibility" has become the buzzword in business circles, and has been used to explain employers' needs to make changes to their workforces to adjust to changes in the market. Employers and institutions promoting neo-liberal ideals argue that labour laws should not unduly constrain employers' ability to make decisions that enable them to be more responsive to markets and remain competitive.

South Africa is no stranger to these debates. Following the transition to democracy in 1994, the country enacted a new labour law regime to give better protection to workers and improve labour relations. This legislation covers matters such as collective bargaining, minimum conditions of employment and skills development. It also protects employees from unfair labour practices, unfair dismissal and unfair discrimination.

Employers argue that South Africa's labour laws are too rigid, and hinder their ability to adapt to rapidly changing markets. They argue that the "standard employment relationship" (SER) characterised as a full-time, long-term or indefinite relationship between an employer and an employee is inflexible and costly. Of particular concern are the protections against dismissal in our labour legislation. As a result, many employers are restructuring employment arrangements to ensure greater autonomy and flexibility. In most cases, these "flexible" work arrangements have the effect of taking work relationships outside the protective scope of labour law.

OBJECTIVES OF THE RESEARCH

The construction industry presents a good case study of changes in working arrangements in the quest for greater flexibility.

The main objective of this research is to establish the various forms of labour flexibility that have emerged in the construction sector, and to identify the benefits of each for the employer. The primary focus is on labour broking and how it relates to other forms of flexibility in the industry.

The second objective is to provide a rough measure of the number of people involved in each of these forms of flexibility, including labour broking. Large-scale data is not helpful in

1 Report Commissioned by the Labour Research Service on behalf of the Building and Woodworkers International

this regard, and a largely qualitative approach will be taken, based on estimates given by key informants in the sector.

The third objective is to focus on labour broking in order to identify the characteristics of labour brokers operating in the construction industry. This objective includes investigating why firms use labour brokers as opposed to other forms of labour flexibility.
The fourth objective is to outline the challenges that labour broking poses for union organisation, collective bargaining and labour regulation. An aspect of this part of the research will be to examine some examples of labour brokers' contracts with workers, in order to check whether or not these comply with all the requirements of the labour statutes.

The fifth objective is to make recommendations as to the steps government should be taking to improve the regulation of labour brokers. Recommendations will also deal with how unions can better respond to the threats posed by labour brokers to organisation and collective bargaining.

NOTES ON THE METHODOLOGY AND SAMPLE

After a review of the relevant literature, and an Internet search, the researcher consulted some knowledgeable individuals in the industry to identify players, trends and possible informants for interviews. Semi-structured questionnaires were then drafted for the different respondents identified.

A list of 40 potential informants representing various institutions was drawn up, and informants were approached to participate in the interviews. The institutions included bargaining councils, building trade unions, Master Builders' Associations (MBAs), the Construction Education and Training Authority (CETA), and the Services Sector Education and Training Authority (SSETA). Of the key informants who agreed to participate, six were representatives of the building bargaining councils. One was an executive of a regional Master Builders' Association. Seven were from large trade unions organising in the construction industry, namely the National Union of Mineworkers (NUM), the Building Construction and Allied Workers' Union (BCAWU), the Building Wood and Allied Workers' Union of South Africa (BWAWUSA), the Amalgamated Union of Building Trade Workers of South Africa (AUBTWSA) and Building Workers Union (BWU). The interviews were conducted between October 2008 and February 2009.

Most informants were quite willing to participate in the survey and made themselves available for interviews. A few were unavailable or unresponsive, despite numerous attempts to contact them. Others declined to participate, as they said they did not have (and were unable to obtain) a mandate to speak on behalf of their organisations. Some were suspicious of the researcher's motives and had concerns that the outcome of the research would have a negative impact on their organisations.

In addition, interviews were held with various people working in the construction industry. 30 labour broking firms were approached, but in the end only 11 participated in the survey. The researcher was unable to obtain a comprehensive list of labour brokers in the industry registered with the SSETA. The sample was therefore drawn from a variety of sources, including Internet searches, the yellow pages and referrals from key informants and other contacts. The researcher limited the sample to firms in Gauteng and the Western Cape, as preliminary research indicated that this is where labour broking is most predominant. While care was taken to ensure that the brokers approached operated in the construction industry, representatives of eight of them claimed that they did not operate in the industry and could therefore not participate.

All 22 of the labour brokers that were operating in the construction industry agreed to participate in the research. However, in five cases, there were problems with obtaining authority from the relevant officer. Six others were unavailable at the agreed time and rescheduling proved to be difficult, despite attempts to do so. In the end, 11 questionnaires were completed.

In addition to the key informants, interviews were held with 16 building subcontractors on three building sites. Of these, seven were subcontractors that provide materials, while nine were labour-only subcontractors (LOSCs). The researcher also interviewed 16 construction workers. Of these, nine were job seekers at a well known "pick up spot" in the Cape Town CBD area, and seven were workers who were taking a break from their work on site. Most of these interviews were facilitated by visits to three commercial building sites in the Western Cape and the efforts of the researcher's contacts working in the industry.

The sample of interviews was clearly not representative in statistical terms. However, this was not the objective. The interviews were intended to be exploratory and qualitative, drawing on the views and experiences of persons well placed to identify the general trends in the industry.

OVERVIEW OF THE REPORT

The report begins with an overview of the construction industry, and then proceeds to map out the flexible working arrangements within the industry. These include increased subcontracting, and labour-only subcontracting, the use of limited duration contracts and labour brokers.

Section two then focuses on labour broking in the construction industry. It presents the findings gathered from the interviews with representatives of labour brokers that operate in the construction industry. The section tries to map out the characteristics of the labour broking firms and operational and other trends. The objective is to gain insight into the nature and extent of the role of labour broking in the construction industry.

Section three examines the regulation of labour broking in the construction industry. It begins by examining the labour law provisions governing labour brokers (or temporary employment services, referred to as TESs, in the legislation). It then examines the arrangements governing terms and conditions of employment in the construction industry. This is followed by a thematic discussion of certain issues raised by critics of labour brokers.

Section four discusses the roles of institutions involved in the regulation of labour broking in the construction industry. These include the building industry bargaining councils, trade unions and employer organisations representing labour brokers.

Section five considers the future of labour broking in the construction industry. This is examined against the backdrop of the ongoing debate on the future of labour broking in South Africa. The report closes with some brief conclusions.

(1) MAPPING FLEXIBLE WORKING ARRANGEMENTS IN THE CONSTRUCTION INDUSTRY

The construction industry covers work falling within the building, civil engineering and manufacturing sectors. The latter relates to the manufacture of materials used in the building and civil engineering sectors. Broadly speaking, the building industry comprises activities involved in the erection, completion, maintenance, alteration and renovation of buildings and structures, and the making of articles used for these activities.[2] This takes place predominantly in the private sector, with the public sector accounting for only 25 per cent of money spent in the building sector.[3]

Civil engineering involves the design and construction of public works such as dams, bridges, roads, waterworks, earthworks and other structures excluding buildings. This research mainly focuses on the building and civil engineering sectors as opposed to the manufacturing sector. According to the Construction Industry Development Board (CIDB), most work in civil engineering is commissioned by the public sector, which accounts for about 80 per cent of civil engineering works.[4]

Statistics South Africa classifies construction enterprises into four groups according to the value of their annual turnover. These are large, medium, small and micro enterprises defined as per the table below:

Table 38: Size of enterprises for the construction industry

Size	Turnover (ZAR)	Percentage of total employment
Large	More than R 26 m	35.6 %
Medium	More than R 13 m but less than R 26 m	23.4 %
Small	More than R 6 m but less than R 13 m	10.2 %
Micro	Less than R 6 m	30.8%

Source: Statistics South Africa, Construction Industry, 2007

Stats SA's last large-scale construction industry survey reported that large enterprises employ the greatest percentage of people working in the industry. This is followed by micro enterprises, which employ 30.8% of the workforce. Medium and small enterprises employ 23.4 per cent and 10.2 per cent respectively. This shows that small and micro enterprises collectively command a significant portion of the labour force in the industry (41 per cent).

Following a slump in the industry in the 1990s, the construction industry underwent a boom. Statistics South Africa reports that the sector grew by 14, 2% in the third quarter of 2007 (Stats SA 2007, 7). Earnings increased from R 6, 73 bn in June 2006 to a high of R 9, 39 bn in December 2007. After a decline to R 8, 32 bn in March 2008, earnings increased and peaked at R 9, 75 bn in September 2008. Growth in the industry accelerated after 2006 due to 2010 FIFA World Cup construction projects.

The Construction Industry Development Board reports that large construction companies have been the greatest beneficiaries of the construction boom. Large companies have seen their share prices increase and have increased shareholder dividends. Four of the largest construction companies in South Africa (the Aveng Group, Murray and Roberts, Group 5 and WBHO) recorded significant growth in their profits post-2006.

Table 39: Construction giants' profits before tax zar (millions)

	Aveng Group	WBHO	Murray and Roberts	Group 5
2004	170	128	415	118
2005	493	198	523	134
2006	788	305	658	141
2007	7 953	446	1 284	373
2008	3 321	1 081	2 558	666

Source: Company annual reports. Calculations by the Labour Research Service

2 From the definitions clause of the Bloemfontein Building Industry Bargaining Council collective agreement. Other collective agreements contain similar definitions.
3 The CIDB Quarterly Monitor, October 2008 p 2.
4 The CIDB Quarterly Monitor, October 2008 p 2.

Firms have not benefited equally from the boom. The majority of firms are emergent firms that would struggle ever to win a project. A tiny minority of contractors (about 0.2% of the contractors registered with the Construction Industry Development Board) tend to win the big, lucrative government tenders (Engineering News, 2-8 November 2007).

Industry reports indicate that activity in the construction industry has been declining since 2008. A number of challenges face the industry. Work opportunities are decreasing, and this has resulted in tougher competition to win projects. The impact of the global financial crisis is becoming evident, as some projects are being suspended indefinitely or cancelled when clients review their infrastructure spending. For instance, Murray and Roberts reported the cancellation of projects worth R 10 billion over a three month period.[5] Demand for construction, particularly in the private sector, has been hampered by slower economic growth and weaker business confidence in the industry.[6]

While larger firms are surviving, small construction firms seem to be struggling to cope in the industry. This trend is confirmed by industry reports that the number of liquidations amongst small construction firms (closed corporations) increased by 54% in 2008.[7] On the other hand, liquidations amongst construction companies reduced by 66% in the same period.[8] In addition, liquidations or insolvencies of closed corporations as a percentage of total liquidations increased from 48% in 2007 to 81% in 2008.[9]

Changing work arrangements in the construction industry

The construction industry operates on a project basis, and work is allocated through a process of tendering by contractors. A project is awarded to a main contractor, who is responsible for the overall completion of the project.

The majority of main contractors do not have all the skills necessary to complete their projects. As a result, sub-contracting has always been necessary for certain specialist tasks. Plumbing, electrical installation, air conditioning, joinery, tiling and roofing have traditionally been carried out by specialist subcontractors in the building industry. Traditional subcontracting "is characterised by specialist skills and the supply of materials by the subcontractor".[10]

Most construction companies (whether main contractors or subcontractors) in the past directly employed their own labour for the functions that they carried out. Goldman argues that employment in the construction industry has always been "precarious and short-term" for the duration of the project, as opposed to permanent employment.[11] She argues that this is due to the project-based nature of the building industry and constant variations in the demand for labour.[12] On the other hand, interviews with key informants indicate that in the past, the majority of workers employed in the industry were employed on a full-time, permanent basis and that the higher incidence of short-term and precarious employment is a more recent phenomenon. The truth probably lies in the middle ground: certainly, most construction companies have tried to retain highly skilled workers either as permanent workers or on limited duration contracts that were repeatedly renewed, resulting in long-term relationships.

5 Creamer, Terence. M &R's order book resilient at R 60 bn, despite project cancellations of R 10 bn", Engineering News, 25 February 2009.
6 "Contractors grappling with rising costs" reported on 4 June 2008 at www.industryinsight.co.za accessed on 20/02/2009.
7 "Small Construction businesses struggle in cash strapped industry" reported on 26 September 2008 on www.industryinsight.co.za accessed on 20/02/2009.
8 "Small Construction businesses struggle in cash strapped industry" reported on 26 September 2008 on www.industryinsight.co.za accessed on 20/02/2008.
9 "Small Construction businesses struggle in cash strapped industry" reported on 26 September 2008 on www.industryinsight.co.za accessed on 20/02/2008.
10 Buzuidenhout et al .Non-standard employment and its policy implications. Unpublished report submitted to the Department of Labour (2003).
11 Goldman, T .Organising in the Informal Economy: A case Study of the Building Industry in South Africa. ILO SEED Working Paper No. 38 (Geneva, ILO: 2003), p 1, 11.
12 Goldman, T .Organising in the Informal Economy: A case Study of the Building Industry in South Africa. ILO SEED Working Paper No. 38 (Geneva, ILO: 2003), p 1, 11.

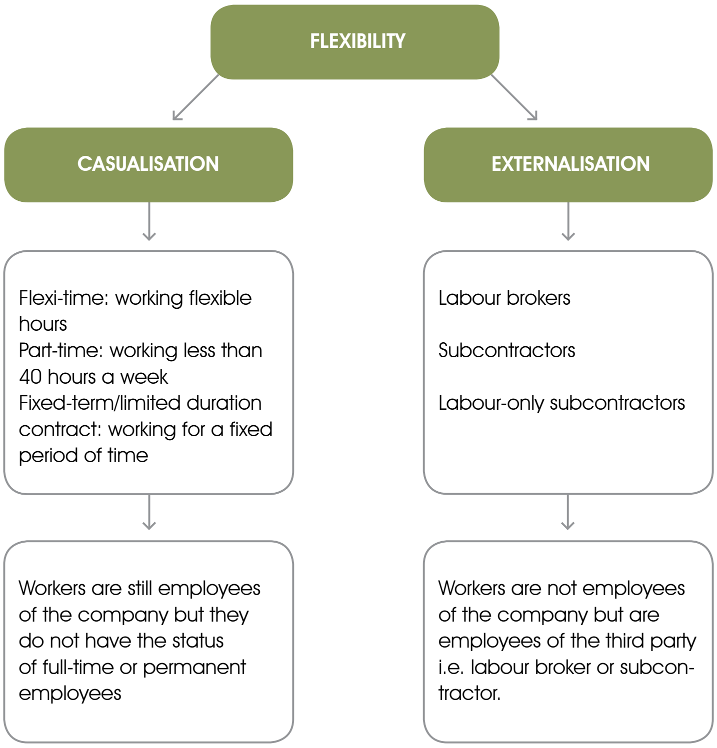
Although the organisation of work in the industry has been changing over the past two decades, the changes seem to have accelerated in the last decade. The literature identifies two main forms of flexible arrangements, namely casualisation and externalisation. These changes have taken place in most industries in South Africa. We begin by defining the processes, and then outline how they have unfolded in the construction industry.

Casualisation *concerns a change in the make-up of an employer's workforce, and can have two possible outcomes. One is the reduction of permanent employees and a corresponding increase in the number of non-permanent or temporary employees.[13]The other outcome is that workers work on a part-time or flexible -time basis, instead of on a full-time basis.[14] Apart from this change to temporary, part-time or flexi-time work, casualisation does not change their status as employees in any other way.*

Externalisation *is more radical, and is facilitated either by subcontracting or by labour broking. Subcontracting or outsourcing occurs when an employer retrenches employees and hires an external contractor to do their jobs. Labour broking involves the engagement of labour through an intermediary, who supplies a specified number of workers for an agreed period of time or the performance of a particular task. Workers assigned by a labour broker remain the employees of the labour broker, despite the fact that they report to and are subject to the control of the client or core enterprise. Externalisation is therefore a "process of economic restructuring, in terms of which employment regulated by an employment contract is being displaced by employment that is regulated by a commercial contract."[15]*

Externalisation differs from casualisation in that it leads to a reduction in the number of people directly employed by the core enterprise.[16] However, the two processes are interlinked. For example, employees engaged through labour brokers and subcontractors are usually employed on temporary contracts.

Fig 143: Flexible work arrangements



13 Theron, J and Godfrey, S. Protecting Workers at the Periphery Development and Labour Law Monograph 1/2000 (Cape Town, Institute of Development and Labour Law: 2000) p 11, 17.
14 Theron, J and Godfrey, S. Protecting Workers at the Periphery Development and Labour Law Monograph 1/2000 (Cape Town, Institute of Development and Labour Law: 2000) p 11, 17.
15 Buzuidenhout et al p 4.
16 Theron and Godfrey (2000) p 11.

How have these changes manifested themselves in the construction industry? The general trend has been for construction companies to downsize their workforces to fewer core site employees. These employees are generally quantity surveyors, site managers, foremen, health and safety officers and a few artisans and semi-skilled workers. A well-placed source in the industry said that three of the largest national firms employed only 300 to 400, 400 to 500 and 500 permanent staff respectively who worked on construction sites.

The general trend seems be that many construction firms are reducing the extent to which they perform general functions that they performed in the past, such as bricklaying, plastering and carpentry. Others have styled themselves as "project management firms", which are mainly responsible for the co-ordination and management of the various contractors on projects.

Externalisation in the construction industry has increased significantly in a number of ways. The first is the increased subcontracting of work at various levels. Main contractors are subcontracting more of the general functions that they used to perform, for instance bricklaying, plastering and carpentry. Some of the firms to which these functions are being subcontracted are now well established, and are able to supply their own materials. Most of these firms specialise in one particular function, as will be shown in the case studies below. This shows that a new species of subcontracting has emerged, which is similar to traditional subcontracting in two respects, namely concentration (or "specialisation") on one function and the supply of materials. This newer form of subcontracting differs from traditional subcontracting in that traditionally, the main or general contractor performed the tasks.

Main contractors also directly subcontract general functions to smaller operations that are unable to supply materials and are referred to as labour-only subcontractors (LOSCs). In addition to the increased subcontracting of general functions, there is an increasing number of layers of subcontracting, as more subcontractors subcontract to other subcontractors. Labour-only subcontractors occupy the bottom layers of these so called "cascading subcontracting" arrangements.

The second form of externalisation in the construction industry is labour broking. Despite assumptions that labour broking is virtually non-existent in the industry, it is actually a common practice, and has increased exponentially in recent years. Labour brokers provide a full range of workers in the industry, from unskilled labourers to skilled workers and artisans in various trades. Labour brokers provide labour to a broad range of firms working as contractors or subcontractors.

Because there is a tendency to confuse the two, it is necessary to distinguish between labour-only subcontracting and labour broking.

Subcontracting *involves engaging a sub-contractor to complete a defined task within a specified period of time. The subcontractor is responsible for the completion of the task, but need not perform the work personally. If the subcontractor hires workers to assist with the completion of the task, they are subject to his or her control, and not to the control of the contractor who engages that subcontractor.*

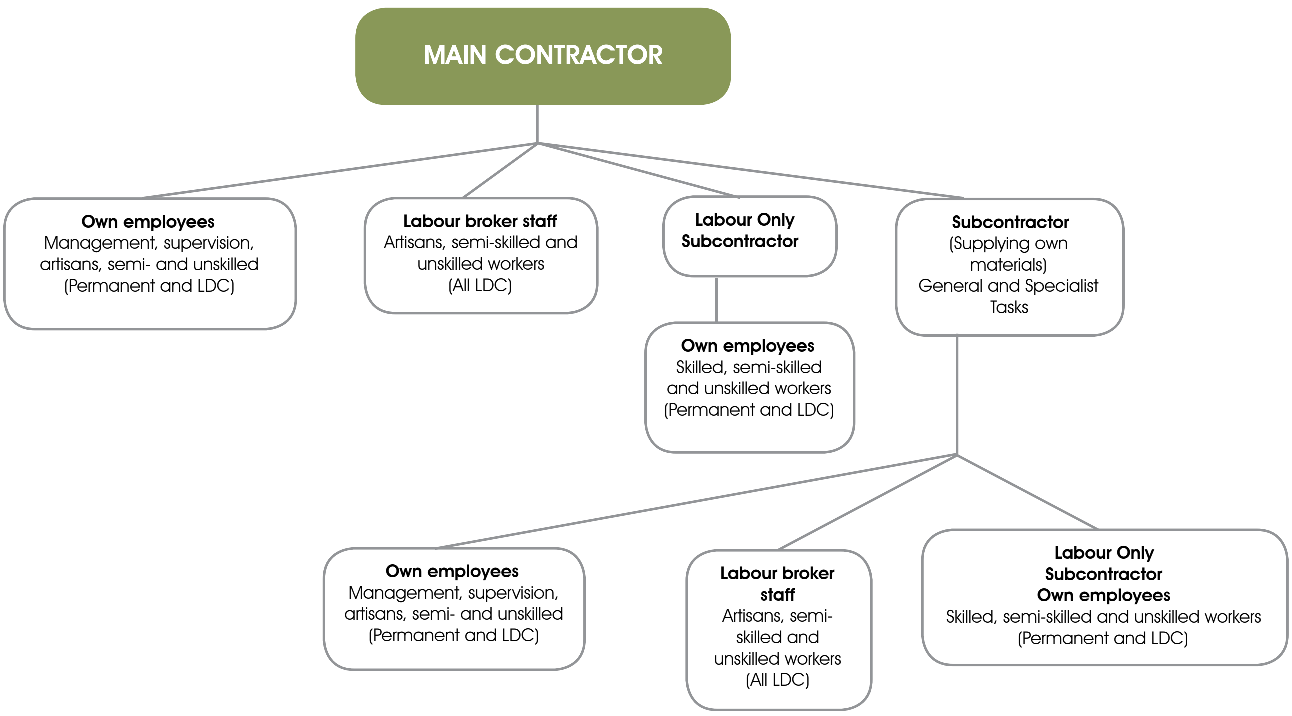
In the case of ***labour broking****, the contractor approaches a broker to supply a specified number of workers possessing certain skills and qualifications. The workers are placed at the disposal of the contractor, who controls and supervises their work. The labour broker is not given a specific task to complete, and is therefore not directly responsible for the outcome of the work performed by the workers.*

Casualisation in the industry has largely taken place via temporary employment facilitated by fixed- or short-term contracts. These are commonly referred to as limited duration contracts (LDCs) in the construction industry. While there is evidence of the use of part-time and flexible time arrangements to achieve flexibility in the construction industry, this report does not examine this in detail.

Employers are increasingly using LDCs to engage workers on a project-to-project basis to avoid having to pay them when work is unavailable. The duration of these contracts varies from a few years to a few months or weeks, with evidence that some workers are employed on LDCs that are constantly renewed by employers. Casualisation of this kind occurs at all levels in the industry, as main contractors, subcontractors including LOSCs and labour brokers all use LDCs.

What does the construction industry look like under these flexible working arrangements? Figure 2 illustrates the various working arrangements that can be used on a typical building site. This information is drawn from interviews with key informants and workers in the industry, as well as from visits to building sites in the Western Cape. Although the combination of flexible work arrangements differs from contractor to contractor and from site to site, the basic structure remains essentially the same.

Fig 144: Flexible work arrangements in the construction industry



The following case studies highlight the variety of flexible working arrangements that can be used. They are drawn from observations at three building sites and interviews with subcontractors, LOSCs and workers on the various sites. Most of the informants have been in the industry for a long time and were willing to share their knowledge and experience, to enable the researcher to understand working arrangements in the industry.

The first building site (Site 1) is a multi-billion Rand commercial project just outside the Cape Town CBD. The second and third building sites (Site 2 and Site 3) are multi-million Rand luxury apartment complexes in the Cape Town area.

Case study 1: A main contractor

Company P (one of the top ten construction companies in the country) was awarded a large commercial building project worth close to R 2 billion. The project began in 2007, and is due to be completed in the middle of 2009. A total workforce of about 2 500 has worked on the site. Of these, the company directly employs less than ten per cent. These employees are mainly foremen, supervisors, safety officers, site managers, and a few artisans. The firm has not engaged workers through labour brokers for the project. It has subcontracted most functions for the project to over 30 subcontractors. All the subcontractors are reportedly fairly well established medium to large construction companies that supplied materials for their parts of the project. Some of these subcontractors have contracted labour brokers to supply them with labour for the project. Other subcontractors have, in turn, subcontracted some or all of their work to subcontractors, some of which are LOSCs. A few subcontractors, who provide highly specialised technical functions such as air condition installation, have performed their work without resorting to subcontracting.

Case study 2: Two subcontractors

A and C are building subcontractors specialising in plastering and bricklaying respectively. Both A and C entered the construction industry over 15 years ago and trained as apprentices for three years. They both worked in construction companies prior to establishing their own businesses, which are registered as close corporations.[17] At one stage they worked for the same company.

A started his business four years ago, and employs four permanent skilled employees. C started his company seven years ago, and has eight permanent, skilled and semi-skilled employees. They both claimed to be registered with the Cape Building Industry Bargaining Council (CBIBC). They both supply materials for all the projects they undertake. A and C were both appointed as the subcontractors for all the plastering and bricklaying work for the building of a multi-million Rand apartment complex.

They both supply their own materials for the work. A has a total of 60 people working for him on the project. Four of them are "permanent" while the other 54 are "on contract" for the duration of the project. They comprise skilled plasterers, semi-skilled and unskilled workers. He cannot afford to employ a full team of workers permanently, and mainly has to rely on hiring limited duration contract workers on a project-by-project basis. Contracts typically last for six months to a year. It is hard to retain the same workforce, but he tries to "keep the good guys" to ensure the quality and consistency of the work. He has never used a labour broker and prefers to hire workers who are referred by people he has worked with. The hourly rates he pays his employees correspond with those prescribed by the bargaining council, and he pays artisans R 5 more than the prescribed hourly rate. However, he does not make benefit contributions for his workers.

In addition to his 60 workers, A engaged two LOSCs to assist him with the project. Each of the LOSCs is a qualified plasterer with considerable experience. The LOSCs each have 12 workers working for them on the project. According to A, all the LOSCs' workers are employed on LDCs and earn R 2 to R 3 per hour less than A's workers for the same work.

C has eight permanent employees and a pool of 15 workers whom he regularly employs on LDCs. He pays labourers
R 90 to R 110 per day and skilled workers R 220 to R 250 per day. These rates are significantly less than the Cape BIBC rates. He does not make benefit contributions for these workers. C has built up a stable workforce and does not use labour brokers or subcontract to LOSCs.

17 A worked for a main contractor, performing several functions, including bricklaying and plastering. The company decided to specialise in plastering as it was "bringing in the most money". That company is presently one of the most prominent plastering firms in the Western Cape.

Case study 3: A subcontractor

Y is a closed corporation (CC) that specialises in scaffolding tasks. The CC has been in existence for nine years. It is a relatively small operation, which subcontracts from several medium to large contractors. It provides the materials required for all of its projects.

Y employs a core of foremen, supervisors and skilled workers on a permanent basis. It relies heavily on a labour broker to provide the semi-skilled and unskilled workers who do the bulk of the work for its projects. It has a long-standing relationship with a particular labour broker that supplies all the additional labour it requires. It is responsible for the scaffolding work on Site 2. It has deployed one of its own foremen on the site, but the labour broker has supplied the rest of the workers on the site (15 in total). A representative of Y says that this is generally how the business operates.

Case study 4: A labour-only subcontractor

F is a qualified carpenter and joiner who has been in the building industry for about ten years. After working for a prominent construction company for several years, he started his own LOSC business over a year ago. It is not registered as a company or a CC, although he is in the process of registering with the CIDB.

F has been subcontracting from a small company (X) that specialises in carpentry and scaffolding. X supplies the materials required for all its projects. X has 16 permanent employees and regularly subcontracts to eight LOSCs. All the LOSCs know each other and meet and talk regularly. One has a team of 48 workers, while another has 21. Yet another has 12 workers and another has 16. All the LOSCs hire their workers on a project-by-project basis.

F has been working exclusively for X for approximately a year. X has had many projects and this has kept F continuously busy. His current contract with company X is for a luxury apartment complex. F has 21 skilled, semi-skilled and general workers who regularly work for him, although none of them are permanently employed. All of them are currently working on the apartment complex project.

F is paid per unit of work done, irrespective of how many people he employs to complete the work. He therefore has to establish how many workers to employ and how much to pay them to meet the deadlines. F is not registered with the Cape BIBC and does not comply with the provisions of the collective agreement. He pays R 80 per day for unskilled labourers, and sometimes gives a R 30/day incentive to encourage workers to meet tight deadlines. He pays semi-skilled and skilled workers R 250 to R 400 per day. He does not make any deductions for benefits or provide holiday pay or inclement weather pay.

F's main challenge is that he cannot afford to employ enough skilled workers to work on his projects. He has to rely on semi-skilled workers who are trained on- the- job and usually have no formal qualifications. Although this has enabled him to reduce the wages, it has compromised quality and efficiency and resulted in several mistakes.

The case studies highlight the diversity of firms and work arrangements used in the building industry. Key informants indicate that the trends are similar in the civil engineering industry. The case studies are by no means representative of the entire construction industry. However, they do highlight the nuances of what is happening in the industry.

Statistics on employment in the construction industry

Statistics SA's employment reports indicate a steady increase in employment in the construction industry since 2001, as depicted in the table below.

Table 40: Employment in the construction industry (thousands)

Year	2001	2002	2003	2004	2005	2006	2007	2008(3)*	2008(4)**
Total empl.	642	627	620	685	875	929	1010	1102	1191
Formal empl.	342	300	377	427	427	544	650	812	877
Informal empl.	299	327	243	258	258	385	360	290	314
% informal	46.5	52.2	39.2	37.7	39.2	45.6	35.6	26	26

Sources: Stats SA, Labour Force Survey Historical Revision, 2007 and Quarterly Labour Force Survey, quarter 4, 2008.

* Denotes figures for the third quarter of 2008.

** Denotes figures for the fourth quarter of 2008.

Stats SA distinguishes between formal and informal employment, and defines the latter as encompassing persons who are in precarious employment situations.[18] The definition includes the following:

- All persons in the "informal sector", that is, employers, own-account workers and unpaid workers in household businesses that are not registered for VAT or income tax. It also includes employees who work in enterprises with less than five employees, that do not deduct income tax from their remuneration;[19]
- Persons helping in their family businesses who are not paid for their work; or
- Employees in the formal sector[20] and persons employed who are not entitled to basic benefits from their employer, such as pension or medical aid, and who also do not have a written contract of employment.

After a decline between 2001 and 2003, total employment has increased since 2004, with the most significant increase (of about 190 000) occurring between 2004 and 2005. Thereafter, it has increased steadily to 1 191 000 at the end of the fourth quarter. Between the last two quarters, the industry saw an increase of about 8 per cent. Incidentally, construction was the largest industry contributing to employment growth during that period. On the whole, total employment in the industry has almost doubled since 2001.

After a decline between 2001 and 2002, formal employment has increased steadily from 300 000 in 2002 to 877 000 at the end of 2008. Formal employment has accounted for the greatest percentage of employment in the industry since 2003. At the end of 2008, it accounted for 76% of employment in the industry. Informal employment, on the other hand, has fluctuated over the last eight years. The number of people in informal employment in the industry peaked at 399 000 in 2005 and declined to 314 000 at the end of 2008. Informal employment as a percentage of total employment has also fluctuated, from a high of 52.2 per cent in 2002 to a low of 26 per cent at the end of 2008.

The statistics on employment do not give an accurate picture of the extent to which the different flexible working arrangements are used in the construction industry. In addition, the more recent figures indicating a decline in informal employment seem to be at odds with the trends as identified by industry informants.[21] They estimate that about 40 to 50 percent

of workers are employed by micro and small enterprises, most of which generally do not comply with labour regulations, nor provide employee benefits such as pensions and medical aid. These estimates seem plausible given the lower rates of unionisation and the collapse of building industry bargaining councils in the past decade.

18 Stats SA Explanatory Notes to the Quarterly Labour Force Survey, 2008, p 18.
19 Stats SA Explanatory Notes to the Quarterly Labour Force Survey, 2008, p 17.
20 These are enterprises that are registered for VAT or income tax that employ more than five employees.
21 The figures are also questionable given the fact that, in 2007, Stats SA expanded the meaning of informal employment to include those working in formal enterprises but not receiving any benefits. One would have expected an increase in the level of informal employment as a result of its wider scope.

(2) LABOUR BROKING IN THE CONSTRUCTION INDUSTRY

This section sketches the characteristics of labour broking firms operating in the industry. It draws together the results of the interviews with representatives of labour brokers operating in the industry.

We begin by showing the difficulty in measuring the extent of labour broking in the construction industry. We then examine the size of labour broking firms that participated in the research. Next, we consider how long the labour brokers have been providing temporary employment in the construction industry. The following two sections consider the clientele serviced and the profile of workers provided by the labour brokers. Next, we examine operational issues, particularly, the registration process, the duration and termination of temporary employment contracts and supervision on site. We then discuss the perceived benefits of using labour brokers and the challenges labour brokers operating in the construction industry are currently facing. Finally, we describe the labour brokers' attitudes towards participating in the research.

Before proceeding with the discussion, it is necessary to highlight the fact that the research involved labour brokers at the formal end of the spectrum - that is, labour brokers that comply with some or all of the relevant regulations. These include registration as a company or closed corporation (CC), registration for tax, and registration in terms of legislation such as the Unemployment Insurance Act and the Compensation for Occupational Injuries and Diseases Act. It therefore excludes informal, unregistered labour brokers operating in the industry, notoriously known as the "bakkie brigade". These labour brokers are characterised as operating at the lower end of the spectrum, using a bakkie to collect work seekers at street corners, and paying very low wages with no benefits.

The extent of labour broking in the construction industry

Industry statistics for the labour broking (or temporary employment services/TES) industry show that it accounts for about 4% of South Africa's economically active population, and contributes between R17 billion and R 20 billion per annum to South Africa's gross domestic product (GDP). According to the Confederation of Associations of Private Employment Services (CAPES), the industry makes approximately 400 000 temporary placements per day. However, there is no data indicating how many of these jobs are in the construction industry.

It was difficult to estimate the number of labour brokers operating in the construction industry for several reasons. Firstly, there is no central database listing the labour brokers operating in the construction industry. Secondly, because most labour brokers operate in a variety of industries, one would have to conduct investigations to ascertain whether a particular labour broker operated in the construction industry. With over 3 500 recruitment firms registered with the Services SETA, this exercise was beyond the scope of the present study. Thirdly, a significant number of labour brokers are unregistered and therefore difficult to identify and locate.

Of the 3 500 labour recruitment firms registered with the Services SETA, over 2 000 are temporary employment services. The Services SETA was unable to give a breakdown of the number of employment agencies by industry. The only estimate is from the Constructional Engineering Association Labour Broking Division, which has about 170 members, representing between 40 and 50 per cent of the labour brokers operating in the constructional engineering industry, meaning that there are about 350 in total. However, the emphasis of the organisation's activities is on the engineering sector, although some members may provide both engineering and building workers to contractors.

A spokesperson of one of the top national construction firms speaking at the Building and Wood Workers' International/FIFA Local Organising Committee inspection of the Green Point Stadium in Cape Town indicated that most firms relied on labour brokers to provide labour for fixed periods.[22] This was necessary, given the fact that construction firms were unable to employ workers with the full range of skills that are needed permanently. In response to questions about the impact of a potential ban on labour broking, he said it would be a significant challenge for construction companies, as they would have to rethink their employment strategies. This indicates that the use of labour brokers is quite an important part of flexible employment arrangements in the industry.

Size of the labour broking firms that participated

As indicated previously, the researcher eventually interviewed only eleven labour brokers. They covered a broad spectrum in terms of size, functions, locality of operation and clientele.

According to the SSETA representative interviewed, the number of staff members working in their offices determines the size of labour broking firms. A firm with less than 50 employees is regarded as small, while one with between 50 and 150 employees is regarded as medium sized. A firm with over 150 employees is classified as large. According to this classification, the four above firms qualify as medium to large operators, as indicated below.

These four labour broking firms were blue collar divisions or subsidiaries of large corporations operating in the personnel services industry. These corporations were formed through mergers and acquisitions largely initiated by well-established labour broking firms. The groups have several specialist divisions, divided according to level of workers sought (white -collar workers, blue collar workers, management and executives) and others according to industries and skills (call centre agents, office administration, engineering, hospitality, health care). In many cases, the divisions trade under different brand names to distinguish themselves in their market, making it hard to associate them (at least on the face of it) with their principal company. The blue collar divisions that participated in the survey operate in various industries, but have some presence in the construction industry. Three have headquarters in Johannesburg and regional and local offices all over the country. The other has only one office in Johannesburg.

Two of the firms were reluctant to say exactly how many workers were registered with them and how many were placed with clients. It was also difficult to ascertain how many of the assigned workers were in the construction industry. One firm indicated that it could not access that kind of information on its database. Another indicated that it had a pool of 12 000 job seekers and 5000 to 6000 workers placed with clients, but could not indicate how many were in construction. The other could not tell how many jobseekers it had registered on its database, but was able to say that it had 3 500 current placements. About 2 500 of them were in construction.

Table 41: Medium to large firms

Company	Size of pool of workers (all industries)	Current placements	Current placements in construction	Number of office employees
A	N/A	N/A	N/A	1000*
B	N/A	N/A (several thousand)	N/A	350
C	12 000	5000 - 6000	N/A	150 - 200
D	N/A	3 500	2 500	55

Notes

* This represented the total number of employees working for the corporation as a whole, as no employment figures were available for the blue collar division in question.

N/A denotes information that was not available, either because the informant did not know or was unwilling to disclose it.

22 The inspection was supposed to take place on 23 March 2009 at Green Point Stadium. It was a joint initiative of Building and Wood Workers' International and FIFA LOC.

The rest of the firms could be classified as small operations, employing between one and 15 office staff members. Most of these firms were based in the Western Cape or Johannesburg, and did not have offices elsewhere in the country. With the exception of two firms specialising in construction, all of these firms operate in a number of industries. The pool of job seekers registered with each firm ranged from 100 to 5 000 workers, with about 1 000 on the databases of quite a few firms. The number of workers assigned varied widely, from 50 in some cases to 3 500 in others. Below is a table indicating staff levels at firms, the pool of workers and number of current placements.

Table 42: Small labour broking firms

Company	Pool of job-seekers (all industries)	Current placements	Current placements in construction	Number of office employees
E	1 000+	N/A	50	2
F	N/A	N/A	145	2
G	1 000+	200	0	5
H*	150	70	70	1
I	N/A	N/A	N/A	4
J	5 000	3 500	1 500	15
K*	2 000	220	220	N/A

Notes

* Denotes the companies that specialise exclusively in construction

N/A denotes information that was not available either because the informant did not know or was unwilling to disclose it.

Length of time of operation in the industry

In general, the medium to large labour broking firms that participated in the research had a long history in the labour broking industry. The oldest had been in the industry for 40 years. The youngest of these firms was established in 1995, and later became part of a large corporation. Since these larger firms were part of large corporations formed through mergers and acquisitions of smaller firms, it was difficult to determine when they had entered the construction industry. However, informants indicated that the blue collar divisions concerned could be traced back to a labour broking firm that had some presence in the construction industry.

All of the small labour broking firms were less than ten years old and were still trying to grow in the market. With the exception of two firms, most of them had entered the construction industry soon after they began operating. The mean (average) number of years of operation as a labour broker for these small firms is 6.5 years and the median is 6 years. The mean number of years in construction is 6 years, with the median being 7 years.

The above, and discussions with informants, indicate that labour broking in the construction industry is not a new phenomenon, but is an established means of securing flexible labour. There has, however, been a significant increase in the number of labour broking firms operating in the construction industry in recent years. This corresponds with research highlighting the trend that labour broking in general has grown exponentially post- 1995, when the new Labour Relations Act[23] came into force.[24]

Below is a table indicating time of operation in the labour broking industry and in the construction industry in general.

23 Act 66 of 1995.
24 Theron, J and Godfrey, S The Rise of Labour Broking and its Policy Implications (Cape Town, Institute of Development and Labour Law Monograph Series: 2005).

Table 43: Time of operation in labour broking

Company	Number of years in labour broking	Number of years labour broking in construction
A	37	37
B	12	N/A
C	40	N/A
D	14	14
E	6	6
F	2	2
G	3	2
H	7	7
I	5	5
J	12	9
K	11	11

Note:

N/A denotes information that was not available because the informant did not know

Who do labour brokers service?

Informants were asked how many clients they were currently servicing in total, and how many were in the construction industry. In most cases, it was impossible to find out how many clients the labour broking firms were servicing. Three informants (representing two large firms and one small firm) declined to give this information on the grounds that it was competitive information. In some cases, the informants did not have the information on hand and declined to give estimates.

A few small firms were willing to provide this information. One indicated that it had three clients in construction, one being a project management company and the other two being building contractors. Another said it had two construction clients. Another said it had between 15 and 20 clients, but did not have any construction clients at the time of the interview. Firm D was the only large firm willing to state that it had eight clients, five of which were in the construction industry. The labour broker had provided 1 500 and 1 800 workers respectively to two clients. It had provided 30, 40 and 50 workers respectively to the other three clients.

The most interesting case was that of a labour broker that had serviced only one client exclusively since it was established. The woman who owned the labour broking firm (a close corporation) was closely related to the owner of the client firm, a project management company. The project management company was in turn servicing several construction companies. The labour broker was registered as a compliant employer with the Cape Building Industry Bargaining Council (which is where the researcher obtained its contact details). The CC had been established to find workers and take care of compliance with regulatory requirements, including the provisions of the bargaining council agreements.

The large firms indicated that most of their clientele were medium to large construction companies, although two of them indicated that some of their clients were small-scale operations. The majority of small labour brokers indicated that they serviced small to medium operations, many of which came onto projects as subcontractors. Both large and small labour brokers indicated that they provided workers to project management companies, although these did not make up the bulk of their clients.

Significantly, quite a few of the founders (or senior employees) of the small labour broking firms had a background in the construction industry, either as building contractors or as labour brokers servicing construction companies. According to the website of one of the labour brokers, one of its executives had worked for a national labour broking firm which had serviced some of the biggest construction companies in the country (names provided). Another executive of the same firm had previously owned a specialist subcontracting company. This labour broking firm claimed only to service medium to large construction companies. On the other hand, the owner of the CC mentioned above had no experience in the construction industry, but a close relation owned the project management company that was her sole client.

The above indicates that (at least in the case of smaller firms) experience in the construction industry is an asset to labour broking firms operating in the industry. One informant indicated that technical knowledge was invaluable, as it enabled the labour broker to understand the client's requirements and find suitable workers. A background (or close relations) in the industry also provided important business contacts and connections that could be leveraged to obtain and retain clients. However, it was more difficult to trace the history of the larger firms, as they had undergone changes over the years.

Nine of the labour broker informants confirmed that they had long-standing relationships with their clients, spanning several years in some cases (13 years in one case). This shows that the engagement of workers through labour brokers is becoming entrenched as a flexible employment strategy used by construction companies.

Profile of the workers assigned by labour brokers

The larger labour broking firms indicated that the workers they contracted were drawn from a broad spectrum of skills levels (general workers, semi-skilled and skilled workers) and building trades such as bricklaying, plastering and carpentry. The smaller firms tended to concentrate on the provision of semi-skilled and general or unskilled labourers. Several informants representing small firms said this was because most of their clients directly hired and retained their own skilled workers and merely required "add-ons" to assist them. Most labour broker informants indicated that attracting skilled staff was a serious challenge due to the skills shortage. On the other hand, semi-skilled and general workers were more readily available.

Process of registration with a labour broker

The labour broker informants were asked what procedures a person had to comply with to be registered on their database of available workers. All of them indicated that basic information such as an ID document (either South African ID or proof of legal immigrant status), address, next of kin and bank details was essential. Workers with qualifications and experience had to provide proof in the form of certificates and references. Some firms indicated that they also required police clearance as proof that the applicant did not have a criminal record. Some of the labour broking firms said they administered written tests to determine an applicant's competency and aptitude for fulfilling the tasks required.

If the applicant fulfils all the requirements and criteria, he or she is placed on the labour broker's database or pool of job seekers available for assignment. This does not create an employment relationship between the labour broker and the worker. A contract of employment between the broker and worker is only created when the worker is assigned to a client for a project or for a stipulated period of time.

Duration and termination of contract of employment

There were mixed responses to the question of whether labour brokers assign workers for a specified period of time (such as two months) or until the completion of the tasks or projects to which they are assigned. Four informants, representing both large and small labour brokers, said that the contract assigned the workers to the client for the duration of the project or until the worker had completed the tasks required by the client. The rest said that a fixed period of time was stipulated.

The respondents all indicated different lengths of assignments, depending on the client's requirements, the tasks to be completed and the skills levels of the workers. One informant representing a small labour broker (providing mainly semi-skilled and unskilled labour) said that most of the contracts were short-term contracts lasting between one day and a few weeks. Another said their contracts were for any period less than 18 months at a time. Another small labour broker indicated that contracts generally were for two weeks to two months for general workers and six months to a year for skilled workers.

The representative of a large labour broking firm said short-term contracts were for three to four months on average, while longer term contracts were typically for between one year to 18 months and in some cases up to three or four years. Informants made it clear that contracts could be extended if the client required a worker for a longer period. One informant from a small labour broker said that she made an effort to renew contracts in good time, because it would be impossible to claim compensation for injuries and accidents if there was no valid contract of employment.

Only two informants (from a small and a large broker respectively) were willing to provide the researcher with their standard contract of employment. Both of these contracts made it clear that the contract of employment between the broker and the client only existed for the duration of a placement with a particular client, and ceased to exist when that placement ended. Each contract stated that the worker could not argue that the termination of a placement (either at the end of the agreed period or prematurely at the client's request) was a dismissal or retrenchment. By signing the contract, the workers agreed that they would not claim severance pay and benefits from the broker.

Another important term was that the worker was not entitled to expect that a contract would be renewed, even if the broker had previously renewed it.

These provisions seem to be standard in most employment contracts between labour brokers and their employees.[25] When questioned about the fairness of such clauses, some respondents said that they placed workers on standby and made the best efforts to reassign workers to other clients. They argued that it was in their best financial interests to have as many workers assigned for as long as possible. The legality of such contractual provisions is discussed in part 4 below.

Supervision on site

Informants were asked whether they merely placed workers at the disposal of the client or whether they provided someone to supervise their workers on site. Most of them said that the client supervised the work onsite. Informants said that in some cases, they are required to provide a foreman or supervisor to monitor the workers on site. Even in cases where the labour broker provides a supervisor, s/he would still be subject to the specifications and requirements set by the client. The majority of respondents indicated that their role was merely to place workers at the disposal of the client, and that they did not supervise their own employees on site.

Benefits of using labour brokers

All the labour broking firms indicated that while they mostly arranged temporary placements, they also arranged some permanent placements. Most of the companies also provided payroll facilities for clients, and made the necessary deductions required by law.

The labour broker informants indicated that they helped clients by enabling them to have the flexibility to adjust the sizes of their workforce according to their needs. The website of one firm explains this as follows:

25 Theron et al op cit p 30.

> "Seasonal industries are able to use … workers without the problems involving (sic) in laying them off in the off-season, or having to incur the cost of carrying non-productive workers in the off-season. Project based industries, such as construction, have the ability … To closely monitor their demands for workers at specific times during the project and to change the number of workers on site easily and quickly at any time. In other industries, should demand suddenly drop, [the firm] would immediately be able to reduce the workforce without the lengthy and expensive process of retrenchment."

As discussed in part 2 above, a senior representative of a large national construction firm said labour brokers played an important role because the labour requirements of construction companies differ from project to project. It was therefore impossible for construction companies to employ the right numbers of workers possessing the necessary skills for their projects permanently.

Related to the benefit of flexibility is the notion that labour brokers enable construction companies to obtain the labour they require, and may get rid of workers that they do not require. Using labour brokers dispenses with the problem of unfair dismissal and retrenchment costs and procedures, as the client has complete freedom to circumscribe the duration of the contract. Moreover, clients are not bound to keep workers for the stipulated periods, as labour brokers promise to replace a worker who the client is unhappy with. Replacements can be found very quickly, with one labour broker promising to find a replacement within 24 hours where possible.

A further benefit is that the labour brokers provide a holistic service with regard to the workers they provide to clients. They promise to "take care" of all labour matters and administration in respect of the workers without the client's involvement, to enable the client to concentrate on their core business. While assurances of compliance with all the relevant legislation are made, promises to "deal with unreasonable unions, strikes, unfair dismissal cases, annual wage negotiations", raise questions about the methods used to solve these problems.

Finally, and importantly, labour brokers undertake all the obligations of the employer, while the client is able to direct and control the workers' day-to-day activities. One website claims that the client retains "total control of the worker…as if [the client] directly employed the worker". Commentators argue that by doing this, labour brokers enable the "true employer" to pull the strings behind the scenes, while at the same time escaping the obligations of being an employer. In this way clients can "have their cake and eat it".

Challenges faced by labour brokers in the construction industry

Most informants complained that labour broking in construction is highly competitive. This has been worsened by the decline in the amount of work available and the growth of labour broking in the construction industry over recent years. One informant also noted that generally, their clients were trying to cut costs by reducing the number of workers hired through labour brokers, thus reducing their income.

The majority of labour broker informants (and several other informants) added that there is a severe skills shortage, and that the "new" training programmes are producing a "substandard" workforce that is a far cry from the calibre of workers who underwent the three-year apprenticeship training in the past. This makes it difficult to attract and retain suitable temporary workers for clients.

Two informants from large labour broking firms said that another challenge is that research and media reports portray labour brokers as unscrupulous, exploitative and non-compliant. One of the major challenges faced is to address these negative perceptions, and distance the compliant labour brokers from the notorious "bakkie brigade".

Willingness to participate in the survey

While the majority of labour brokers were willing to participate in the survey, several were suspicious and raised certain concerns. One of the most pressing concerns was that some of the information requested was competitive information. The disclosure of this information to "the wrong people" would be detrimental to their businesses. Some raised concerns about whether they would be reported to the Department of Labour. Presumably, they were concerned with penalties for non-compliance. A few asked if the research would be used to support calls for the banning of labour brokers in the country. The researcher had to reassure the respondents that the purpose of the research was to explore the nature and extent of labour broking for policy reasons, and that they need not answer any questions that they were unwilling to answer.

However, most were willing to answer all the questions, with only three refusing to disclose the number of workers registered on their database, the number of workers placed with clients and the number of clients serviced. Ironically, some of this information was prominently displayed on many labour brokers' websites (including two that refused to provide it) and used as a selling point.

(3) THE REGULATION OF LABOUR BROKING IN CONSTRUCTION

This section examines the means by which labour broking is regulated in the construction industry. We begin with the current legislative provisions that relate specifically to labour brokers (referred to as temporary employment services or TESs in the legislation). The main import of these provisions is that labour brokers are the employers of workers assigned to clients, while the client may be held jointly and severally liable for the labour broker's non-compliance with certain employer obligations.

We then examine the arrangements governing the terms and conditions of employment in the construction industry. These are divided between the building and civil engineering sectors.

The controversy surrounding labour broking has been fuelled by claims that labour brokers exploit their employees and do not comply with labour legislation and regulations. There are also arguments that labour broking does not promote the skills development of employees, and that employment by labour brokers is precarious and insecure, as clients can easily dispense with the workers. The remaining sections highlight how some of these issues are manifested in the construction industry. We also highlight some programmes and initiatives that attempt to address these issues, and examine their strengths and limitations.

Current legislative provisions governing TESs

The Labour Relations Act, Basic Conditions of Employment [26] and Employment Equity Act regulate the position of temporary employment services. The relevant provisions of each are discussed below.

Section 198 of the Labour Relations Act defines a temporary employment service as "any person who, for reward, procures for, or provides to, a client, other persons – (a) who render

26 Act 75 of 1997

services to or perform work for, the client, and (b) who are remunerated by the temporary employment service". In other words, the TES provides its clients with temporary workers and pays these workers. Section 198 further provides that the TES (as opposed to the client) is the employer of a person whose services are provided to a client by a TES (provided the worker is not an independent contractor).

The section also holds the TES and the client liable if the TES contravenes a collective agreement that regulates terms and conditions of employment; a binding award that regulates terms and conditions of employment; the BCEA or a wage determination. These terms and conditions mentioned typically regulate working hours and overtime, annual leave, sick leave, family responsibility leave, maternity leave, notice periods for termination of employment and retrenchment provisions.

Section 1 of the BCEA has a similar definition of a TES to that found in section 198 of the LRA. It also designates the TES as the employer of the worker and the worker as the employee of the TES. In addition, the section provides that a client is jointly and severally liable for a TES's non-compliance with the BCEA or any sectoral determination.

Section 57 of the Employment Equity Act provides that for the purposes of Chapter III of the Act (relating to affirmative action measures), a person provided to a client by a TES is deemed to be the employee of the client if the person's employment with the client is for an indefinite period or for three months or longer. It also provides that the TES and the client are jointly and severally liable if the TES commits an act of unfair discrimination on the express or implied instructions of a client.

Section 57 of the EEA attempts to ensure that workers provided by labour brokers are included in measures to eliminate unfair discrimination and to ensure the equitable representation in the client's workplace. It differs from the TES provisions in other legislation in three respects. Firstly, it provides that in certain cases, the client will be deemed to be the employer of the worker provided through the TES in matters relating to affirmative action. However, this is subject to the limitation that the worker works for the client for at least three months or for an indefinite period (the second distinguishing feature). Thirdly, it provides for joint and several liability if the unfair discrimination by the TES is committed on the express or implied instructions of a client. While this acknowledges the reality that, in many cases, the client determines the actions of a labour broker, it seems to require the worker to show that the client gave the broker instructions to discriminate. Since the worker is usually not privy to the dealings between the client and the labour broker, this would be very difficult to prove in most cases.

The use of a labour broker creates a triangular employment relationship involving the worker, the TES, which is designated as the employer in law, and the client or core enterprise, which makes use of the worker's services. This is problematic: in most cases, the client makes decisions and takes actions that directly impact on the employment relationship between the worker and the "employer", that is, the TES. Theron argues that:

> "The employer assumes the legal risk of employment but it is the client who calls the shots by determining the work to be done, and, in most practical respects, the terms on which workers are employed to do so. In many instances it would be appropriate to refer to nominal and real employers. The contract of employment between the nominal employer and workers, if indeed there is one, is practically irrelevant."

The legislative provisions outlined in the above section partly address the problem by holding the client jointly and severally liable for unfair discrimination or contraventions of collective agreements, binding awards, the BCEA or sectoral or wage determinations. However, these provisions do not hold the employer jointly and severally liable for unfair labour practices and dismissals.

The regulation of terms and conditions of employment in the construction industry

Having outlined the legislative provisions that govern labour broking, it is necessary to turn to the arrangements that govern terms and conditions of employment in the construction industry, which are applicable to labour brokers operating in the industry. Terms and conditions of work govern issues such as pay, benefits, leave, hours of work and overtime. There are separate arrangements for the building and civil engineering sectors of the construction industry. These are examined in turn.

The regulation of conditions of employment in the building industry is very fragmented. The industry does not have a national bargaining council, and regional bargaining councils have regulated certain parts of it. Four out of ten of the building industry bargaining councils (BIBCs) have collapsed, largely due to insufficient representivity. Of the six councils that are currently operational, only four (the Western Cape BIBC, the North and West Boland BIBC, the Kimberley BIBC and the Bloemfontein BIBC) have collective agreements in place. All four collective agreements have been extended to non-parties. All of the bargaining councils require labour brokers to register as employers with the councils and comply with the collective agreements.

Voluntary bargaining forums (VBFs) have been established in Gauteng and in the Southern and Eastern Cape, where no bargaining agreements are in place. Collective agreements are reached within these forums, but these are only binding upon the employer and trade union parties to the forums. According to trade union representatives in Gauteng, the collective agreements reached in the VBFs are only binding on employer parties in respect of the workers they directly employ, and do not bind labour brokers.

The coverage of bargaining councils and voluntary bargaining forums is very limited. Trade unions must bargain with individual employers in areas where no BIBCs or VBFs exist. The Basic Conditions of Employment Act provides a minimum floor regarding matters such as working time, overtime, public holidays and leave, but it does not stipulate minimum wages.

The civil engineering industry has a national bargaining forum (NBF) comprising the South African Federation of Civil Engineering Contractors (SAFCEC), the National Union of Mineworkers (NUM) and the Building and Construction and Allied Workers' Union (BCAWU). The collective agreement reached in the NBF is an important input document used by the Minister of Labour in making a sectoral determination to govern issues such as pay and leave for all workers in the civil engineering industry. Labour brokers are bound by the sectoral determination, and must apply its terms to their employees in the civil engineering sector.

Provisions of the collective agreement that are not incorporated into the sectoral determination remain binding only between members of SAFCEC and the trade unions. Arguably, these provisions do not bind labour brokers, as they are not members of the federation or parties to the collective agreement.

Having outlined the legislation governing labour broking in general and the arrangements regulating terms and conditions of employment in the construction industry, we now examine some of the areas of non-compliance that are cited by critics of labour brokers. Four areas have been selected, namely the underpayment of wages, the provision of social security, skills development and dismissals.

Payment of wages

One of the most common criticisms of labour broking is that labour brokers pay their employees much less than their counterparts that are directly employed. The logic behind this is that the only way labour brokers can serve as a viable alternative to direct employment is if their fees are not significantly higher than what clients would pay if they directly employed the workers. Labour brokers also argue that stiff competition means that brokers must find ways to undercut their competitors while still making a profit.

Representatives of labour brokers interviewed responded that this was not necessarily the case. They claimed that their clients did not see them as a mere alternative to direct employment, but perceived labour broking as a service that was convenient and relieved them of employer obligations. They were willing to pay more than what they would have paid for direct employment. As a result, labour brokers received enough to pay their employees the required wages while still making a "decent profit".

Which theory holds true in the construction industry? There is no simple answer to this question, as there were mixed responses from the different respondents. The researcher did not ask labour brokers how much they paid their employees, as this is a sensitive issue and the question is unlikely to be answered truthfully. The researcher relied on the views of trade union and bargaining council representatives, as they were willing to give this information.

As far as the building industry was concerned, we examined the position in the bargaining councils that still operate in the industry. Representatives from the North and West Boland, Kimberley and Bloemfontein BIBCs said they did not have serious problems with the (few) labour brokers who operated and were registered within their areas. They said that they had encountered a few instances of underpayment of wages, but these were usually resolved through the use of the normal enforcement channels.

The position in the Western Cape was very different, as there were many more labour brokers operating in the industry. However, in contrast to the other three regions, very few of the labour brokers had made attempts to register with the bargaining council and still fewer (five) were listed as being compliant. Representatives of the Western Cape BIBC said that while a few labour brokers paid the required wages, the overwhelming majority (including those not registered with the council) underpaid their employees.

The trade union representatives said there was general non-compliance with the minimum wages in building industry bargaining councils and the civil engineering sectoral determination by labour brokers. Some said it was more likely that labour brokers would comply with collective bargaining agreements in BIBCs, as there were enforcement measures in place. The representative of the BWU that operates in the Western Cape and Boland painted a slightly more positive picture. He said that the union had established good relationships with some labour brokers, and that most of them complied with the collective agreement. The union and the bargaining council tackled those that did not comply, and were usually successful in ensuring compliance.

Leave pay and social security provision

Critics of labour brokers argue that they only pay for work done and do not provide for social security benefits for workers. These include contributions towards pension funds, and statutory funds for unemployment insurance and occupational injuries and diseases. Critics also argue that labour brokers do not pay for annual leave, family responsibility leave and sick leave.

An argument can certainly be made that some unscrupulous brokers avoid providing for social security benefits and leave in order to maximise their profit from fees paid by clients.

It is also plausible that the temporary and assignment-based operation of the labour broking industry is a disincentive for labour brokers to make such investments in their workforces. Some trade union and labour broker representatives indicated that many labour brokers do not pay for leave or make benefit contributions.

The CAPES website details the rights of TES employees in terms of labour legislation. These include the right to a written contract, the right to annual leave, sick leave and family responsibility leave, the right to allowances for night work, and the right to premium rates for overtime and work on public holidays and Sundays. It sets out the obligations relating to deductions for the Unemployment Insurance Fund (UIF), Skills Development Levies (SDL) and the Compensation for Occupational Injuries and Diseases Act (COIDA). TES are required to comply with terms and conditions of employment as provided for in any relevant collective agreement.

CAPES also includes a detailed breakdown of the contributions for TES to build into their charges to clients:

Annual leave	5.88%
Sick leave	4%
Family responsibility leave	1.25%
UIF	1.25%
COID	1%
Skills Dev.	1%

It was difficult to establish the extent to which labour brokers actually build these contributions into their costing and actually pay for leave and pay towards the UIF and COIDA. However, there was evidence that in some cases, labour brokers operating in the construction industry do make such provisions.

Bargaining councils enforce employer obligations relating to leave pay and administer contributions to social security funds such as pensions. A number of labour brokers are registered with the building industry bargaining councils in the industry, that is, the Western Cape, North and West Boland, Kimberley and Bloemfontein Building Industry Bargaining Councils. Representatives of the latter three councils said that the few labour brokers operating in their areas were registered and for the most part complied with requirements to pay for leave and benefit contributions. These representatives said that they considered labour brokers to be "just like any other employer in the industry" and that labour brokers were not necessarily predisposed to be non-compliant.

Trade union and bargaining council representatives in the Western Cape painted a mixed picture of compliance in these areas. They indicated that while some labour brokers were generally compliant with regard to leave and benefit fund contributions, these were a mere drop in the ocean, given the large numbers of labour brokers operating in the region. At the time of research, only five labour brokers were registered as being compliant. Estimates from key informants show that these five labour brokers represent well below ten per cent of the labour brokers operating in the industry in the Western Cape.

Case study 5: A national labour broking firm

One national labour broking firm incorporates the leave and benefit provisions of the national bargaining councils for the industries in which it operates into its standard contract of employment. Although it operates in the construction industry, it does not include construction industry provisions because there is no national bargaining council in the building and civil engineering sectors. The firm's standard contract of employment states that the firm provides paid annual leave, sick leave and family responsibility leave to employees who meet the relevant criteria. It also makes contributions in terms of the UIF and COIDA for employees.

It also has several benefit funds for those who are not covered by bargaining council arrangements. It provides personal accident cover providing a benefit in the event that an employee dies or becomes permanently disabled. It also has a programme to provide advice, counselling and anti-retroviral treatments in the event of accidental exposure to HIV/AIDS. These two funds are fully funded by the labour broker. It also provides elective benefits including a funeral plan, hospital plan and provident fund. These are funded by employee contributions.

The above firm can be commended for its efforts to have a comprehensive policy to provide for leave and social security. However, it does not seem that the labour broker itself makes a contribution to the funeral, hospital and provident funds in addition to the employee's contributions. It is also unclear how widespread the practice of establishing benefit funds for employees is amongst labour broking firms in the industry. Arguably, large firms would be more likely to provide such funds than smaller operations.

Skills development

Critics of labour broking also have misgivings about the extent to which the industry contributes to skills development. This is a pertinent question in the construction industry, which already suffers from an acute skills shortage, as identified by representatives of all stakeholders. While all the representatives of labour brokers interviewed identified the skills shortage as a challenge for them in the construction industry, very few of them had or were participating in training programmes for the workers assigned to clients. This section examines the formal arrangements for skills development in the labour broking industry.

The Skills Development Act provides for the regulation of employee training through SETAs, which have been established for each sector. The Construction Education and Training Authority (CETA) facilitates the training of employees of employers operating in the construction industry. All employers are required to pay skills development levies of 1% of their payroll. 80% of this amount is given to the relevant SETA, and the remaining 20% goes to the Skills Development Fund.

The position regarding labour brokers is different, as they are not required to register with the SETAs in the industry or industries in which they make temporary placements. Thus, labour brokers operating in the construction industry cannot register with the CETA. All labour brokers are required to register with the Labour Recruitment Chamber of the Services SETA. The Services SETA facilitates the training of labour brokers' employees who are responsible for carrying out the labour recruitment functions in their offices, as opposed to the workers placed with their clients.

However, several informants (one from the Services SETA and two from large labour broking firms) said that labour brokers may facilitate the training of workers that they place with clients in the relevant industries. A labour broker is entitled to include these workers in its workplace skills plan, which sets out the training the broker intends to undertake each year. Bursaries that the Services SETA may grant to labour broking firms facilitate this training. These bursaries can be redeemed with a training provider recognised by another SETA, such as the CETA. The labour broker may then claim back for the training provided. The two labour broker representatives said that clients can also train the employees and invoice the labour broker, who then pays the client for providing training, and claims the amount paid from the Services SETA. This is referred to as the "Client-TES Claim Programme." In this way, labour brokers were encouraging clients to train workers.

The representatives were at pains to show that it is in labour brokers' best interests to ensure that their employees have the currency of skill to remain in employment. CAPES estimates that the temporary employment sector has contributed R 112 million to the annual skills levy, and has introduced over 4 000 out of 80 000 learnerships created, constituting about five per cent of all learnerships. Again, it is impossible to ascertain what proportion of these levies and learnerships contributed to actual skills development in the construction industry.

While the training programme is a commendable initiative, it is doubtful that many construction workers would benefit from it, for various reasons. Firstly, several small labour broker informants said that their firms were not registered with the Services SETA, and it is likely that a significant proportion of labour brokers operating in the industry are not registered.

Secondly, the majority of informants said that they did not provide or facilitate any training for workers placed with clients, as the latter only required workers with the requisite skills and knowledge to perform their work. One representative went so far as to say that the workers they placed with clients (predominantly unskilled labourers) were not interested in participating in training programmes, as they were concerned with more pressing matters of survival.

Thirdly, although it is not impossible that clients would invest their time and effort in training workers who are working for them temporarily via an intermediary, it is less likely that they would do so. Any training provided by the client would probably be geared towards enabling the worker to perform the assigned tasks, as opposed to facilitating upward mobility.

Security of employment: Dismissals

There is a general perception that labour broking provides very little security of employment. This is largely due to the fact that assignments are of a fixed-term nature. South African labour law allows and does not place restrictions on fixed term contracts. In the normal course, the expiry of a fixed -term contract (whether in a direct employment relationship or a labour broking arrangement) does not in itself amount to a dismissal and does not give rise to any remedies.

The real problem with security in employment lies in the perception that labour brokers' employees are more dispensable than direct employees, and do not have recourse to remedies for unfair dismissal when contracts are cancelled on the instructions of the client. Dismissals in the context of labour broking arrangements are problematic and usually arise in two situations.

The first is the cancellation of a fixed-term contract before the agreed time. This happens when the labour broker removes and replaces a worker because the client is unhappy with his or her conduct or performance or no longer requires the worker. The second arises when the employment contract is not renewed, despite the employee's legitimate expectation of renewal. This usually applies in situations where an assignment with a particular client has previously been renewed several times. Both these cases constitute dismissals in terms of section 186(1) of the LRA, and give rise to liability if the employer cannot give a fair reason or failed to follow a fair procedure.

The question is whether an employee has a remedy when dismissed in the context of a labour broking arrangement. Because there is no contract between the worker and the client and no provision holding the client liable for dismissal, the worker cannot proceed against the client. Trade union representatives interviewed said that it was common for labour brokers to deny liability for dismissals including retrenchment, on the basis that the decision to dismiss was made by the client and therefore beyond the labour broker's control. Some labour brokers include terms to that effect in their employment contracts. Representatives of labour brokers said that this was how the industry operated, and that the best they could do was to try to reassign the worker to another client, which was in their own best financial interest.

This approach taken by some labour brokers violates the law as stated in a number of labour court decisions and arbitration awards. The Labour Appeal Court has held that the cancellation of an employment contract amounts to a dismissal by a temporary employment service, and the latter must do so for a fair reason and according to a fair procedure.[27] In the case of redundancy, the broker must follow retrenchment procedures in terms of the LRA.[28] In the case of misconduct, the broker must conduct a disciplinary enquiry.[29] Brokers may not simply rely on a clause in an employment contract that states that employment will automatically terminate if the client no longer requires employees' services.[30] If the client no longer requires the worker, the labour broker must find alternative employment or retrench the workers.[31] Two arbitration awards have also held that placing an employee "on standby" indefinitely after cancellation of a contract amounts to unfair dismissal.[32]

Another problem highlighted is the fact that some labour brokers choose to define the duration of an employment contract according to the completion of a specific task or project, as opposed to a fixed date. This goes against the provisions of section 29(1)(m) of the BCEA, which requires that an employer must provide a written contract of employment that stipulates the date of termination of the contract. A term that the worker will be employed "for the duration of project X" does not meet this requirement. Furthermore, the absence of a specified date of termination gives a labour broker leeway to dismiss a worker prematurely under the pretext that the contract has come to an end.
Section 4 discussed the regulation of labour broking in the construction industry. This involved a discussion of the legislative provisions relating to labour broking and the laws governing the terms and conditions of employment in the construction industry in particular. It examined how these regulations translate in practice, with a focus on certain issues raised by critics of labour brokers.

(4) INSTITUTIONS REGULATING LABOUR BROKERS IN THE CONSTRUCTION INDUSTRY

This section considers the non-state institutions involved in the regulation of labour brokers in the industry. These are trade unions, bargaining councils and employer associations regulating the labour broking industry. While some of the information presented in this part overlaps with that discussed in part 4, we believe it is necessary to explain the role of these organisations and outline their experiences and attitudes relating to labour broking and the construction industry. We highlight the strengths and shortcomings of these institutions and the challenges they face in regulating labour broking.

The role of the bargaining councils

The Cape, North and West Boland, Kimberley and Bloemfontein Building Industry Bargaining Councils require all employers to register with councils if they operate within their jurisdiction. As labour brokers are employers, they must register with the relevant bargaining council and comply with the provisions of the collective agreements. However, they are not members of the Master Builders' Associations, and therefore do not directly participate in collective bargaining.

27 LAD Brokers (Pty) Ltd v Mandla [2001] 9 BLLR 983 (LAC).
28 LAD Brokers (Pty) Ltd v Mandla [2001] 9 BLLR 983 (LAC).
29 NEHAWU & Another v Nursing Services of South Africa [1997] 10 BLLR 1387 (CCMA); Labuschagne v WP Construction [1997] 9 BLLR 1251 (CCMA).
30 NUMSA obo Majoro and Others/ Purple Moss 1309 t/a Kopano Therman Insulation [2008] BALR 342 (MEIBC).
31 NUMSA obo Majoro and Others/ Purple Moss 1309 t/a Kopano Therman Insulation [2008] BALR 342 (MEIBC).
32 NUMSA obo Daki/Colven Associates Border CC [2006] 9 BALR 877 (MEIBC); Smith/ Staffing Logistics [2005] 10 BALR 1078 (MEIBC).

Clause 6A of the Cape bargaining council collective agreement states that no person may use a temporary employment service for work in the building industry unless both the client and the TES are registered and in good standing with the council. It also provides that the client and the TES shall be jointly and severally liable if the TES contravenes the collective agreement.

According to trade union and bargaining council representatives, several labour brokers have at some stage been registered with the Cape bargaining council. These labour brokers are a mixture of large national firms and medium and small operations. However, only five labour brokers were registered as being compliant with the collective agreement at the time of registration.

One official at the Cape bargaining council said that 50 complaints were brought against labour brokers in 2008. Most of them related to the non-payment of benefit contributions. The bargaining council has innovatively used the joint and several liability clause to hold clients liable for the non-compliance of the labour broker. In one case, a registered labour broker had not paid benefit contributions to the council because its client had not paid fees for workers that had been assigned to them. After failing to secure payment by the labour brokers, the bargaining council approached the client and asked it to pay the outstanding fees directly to the council instead of the labour broker. After deducting the overdue contributions, it paid the rest of the money to the labour broker.

Another official at the Cape bargaining council said that while the council tried its best to ensure the compliance of labour brokers, it recognised the need to have a compliance agent dealing solely with labour brokers, due to the unique problems presented by the triangular relationship. The council was considering creating a post for this purpose.

The experiences of the other three bargaining councils were different. In Kimberley, only one labour broker, employing about 100 construction workers, was registered with the bargaining council. The North and West Boland reported that four labour brokers were registered with the council, one classified as large and the other three as small. The latter placed ten to twenty workers with clients. Two labour brokers are registered with the Kimberley bargaining council: a large labour broker servicing six clients and a small labour broker. The representatives of these three bargaining councils said that they were not aware of any other labour brokers operating in their areas. They did not believe that labour broking had grown exponentially in their areas. It may be that there are fewer brokers in the smaller towns because there is less work available than in the large cities.

The representatives of these three bargaining councils also said that the labour brokers generally complied with the provisions of the collective agreement, and that no complaints had been brought against them in 2008. Their general approach was to treat labour brokers in the same way as building (sub) contractors - approach them in the case of a complaint and use the normal procedures to ensure compliance. Generally the labour brokers were quite co-operative with the council. It was evident that all three bargaining council representatives had personally interacted with the owners of the labour broking firms.

While bargaining council agreements are (theoretically) binding on labour brokers and can be enforced against clients, they are likely to have a limited impact, due to the fragmented and partial coverage of the bargaining councils in the building sector.

Collective bargaining with labour brokers operating in the civil engineering sector was not a major issue, as the sector is governed by a sectoral determination. Labour brokers do not seem to have much influence in the collective bargaining process that precedes the making of a sectoral determination, as they do not belong to SAFCEC.

Challenges for trade union organisation

Trade union membership has declined over the last two decades. This is due to changes in the organisation of work, notably through outsourcing, the use of labour brokers, and the increasing use of fixed term contracts and part time workers. Labour broking presents a challenge to trade union organisation, not least in the construction industry.

A representative of the BWU, a large building union operating in the Western Cape, Boland and North and West Boland, painted a slightly positive picture in relation to labour broking in the industry. He could not give the exact number of workers employed through labour brokers, but said that about five to ten per cent of their members are employed through labour brokers. He said that quite a few labour brokers operating in the area recognised the union as a collective bargaining agent and granted organisational rights such as deductions for trade union subscriptions. The union had established good working relations with some of them. These comprised a broad spectrum of labour brokers, ranging from very small to large national firms.

The BWU representative said that the Cape BIBC had been very active in its attempts to ensure that labour brokers were registered with the council and complied with the law. The council had issued compliance orders compelling them to register as required by the collective agreement. He said one of the challenges of organising amongst the workers of labour brokers was the high rate of staff turnover amongst labour broking firms. In addition, workers were rotated frequently, making it difficult to make contact and maintain relations with them. He said that there were some labour brokers that did not pay the stipulated wages or make benefit contributions for workers. He said the unions and the bargaining council took measures to ensure compliance ("They must comply with the legislation and collective agreement, and if they don't we make them comply") and he mentioned the use of the joint and several liability clause against the client to ensure compliance.

A representative of another trade union representing construction workers in the Western Cape, BWAWUSA, said that about a third of the trade union's members were employed through labour brokers. Three labour brokers recognised the trade union and granted it organisational rights, such as deductions for trade union subscriptions. However, large labour broking companies only recognised the trade unions as representatives of workers assigned to a specific project. The union therefore had to show representivity in respect of each project to which a labour broker had assigned workers. This made it very difficult to ensure continuity of the recognition of the unions.

Some of the other labour brokers that employed BWAWUSA's members were unregistered "fly by night" operations and were uncooperative with the union. Some of the labour brokers operating in the industry refused to recognise the union on the grounds that they were not construction contractors. He argued that an overwhelming majority of the labour brokers refused to comply with labour laws and the collective agreement, and that the union's efforts to enforce the agreement were usually unsuccessful.

The Western Cape co-ordinator for NUM indicated that 25 per cent of its membership in the region was engaged through labour brokers. He said it was often difficult for a trade union organiser to distinguish between the contractor's employees and those of a labour broker when they were working on site. An organiser would typically approach the contractor/subcontractor on site to initiate the process of gaining recognition. At this point, the employer would direct the trade union to the labour broker that employed the workers involved. In many cases, it was difficult to track down the labour broker because it was not registered and did not have a fixed address. Once the labour broker was located, the union engaged with the broker.

According to this informant, labour brokers typically used various "dirty tricks" to frustrate the unions (except in the case where the contractor had a "sweetheart union" and facilitated the recognition process). The most common of these tricks was to argue that the union was not sufficiently representative of the workers, which usually included all the labour broker's employees, including permanent office staff.

The union had been recognised by about five labour brokers. The official said that it is often difficult to get an audience with the labour broker, and it takes a longer time to resolve issues because the broker always has to consult with the employer. Workers are often laid off with little or no notice. This affects the union's finances, as they cannot deduct union subscriptions from laid off workers. The labour brokers specifically tell the workers that they have not been dismissed or retrenched, but that they have merely been laid off, and cannot approach another company to look for a job.

The position in Gauteng was different. The largest trade unions, NUM and BCAWU, said that they recruited members amongst labour brokers' employees, but could not give estimates as to what proportion fell into this category. The unions do not seem to approach and engage with the labour brokers directly to seek recognition and organisational rights. It therefore did not appear that the unions engaged directly in collective bargaining with the labour brokers. This was strange, given the fact that they said that the voluntary bargaining agreement did not bind the labour brokers. It did not appear that efforts were being made to ensure that members employed through labour brokers received treatment equal to that received by those covered by the VBF agreement.

However, the Gauteng unions had entered into a project labour agreement setting conditions of employment for workers on a large civil engineering project in Lepalale. A large national labour broker is said to have provided some of the workers for the project. All the parties had agreed that the project agreement would cover all the workers on the project, including those of the labour brokers.

There is a divergence in the approaches followed by the trade unions operating in Gauteng and those in the Western Cape. While unions operating in both regions have members who are employed by labour brokers, the unions in Gauteng do not seem to engage the labour brokers to reach agreements regarding employment conditions.

In contrast, the trade unions in the Western Cape seem to have accepted the reality that labour brokers command a significant portion of the workforce and are a permanent fixture in the construction industry. Despite the fact that the Western Cape has a collective agreement that is binding on all labour brokers, they have sought directly to engage and be recognised by labour brokers. However, in attempting to do so, trade unions have experienced various challenges.

The consensus amongst trade unions is that the best policy solution would be to ban labour brokers and require construction firms to hire their workers directly. As one trade unionist put it, "We would rather engage directly with the construction companies because labour broking opens up too many loopholes that can be used to exploit workers."

Employer organisations representing labour brokers[33]

The Confederation of Associations in the Private Employment Sector (CAPES) was formed in 2002 after the need was identified for a unified body to serve as a single voice for the industry. The CAPES has an association chapter comprising four staffing associations, namely

33 The researcher did not interview representatives of the relevant employer organisations. The information presented in this section was gathered from the websites of employer organisations, media reports and representatives of labour broking firms that were members of the organisations.

the Association of Personnel Services Organisations of South Africa (APSO), the Association of Nursing Agencies of South Africa (ANASA), the Information Technology Association of South Africa (ITA) and the Constructional Engineering Association of South Africa Labour Broking Division. In addition, it has a corporate chapter comprising ten large national labour broking companies: Adcorp Holdings, Adecco Recruitment Services, Kelly Group (Pty) Ltd, Callforce Direct, Drake International SA (Pty) Ltd, Landelahni HR (Pty) Ltd, Manpower SA, Primeserv Employment Solutions, Transman (Pty) Ltd and Workforce.

CAPES acknowledges the fact that some "unscrupulous operators and clients abuse assignees by using TES in order to pay below minimum wages, and avoid compliance."

The temporary employment industry has therefore self-regulated for decades. Each of CAPES' four staffing associations requires members to comply with certain membership criteria as well as with codes of ethics and other regulations, failing which, corrective and/or punitive action is taken. The website claims that its member associations "have done outstanding work in protecting the rights of clients, assignees and the industry alike, albeit on a voluntary basis." As a result, many clients now require that the private employment agencies are members of the associations as a precondition to signing service agreements.
The CAPES website details the rights of TES employees in terms of labour legislation. These include the right to a written contract, the right to annual leave, sick leave and family responsibility leave, the right to allowances for night work, and the right to premium rates for overtime and work on public holidays and Sundays. It sets out the obligations relating to deductions for the Unemployment Insurance Fund, Skills Development Levies and Compensation for Occupational Injuries and Diseases. TES are required to comply with terms and conditions of employment as provided for in any relevant collective agreement. CAPES also includes a detailed breakdown of the contributions for TES to build into their charges to clients.

One of the aims of CAPES is to professionalise the industry, to ensure the competence of labour recruitment companies to conduct work in the industry. It envisages the development of a programme aligned to quality assurance, certification and related requirements of the skills legislation. This programme is being developed in discussion with relevant stakeholders such as the Services SSETA.

Key informants noted that CAPES did not have enough "teeth" to regulate the industry adequately, due to the voluntary nature of the current regulatory regime. The confederation is lobbying for a move from self-regulation to co-regulation by a board comprised of all the social partners (government, the industry and labour). This would also involve provisions for a statutory right to regulate the industry, and the ability to impose severe sanctions on private employment agencies that contravene legal or ethical requirements.

CAPES launched a code of conduct in March 2008. [34] The Services SETA hosted the launch of the code of conduct. In a statement to the media, its Chief Operating Officer said that this was one of the steps in a multi-tiered approach to professionalise the industry. In conjunction with the Services SETA, CAPES was also in the process of establishing an institute to certify labour brokers. It also launched an industry pension fund to ensure that temporary workers who were not covered by collective agreements had some form of social security coverage.

The Association of Personnel Service Organisations (APSO) was established in 1977 to represent its members in their dealings with government and other related bodies. Its role is to promote and ensure "for the benefit of clients and candidates, the adherence to high ethical and professional standards of business." Members may provide permanent or temporary employment services, or both.

34 "Labour recruitment Code of Ethics Launched" reported on http://www.iol.co.za/index.php?set_id=1&click_id=594&art_id=nw20090327115417848C56542, accessed on 28/03/2009.

The following documentation is required when applying for membership of APSO:

- Company/CC registration documents;
- Registration with the Department of Labour (although presently there is no statutory requirement that labour brokers register with the department);
- Income Tax reference number from SARS;
- Skills Development Levy, Unemployment Insurance Fund, Pay As You Earn reference numbers from SARS;
- Workmen's compensation reference;
- VAT registration number;
- Company profile;
- Details of all branches and subsidiary companies;
- Application form that candidates must complete when registering with the agency;
- Terms and conditions of business which the client must sign when dealing with the agency;
- Temporary contract that the temporary employees must sign (if operating as a TES); and
- Service level agreement that clients must sign (if they are provided with temporary employees).

Members of APSO must abide by its constitution. The latter regulates various aspects of the operation of employment services, including disclosure of information to clients and candidates, the advertisement of positions and the levying of fees for recruitment services. Clause 7 of the constitution deals with temporary employment services. It requires TESs to observe fair labour practices and pay the employer's portion of statutory benefits and other insurances and taxes required by law. It also requires that TESs should only provide replacement labour during a strike if the requirements of the Labour Relations Act are fulfilled. It also prohibits TESs from approaching and luring away their competitors' clients and employees. Members are also prohibited from advertising their services on the basis that using a TES would circumvent labour laws.

An ethics committee hears and makes decisions regarding complaints brought against members. The committee can issue a sanction against a member found to have contravened the code of ethics, including a fine, a reprimand, a written warning, suspension of membership for up to one year and the cancellation of membership. This is subject to a right of appeal to the national executive committee, which may confirm or set aside the ethics committee's findings.

The Constructional Engineering Association (CEA) is the national umbrella body for labour brokers, providing constructional engineering workers of all levels. The CEA is also one of the 37 organisations within the Steel and Engineering Industries Federation of South Africa (SEIFSA). While the CEA provides temporary workers for constructional engineering work, its members seem to operate more within the metal and engineering industry than in building or civil engineering. There are, however, indications that some members of the association provide employees in the building and civil engineering industries.

The CEA has two divisions, namely the Labour Broking Division (LBD), which governs labour brokers providing blue collar workers, and the Temporary Employment Services Division (TESD), which provides white collar workers to clients.

13 labour brokers established the CEA-LBD in 1949.Its membership has grown to 168 in 2009. It is estimated that the CEA-LBD represents less than half of the labour brokers operating in constructional engineering. While the members also facilitate the permanent placement of workers with clients, they predominantly provide temporary workers. The membership is drawn from a wide range of labour brokers, from small to large, and predominantly services medium to large construction companies. The members draw their workers from a broad

range of skills levels and trades. The majority of the founders of these labour broking firms enter labour broking with technical experience in construction.

In order to register with the CEA-LBD, a labour broker must show proof of compliance with relevant legislation. The broker must provide SARS clearance and proof of registration with the Services SETA, the Unemployment Insurance Fund, Skills Development Act and the Compensation Commissioner. The labour broker must also be registered with the Metal and Engineering Industry Bargaining Council (MEIBC). In addition, the members must vote in favour of the labour broker being granted membership.

The CEA-LBD has a code of ethics regulating the conduct of its members. This is enforced by a disciplinary and ethics committee, which has the power to suspend or terminate a labour broker's membership for non-compliance. In addition, the association also encourages workers and clients to lodge complaints with the MEIBC, whose enforcement machinery applies to labour brokers. SEIFSA's disciplinary machinery also applies to the labour brokers.

The CEA-LBD provides a number of benefits to members. One is an educational service to update them on developments in the law and in the industry in general. It informs the members of minimum labour standards, and provides a pro forma contract of employment for members to use. It represents members, and lobbies on their behalf when interacting with institutions such as government, trade unions, NEDLAC, the MEIBC, and the South African Chamber of Commerce (SACOC). It also promotes its members, by encouraging clients to use them.

The CEA-LBD engages with trade unions on a number of matters. The association has negotiated with one of the trade union federations on the development of a system to facilitate the deduction of trade union subscriptions by member labour brokers. In addition, they negotiate project labour agreements to determine the terms and conditions of work for large projects such as Gautrain. It was also instrumental in the establishment of the client-TES claim programme, which enables labour brokers to facilitate industry-specific training to workers that they place with clients.

While the efforts of the employer associations to regulate labour broking are praiseworthy, there are several limitations. The first is that they focus on formal, registered entities, to the exclusion of smaller, unregistered labour brokers. As a result, to the extent that they ensure compliance, this is only in respect of the formal segment of the labour broking industry. The challenge remains to identify informal labour broking operations and encourage them to comply.

The second limitation is that, despite their intentions to secure compliance with labour legislation and other regulations, the employer associations cannot guarantee compliance by their members. This applies to members operating both within and outside the construction industry.

The third limitation is that, because APSO and CAPES encompass labour broking firms operating in various industries, they do not focus on compliance with industry-specific labour regulations, such as the collective bargaining agreements in the building industry and the civil engineering sectoral determination.

To the extent that the CEA-LBD operates in the construction industry, it seems to concentrate more on metal and engineering work, as the MEIBC is the only bargaining council that it engages with. It does not seem to focus on civil engineering and building, which is the focus of this research. However, the CEA LBD provides a good model for a potential association drawing together labour brokers that supply workers in the building and civil engineering industries.

(5) THE FUTURE OF LABOUR BROKING IN THE CONSTRUCTION INDUSTRY

The future of labour broking in the construction industry must be examined in light of the ongoing debate about the future of labour broking in South Africa. While labour broking has always been a contentious issue, it has come to the fore as a result of Namibia's recent ban on labour broking.

The main objection to labour broking is that deeming the labour broker to be the employer of the worker is a legal fiction - the client controls the worker and the workplace where work is done. The argument is that the client is the true employer, and the broker is merely an intermediary between the two parties. The legal recognition of labour broking therefore legitimises the client's delegation of its employer duties to this third party. This explains why labour broking has increased so dramatically in South Africa.

Key informant interviews and existing research highlight several problems arising in the context of labour broking arrangements.[35] Firstly, there is some evidence that employees of labour brokers are more likely to be paid significantly less than standard employees. In addition, there is evidence that many workers employed through labour brokers do not receive social security benefits, and are not granted paid leave in terms of collective agreements and the BCEA. Despite the labour broking industry's significant contribution to skills development, there is evidence that many labour brokers do not see the need to provide training for their workers. Thus, some have argued that labour broking has facilitated the creation of an "underclass" of workers, whose conditions of employment are inferior to those of standard employees.[36]Arguably, these inferior conditions are a result of labour brokers' efforts to undercut their competitors and maximise their profits.

In addition to encouraging the inequality of working conditions, labour broking creates insecurity of employment. This is largely because employment can be summarily terminated at the request of the client, who is not held responsible for the consequences of dismissal. Despite the fact that the labour broker is the employer and is legally responsible for the consequences of dismissal, it seems common for labour brokers to require workers to "sign away" their rights to recourse in the event of the termination of an assignment. There is also little evidence to support the assertion that temporary placements are an avenue towards acquiring permanent employment. This would run contrary to the financial interests of labour brokers, whose continued profitability depends on having as many workers on temporary assignments for as long as possible.[37]

The following sections consider the possibilities for the future of labour broking in South Africa, and possible implications for the construction industry. We begin by considering banning labour broking, which has been argued for in some quarters. We then consider the option of allowing labour brokers to operate under stricter regulations.

Banning labour broking

Labour broking has increasingly come under the spotlight in South Africa. Trade unions have argued strongly for its banning on the basis that it amounts to modern slavery and provides little security or benefits to workers. Some politicians made promises to end to labour broking after the 2009 elections.

35 Theron and Godfrey (2005) and Labour Resource and Research Institute Labour Hire in Namibia: Current Practices and Effects (2006) accessed on www.larri.com

36 Theron and Godfrey (2005) p 35.

37 Theron and Godfrey (2005) and LaRRI (2006).

Although labour broking has always been unacceptable in some quarters, the banning of labour brokers in Namibia has fuelled recent debates. We begin by examining the case in Namibia.

Section 128 of The Namibian Labour Act of 2007 prohibits "labour hire" (as it is known in Namibia) in the following terms: "No person may, for reward, employ any person with a view to making that position available to a third party to perform work for the third party." The prohibition excludes the matching of offers of and applications for employment where the service-provider does not become a party to the ensuing employment relationships.

African Personnel Services, (APS, a labour broking firm operating in Namibia) applied for an order declaring section 128 of the Labour Act unconstitutional. APS argued that the prohibition violated its constitutional right to carry on any trade or business in terms of section 21(1) of the Namibian Constitution. The Namibian Court denied the application and found that the prohibition did not violate the applicant's constitutional right.

The Court's decision rested on its finding that the right to carry on any trade or business was not absolute, and that it only encompassed lawful trades or businesses. The Court found that although labour hire was not a crime, it had no legal basis in Namibian law. Namibian employment law was based on the Roman law, which defined a contract of employment as existing between two persons and excluded third parties, such as labour brokers. On these grounds, labour hire was not a lawful business or trade entitled to protection in terms of section 21 of the Constitution.

Although the Court's decision was based on the fact that labour broking was foreign to Namibian labour law, the Court was also influenced by moral objections to labour broking. It went as far as to say that labour hire amounted to modern slavery:

> *"It is my view that this third party interposition creates an unacceptable situation that has no legal basis in our law of contract of employment. In this regard, I accept [the] submission that the whole core nature and character of labour hire is to hire out or rent labour. In my opinion, it is letting or hiring of persons as if they were chattels."*[38]

The Court also found that the labour hire system violated a fundamental principle on which the ILO was based, namely that "labour is not a commodity."

The decision can be criticised on a number of grounds. Firstly, the Court's reliance on the Roman law of contract disregards the fact that law is not static and evolves to meet the changing needs of society. The Namibian legal system itself had condoned labour hire for years. The Court failed to explain the legal basis on which labour broking had operated, and why it was no longer acceptable.

Ngiishililwa argues that the Court's reliance on Roman law was an attempt to shy away from the real question of balancing the benefits of the labour hire system against its disadvantages, including allegations of non-compliance and the exploitation of workers.[39] Both sides in the matter had presented extensive evidence and argument regarding the role and impact of the labour hire system. By avoiding this critical issue, the Court missed out on an opportunity to examine other regulatory options for addressing labour hire, for instance the imposition of strict regulations requiring labour brokers to comply with labour legislation.

Reading the judgment gives the impression that, with respect, the Court had already made

38 African Personnel Services v Government of Namibia and Others (Case No: A 4/2008) NAHC 148 (1 December 2008) Para 26.
39 Ngiishililwa, F (Deputy Dean, Faculty of Law, University of Namibia) Labour Hire in Namibia: Looking at a different angle unpublished Mimeo, 2009.

its decision on the position of labour brokers, and was seeking justifications for it. For instance, it placed emphasis on the fact that labour broking violated the ILO's fundamental principle that labour is not a commodity. However, the Court did not acknowledge that even the ILO recognises labour broking, and has chosen to regulate their position in the Private Employment Agencies Convention of 1997. In this way, the Court failed to consider the possibility of regulating labour hire to ensure non-exploitation of workers. African Personnel Services has lodged an appeal against the decision with the Supreme Court of Appeal, which is yet to decide on the matter.

Does the Namibian ban on labour broking signal the end of labour broking in South Africa? This certainly appeared to be the case in the run-up to the 2009 elections, when the ruling party adopted a stance in favour of banning labour broking. More recently, there seem to be indications that the government may consider less drastic measures, such as introducing more controls over labour broking. The remainder of this section considers the potential implications of a ban on labour broking.

The only means to effect a ban on labour broking would be through legislation passed by Parliament. This legislation would essentially amend existing labour legislation that recognises labour broking, including the LRA, BCEA and EEA. Undoubtedly, such legislation would be challenged in the courts, as it would infringe on labour brokers' right to freedom of trade, occupation and profession enshrined in section 22 of the Constitution. A court would have to determine whether it met the requirements of section 36 of the Constitution. This section sets out the criteria for the limitation constitutional rights. Section 36 reads as follows:

> "The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors:
> - The nature of the right;
> - The importance of the purpose of the limitation;
> - The nature and extent of the limitation;
> - The relation between the limitation and its purpose; and
> - Less restrictive means to achieve the purpose.
>
> Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights."

The onus would rest on the party supporting a ban on labour broking to persuade a South African court that it was "reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom". A court considering the matter would have to consider the factors outlined in section 36(1). The court would first have to establish whether there was a justification for the limitation (sections 36(1) (b) and (d)). The second stage would involve a balancing act to ensure that there was proportionality between the limitation and its purpose (sections 36(1) (c) and (e)).

Establishing a justification for limitation to Section 22

Extensive evidence and argument would be required to show that there was a valid reason for banning labour broking (thereby limiting labour brokers' section 22 rights). Arguably, the justification would lie in preventing the exploitation of workers and unfair practices associated with labour broking. Of great concern is the disparity between the working conditions of labour brokers' employees and standard employees. The establishment of uniform working conditions for similar work performed under similar conditions would certainly qualify as an acceptable objective for banning labour broking.

In addition to finding a good reason for the limitation, the court would have to be convinced that there was a sufficient link between the limitation and its purpose. In other words, the court would have to find that there was some rational connection between banning labour broking and the elimination of disparities in working conditions. Arguably, a rational connection could be established by showing that banning labour broking would encourage clients to employ all their workers directly under equal terms and conditions of employment.

Balancing the limitation and the purpose of the limitation

The second stage of the limitation analysis would involve a proportionality enquiry to ensure a balance between the limitation and the purpose of the limitation. Importantly, it would involve considering the nature and extent of the limitation, to ensure that it was not overly invasive; rights should only be limited to the extent that is necessary to achieve the stated purpose. A ban on labour broking would have to be narrowly defined and limited to temporary placements, thus excluding other labour recruitment practices.

The proportionality enquiry would also have to determine whether there were less restrictive means to achieve the same purpose. This is in keeping with the principle that rights should only be limited to the extent necessary to achieve the stated purposes. The court would have to determine whether the disparity in working conditions could be eliminated by measures that fell short of banning labour brokers.

It is likely that this factor would pose a challenge, as less restrictive means to ensure parity of working conditions between direct employees and labour brokers' employees do exist. One is to increase the barriers to entry into the labour broking industry by establishing strict registration and accreditation criteria for labour brokers. Another is more comprehensive legislation governing all aspects of the labour broking relationship, and allocating responsibilities between clients and brokers. This would be supported by dedicated enforcement and compliance mechanisms to ensure adherence to the regulations.

Presently, the government has not initiated a comprehensive programme to regulate labour broking, and the current (inadequate) legislative provisions have not been well enforced. Therefore, proponents of a ban would have to present compelling evidence to show that the adoption of such measures would be ineffective, and that the more drastic solution of banning is required.

Could proponents of banning persuade a South African court that banning labour broking would be a "reasonable and justifiable" limitation on the right to freedom of trade, occupation and profession? Our response is that while this would be a significant challenge, it would not be impossible. A ban could be adopted to prevent the perceived abuses that occur in labour broking relationships, subject to several caveats. Firstly, the legal provision would have to be narrowly limited to temporary placements and exclude more benign labour recruitment practices, such as permanent placements. Secondly, a ban on labour broking would be meaningless without effective enforcement measures to prevent clandestine operations. These would require the commitment of significant resources. Thirdly, a ban would have to be considered within a broader programme to address "flexible" working arrangements that undermine the labour regulation. This would prevent the re-emergence of labour broking in disguised forms such as "labour only subcontracting" to avoid the penalties that would be attached to labour broking.

Regulating labour broking

The above discussion shows that proponents of a ban on labour broking would have to show the futility of less restrictive measures to address the abuses arising in labour broking relationships. This section considers the possibility of allowing labour broking to continue, while introducing regulations to control the possibilities for abuse.

At present, the provisions deeming labour brokers to be employers do not give the clients any incentive to ensure that the labour broker is compliant with labour standards and regulations. It is suggested that their application be made dependent on the registration of labour brokers with a regulatory body and compliance with labour regulations. In the absence of proof of registration and compliance by the labour broker, the client would be held liable as the employer of the workers involved. This would provide an incentive for clients to deal only with compliant labour brokers.

Currently the employer organisations regulate their members under codes of ethics and have their own enforcement mechanisms. However, this system is voluntary and weak, because the employer organisations do not have statutory power to regulate the industry. Given the far-reaching consequences of labour broking, it is not advisable to leave its regulations in the hands of labour brokers alone.

It is suggested that co-regulation by a joint regulatory body comprising representatives of government, labour and employers would be the most appropriate form of regulation of the industry. It is submitted that co-regulation of the industry would be beneficial for the industry, as it would ensure balancing the needs of the different stakeholders. The regulatory body would be established in terms of an Act of Parliament empowering it to regulate the industry.

This would involve the registration of labour brokers meeting certain minimum criteria. They would also have to comply with a code of ethics governing all aspects of labour broking relationships. Most importantly, matters relating to dismissal of workers, trade union recognition and collective bargaining would have to be addressed in such a code of conduct. Labour brokers would be required to declare the industries in which they operated and to register with and comply with the applicable collective bargaining arrangements and agreements. Monitoring mechanisms would have to be put in place to deal with non-compliance with the code of ethics, legislation and collective bargaining agreements, with deregistration as the ultimate sanction.

In addition, the provision deeming the TES to be the employer could be made subject to a certain time period, after which a worker assigned to a client would become an employee of the client. This would prevent the employee from being employed in perpetuity under a triangular employment relationship.

Concerted efforts would have to be made to identify and engage with the so-called "bakkie brigade", to better understand their circumstances and the factors preventing them from complying. They would need to be educated about the benefits of compliance with labour regulations. Support measures to assist them to register and comply with regulations would have to be devised and implemented.

It would also be appropriate to establish an association such as the CEA-LBD for labour brokers operating in the building and civil engineering industries, to engage on an industry level. This has been successful for constructional engineering, which falls within the ambit of the MEIBC, the national council governing the entire industry in South Africa. It would not be as easy to do this in the construction industry, since, as discussed above, there is no national bargaining council and the arrangements determining terms and conditions of employment are fragmented.

These proposals would require the commitment of significant time, energy and resources on the part of the stakeholders. Their success would also depend on stakeholders' willingness to co-operate with each other to ensure decent work for all temporary employees.

CONCLUSION

This report undertook to identify and map the different flexible working arrangements that are being employed in the construction industry, namely casualisation through the use of limited duration contracts and externalisation through subcontracting and labour broking. The research was essentially qualitative, and sought to draw from the views and experiences of a broad range of informants with knowledge and experience in the industry. It cannot be said to represent what is happening in the entire industry, although there are indications that some of the trends identified are widespread.

This report paid special attention to labour broking, as there is currently little (if any) extensive research about its prevalence in the construction industry. Due to a number of constraints, it was impossible to conduct a large-scale survey of labour brokers operating in the construction industry, which raises questions and issues for further research and debate. Since it was impossible to measure the number of people working under the different flexible arrangements, future research in the area should focus on a more quantitative approach, to gain more clarity on the extent of these operations.

The report does not answer all the questions regarding the future regulation of flexible employment arrangements in the industry, and has focused its recommendations on the future of labour broking in the industry. It is hoped that it will give insights on the interplay between the different flexible working arrangements and the regulatory framework in place and the challenges raised therein. This, and further research in the area, should guide stakeholders and policy-makers in charting the way forward.

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APPENDIX 8: List of acronyms and glossary

LIST OF ACRONYMS

AUBTWS	Amalgamated Union of Building and Allied Workers of South Africa
APS	African Personnel Services
APSO	Association of Personnel Service Organisations
BCAWU	Building, Construction and Allied Workers' Union
BCEA	Basic Conditions of Employment Act
BIBC	Building Industry Bargaining Council
BIFSA	Building Industry Federation of South Africa
BWI	Building and Wood Workers International
BWAWUSA	Building, Wood and Allied Workers' Union of South Africa
BWU	Building Workers' Union
CAPES	Confederation of Associations of Employment Services
CC	Closed corporation
CEA	Constructional Engineering Association
CEA- LBD	Constructional Engineering Association (Labour Broking Division)
CETA	Construction Education and Training Authority
CIDB	Construction Industry Development Board
COIDA	Compensation for Occupational Injuries and Diseases Act
DTI	Department of Trade and Industry
EPWP	Extended Public Works Programme
ILO	International Labour Organisation
LDC	Limited Duration Contract
LOSC	Labour-Only Subcontractors
LRA	Labour Relations Act
MBA	Master Builders' Association
MBSA	Master Builders South Africa
NEDLAC	National Economic Development and Labour Council
NUM	National Union of Mineworkers
NBF	National Bargaining Forum
SACOC	South African Chamber of Commerce
SASCA	South African Subcontractors' Association
SAFCEC	South African Federation of Civil Engineering Contractors
SAWWU	South African Woodworkers' Union
SBA	Small Builders' Association
SETA	Sector Education and Training Authority
SSETA	Services Sector Education and Training Authority
TES	Temporary Employment Service
VAT	Value Added Tax
UIF	Unemployment Insurance Fund
VBF	Voluntary Bargaining Forum
ZAR	South African Rand

GLOSSARY

Bargaining council	A bargaining forum established by one or more registered trade unions and one or more registered employers' organisations in compliance with the Labour Relations Act. It must be registered with the Department of Labour and is subject to regulation by the Minister of Labour.
Casualisation	The trend to reduce permanent, full-time employment and use more part-time and temporary employment.
Collective agreement	A written agreement concerning terms and conditions of employment and/or matters of mutual interest concluded by trade unions, on the one hand, and employers and/or employers' organisations, on the other hand.
Collective bargaining	Negotiations between trade unions, on the one hand, and employers and/or employers' organisations, on the other hand, with the objective of reaching agreement on terms and conditions of employment or other matters of mutual interest.
Externalisation	The trend to reduce the number of direct employees by increasing the number of workers engaged via third parties such as labour brokers and labour only subcontractors.
Full-time employment	An employment relationship where the employee works for at least 40 hours per week for the same employer.
Labour broker	Also referred to as a temporary employment service (TES). A person who (for the fee) assigns a specified number of workers possessing specified skills to a client for a fixed period of time. While the labour broker is deemed to be the employer, the worker is subject to the client's control, as the client determines what, how and when the work will be done.
Labour-only subcontractor	A person who undertakes to perform a specified task within a specified period for a client. The labour-only subcontractor retains some discretion as to how the work will be completed and may employ his or her own workers to assist in completing the tasks. These workers are not subject to the client's control.
Part-time employment	An employment relationship where the employee works for less than 40 hours per week for the same employer.
Permanent employment	An employment relationship for an indefinite period of time until either party terminates it by giving notice to the other party.
Temporary employment	An employment relationship where the parties agree that the relationship will last for a fixed period of time or until the employee completes a specified task. Also referred to as "fixed-term" or "limited duration contract" employment.
Voluntary bargaining forum	A collective bargaining forum established by trade union and employer parties. It is not registered with the Department of Labour or subject to the Minister's control, but is regulated by mutually determined rules.

Getting Organised

Making the union a home for women workers

Nina Benjamin
Labour Research Service
July 2009

INTRODUCTION

More and more women in South Africa are taking on the role of income earners and often this income is earned in extremely vulnerable forms of work in both the formal and informal sectors. These women not only have to deal with the vulnerability of their daily working conditions but also have to continue carrying an unequal proportion of reproductive work. For many working women the reality is one of earning very little, working under conditions that range from difficult to inhumane and carrying out an increasing amount of unpaid and devalued reproductive labour.

In the past few years' part of our work in the Labour Research Service (LRS) has been to investigate and understand women's working conditions by looking at a range of indicators. These indicators include the kind of gender standards that exist within collective bargaining agreements, how labour legislation addresses gender inequalities and how women workers experience the workplace. The second key component of our work has been a participatory process for identifying possible strategies for addressing the conditions women workers face and in the process to begin to work towards more equal gender relations.

In this article we will share some of our insights into the experiences of women workers and highlight strategic initiatives being discussed and implemented within the trade union movement.

OUR WORK AS RESEARCHERS

Our research tools included a quantitative survey and qualitative methods such as focus groups, workshops and action research circles, where participants have both reflected their experiences and planned action.

Survey

A survey was conducted with a random sample of 116 women workers predominantly from the chemical, clothing, textile and retail sectors. The LRS commissioned Southern Hemisphere Consultants to conduct the survey. The survey was administered to women workers using a facilitated workshop methodology.

Focus groups

We facilitated eight focus group discussions involving 86 women workers in the retail and 30 women workers in the chemical sector between December 2007 and December 2008. There were 17 women on average per focus group in the retail sector and an average of 15 for the two focus groups in the chemical sector. In total, one hundred and twenty six women workers were involved in these activities.

The survey and focus group discussions focussed on women's experiences of working in these sectors. In the discussions women workers highlighted how they felt about their existing conditions, whether they have seen any improvements over time, the obstacles they face in achieving gender equality in the workplace, the kinds of improvements and changes they would like to see and how they view their participation in the trade union movement.

Strategising workshops/learning circles

We facilitated 19 strategising workshops/learning circles with women workers, women trade union officials and women worker leaders from the construction, health, chemical, municipal, retail and agriculture sectors between November 2007 and June 2009. An average of 15 women participated in each workshop/learning circles and 285 women were involved in total.

The aim of these workshops/learning circles was to reflect on existing trade union activities which claimed to promote gender equality and empower women. Participants were encouraged to analyse why these activities are taking place, who is involved in the activities, their own involvement, the obstacles and the impact of the activities on their lives and the lives of other women workers. After the reflection process participants went on to develop plans for future actions that they believed would empower women workers and influence the gender relations in the workplace, in the union and in their lives more generally.

An indication of who is participating in the research project

An important feature of the participants in the research process is that their ages are between 30 and 50 years old. At least one third of the focus group participants from the retail sector are younger than 30 years while on average 66% of the trade union officials and worker leaders who participated in the strategising workshops were older than 40 years. The fact that a significant number of the trade union participants are middle aged has important implications for strategy as we will see later.

Care-giving responsibilities are another important feature of this group. Most of the participants have at least one child with on average of 70% having 2 or more. More than half are single mothers and the majority care for other dependents besides children. 63% of the women workers who participated in the survey are the sole income source for their families.

It is interesting to note that in the survey and focus group discussions the majority of women working in small companies have been in the company for between 0 and 5 years while in large and male dominated companies the majority of women workers have been working for the company for 10 or more years. One reading of this is that a core, long term employed group are more likely to exist in larger companies alongside most probably groups of casual and outsourced workers. This core is also more likely to be unionised.

The focus group discussions and strategising workshops/learning circles were organised through the trade unions and as a result the majority of participants were trade union members. The women worker survey was not organised through the trade union and revealed that women between the ages of 30 and 40 are more likely to be members of unions than their younger and older colleagues. Women workers 50 years and older were more likely to have belonged to a trade union at an earlier stage as compared to their younger colleagues.

(1) TRYING TO UNDERSTAND THE EXPERIENCES OF WOMEN WORKERS

Our needs as women

To develop a broad mapping of the experiences of women workers we started the focus group discussions with an overview of what women workers saw as their needs as women.

Two participants in the GIWUSA focus group summed up what a number of other women had expressed in different ways:

> *"To recognise myself first – I want to understand and know that I exist. If I know that I exist, everybody will know that and no one will take advantage of me".*
>
> *"I need to get rid of the baggage on my shoulders. I carry everyone on top of me and I can no longer carry myself."*

From the start of the project it was clear that women carry their oppression "on my shoulders", making it difficult for them to identify that "I exist" let alone struggle for gender equality or their rights as workers. Finding a way to articulate your experiences, challenges and possible solutions needs one to firstly believe that these experiences are important both individually and as part of a collective.

As the researcher in the project it became very apparent to me that really hearing and understanding the experiences of women workers would need more than a set of questions but rather a space that would allow women to reflect both intellectually and emotionally. It is for this reason that we tried to use both LRS initiated workshops as well as workshops requested by unions as a space for reflection and thinking through action. Even the planned quantitative survey was conducted using a more facilitated workshop approach.

Being undermined – is it a feature of the workplace?

> *"When I enter the gate in the morning my authority and insight as a grown women ceases to exist. I become a child and all my concerns are seen as complaints and insignificant".* [1]

How often don't we hear women in the trade union express a sense of being "undermined". In the survey, focus group discussions, workshops and learning circles, the term "undermined" appeared very often in relation to women's experiences in the workplace, trade union, community and home. The notion of "becoming a child", seems to imply an inability to reason rationally and therefore someone who cannot assume any kind of authority. Now while all workers experience a deep sense of inequality, very often for women workers the experience of the workplace can become a stripping away of all sense of dignity. When women then respond under the weight of this dehumanising and what can feel like powerless position, it is heard as "complaining and insignificant".

Equality between the sexes in the workplace – reality or myth?

While formal inequality between women and men in the workplace is against the law, the majority of women participating in the project agreed that they experience inequality in terms of pay, job grading, job descriptions, promotions, the treatment of women by male management and the involvement of women in decision making structures for workers.

1 Participant at MCC Focus Group, 7 December 2007

"Men are generally paid better and have a clear job description for the work they are doing". The work done by women is less valued. Women are doing a number of different jobs in the company yet they are described for e.g. as packers when men are described as machine operators. [2]

"On the road works, have we ever asked ourselves why it is usually women holding the boards saying Ry/Go. Even if it is raining it is the women who are holding these boards. Women are given the jobs that appear to be the most menial and undermining." [3]

Training and skills development – a gendered issue

The demand for and provision of training and skills development is deeply gendered with women in this project identifying a number of barriers preventing them from taking up training and development opportunities even when they do exist. On one level there was a strong sense that the playing field is not level and that women are more likely not to be encouraged by their supervisors or bosses to take up training opportunities as training is often seen as the prerogative of men. Then there is also a disregard for the reproductive roles women play. "The training takes place after hours or over the week-end at times that are inconvenient due to family responsibilities", was a commonly held view of a number of women.

At another level a number of women workers expressed a fear of failing and a sense that their lack of formal educational skills disadvantaged them. This in turn created a perception that women were not interested in training opportunities.

Women participating in the survey and focus groups also felt that age played an important role in their ability to access training opportunities. "There is discrimination against older people as we do not get any training", was the view expressed by a number of women over 50 years old. The lack of training opportunities for older women seemed to reinforce a sense that the company gave little value to the work and life experience of older women.

"Work and home" – a stressful tension

The majority of women participating in the project felt that one of their key distinguishing features as women workers is their roles as caregivers. They stressed that because they are responsible for caring for children and dependents they needed to take unpaid leave when their children were sick, needed more compassionate leave and needed to be at home at night and over week-ends. Throughout the project we found that a number of women were not familiar with the 3 days of Family Responsibility Leave in the Basic Conditions of Employment Act and even when women were aware of it they often found the number of days totally inadequate. Having to constantly be faced with making decisions about whether to stay home to look after a sick child or relative or to leave for work because you fear the threat of dismissal places an enormous strain on women. This together with the constant devaluing and undermining of their care-giving roles by both company management as well as male colleagues makes many women feel stressed, insecure and generally unhappy in their work environment.

"Maternity leave" – a difficult time for women

"Women's rights are human rights – people are paid when they are on sick leave, when they take annual leave yet the employer does not have to pay you when you are on maternity leave." [4]

2 Participant at GIWUSA workshop, 26 November 2007
3 Participant at Building and Wood Workers International (BWI) workshop, 11 November 2008
4 MCC, focus group, 7 December 2007

Most of the women who participated in the project felt that being pregnant only further entrenched your status as "second class citizens" in that you are viewed in the words of a group of young women workers who participated in the GIWUSA workshops as "irresponsible, unreliable" and generally a "nuisance" by management.

In the survey with women workers the majority of workers indicated that they receive very few maternity benefits. Only 40% said that they got time off for ante-natal visits, 14% said some kind of flexible hours were available while only 3% spoke of any kind of childcare support.

For many women, maternity leave does not feel like a right. In the best case it is experienced as a grudging acceptance of a "condition" while in the worst case many women experience increased discrimination. A young women worker expressed her dissatisfaction at how maternity leave payment is viewed:

> *"Maternity payment does not have anything to do with the baby; it is about the mother not working. The money is not paid to the child and we must stop pretending as if the mother does not exist."* [5]

In the learning circles a number of women spoke about feeling as if "they do not exist", yet being held "solely responsible for the child".

> *"There is little mention of paternity leave in the construction sector even when the sector is male dominated. This is because women are seen as solely responsible for the child. We need to change this and to fight for increased paternity leave as the BCEA is not enough."* [6]

"When smoke gets in our eyes"

Women in the different sectors gave detailed and often emotional accounts of the discomfort they experience in the workplace

> *"We work in smoking areas and there is no protection for us". In the Casino we stand for 11 hour shifts breathing in all kinds of smoke and we are expected not to complain".* [7]

> *"The overalls, shoes, helmets etc. Are made with men in mind so they are not always comfortable for women – we need to demand clothing that takes women's bodies into account. There might also be specific kinds of clothing needed for women when they are pregnant. We also need change room because we end up going home dirty because there are no change rooms. How can we maintain our health and dignity without proper toilets and sanitary bins etc."* [8]

"Safety" – whose concern is it?

Almost all of the workers who participated in the project reported feeling unsafe either in the workplace or on the transport they take to and from work. In the women worker survey 25% of the women reported that they had been threatened or attacked on their way home or to work while 10% had been threatened in the workplace.

> *"Transport is a big issue as regards safety. The company does not arrange transport and mostly hires people who can arrange their own transport. They are*

5 Participant at LRS Negotiators Conference ,2008
6 Participant at BWI workshop, November 2008
7 Participant in Flamingo Casino focus group, 20 August 2008
8 Participant at BWI workshop, 11 November 2008

asked this when they apply for a job. One of the staff got killed on their way home as we have to pass through a long, dark road. We have had a few incidents at our work but afterwards the business just goes on. We want the possibility to get counselling etc. With a robbery you know that there are 2 dead guys lying there but you have to go back to work." [9]

"Sexual harassment" – a woman's worst enemy

At least 40% of all the women who participated in the project reported that they had experienced some form of sexual harassment. The form the harassment took was also often shaped by the particular sector for e.g.

> *"In the context of the casino – there is a great deal of sexual harassment from customers but managers see their role as disciplining workers and allowing customers to continue with the sexual harassment. The customer is the most respected person. No one will ever listen to you."* [10]

Young women spoke of the connection between their vulnerable status as young, single mothers in casual or outsourced jobs and the increased chances of sexual harassment.

> *"95% of workers in the cleaning sector are women. Unlike before where mostly older women worked in this sector, now most of the women in the cleaning sector are young, single mothers. As young women they are exploited at many different levels by the employers and very often even in the union. The young women are seen as sex objects and are made to feel very vulnerable. For these young women they have to deal with many different issues both at work and at home as single mothers."* [11]

The challenge of being part of the union movement

> *"We believe that our opinion is not needed or valued. Each time you stand up to speak in the union or the company you are seen as complainers or people who are petty about insignificant things. We are not keen to attend general meetings as this is an opportunity for men to show everyone how clever they are"* [12]

Even when women are interested and willing to participate in the union many of the women felt that the union discourse seemed to reinforce a sense of "inadequacy" amongst women.

> *"Everything in the union is about power in both male and female dominated unions. There are many strategies used to suppress you as women for e.g. your ideas are dismissed and if you are building gender structures your programmes are suppressed, your budgets are not approved".*

> *"Our biggest challenge in the union is not to "turn into men" who use power to control. If we do not behave like men we are seen as naggers. Our supposed nagging is from our position of weakness".*

The empowerment of women in a union context which is perceived by some women as reinforcing stereotypes about their weaknesses is a major challenge for trade union activists.

Even when women join the union there is the challenge of constantly being faced with the choice of carrying out their reproductive work at home or participating in union activities.

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9 ibid
10 Participant in Sun City focus group discussion, August 2008
11 SATAWU speaker at LRS Negotiators Conference, 2008
12 Participant in MCC focus group, December 2008

For some women this leads to increased levels of frustration resulting in a lack of participation in union activities. When there are no spaces to collectively discuss and analyse the tension between the roles women have to play as caregivers, parents, partners, workers and trade union members and the frustration women experience with this tension, participating actively in the union can be very difficult.

(2) CREATING AN ENVIRONMENT FOR THE PROMOTION OF GENDER EQUALITY – POSSIBLE APPROACHES

What does it mean to create an environment that promotes gender equality?

When one thinks of an environment one can for example imagine a particular atmosphere, rules, norms, behaviours and what can most probably be described as gender sensitive emotional responses, actions and consciousness. An environment promoting gender equality would therefore have to be both an individual as well as collective effort affecting the formal rules and policies as well as informal norms and practices.[13]

Even when workplaces and unions have formal rules and policies in place for example gender policies it is usually the informal norms and practices that continue to perpetuate gender inequalities. Changing these inequalities would therefore need not only rules and policies but also shifts in attitudes, behaviours, consciousness and practices. This is where some of the real difficulties lie. In the workplace women speak about being "treated like children", being "ridiculed" and having the reproductive roles they play devalued and undermined not only by the employers and management but also by their fellow male colleagues. While perhaps not always in the same form, many women in the union also speak of a sense of undermining and devaluing by their male comrades.

Therefore creating an environment to create gender equality is a slow and often painful process that needs both personal as well as institutional change at both formal and informal levels.[14]

Some comrades writing in the NALEDI publication "Labour Pains" argue that by expecting women to operate in an environment that is hostile to them:

> *"It has allowed gender struggles to take on a routine and rhythm in the union that has diluted their effect and given resistant men opportunities to use 'gender-speak' to prevent transformation. Most significantly is has allowed commitments to gender equality to remain on paper without their translation into reality".* [15]

As trade union activists we see our challenge as transforming the workplace to ensure that workers are not exploited and oppressed. We therefore need to be honest and ask ourselves are we moving any closer to changing the norms and practices that oppress women in our own "home", the union and in this way are we developing an activism that can struggle against the oppression of women in the workplace? In other words are we making the trade union environment an example of what we would like to see in the workplace?

Understanding the "person" in the constituency

An important learning during this research project was the difficulty experienced in getting a profile of women workers in different sectors. In many of the workshops and focus group

13 Rao, A and Kelleher D
14 ibid
15 Labour Pains pg 203

discussions participants were only able to guess the sex breakdown of membership and there seemed to be very little information on other profiling aspects like age, disabilities, rural-urban membership, care-giving responsibilities, sexual identities etc. Understanding the needs and canvassing the demands of women workers therefore seemed to focus around women's reproductive roles e.g. demands around maternity leave or specific workplace issues focusing on health and safety issues.

In the workshops and focus group discussions participants were often surprised when issues like menopause or leg problems were raised by older women or when younger women spoke about being frustrated and bored by the routine of their everyday work. "A one size fits all" definition of the women worker seemed to be fairly prevalent so that when gender-related demands were raised the first issue on the table was often maternity leave.

This is somewhat curious as from the workshops, focus group discussions and survey it would seem that the majority of women organized into the union are generally older than 35 years and are very likely no longer having children. For many of the women in the focus group discussions accessing bursaries and opportunities for their older dependents is more of a priority at this moment than maternity leave.

Older women also expressed frustration with the lack of promotion opportunities and the fear of being downgraded in their existing jobs because they are seen as to old to learn new skills. For the older women worker there is often anxiety and exhaustion with taking on extra work because as fellow workers retire or are retrenched, casual workers are employed, forcing the older permanent workers to take on more responsibility

On the other hand the casual, contract and often younger women workers feel vulnerable and burdened with many care-giving responsibilities:

> *"I am a contract worker and my problems are many. They keep renewing my contract and I should have been permanent by now. I feel I'm without rights. I am afraid to raise certain issues because my job is not secured. If I become too vocal my contract will not be renewed like others who fought for their rights. I have a sick mother and a little girl. My mother has cancer and I have to ensure that there is always someone to look after her and my daughter. I need this job with all its disadvantages. We now have new management and scared that they may not renew our contracts because of the recession".*[16]

> *"I have been in this job for four years now. Ever since I started working my working conditions have not improved at all. We still have bosses who complain whenever a woman goes on maternity leave. They feel they have a right to teach us about family planning. As long as I'm this job I will always be treated like a minor. This is also encouraged by the way they address us. When I got this job my supervisor always called me baby because I was the youngest. I liked it then because it made me feel welcomed. Now I hate it because it means I am a child and cannot challenge my supervisor because I am young. I feel like a child in my mother's house"* [17]

For these younger workers better maternity benefits and proper childcare facilities are key issues. What I think is significant though is how all of the women feel oppressed but how they experience or articulate this oppression is linked to how they identify themselves i.e. as young or older women workers.

16 Interview with SABC women worker at a picket, 14 July 2008
17 ibid

Women workers have a range of intertwined identities which involve being a women, being a worker, being a care-giver, being a partner, being old, being young and so on. Recognizing this can assist us in not only understanding the different faces of women's oppression, but also the different avenues for challenging this oppression.

"Empathy" – an important starting point

A highlight of the project was the deep sense of empathy participants showed to fellow women workers but also for example the empathy that older women who are more generally permanent workers expressed towards younger, often casual employed women.

> *"We think that casuals are being treated really badly and the company has a lot of casuals. The outsourced casuals work the same hours as the permanent employees but they do not get paid as much. Sometimes outsourced casuals have to sign a contract with their company where they have to promise not to join a union. Sometimes if the casuals come 5-10 minutes late they will be sent home and sometimes they come from really far away. I cannot afford taking the children (the casuals) home, so you turn the blind eye even though you don't want to. Most of the casuals live far away."* [18]

A common theme emerging in the survey and focus group discussions is a sense from many of the women workers that "nobody listens" to us. This sense of not being heard is an important element of how women experience their oppression, so when in the workshops and focus group discussions women spoke of how they not only listened to but also felt empathy for their fellow women workers we identified an important step in dealing with oppression collectively.

"Sisterhood" – the next step

"What we need is sisterhood" is a view expressed by some of the participants in one of the action learning circles. This notion of "sisterhood" was in response to the often repeated view that women are suspicious, defensive and competitive towards each other, what participants referred to as the "pull her down syndrome". The idea of "sisterhood" is a common feminist expression used to denote solidarity against a common oppression and to shift from seeing women as victims. Our discussions about resurrecting "sisterhood" did not just focus on a bonding between women in the union movement but "sisterhood" was seen as an approach to challenging our own socialization and sexist attitudes in a "sisterly" manner and building a shared power that was different to the dominant forms of patriarchal power we experience daily.

"The union is our home"

In the action learning process with Sikhule Sonke the idea of the union as a "home" was strongly emphasised. Calling themselves a social-movement union, union member describe union in the following way:

> *"Sikhule Sonke is not just about work, it is about life's celebrations and life's tragedies all our involvement, praying together. We are more like a family. We see ourselves as a social movement union empowering our membership both men and women around social issues, labour issues, dismissals and retrenchments, alcohol abuse, gender based violence, and any other violations of our rights both in our work and private lives. If you look at the community we are not just focusing on people who are working but start from children through to the retired to disabled on the farm".* [19]

18 Participant in Makro focus group, July 2008

19 Sikhule Sonke Action Gender @ Work Action learning meetings; December 2008

Sikhule Sonke is one of the few women led trade unions. In one of the action learning meetings union members drew up this typology to explain what they saw as the differences between Sikhule Sonke as a women led trade union and the majority of male led trade unions in the South African context.

Table 44: Our values as Sikhule Sonke

Values Prevalent in Trade Unions	Values Prevalent in Sikhule Sonke
The objectives of most trade unions are to improve the working conditions for mostly regular male workers in the areas of the workplace	The objectives of SS is to share and improve the lives of men and women in the workplace and home together
Structure of the union Can end up being bureaucratic with all the focus on "constitutional meetings". Resources are allocated to these meetings and when there is a lack of resources it is the more "important" meetings that are catered for e.g. NEC meetings.	Like other unions we have Congress, National Executive Committee, Branch executive committees and farm committees. The difference with other unions is that all our structures are open to everyone who has some kind of connection to the farm i.e. the unemployed who live on the farm, contract workers, pensioners etc. This can help us to keep our structures of becoming very bureaucratic and only serving a small group of workers.
Culture of the union Male dominated	We are like a family. We have a lot of love and respect and we look after each other
Collective Bargaining Men dominate the negotiations and see themselves as powerful figures almost like lawyers. Women and the issues that affect women are the first to fall off the negotiating table.	We have women as negotiators, the other trade unions mostly men. Even though we negotiate around many issues, wages is still the most important issue – just like in the other trade unions. We need to open the scope of collective bargaining to bring in more of the real issues women speak about so that we make sure we do not see issues like "leaking roofs" etc. as just issues that women nag about. It is interesting to note that sometimes the farmers prefer the male organizer because they think that we as women are problematic.

Using the metaphor of a "home" and a "family", Sikhule Sonke can be an important example of a trade union attempting to bring together the private and the public lives of its members, an important strategy when creating a climate for the promotion of gender equality.

Another important example of a women led trade union organising on the basis of women's interests and the development of alternative ways of living is the Korean Women's Trade Union (KWTU):

> *"The activities of the union have been devised on the basis of women's interests and needs and in terms of their "life issues" like marriage, delivery and childcare and also to deal with demands to change the unequal power relations between men and women in the workplace and society – and most importantly to develop alternative ways of living. Therefore, KWTU is trying to carry out various programmes and activities not only for negotiating collective bargaining but also for improving women's status and the quality of lives of women workers. This is done through activities like programmes with children, small group sessions for self-development and vocational training."*[20]

"Rethinking our form"

Throughout the research process one often heard that while a number of gender structures are in place there was in the words of a workshop participant a "sense of standing still". Meetings took place and often it felt as if "we are discussing the same things over and over without any progress". These sentiments evoked a picture of a bureaucratic wheel from which it is difficult to leap out of and try something new. In this context SACCAWU's establishment of Mall committees presents exciting possibilities of finding avenues to work across companies, to build worker solidarity in the mall and importantly to work more directly with young women workers in very vulnerable forms of employment e.g. casual workers in restaurants. Young women workers represent by far the majority of the workforce in the malls.

A SACCAWU shop steward at the LRS Negotiators Conference in 2009 presented what she saw as some of the important roles that mall committees can play:

20 KWTU presentation at the AWID Conference, November 2008

"The Mall committee allows for more women to organise and presents more chances of women participating, engaging with mall management rather than their specific company management in the mall. For women this is easier as it is difficult to go to union meetings after hours but mall meetings can be easier as they can be held during lunch times. Workers have different lunch times so there has to be a degree of flexibility allowing for the biggest numbers of workers to participate.

Everyone is invited to the meetings not just union members or shop stewards. It is open for discussing all kinds of issues for example late trading can be discussed by all the workers in the mall. Pressure can be placed on the mall committee to ensure that transport is provided as usually all the shops in the mall close at the same time.

Childcare is an issue especially during late trading. At one mall this has led to an engagement with management. A survey was conducted especially amongst casual workers. The survey enquired about the number of children that needed childcare and what workers are prepared to pay for childcare. Management offered meals for the kids during the shift that the worker is on duty and entertainment like art. This can be an important starting point.

The Mall committee also plays an important role in issues like domestic violence and HIV/Aids. For example peer educators can have events with information which raises the profile of affected workers inside the mall.

The mall committee can be an impetus for collective bargaining. For example if there are disparities in agreements e.g. length of maternity leave time between companies workers can make an assessment together across companies and this helps to create an awareness and these comparisons also helps to compare strategies."

A CONCLUDING THOUGHT

A sobering reading of the women worker survey revealed that only half of women workers who participated believe that women have more rights in the workplace today than they did 10 years ago. While factually this might not be true, this seems to be how women are experiencing the workplace. What this means is that we have a long road ahead of us and our starting point is our own "home" the trade union.

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Space for Organisation

Trade unions in South Africa and the prospects for renewal

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INTRODUCTION

"Even by international standards we have been among the fastest growing trade union movements in the world" South Africa's largest trade union centre claims on its website. "Today when most trade unions are facing a decline in membership, we have continued to grow."[1] Whereas the political influence of most trade unions has been waning, the influence of COSATU today is probably at its zenith.[2] At the same time the role of organised labour in determining social and economic policy has been institutionalised in the tripartite National Economic Development and Labour Council (NEDLAC).

What is the nature of the political influence trade unions should exert in the national political arena? To what extent are trade unions able to claim to represent their members in doing so? A trade union is clearly not a political party. Equally so, it has a political role. But is this role to be evaluated on the basis of its policies and pronouncements, or on the basis of its practices?

A glib response would be 'both.' Yet it is difficult to gauge to what extent the workers whom a trade union purports to represent abide by its policies or pronouncements, or to what extent they actually reflect practices on the ground. Any attempt to gauge the reach these policies and pronouncements have beyond the membership, into other layers of society, is even more problematic. For there is a potential disjuncture between the influence a trade union is perceived to have in other layers of society, and the influence it in fact has amongst its members, or amongst those whom it seeks to organise. I shall refer to the latter group as the membership constituency.

So while trade union membership is of course significant, it has always been a crude proxy of the strength or effectiveness of trade unions.[3] To understand something of the character of a trade union movement, rather, one must first identify its membership constituency and membership density in that constituency. This necessitates debunking any narrative of South African exceptionalism such as underpins the kind of membership claim quoted above. Secondly, it is necessary to examine trade union practice in the constituency in which it is located. My point of departure here is that it is trade union practice in its own constituency that above all determines its political role, and significance.

The most visible aspects of trade union practice are the campaigns and disputes in which trade unions are involved. But campaigns or disputes are the outcomes of organisational practice. Practice, I argue in the next section of this paper, section 2, is constituted by the different traditions that trade unions subscribe to. These different traditions must in turn be understood in terms of different phases in the development of trade unions.

1 www.cosatu.org.za/aboutcos
2 COSATU is widely credited with having influenced the outcome of the election of the leader of the ruling party. At the same time some disquiet is being expressed about the manner in which COSATU wields its influence. See for example the opinion piece by a commentator sympathetic to organised labour, T. Bell, 'Cosatu goes too far in its political ambitions.' Business Report, 14 March 2008.
3 For a contemporary example, one need look no further than the largest 'trade union' movement in the world, that of the People's Republic of China.

I moot three phases in the development of what is now the established trade union movement in South Africa, of which COSATU is the most important constituent. Section 3 concerns the first phase, namely its emergence as a coherent organisation. The second phase entails its establishment as a stakeholder in society, and is the subject of section 4. In the third phase, discussed in section 5, there is to a greater or lesser extent a process of ossification, which may give rise to organisational renewal or a perversion of what the trade unions initially stood for.

The need for organisational renewal arises both because of how the contemporary workplace has been transformed, and because of the transformation of the global economy. My point of departure here is that the most pressing political problem that confronts trade unions in the present era of capitalist globalisation is one of class polarisation and increasing inequality (Sklair, 2002). Depending on the tradition a union or union movement it may, in practice, play a role in either ameliorating or exacerbating inequality. The litmus test for assessing the political role of a trade union is thus, or should be, whether it is ameliorating or exacerbating inequality in the workplaces and sectors where it is organised.

There is mounting evidence of increasing inequality in the workplace. This is the subject of section 6. The paper concludes with a discussion of the prospects for trade union renewal in section 7.

(1) DEFINING TRADE UNION TRADITIONS

The roots of inequality in South Africa pre-date the government that coined the term apartheid, and are rooted in the history of capitalist accumulation. There has been some debate between liberal and radical scholars as to extent to which apartheid facilitated or constrained capitalist accumulation post-1948.[4] It is nevertheless indisputable that capitalist accumulation proceeded apace under apartheid, and shaped key apartheid institutions, such as the migrant labour system. One of the prime beneficiaries of apartheid was the white working class which, as with its counterparts in the global North, was increasingly able to aspire to the trappings of the middle-class.

The role of the established trade union movement of the time in promoting the interests of the white working class, and exacerbating inequality, is a convenient point to begin elaborating what we mean by trade union tradition. For trade unions obviously take a variety of forms, and there are also bodies that style themselves as trade unions, although they are not. Law (both national and international) determines the parameters within which trade unions are recognised as such. However in the final analysis a trade union is an autonomous organisation that, regardless of the law, determines its own identity. As a representative body, the most important way it does so is by determining its membership constituency. This constituency can be explicitly defined: for example in its scope as set out in its constitution. However regardless of how the membership constituency is defined, it is how a trade union in fact organises this constituency that matters. This in turn is constitutive of a tradition it subscribes to.

Amongst the established movement of the apartheid era there were two main traditions. One was constituted by trade unions that defined their constituency in terms of occupation or skills (the so-called 'craft' unions) and the other in terms of industry or sector ('industrial' unions). Yet the designation 'craft' or 'industrial' says little about how trade unions were in fact organising within their constituency. The simplest way to assess this was from their response to the problem of unorganised workers. The relationship between organised and unorganised workers in turn implied a conception of the interests of the working class. [5]

4 Seekings and Natrass . 2006, 21-30

5 I refer to a tradition in this context as a practice or practices constituted by an argument about what it is that an organisation should be, and how it should be constituted (Macintyre, 1985).

All trade unions are confronted with a tension between representing the interests of their members for the time-being, and advancing the broader interest of the class from which their members are drawn. It is the manner in which trade unions resolve this tension that most fundamentally characterises the tradition they subscribe to. Within the traditions of 'craft' and 'industrial' unions there were thus other, competing traditions. Some defined their constituency in racial terms well before apartheid-era labour legislation required them to do so. Some defined their constituency in practice, by simply neglecting to organise the unorganised, or passively acceding to measures calculated to disadvantage African workers. Others actively opposed class and racial segregation.

The importance of the relationship between membership and class relates to the development of class consciousness. The working class, as Anderson explains, "experiences itself as a class only through its collective institutions, of which the most elementary is the trade union. Outside these historic institutions the working class has a purely inert identity, impenetrable even to itself. It is separated from the rest of society by its characteristic occupations, customs and culture, but it is not a fused group capable of any social action. For this it must be conscious of itself as a class…..Trade unions thus everywhere produce working-class consciousness – that is, awareness of the separate identity of the proletariat as a social force, with its own corporate interests in society."[6]

At the same time how a trade union exercises power is determinative of both its relationship with its members and the class. For trade unions are, as Hyman and Fryer put it, "first and foremost a source and medium of power: and processes of power are central to their internal and external relations."[7] With regard to the power a trade union is able to exercise in its external relations, a useful distinction can be drawn between objective and subjective power. The former relates to the depth of organisation within a workplace, or an industry (or within a value chain). The latter would appear to correspond with the notion of symbolic power: where trade unions are able to command the moral high-ground, in a context in which their objective power is limited. [8] But it is the internal relations of power that are of particular importance in discerning or establishing a tradition.

In essence the internal relations of power concern the relationship between a leadership (be it elected, or paid) and membership. The power a trade union leadership is able to exercise over its membership is constrained by its dependence on the membership as a source of power in its external relations, and by the voluntary nature of this membership.[9] At the same time it is profoundly affected by the way trade unions are structured and financed. This concerns on the one hand the manner in which a specific trade union structure links or brings together different workplaces (what has also been termed trade union morphology).[10] On the other hand it concerns the degree to which there is centralisation or de-centralisation within a union.

Certain practices or institutions such as the closed-shop enhance the power of leadership over membership. Similarly, the control that members exercise may be diminished in various ways. Trade unions are susceptible to the "iron-law of oligarchy" and leadership is susceptible to corruption.[11] Even if leadership is not corrupt, it may enter into an accommoda-

6 Anderson, P. 1975.

7 Hyman, R and Fryer.R.H. 1975. 'Trade unions: Sociology and political economy.' In J.B.McKinley, Processing people: Studies in organisational behaviour'. Holt, Rinehart and Winston, 1975, 182-191. Reprinted in Clarke, T and Clements, L. 'Trade unions under Capitalism', 153-174

8 See Fine, J. 2000. 'Workers centers: Organising communities at the edge of the dream', Ithaca and London: ILR Press. Cited in Webster and Von Holdt, 2008. See also Wright's distinction between structural and associational power are both forms of objective power. Structural power results 'from the location of workers within the economic system', whether this is derived from 'tight labour markets or from the strategic location of a particular group of workers within a key industrial sector.' Associational power results from the collective organisation of workers into unions or other formations. See Wright, E. O. 2000. 'Working class power, capitalist-class interest, and class compromise.' American Journal of Sociology, 105 (4): 957-1002, cited in Webster and Von Holdt, 2008.

9 This is essentially the reason why trade unions, as Anderson puts it, "can never achieve the level of action of a political party. Nor, for the very same reason do they sink to their lowest level either-melting en bloc into the system. For their function is rooted in the natural organisation of capitalism itself – the labour market. The result is that they are less easily chloroformed and suppressed totally."

10 Fiorito, J, Jarley, P and Horn, M. 2007. 'Trade Union Morphology: Structure, Soul and Renewal.' Paper presented at the International Industrial Relation Association European Conference, Manchester, 2007.

11 In brief, this is that direct democracy in mass-based organisations is impractical. That is because mass-based organisation requires a

tive relationship with management, becoming itself a "manager of discontent."[12] Or trade unions may be diverted into the pursuit of sectional interests. Indeed, collective bargaining, by its very nature, encourages sectional claims in a way that can be contained, and lends institutional form to a scaled-down form of militancy.[13]

(2) CREATING SPACE IN THE APARTHEID WORKPLACE

The 'pecking order' apartheid created was never so simple as to create racially-defined categories of insiders and outsiders. Racial controls on the upward mobility of workers in the workplace, introduced by apartheid-era labour legislation, must be understood in the context of spatial controls on the movement of rural people to the cities, and the migrant labour system that preceded institutionalised apartheid. The effect was firstly to exacerbate an urban-rural divide, which relegated women and survivalist economic activity to the rural areas. Second, it was to create a hierarchy in the workplace in which both race and gender played a determinative role.

To understand how this hierarchy operated in the 1970s and early 1980s it is appropriate to take a workplace in manufacturing as a prototype. Manufacturing in the 1970s was the most important sector of the South African economy, followed by mining and agriculture.[14] The secondary sector also employed about 25 percent of the workforce, whilst mining employed about 10 percent.[15] It was primarily in manufacturing and mining that the emergent unions were formed. And whilst there were also unions organising in the tertiary or services sector, notably in retail and transport, representation in the public sector, the largest employer in services, was weak or non-existent.

In analysing the workplace hierarchy, regard must be had to the concentration of ownership that occurred under the apartheid regime, as a consequence of protectionist industrial and fiscal policies. A handful of conglomerates controlled the sector. It was thus unusual to come across an owner-manager, except in small firms. These were few and far between. Typically, the workplace was controlled by white managers, invariably male, supported by a layer of supervisors, clerical and administrative employees. This layer was typically white or coloured (including Indian). But depending on its location, African men were increasingly appointed to these positions.[16] These were urban insiders: Africans with the right to live permanently in the urban areas.[17]

The composition of the skilled workforce was similar. Again, depending on locality, it comprised white or coloured workers (including Indian). Apartheid labour legislation enforced a separation between these two groups. But the colour bar that protected them both from competition from African workers was far more significant. The established union movement at that time played a crucial role in maintaining this colour bar, as already noted.

The measures utilised to get trade unions to toe the line were both formal (through law and legislation) and informal (through various forms of collusion between employers and state to

centralised bureaucracy with specialist leadership. Leadership in such an organisation inevitably acquires an interest in securing its own permanence, and comes to regard the organisation as an end in itself.

12 The phrase was coined by C. Wright Mills, New Men of Power, New York, Harcout Brace, 8-9, and is cited in Hyman and Fryer,

13 Clements, L. 1977. 'Reference groups and trade union consciousness', in Clarke, T and Clements, L. 1977. 'Trade unions under Capitalism', William Collins, Glasgow, 332.

14 According to Davies et al, after 1960 the manufacturing sector contributed more to GDP than mining and agriculture combined. In 1977, manufacturing output constituted 22 percent of GDP, compared with 25 percent in Korea, 16 percent in India, 25 percent in Britain and 38 percent in the Federal Republic of Germany. See Davies, O'Meara and Dlamini. 1985. The struggle for South Africa. Zed books, 51-52.

15 The figures given by Hindson and Crankshaw are for the period for 1960 until 1985. Whereas the figures for manufacturing and mining remain fairly constant, those for agriculture fluctuate between 32 percent in 1960 and 15 percent in 1985. However statistics of agricultural employment are generally considered unreliable. See Hindson and Crankshaw, 1990. New Jobs, new skills, new divisions. SA Labour Bulletin, Vol 15,No 1.

16 Africans had the greatest upward mobility in the industrial heartland around Johannesburg, then known as the Witwatersrand and now known as Gauteng.

17 These were the holders of so-called 'section 10 rights', in terms of section 10 of the Native (Urban Areas) Act.

achieve union compliance, and repress endeavours to organise unorganised workers). The key legislative measure was a definition of employee that excluded Africans, coupled with a system of registration that allowed unions to bargain collectively in what were then referred to as industrial councils (and are now referred to as bargaining councils). For unions, these councils facilitated the pursuit of the sectional interests of their skilled or educated members. For employers, the extension of collective agreements legitimised a wide differential between the wages of skilled and unskilled workers, and an extremely low wage for the latter.

The unskilled were overwhelmingly African, except in industries where women were traditionally employed, such as food manufacturing and clothing and textiles, where (again, depending on location) significant numbers of coloureds were employed. However as opposed to African women, African men were not urban insiders, but migrants. A combination of formal and informal measures maintained a separation between them and the urban insiders. Foremost amongst these was the utilisation of a form of fixed-term contract, and a system of hostels in which they resided and were spatially separated from the community.

It has been suggested that the unions that emerged in opposition to the established union movement of the time did so because they were able to utilise legal space. Two circumstances contrived to create this space. Firstly, it was clear by at least the mid 1970s that there were insufficient white and skilled workers to serve the needs of employers in manufacturing and on the mines. So the colour bar, and the unions devoted to its maintenance, had become an obstacle to capital accumulation. This was the primary motivation for the legislative reforms initiated by the Wiehahn Commission. Secondly, the fact that unskilled workers in certain industries were already unionised made it difficult to conceive of any legal basis on which the skilled-unskilled divide could be maintained, unless it were based on the exclusion of migrant workers.

The Wiehahn Commission was in fact split over whether to extend trade union rights to all African workers, or whether to extend trade union rights only to urban insiders. The majority, in adopting the former option, believed it would be able to achieve the same result in respect of African workers as had already been achieved in respect of coloured and white workers: a trade union movement committed to the sectional interests of skilled or better educated workers. The minority, on the other hand, were not prepared to countenance the extension of union rights to migrant workers.

Government initially adopted the position the minority advocated. But in the hiatus the appointment of the Commission created employers were increasingly unsure how to respond to the emerging unions. These unions, in turn, began to take up issues in the workplaces they were organising, or had organised, to establish that their members, migrant workers in particular, were frequently denied the most elementary rights, and in many workplaces they constituted a majority of the workforce.[18] So it was scarcely possible for the emergent unions to gain an organisational foothold in the workplace without organising them.

At the point at which the reform of labour legislation is proposed, the workers and unions at which such reforms are targeted acquire enormous symbolic power. The emergent unions were at this point a disparate bunch, representing different organisational strategies but with no firm organisational base. There were some that were clustered around workers' advice centres, whilst others were allied in one way or another to a registered union. Almost all were entirely reliant on foreign funding, for which they competed, and they subscribed to different traditions. However, whether in the 'black consciousness' or 'non racial tradition', all were united in rejecting a reform that excluded the migrant workers. Consequently government was constrained to modify the proposed reform, to allow racially separate unions for 'blacks' to register.

18 The other category of worker whose rights were flagrantly violated was women.

A proposal to register racially separate unions ought to have been rejected, at least by unions in the non-racial tradition.[19] Instead, in the formative period between 1980 and 1983, unions were divided[20]. They were divided in their response to the state, over a range of questions relating to organisational strategy and structures, in their relationship with the employers, and in their relationship to the community, and by implication politics. The Industrial Court, the quasi-judicial tribunal mooted by the Wiehahn Commission, was established in this period, and within a remarkably short time a lucrative (for its practitioners) new branch of law was developed, labour law, which was calculated to discourage reliance on workplace organisation and the resort to self-help.[21]

(3) THE ESTABLISHMENT OF AN EMERGENT UNION MOVEMENT

Two forms of organisation cohered in the period between 1980 and 1983. The first was industrial unionism, the object of which is to link workplaces operating in the same industry into one union. The other was general unionism, or community unionism, in which workers in different industries are organised into one union. However these are not discrete forms, insofar as a general union may pursue an industrial strategy, and indeed is obliged to do so to achieve objective power (specifically structural power).[22] Similarly an industrial union may define its scope so widely as to render the pursuit of an industrial strategy impractical, and end up organising generally as a result.

The forms of union adopted can also not be considered in isolation from those adopted by the established union movement of the time. Although, as already noted, this was a craft union tradition, targeting skilled workers, there were also unions that defined their scope in industrial terms. [23]Moreover these unions had an institutional basis in the council system. With the important exception of the metal and engineering industry, most such councils, and the unions that sat on them, defined 'industry' in narrow terms.[24]

An analysis of trade union structure is further complicated by the political traditions that unions subscribed to, and the question of finance. The purest form of community unions were regionally based organisations that organised without regard to industry, and were proxies for political organisations. They only ever achieved objective power in the ANC heartland of East London, where they were fairly easily contained and repressed. Nevertheless the spirit of engagement the community unions symbolised generated a leadership corps whose influence far exceeded the numbers in fact recruited.

The question of finance is fundamental to understanding how particular structures and practices evolved. The fact that unions were (with only two exceptions) externally funded meant that organisational structure, and trade union leadership, did not emerge organically, from the workplace up. At the same time funds were procured and controlled by the trade union centres. Notwithstanding rhetoric about workers control, real control resided with the leadership, and specifically its paid officials.[25] To demonstrate to funders that they were worthy of continued funding, a number of 'short-cuts' were taken in the establishment of organisation

19 In 1981 the state conceded on the question of non-racial unions. See Theron, J. 2002. 'The erosion of worker rights and the presumption as to who is an employee', Law Democracy and Development, Vol , University of Western Cape,.
20 1983 was the year the government of P.W.Botha introduced a political 'reform', the institution of a tri-cameral Parliament that enfranchised coloured and Indian persons, and led to the establishment of the United Democratic Front. It was also the year the Labour Relations Act was amended to recognise labour brokers that procured or placed workers with a client as their employer.
21 Theron, J. 1997. 'Trade unions and the law: Victimization and self-help remedies', Law Democracy and Development, Vol 1, University of Western Cape, 11-38.
22 See note 14 above.
23 In some instances craft unions defined their scope industrially, in others they were unions representing the supervisory and administrative layer in the industry.
24 The Metal and Engineering Industry Bargaining Council was and still remains by far the most significant such council.
25 In a union that is reliant on external funding workers were not even able to 'vote with their feet' by refusing to pay membership subscriptions, since a union does not rely on their subscriptions.

and leadership became inured to an organisational 'standard of living' that bore no relation to their capacity to raise money from members.[26]

The 'short-cuts' I refer to are often not acknowledged or documented, since they typically concern 'deals' of a collusive character struck with employers, particularly the big corporations that controlled most workplaces. The big corporations for their part had decided, at least since 1980, that it was necessary to engage with the emergent trade unions and to grant them access to the workplace subject to certain conditions. But these conditions were all-important. They were enshrined in private 'recognition agreements' that dove-tailed with the top-down practices most unions already subscribed to, and tended to encourage a reliance on the largesse of the employer. [27]

Thus one of the conditions imposed (almost invariably) by the large corporations was that a union would not to be granted rights of access to the workplace unless it had recruited a majority of the workforce concerned. This compelled unions to recruit outside the workplace, in the streets or in the community. However certain unions were granted favoured treatment by employers. In the important case of the mining sector, this certainly appeared to be the case.[28]Recruiting outside the workplace was (and still is) peculiarly difficult in mines.[29] Yet in about 1983 the largest of South Africa's mining corporations granted a particular mine workers union access to its mines.

Amongst the trade unions that formed COSTATU in 1985, there was a countervailing tradition to the centralised structure and 'top-down' methods most subscribed to. In this countervailing tradition, organised workplaces were linked together in financially autonomous branches. The branches in turn affiliated to, and financed, the central office. [30] But this tradition was not compatible within what was conceived as a 'tight' federation.

The ostensible justification for a tight federation was the policy of having 'one union for one industry.' Unlike the narrow version of industrial unionism the established unions had subscribed to, this policy envisaged a small number of broad-based industrial unions, capable of 'taking on' the big conglomerates. Broad-based industrial unionism, it was argued, necessitated a degree of centralisation. COSATU itself adopted a centralised structure and 'top down' modus operandi, modelling itself, despite the vastly different social context, on the Scandinavian trade union centres that funded ninety percent of its running costs. Consistent with the policy of broad-based unions, there were also a number of mergers between COSATU affiliates and unions that had previously been part of the established union movement. These boosted the numbers of affiliates without any appreciable gain in the quality of organisation.

The event that more than any other confirmed that the established unions of old had been displaced, and the emergent union movement was now acknowledged as representing organised labour, was the Laboria Accord. This was an agreement arrived at in 1990, between the Department of Labour, the representatives of organised business, and organised

26An example of the leadership of the emergent unions becoming inured to a 'standard of living' beyond their organisational means is their undue dependence on lawyers, litigation and the courts, because funders were prepared to bankroll litigation.

27 The 'recognition agreement' purported to regulate the relationship between the parties in an implicit acknowledgement that labour legislation was unable to do so, because it was not legitimate. I distinguish here between a private agreement between an employer and the trade union concerned and collective agreements that are published in the government gazette, as is the case with industrial or bargaining council agreements.

28 The National Mine Workers Union was established in 1982 by CUSA, a federation representing unions in the 'black consciousness' tradition. At the time a union with a more militant reputation, the Metal and Allied Workers Union (MAWU) was organizing mine workers. According to Baskin, NUM grew from a membership of 20,000 in June 1983 until 110,000 at the end of 1984. He attributes the fact that MAWU did not achieve comparable growth to "its low profile and gradualist organising methods", while making no mention of the fact that this membership growth was mainly or entirely attributable to the decision of Anglo-American to grant NUM access. See Baskin, 1991, 30. It might be said that the decision back-fired, in that NUM left CUSA, and allied itself with COSATU. On the other hand James Molatsi, formerly President of NUM, is now a director of Anglo Gold, a subsidiary of the Anglo American Corporation.

29 Whereas in manufacturing the workplace was generally in an industrial area, as part of an urban complex, and the workforce was drawn from adjacent townships, where migrant hostels would be located, the mines were often situated in relatively isolated localities, and hostels were on the property of the mine.

30 The writer was the General Secretary of the Food and Canning Workers Union (FCWU) from 1976 until 1986, and subsequently became General Secretary of the Food and Allied Workers Union. The FCWU was centrally involved in the formation of the Congress of SA Trade Unions (COSATU), and was one of only two of the founding unions that was financially autonomous.

labour, represented by COSATU and NACTU (the successor of CUSA).[31] The agreement committed the parties to negotiating new labour relations legislation. It also coincided with the unbanning of political parties, and the transition to democratic government.

(4) SEALING SPACES

The 'establishment' of the emergent trade unions coincided with an acceptance of rules regulating access, and the consolidation of the trade unions as an organised formation within the workplace. It also led to the transition towards a corporatist type of relationship with the state and organised business, now conceived as social partners. This was cemented in the legislation that established NEDLAC.[32] As part of the same deal, trade unions adopted a conception of 'the law' as a neutral body of rules serving to maintain a status quo of which they were increasingly part. This was epitomised by the adoption of a new Labour Relations Act (LRA), which was to be the cornerstone of a new labour relations regime.

In the meantime the fiscal controls and protectionist policies that had confined the big corporations to the domestic economy were loosened. Several of them initiated moves to relocate off-shore. At about the same time, mass manufacturing was being the relocated globally to low-wage countries with which South Africa was not able to compete, and the locus of domestic production was increasingly relocated to areas that were not unionised. Whilst the latter was not an altogether new strategy, the externalisation of employment was.[33]

Externalisation of employment is commonly understood to be a response to the competitive pressures of economic globalisation. Yet organised formations of employers also constituted new services, providing an 'active institutional presence' promoting externalisation. [34] As a result existing workplaces became home to a cluster of service providers each having its own workforce, serving a 'core business' that did not employ them.[35]

Three benefits of externalisation for an employer are discernable. Firstly, there is a direct cost saving, in that a service provider is able to employ workers at a minimum wage that is far lower than the core business would otherwise be able to do. Secondly and no less importantly, the core business is able to control the conditions under which workers are employed without becoming liable for any of the contingent costs associated with employment. [36] Thirdly, it erodes the significance of the trade unions as an organised formation within the workplace.

At the same time, for the capitalist class externalisation is a particularly elegant way to overcome the constraints on its operation that trade unions and labour regulation represented. On the one hand it broadens its own class base by creating the opportunity for enrichment by a layer of what are in effect intermediaries, typically at the expense of the most vulnerable section of the working class, namely those who lack skills. It is of course politically preferable in the South African context that these intermediaries be black.[37] On the other hand it further fragments the working class. Workers in employment, in the organised workplace, are now divided between those employed by the core business and those employed by service providers.

31 The agreement followed a protracted period of labour unrest, prompted partly by amendments to labour legislation perceived as hostile to labour, partly prompted by worsening economic conditions and retrenchments.
32 The members of NEDLAC were government and the federations representing organized business and labour respectively, to which was added a fourth chamber, representing the community. However since no organisation could claim to represent the community, invitees substituted on an ad hoc basis.
33 I refer to externalisation as the practice or policy whereby firms structure their operations so as to employ a minimum core workforce, comprised of relatively skilled workers, and enter into various contractual arrangements with service providers and intermediaries to carry out operations that are perceived to be 'non-core'.
34 Peck and Theodore,
35It does not seem to me that the term 'de-industrialisation' is an apt description for such a process. Equally, it is problematic to speak of the 'rise of services', implying increased employment, when much of this supposed increased in employment in services is merely the corollary of its externalisation.
36 All indications are that since the adoption of the LRA the contingent cost of most concern to employers is the cost of dealing with unfair dismissal proceedings in the CCMA or Labour Court.
37 There are indications this is in fact occurring. Black entrepreneurs, including former trade unionists, are prominent in security, contract cleaning, catering and temporary employment services, although further research is needed in this area.

Amongst unions a conventional view of the LRA of 1995 is that it consolidated the achievements of the emergent unions in the years of struggle. There was at last adequate provision for organisational rights. Minimum standards in employment were to be determined by collective bargaining, with a strong preference for centralised bargaining. In those few sectors that were inaccessible to organisation, minimum standards would be secured through the BCEA. The notion that employment can be regulated by private contract was finally laid to rest. Employment security would be safeguarded by an accessible system of labour justice.

A more realistic view of the new LRA was that it was the product of compromise in which many of supposed gains for labour were more apparent than real. The organisational rights provided were no more than the emergent unions had already achieved in practice. But they were now premised on a definition of the workplace that was all the places where the employee of an employer worked. That was done to protect the new, established unions against claims from new-comer unions. Yet it failed to take account of how the workplace was being restructured.

Two provisions of the new LRA, which do not appear to have been contested at the time, facilitated the process of externalisation. One was the definition of 'employee', the mechanism by which Africans had previously been excluded from the legislation. The purport of the new definition was also to introduce an exclusion, namely of the so-called 'independent contractor'. This signified a space employers could utilise to evade the legislation.[38] The other provision recognised 'temporary employment services' (TESs) or agencies as the employer of workers they provide to a client. This signified another space employers could utilise, to avoid risk of liability arising out of the employment relationship. [39]

Employers were quick to utilise these legal spaces, and there has been a dramatic growth of TESs, in particular, in the period since the new LRA was introduced. At the same time spaces for union organisation have been sealed. It is difficult to measure the overall extent of externalisation, for a number of reasons. But its impact can be discerned at the individual workplace, as discussed below. It is also difficult to see how trade unions will be able to reverse this impact, unless they begin at the individual workplace, as it were 'from scratch.' However one of the profound drawbacks of corporatist type of arrangements unions have entered into is that they may have lost the capacity to do so. For the effect of such arrangements is to focus all capacity and resources at a central level, and to nurture the belief that it is only at this level that changes can occur. The centralised structure and modus operandi of unions reinforces this belief, as already pointed out.

In summary, the increase in trade union membership in post-apartheid South Africa has been largely if not entirely attributable to increased membership in the public sector, starting in about 1990, in the period of political transition. This increase was in turn made possible by a more pliant state. Trade union membership continued to grow after the first democratic election in 1994, for the same reason. But a proliferation of bogus unions also contributed to this growth. According to official data, both trade union membership and the number of unions reached a peak in 2002. Since then, the trend for both has been to decline.[40] It is in any event clear that trade union membership in the primary and sector sectors has in fact declined.[41]

As a consequence, COSATU is increasingly a centre dominated by workers in the public sector.[42] The very notion of a 'worker' has acquired new meaning. When the union movement

38 Section 213, LRA of 1995.

39 Section 198, LRA of 1995. In terms of section 198(4), the client was made jointly and severally liable if the TES contravened a bargaining council agreement or a provision of the Basic Conditions of Employment Act, but not if the employee placed by a TES is unfairly dismissed.

40 Godfrey, S. in Du Toit, D et al. 2006. Labour Relations Law, Juta. The latest figure from the Department of Labour shows a slight increase in overall membership over the 2005 and 2006 figures, while the number of trade unions has declined. However it is highly unlikely this slight increase will be maintained. In any event official data are compiled from trade union returns. But membership figures are generally not verified, and may be inflated.

41 According to official statistics, manufacturing now comprises 13,9 percent of the employed workforce and mining 3,2 percent. See Statistics SA, Labour Force Survey, March 2006. Retail employed 24 percent of the workforce: but a large proportion of this comprises self-employed traders, or workers in small businesses. Both these categories are largely unorganised.

42 This is exemplified by the fact that the last three major strikes involving COSATU affiliates was in the public sector, in 2007, and in contract cleaning and security in 2006. Of COSATU's 1,8 million members, 770 433 belong to its five affiliates whose membership is

from which COSATU emerged was first being established, 'worker' was understood to mean someone employed in production, as distinct from other employees. Nowadays the 'workers' of unions affiliated to COSATU include medical doctors and musicians, but not, with a few exceptions, workers in externalised employment, working in the same workplaces where their members are employed. It is in this context that the question of trade union renewal arises.

(5) TWO CASE STUDIES OF THE CONTEMPORARY WORKPLACE

The case of a steel mill in Saldanha illustrates the effects externalisation has had on the manufacturing workplace.[43] It is a 'green field' development in which employment relations have been structured from the outset to ensure that the mill itself employs as few workers as possible.[44] Accordingly, upon entering the workplace, one is confronted by a wall with the name-plates of all the business-partners of the company listed on it. This is the entrance of the 'contractor village', where all the different contractors on site have their offices. These range from multi-national enterprises working with by-products of the steel manufacturing process to a TES. The number of people they collectively employ is roughly equivalent to the number employed by the mill.

As initially conceived, the mill was to be run by a small workforce of highly trained and multi-skilled people. As a consequence, the entrance qualification for a worker is a matriculation certificate, preferably with mathematics. Computer literacy is requisite. The 'philosophy' of the company, as it describes its labour relations policy, is to have a flat organisational structure, resulting in effective communication and maximally delegated responsibility. 'Necessary non-core activities' are to be outsourced.[45]

One such 'necessary' non-core activity is the service provided by a contract cleaning company. Whereas the mill workers seem to be mostly locals from nearby towns, and are predominantly coloured, the workers who do the cleaning come from the same places in the Eastern Cape from which industry in this area used to recruit migrant labour in the apartheid era. The 'cleaning' these workers do is with picks, shovels, wheelbarrows, buckets, sometimes even a small jack-hammer. By any standard it is heavy physical work. In some localities it is hasardous.

It is clear, also, that this work is an integral part of the production process. So it is not surprising that there should be an expectation that workers would be paid a wage determined by the mill. In truth they are. But the minimum wage the mill has to pay is stipulated in the sectoral determination for the contract cleaning industry.[46] The only way the workers would be able to achieve a premium on this minimum would be through organisation. They are not entitled in terms of legislation to organisational rights at the workplace where the actually work. That is because it is not regarded as the workplace of their employer. Still less are they entitled to bargain with the mill. [47]

No-one knows how many jobs in manufacturing and on the mines have been converted to this form of 'cleaning', but probably it is considerable.[48] Certainly some of the growth of

located in the primary and secondary sector. The balance of its membership is employed in services, and overwhelmingly in the public service. There are seventeen unions in the services or tertiary sector, some of which are very small. (Data obtained from COSATU website and the website of its affiliates.)

43 In the South African case the legislative response has been to regulate the 'transfer of undertakings' more rigorously, a case of closing the stable-door after the horse has bolted.

44 www.mittalsteel.com . The plant was established in 1998, and is described as the only plant in the world to have successfully combined the corex/midrex process into a continuous casting chain, thereby eliminating the need for coke ovens and blast furnaces.

45 Untitled, unpublished document provided by the Metal and Engineering Industry Bargaining Council.

46 Sectoral determination 1: Contract cleaning sector, Gov notice No 622 of 14 May 1999, as amended.

47 If they want to bargain collectively, it seems, they will have to bargain at the forum where the contract cleaners meet with the unions, voluntarily, every couple of years. It will be nothing like the wage they would secure if they were able to make common cause with the mill workers.

48 This is also indicative of the disintegration of the concept of an industrial sector, with far-reaching implications for the way in which labour relations are structured.

jobs in services is attributable to this kind of conversion. There is also nothing unusual about a workplace in which about the same number are employed by service providers and intermediaries as by the 'core business'. Increasingly this seems to be the norm. It also seems to be the norm for workers employed by intermediaries and service providers, particularly TESs, to earn a fraction of what a worker in an equivalent job in standard employment would earn. In many cases this is half, or less than half, what core workers earn.

The effect of externalisation in the retail sector is more difficult to discern, since the big retail chains have not externalised as much as converted full-time jobs to part-time jobs. There was a shift in power relations between retail and manufacturing in South Africa in the 1980s at about the same time a similar shift in Northern countries occurred (Wrigley and Lowe, 2002).[49] Three big retail chains emerged as the dominant force in the retail market, and began establishing more and more stores. Whereas initially the trend was also to establish larger and larger stores (epitomised by the 'hyper-market') lately the focus has shifted to local malls, and an emphasis on convenience. My case study of a contemporary retail workplace is my local mall, in the town of Stellenbosch.

At one end of the Mall is Woolworths, one of the three big retail chains. Because the largest of the retail unions was unable to recruit sufficient part-time workers in Woolworths nationally, a direct consequence of the legislative definition of a workplace already referred to, the company terminated its recognition of the union a decade ago. Recently the union has managed to get the employers to reverse that stance. However it does not seem the union has got round to recruiting the workers at this particular store. They still believe it is company policy not to recognise unions.

Pick 'n Pay is at the other end of this mall. The Pick 'n Pay group still recognises the trade union Woolworths de-recognised. But this store does not belong to Pick 'n Pay. It is a franchise, and the workers are not organised by the union. It seems as though the union has not attempted to organise the workers of such franchisees. This suggests an implicit understanding between itself and Pick 'n Pay. For it is inconceivable that Pick 'n Pay, as franchisor, would not be in a position to compel its franchisee to recognise the union if it was inclined to do so.

Franchising provides another example of externalisation that does not occur through outsourcing, and plays an increasingly important role in retail. Merchandising is another. It is the merchandiser in Pick n Pay who stocks the supermarket shelves, and who maintains the appropriate levels of stock in warehouses, in order to fulfil this function. It also gives the lie to the conventional rationale for outsourcing, to focus on one's 'core business.' Merchandising is clearly a 'core' function. It is precisely because it is a core function, in the event of industrial action, that it is strategically preferable that an external company provide the service.

It would be difficult to ascertain the terms on which Woolworth's and Pick 'n Pay leases premises in the mall, but it is common knowledge the success of any such mall depends on securing anchor tenant such as these. For this reason the large retailers are usually able to command favourable terms. In between the two retail chains is the usual range of smaller shops, restaurants and retail outlets that one finds in a shopping mall of this kind. A large proportion of employment in retail is in this kind of outlet. In the context of a mall, these retail outlets can be regarded as satellites of the large retailers.

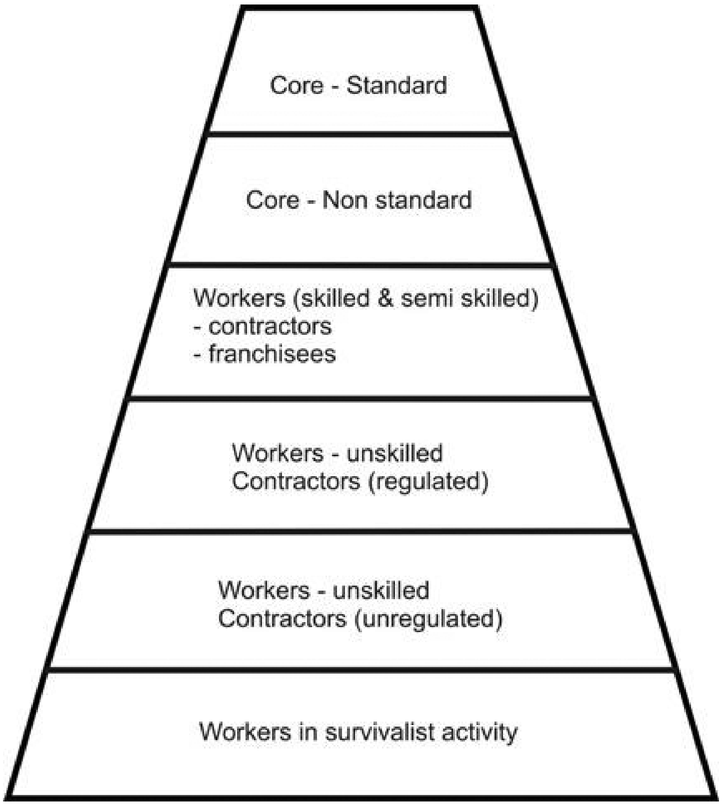
There is also a huge component of the retail sector employed in the informal economy. This

49 Wrigley and Lowe describe the concentration of capital that commenced in economies of the North post-World War 2, as a result of which independent retailers were progressively eliminated and the retail sector came to be increasingly dominated by 'big capital', in the form of the retail mega-chain (exemplified by Wal-mart in North America). This has resulted in a shift in bargaining power between retailers and their suppliers. See N.Wrigley and M.Lowe, 2002. 'Reading retail: A geographical perspective of retailing and consumption spaces', Arnold, London, 22-25 and 52-55. A similar development occurred in South Africa. Manufacturers began complaining about the potentially devastating consequence of having their products blacklisted by Pick 'n Pay, if they could not deliver product at the prices the retailer stipulated. In the case of Woolworths, manufacturers were required to modify their plants to meet its exhausting specifications.

of course includes street-traders and hawkers, but that kind of activity would not be permitted in an upmarket mall like this one. Indeed it is probably to prevent intrusions of this kind that the mall permits a different kind of informal employment. On any day of the week there are about eight men patrolling the parking area, in distinctive orange and white shirts and hats. All seems to hail from the DRC or Congo, and live elsewhere. They are issued with the uniforms, to signify that they are authorised to operate as 'car guards'. In other words they work for tips. For this privilege, they pay R10 a day to an intermediary, who has a contract with the mall's management to provide this service.

Neither the shopping mall nor the mill constitutes a workplace in law. Both could be constituted as the workplace, from the point of view of a union seeking to organise industrially, in a broad-based manner. In both cases this has not been attempted. What we find instead is increased segmentation in workplace, reflecting increased segmentation in the labour market. The diagram below is intended to represent the workplace hierarchy thereby established, although each form of employment listed below will not necessarily be represented in individual cases, and the make-up will also differ from sector to sector.

Fig 145: The hierarchy of employment relationships in the workplace



Thus there is segmentation amongst those employed by the same core business, between workers in standard and non-standard employment. Trade union membership, it should be noted, is largely confined to workers in standard employment in the core business. Secondly, there is segmentation between those employed directly by an enterprise and those working for it, but employed by intermediaries and service providers. In almost all respects – wages, conditions of work, health and safety, access to skills development and training, social security and social protection – workers in such triangular employment relationships are likely to be even less well protected than workers in part-time employment, or the more secure forms of temporary work. Thirdly, there is segmentation between those employed by or working for the enterprise, and those employed by or working for satellites of the enterprises, or the informal economy: in the context of the retail mall, I have suggested this includes smaller businesses, and the car guards in the informal economy.

(6) AN AGENDA FOR RENEWAL

Some commentators who have posited the need for trade union renewal or revitalization have drawn inspiration from organising endeavours that are comparatively marginal to the economy, such as the struggle of the members of a theatre union in the United Kingdom (Simms, 2007) or street traders in Johannesburg and Durban (Webster and Von Holdt, 2008). The latter is also a constituency much discussed in the literature on the informal economy. Without discounting such initiatives, it is difficult to see how they can progress without addressing the problem of segmentation in the workplace.

Others have discerned the development of a new paradigm in the United States (Pope, 2006), or raised the possibility of established trade union federations engaged in 'social movement unionism' in the context of the United Kingdom (Simms, 2007) and South Africa (Habib and Valodia, 2006). However although the growth of employment in services does raise particular challenges, in the South African context there is a more fundamental challenge. There is nothing new about it. It confirms the adage that those who are unable to learn from history are doomed to repeat it.

Confirming the oligarchic tendencies evident in the previous phase of their development, trade unions increasingly represent insiders employed by the 'core business', whose interests are perceived as distinct, if not antagonistic, to those who are not. Put differently, segmentation in the workplace translates into a hierarchy, or 'pecking order', with workers in standard employment at the top. In the case of the steel mill, the membership constituency of one union is exclusively drawn from the core-workforce of the mill, and it is accepted that another union should represent the lower-paid, less educated cleaning workers. The union is thereby reinforcing a kind of class division amongst workers little different from what prevailed under apartheid. So too is a retail union that fails to organise part-timers, or organise the workers of franchisees, although perhaps not to the same extent.

If one were to gauge the political and organisational extent of the failure of unions to address this segmentation, the appropriate place to begin one's enquiry would be at the bottom of this hierarchy: in the case of the steel mill, with the 'cleaning' workers; in the case of the shopping mall, with the car guards who pay for the privilege of working. By the same token, if one were to evaluate the legislative roots of this failure, one would have to conclude that the law has more often than not been used to seal organisational space than open it. It is therefore imperative that trade unions understand that there is no regulatory 'quick-fix'. If today's established union movement is to carry on the tradition in which the emergent unions were founded, they will need to open up new spaces, in the workplace as it has been reconstituted.

Nothing compels the trade unions to accept legal definitions that emasculate their organisation. The fact that workers placed by TESs are not organised does not mean that trade unions representing workers of the client cannot take up their cause. So too the trade union at the steel mill could make common cause with the cleaners. The problem confronting workers in triangular employment relationships such as these is essentially the same problem confronting workers in the informal economy: how to hold powerful economic entities that in fact determine the conditions under which they work accountable.

Trade unions should be the first to appreciate that this is at root and base a problem of organisation. In the case of the informal economy, there may be no economic entity visible determining the conditions under which workers work. Yet the task of organisation is to make linkages visible, in much the same way the emergent unions made the links between different employers in different workplaces visible, underpinning its founding principle of 'one union, one industry.' In the case of the retail mall, the informal economy is literally outside the doors of the formal workplace.

Of course any attempt to establish linkages between formal and informal will be resisted. Here there are a variety of strategies that can be attempted. There are of course instances where public pressure has succeeded in forcing even multi-national companies to accept responsibility for labour standards in plants that are ostensibly not theirs. But such campaigns are best reserved for high profile cases. They do not address the day- to-day problems of workers without voice or representation. In any event, even in high profile cases there is no substitute for effective organisation of the workforce.

So trade unions need to facilitate the organisation of the unorganised. Ideally one would hope that workers would be organised into one union. But given the segmentation that has occurred, this may not be realistic. It also may not be appropriate to organise these workers into unions at all. Because activity in the informal workplace is primarily entrepreneurial in character, it may be more appropriate to organise cooperatives than unions. Cooperatives and trade unions are nevertheless compatible organisations, with a comparable history and comparable traditions.

Coupled with the question of organisation, trade unions need to develop an agenda for bargaining that somehow addresses informal workers. A trade union cannot bargain for those it does not represent. However nothing precludes a union from bringing pressure to bear on its employers to recognise the rights of others to voice and representation. Or from demanding that an employer puts pressure on the shopping mall to contract with a co-operative of car guards, rather than an intermediary. Or to demand the establishment of a forum where vulnerable workers such as those employed by intermediaries and service providers can be represented.

Lastly, the centralisation of trade unions will not be easy to reverse. But if trade unions do not develop the capacity to respond locally to local issues, it is difficult to see how they will be able to begin to bridge inequalities in the workplace.

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Developing Economies, Developing Solidarity

Towards working class solidarity between China and Africa

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INTRODUCTION

"The compensation from the Italian Chicco Company and the local government cannot be offset against my ruined youth!" said XiaoYing, a 15 year child worker who was a survivor of the Zhili toy factory fire 15 years' ago in Shenzhen, China. She had a 75% body burn.

The spectacular hosting of the 2008 Beijing Olympics indicates the rise of China in the global political economy. Almost every country knows about China due to the large quantities of goods made in China that they import. They have most likely heard about the human rights violations and the lack of democracy in China through the mainstream press. Increasingly in Africa they are also aware of labour standards deployed in Chinese operations as these have mushroomed throughout the continent, and elsewhere, in the past decade. But magnanimous displays at the Beijing Olympics will leave a lasting impression on the world – mainly that China is no longer a backward country.

A big question for African workers is: What are the conditions of workers in China? Similarly the big question each African labour organisation asks is: How are workers organised in China? And a big question for the progressive African labour movement as a whole is: How do we build solidarity between the progressive Chinese labour movement and ours?

Although the rise of China in the world economy is new its relationship with Africa is not. The people to people exchange between China and Africa has a history of three thousand years. The most famous one is the sea expedition led by Cheng He from the Ming Dynasty from 1412 to 1433 which helped to promote trade and cultural exchanges for many years. After its founding in 1949, the People's Republic of China assisted numerous African countries in their struggle for political and economic independence from European colonial rule. Likewise African countries supported China in the international arena, for example, twenty-six out of seventy-six votes that allowed China to re-enter the United Nations were African.

Sino-Africa trade has surpassed the US$10 billion mark since 2000 and trade between China and Africa has maintained growth rates of more than 30% annually. Bilateral trade hit US$73.31 billion in 2007, an increase of 32.6% over 2006. China's major exports to Africa include textiles, garments, light industry machinery, automobiles, motorcycles, household electrical appliances, telecommunications and other hi-tech equipment. Electronics and electrical appliances form the lion's share of export items (45% of the total) followed by textile and garments (15%). Coastal cities such as Guangzhou have a well known 'African town' where business transactions between African and Chinese take place. African buyers place their orders or do the shopping directly with their Chinese counterparts who are mostly small and medium size operators. Flights to Africa from Hong Kong are often loaded with Chinese goods taken back by African business people. In return, African products embraced by Chinese consumers include diamonds, coffee, timber, cocoa, tobacco, olive oil marble, sesame and peanut oil. But it is the natural resources such as oil that dominate African exports (73%).

1 This paper was commissioned by the African Labour Research Network

At present 466 commodities imported from least-developed countries in Africa have no tariff in China. By June 2008 the value of those commodities totaled US$620 million. (China Daily 28 August 2008) This policy is underpinned by the Chinese Government's view that Africa's trade to China needs to be expanded to ensure balanced trade between them. (China's "Africa Policy" paper adopted in January 2006)

At the end of 2007, China's foreign direct investment to Africa was 6% of China's total FDI. Comparatively it is easier for China's transnational corporations (TNCs) to invest in Africa than in Latin America, USA and North America, Europe and Asia where there are more powerful business competitors.

A large number of China's FDI goes to Cayman Island, British Virgin Island and Hong Kong where they redirect their investments to unknown destinations making it difficult to ascertain the real geographical spread of FDI outflows. It appears though that official investment is in raw materials and mega projects, whereas the small and medium operations are mostly private initiatives. Most investment goes to raw materials (oil, timber), the manufacturing sector (garments, home appliances and telecommunications) or rural development (food processing and agricultural machinery).

It appears that there are two motivations for China's investment outflows – the first is to make profit through trade and the second is to make political alliances in the international arena, particularly with the least developing countries such as those in Africa. This policy has won support from African countries on both the Taiwan and human rights issues involving China.

In addition, China has conducted 800 aid projects in Africa since 1950. This includes 137 agricultural projects and 133 basic infrastructure projects. The establishment of the China-Africa Development Fund indicates that China plans to further develop its ties with Africa despite the slowing economy at home.

The challenge to ensure working class solidarity between Africa and China thus becomes more relevant. The effects of more than thirty years of neo-liberalism are conspicuous in Africa – a decline in its contribution of world production, world trade and world investment; an inability to meet the Millennium Development Goals targets; the prevalence of poor working conditions, cheap labour and high levels of unemployment. Democracy remains as elusive as human rights violations are rife. It is in this context that Africa is asking whether the rise of China is a threat or an opportunity. This paper accepts the assumption that only working class solidarity can divert threats and ensure that opportunities are turned into real benefits for workers and the poor in both Africa and China. But solidarity requires understanding of different contexts and so this paper is an attempt to inform African workers of the Chinese economy, of the working conditions in China, of workers' experience of oppression in China and their responses to it as well as trade unions in China. The ability to develop strategies for solidarity can only be improved if the working classes of Africa and China are better informed and have a better understanding of each other.

This paper, serves only as a small contribution to develop this understanding. It has four sections. It starts with an overview of China's economy (section 1). This is followed by Human Development Indicators (section 2); Working Conditions (section 3); Worker Experience of Oppression (section 4) Worker Responses to Oppression (section 5) and last it looks at Trade Unions (section 6). This paper concludes with recommendations for the African labour movement, from a Chinese labour activist perspective, on how to further develop an understanding and a strategy for engaging with China.

(1) CHINA'S ECONOMY

The year 2008 marks the 30th anniversary of the economic reforms that China embarked upon in 1978. These reforms were what the Chinese Communist Party calls 'socialism with Chinese characteristics' (1993) but in essence it was a process of liberalizing the economy and moving towards a capitalist market system. Deng Xiao Ping's famous motto is "let a few get rich first" and the Communist Party is determined to remain on this course announcing that it has "no regret" for embarking on the reforms (17th Party Congress, 2007).

Economic statistics affirms the position of the Communist Party. The economy has grown very fast as depicted in the table below. The exchange rate in January 2009 was 1 USD=6.85 RMB and the GDP of China represents 6% of the world total. During the decade of the 1980s China's economy grew by 32% and sped to 195% during the 1990s. Between 2000 and 2007 the economy grew by 175%. In 2007 it recorded a 22.6% increase while recent annual increases were all over 17%.

Table 45: Nominal GDP growth in China for selected years

Year	1980	1990	2000	2003	2004	2005	2006	2007
GDP (US$mil)	306,520	404,494	1,192,836	1,647,918	1,936,502	2,282,554	2,681,265	3,286,881
% Increase		32.0	194.9		17.5	17.9	17.5	22.6

Source: Unctad Hand Book of Statistics 2008, p432

The composition of the Chinese economy has changed. Agriculture declined from 27% to 13% of the economy between 1990 and 2006 while Industry grew from 41% to 46% and Services from 32% to 39% over the same period.

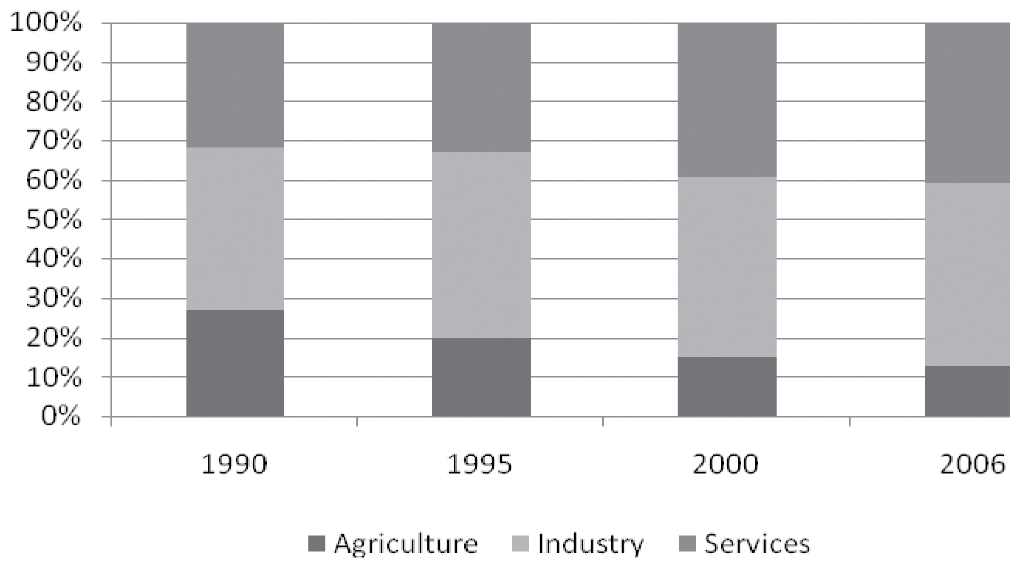
Table 46: Changing structure of China's economy: 1990 - 2006

	Agriculture (%)	Industry (%)	Services (%)
1990	27	41	32
1995	20	47	33
2000	15	46	39
2006	13	47	41

Source: Unctad Hand Book of Statistics 2008, p416

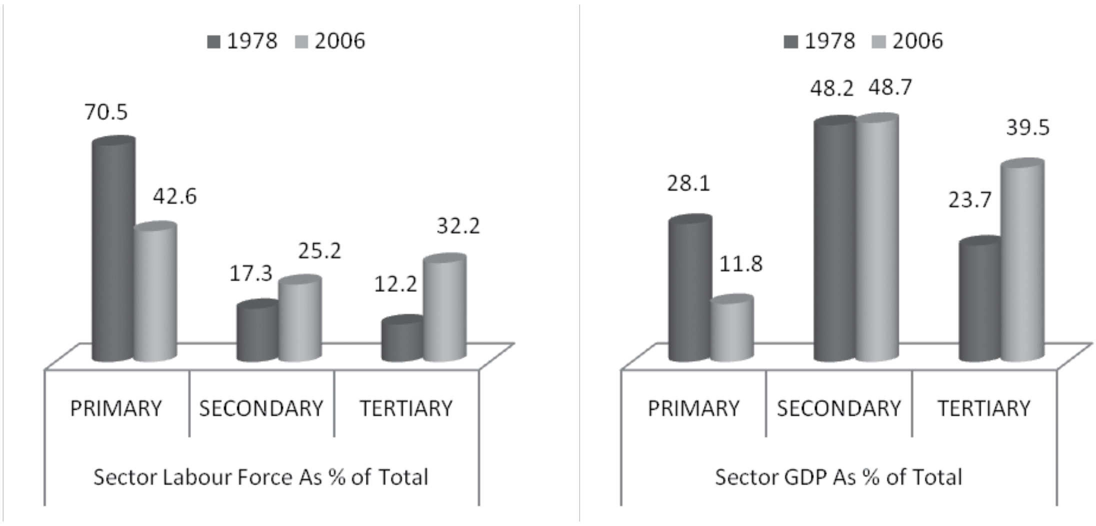
The figure below which represents the table above and shows clearly that industry and services have grown consistently and at similar rates during this period.

Fig 146: Changing structure of China's economy: 1990 - 2006



By the end of 2007 the labour force was 769.9 million, of which 193.5 million were urban workers. A comparison of the percentage change in the size of the labour force engaged in the various sectors since the introduction of the economic reforms to the percentage contribution of GDP of the various sectors over the same period reveals the following observations.

Fig 147: Sector employment and output in China



1. The tertiary sector has grown both in terms of employment as well as contribution to GDP. However employment growth has been faster resulting in a slight difference between the percentage people employed in the sector and the percentage contribution of this sector towards GDP.
2. The secondary sector has grown in terms of employment however its contribution to GDP has remained static but is still much higher than the percentage people employed in the sector.
3. The primary sector has declined in terms of employment and contribution to GDP. That 42.6% of the working population contributes 11.8% to the GDP in the primary sector is a strong factor driving the growth of inequality.
4. What is being achieved in the tertiary sector namely that the percentage of people employed is equivalent to the percentage contribution has not been accomplished for the other two sectors.

Table 47: Profit rates for Chinese enterprises

Type of Ownership	Profit Rate
State- Owned Enterprises	36.70%
Collectively-Owned Enterprises	25.20%
Shareholders Enterprises	35.10%
Foreign-Owned Enterprises	34.30%
Privately-Owned Enterprises	50.90%

Other key economic indicators are:

- Foreign exchange reserve in 2008 amounted to 1,900 billion USD, the highest in the world.
- Total import/export growth rate was 23.5% in 2007 compared with 2006. China now known as the 'factory of the world', was ranked number three in world trade in 2007 compared to number 29 in 1976.
- In 2007, non-financial foreign direct investment (FDI) was valued at US$74.8 billion, a growth of 13.6% compared with 2006.
- The overseas direct investment by Chinese investors was US$18.7 billion in 2007, an increase of 6.2% over 2006 which is encouraged by the government's 'going out' policy.

- Profits growth is very high, especially in privately-owned enterprises.
- The inflation rate has been rising steadily in China jumping from 1.5%in 2006 to 4.8% in 2007 and is the most disconcerting economic indicator presently.

Table 48: Inflation rate in China (consumer price index)

2003	2004	2005	2006	2007
1.20%	3.90%	1.80%	1.50%	4.80%

These enormous economic achievements make China the envy of every developing country. China now occupies 4th place in terms of size of its economy moving from 11th place in 1978. So it is no surprise that African government are lining up to develop economic relations with China.

(2) HUMAN DEVELOPMENT INDICATORS IN CHINA

An outline of human development and social indicators is required to place this immense economic growth in a broader development perspective. The African experience shows that economic growth does not necessarily lead to improved socio-economic development and this section describes the Human Development Indicators as they apply to China in order to understand if there is a different experience.

The drastic drop in poverty from 250 million people in 1978 to 23 million people currently is striking. Poverty is down to 10% of what it was before the new economic policy. Income has also risen as shown by China's country ranking in GDP per capita. Before the economic reforms China was number 175 out of 188 countries – or 13th from the bottom. Currently it ranks 129 out of 209 countries. According to official statistics the poor represent one tenth of the total population. Of these 5,968,000 are from the rural population, 4,616,000 from the urban population and 2,500,000 are migrant workers. (Li, Social Harmony and Stability in China Today, 2008)

Of concern, however is the rise in unemployment which although officially at 4% is more like 8% if one includes workers laid off from State Owned Enterprises but are not counted as unemployed due to their continued relationship with the company. These are called "xiagang" workers and their number has grown to between 30-40 million in the past ten years. Also not counted is the growth of migrant unemployment.

Inequality has also become a huge feature of the socio economic landscape in China – the Gini coefficient of China is 0.496 (2006), equivalent to that in Latin American countries but better than quite a few African countries. The form that inequality is taking, however, shows that the new middle classes based in the cities have improved their earnings while the earnings of farmers in the rural areas have declined. The divide in income between the population of the farmers and urban people has widened from a ratio of 2.57 to 1 in 1978 to 3.33 to 1 in 2007. The biggest disparity, like in most countries of the world, is that between the small size of the employer class and the huge proportion of national income it accrues. The employer class represents 3.15% of the labour force, but their income share is 15.94% of the total. The new middle class share of the labour force is 7.76% but their income share is 16.95%; the working class share of the population is 30.61% but their income share is 35.76%, while the farmer class share of the population is 46.96% but their income share is 17.91%.

China's growth can be compared with the Victorian "primary accumulation of capital", which is driven by intensified exploitation of the country farmers and workers. (Hart-Landsberg and Burkett 2008) In the old days, the government regulated everything under the planned economy; however, in the reform period the government plays a minimum role in labour relations and redistribution of wealth and public goods leaving this in the hands of company bosses and their management.

An indicator of the attitude of the Chinese population to the manner in which China is developing can be found in a recent opinion poll. The Blue Book on Society in China in 2008 identifies their top five concerns as rising prices (96%), the gap between the rich and the poor (89%), corrupt officials (78%), air pollution (74%), and unemployment (68%). (CASS)

The government, however, has come to recognize the problems of growing unemployment and inequality as well and publically argues that there needs to be countervailing measures to the "growth first" economic policy. Towards this end it has adopted what it calls a balanced approach, such as the 'green GDP' measurement which includes the respect for human rights and 'putting people first'. (2004 State Council Policy Statement). So the government in China continues with its position that business interest should be protected and pursued but has instituted some mechanisms to relieve the pressure of unemployment.

One of these mechanisms is the policy of sending workers overseas. The number of overseas workers in October 2008 was 838,000 according to the Ministry of Commerce, an increase of 81,000 compared to the previous year. This is an underestimated figure as many Chinese go overseas without proper documents which are arranged by 'snake heads'. It is well documented that Chinese migrant workers are badly treated and there are numerous labour disputes and wildcat strikes. Unscrupulous employment agencies exploit overseas Chinese workers who are vulnerable. (South China Morning Post website) There appears to be a new trend, however. This is the signing of the bilateral labour service treaties such as that between the governments of Mauritius and China in 2005 on labour cooperation and the reduction and avoidance of labour disputes for 8,000 Chinese overseas workers stationed there.

Other mechanisms include focusing on new entrants to the labour market, creating jobs in the rural areas and retraining unemployed workers in the city. Accordingly the Ministry of Human Resources and Social Security (MHRSS) has set targets for employment of 10 million new persons, retraining of 50 million "xiagang" workers and maintaining the unemployment rate of 4.5%.

(3) WORKING CONDITIONS IN CHINA

It took China 40 years to enact the first comprehensive Labour Law. (Guan 2007) On paper the China Labour Law is quite good. Enacted in 1994, it stipulates the basic rights of a worker in terms of employment contract, rest days, wages, dismissals and layoffs, working hours, occupational health and safety, social insurance, and labour disputes. (Handbook of Chinese Labour Law, 1999) This is a direct result of the early market reform in China where private sectors workers need clear protective mechanisms from unscrupulous business. More recently, in 2008, two further laws were enacted due to the rise of migrant labour: the Labour Contract Law and the Labour Disputes Conciliation and Arbitration Law in 2008. The new Labour Contract Law says every employee should have a contract which stipulates all the workers' rights and entitlement. Should a company fail to do this it is compelled to pay twice the compensation to the workers.

A Chinese worker earns on average 2,000 RMB a month (250 USD). The government has different minimum wage rates for different cities but these apply to workers formally employed who are largely in State-Owned Enterprises. Numerous workers are informally employed in privately owned enterprises (POE) or joint ventures (JV) and who are mostly migrant workers. The wage difference between migrant and traditional state workers is significant, without counting benefits. A migrant worker earned 921 RMB a month compared with an urban worker whose average monthly wage was 2,364 RMB in 2007. In other words a migrant worker would have to get a 156% increase to match the wage of a worker in a state-owned company even if they are doing similar work. In addition, migrants are not entitled to benefits such as maternity or unemployment benefits and are excluded from many social security measures such as social assistance.

The old social security system dates from 1951 and provided workers with cradle-to-grave benefits. This system has been dismantled due to rapid reforms or privatisation (though this term is rarely used because of political sensitivity) or lack of funds. Previously it did not require any workers' contribution and was based on the former USSR model. The new central system is not yet in place and a bill on Social Insurance Law is pending at the National People's Congress. There are, however, numerous schemes currently operating under the social security system in China.

- Old age grants - the retirement age is 60 years for men and 55 for women
- The labour insurance medical system aims at protecting the health of enterprise employees, with medical expenses subsidized if they are sick or injured at work.
- The unemployment benefits extend for a maximum of 2 years, but the length is determined by the length of subscription and the amount is 80% of the minimum wage.
- Industrial injury benefits include medical allowance and subsidies for work injuries, disability allowance and compensation according to the assessment; and compensation and allowance for work-related deaths.
- Maternity benefits covers medical expenses for child delivery, birth allowance (10 weeks), and family planning cost.

The social security system in 2007 had a little more than 201 million people on old age grants. It catered for medical needs of over 220 million and provided industrial injury and unemployment benefits to more than 121 million and 116 million people respectively. Furthermore it provided maternity benefits to over 77 million women. (Ministry of Human Resources and Social Security)

The problems that the forthcoming social security Bill is attempting to deal with are:

1. Low coverage: There are many private enterprises which fail to pay the premium and their employees are thus exempt from benefits. Furthermore, large numbers of migrant and informal workers are not protected.
2. The funds accumulated in the fund by an employee in one city are not transferable when the employee moves to another city or province.
3. Rural workers unprotected: Some villages have remedial or limited security schemes
4. The Social Security System is underfunded: There is no central pool system which can allow cross subsidization.
5. Corruption: Due to the power of politicians in their cities they are able to misappropriate funds as was the case of the Shanghai Mayor. (He appropriated RMB 3.2 billion from the pension scheme.)

In terms of international regulations, China has ratified 25 pieces of International Labour Organisation (ILO) conventions: These are no. 11, no. 14, no. 16, no. 22, no. 23, no. 26, no. 27, no. 30, no. 45, no. 100, no. 111, no. 122, no. 138, no. 144, no. 150, no. 155, no. 159, no. 167, no. 170, and no. 182. It has, however, also denunciated the following conventions: no. 7, no. 15, and no. 59.

Of the eight core labour standards, China failed to ratify the conventions related to forced labour (conventions no. 29 and no. 105) because prison labour and labour through the re-education system exist. The conventions related to freedom of association and the right to organize (no. 87 and no. 98) have also not been ratified because of the single union structure in China. According to the International Confederation of Free Trade Unions (now International Trade Unions Confederation or ITUC) submissions to the ILO state that much work needs to be done. From 1989 to early 2007, the ITUC has submitted 17 submissions to the ILO on China.

In addition, China is a signatory to the Universal Declaration of Human Rights and is a founding member of the United Nations. Under the UDHR there are several clauses (article 23 for example) related to labour rights, so China has a duty to fulfill all these labour rights.
Under the UN system, there are many international conventions, covenants and agreements which have labour clauses, or clauses related to labour. Again, China is a signatory to around 25 pieces of international instruments and has a duty to submit periodical reports to the related authorities for scrutiny.

One of the most important pieces is the International Economic, Social and Cultural Rights Covenant (ICESR 1966) which has specific labour rights articles. China signed the Covenant in 1997 and the National People's Congress approved it in 2001, while making a reservation on Article 8 on freedom of association. The Committee on ICESR called upon the Chinese government to undertake necessary measures to ensure all persons under its jurisdiction enjoy the economic, social and cultural rights enshrined in the Covenant without discrimination. On the Civil and Political Rights Covenant, China is a signatory but the NPC has yet to approve it. (Leong 2008)

(4) WORKERS' EXPERIENCE OF OPPRESSION

Despite the extensive legal protection of workers through government enacted national laws and approved international regulations, there are undoubtedly unfair practices and large and growing numbers of workers remain oppressed and exploited in the following manner:

The Household Registration System

The hukou (household registration) system, which dates back to 1958, makes it difficult for migrant workers to change their status to an urban one, unless he/she is rich enough to do so or is a professional. It was a measure by the government to segregate the rural people from the city people and to exploit the farmers to subsidise the urban population. A native from the countryside, for example, is confronted with all forms of discriminatory measures due to his or her rural status. Some academics compare this with South African's apartheid system, which discriminated against Black people. The Civil Affairs department and the Public Security Bureau keep a close eye on the hukou status of each individual.

Recently, a lawyer and a scholar listed ten of Beijing's laws and regulations that limit the civil, political and social rights of migrants. For example:

- The election regulations prevent migrants from voting or standing for election other than from where they are from.
- The low cost housing measures only apply to the Beijing residents;
- The regulations governing taxi drivers and mini-bus drivers only apply to those who have Beijing resident permit;
- The social assistance scheme, the maternity scheme and the medical scheme do not cover the migrants.

A 'Citizen Recommendation' which advocates for equal rights for migrants in terms of social insurance, the right to vote, subsidised housing, education for children and the right to work as urban Beijing citizens has been submitted to government. (Lu Jun 2008)
Migrants take up what can be referred to as 3D jobs (dangerous, dirty and difficult). Assembly line jobs are taken up by the migrant workers or the unemployed workers after re-training. The number of migrant workers now surpasses the number of traditional state workers. The recent estimate is that migrant workers constitute between 150 million – 200 million people.
According to the CASS researchers, migrant workers are ranked as the lowest strata and

have the lowest status. The ten strata identified by CASS are as follows: administrators (government and private), managers, private entrepreneurs, professionals, office workers, individual private business people, commerce and business staff, industrial workers, migrant workers and unemployed or underemployed.

Another issue that has affected workers has been dismissals from State-Owned Enterprises. These dismissals have severe repercussions, far beyond wages. Workers also lose their social benefits such as subsidized housing, schooling for the children, etc. A common lament among dismissed SOE workers is that they are no longer 'masters of their society.' (May Wong 2007) in other words they lose their status and self esteem even though they are still entitled to limited social security benefits.

There is a growing trend of informal or dispatch workers. This is confirmed by the Informal Employment Development Report (2006). It is estimated that informal workers represent 40-50% of the urban workforce, and contribute 35% of GDP. Most of them are migrant workers or xiagang workers. (Asian Labour Law Review 2008)

Gender

Women workers suffer further through being paid less, gendered job segregation and discrimination. The cases regarding women workers are numerous. For example, women are asked to retire at an earlier age, 55 or 50 instead of 60 for men. In mass lay-offs, women are usually the first victims, being asked to 'return to kitchen'. In export oriented factory work, assembly line women are required to produce a 'family planning' certificate (a paper certifying married women's family planning status or unmarried status because of the one child policy) before employment can be granted.

Health and Safety

There were 101,480 reported work related deaths in 2007. In a 2006 report by the Panyu Migrant Centre, most of the accident victims in Pearl River Delta area in South China are migrant workers in metal, furniture, electrical appliances, plastics and other industries. These accidents are more likely to occur in small and medium size factories (less than 1,000 employees), in Chinese-owned enterprises and in Taiwanese factories. The survey's findings show that the majority of migrants had no occupational health and safety training, nor were they provided with proper protective gear. They were required to work overtime (10 or more hours per shift per day). Furthermore, most of the small and medium size factories used outdated or second hand machinery from Japan, Korea, Taiwan or Hong Kong.

An example of the lack of health and safety is the Zhili fire. It is acknowledged that this was not 'an accident' but a man-made tragedy. In fact the factory had been served warnings by local officials several times before. Through corruption both the employer and authorities, however, turned a blind eye to the hazard of management locking workers inside the factory and barring all the windows. The reason they provided for doing so was that this prevented workers from stealing. However, workers viewed it as a way to force them to work overtime.

The most terrible 'killing field' in China is coal mining. Through the combined efforts of heavy punishment, enforcement, closing small mines and installation of preventive measures, the number of casualties has been reduced from 6,000 persons per year to less than 4,000 persons.

Occupational diseases which have a longer latency period are rampant in China. Over 600,000 workers suffer from lung diseases, not to mention chemical poisoning, deafness and other ailments. (ANROAV website)

Environment

The recent case of milk product poisoning by melamine has not only affected China, but the whole world which imports from China. Air pollution is a major concern for workers and this situation was highlighted in preparation for the 2008 Olympics when the number of cars in Beijing was limited and industrial factories closed. This, however, was only a temporary measure to ensure a "blue sky" during the Olympics itself. The other cities in the country were less fortunate. According to an opinion poll in 2006 by the China Environment and Culture Promotion Association, 82% of the respondents were affected by unsafe food, 81% by polluted water and 73% by air pollution. (Blue Book on Society of China, CASS 2008).

Corruption

Corruption plays a major role in the exploitation of workers either directly through politicians appropriating workers funds or indirectly through resisting reforms or not monitoring violations. While the government and the Communist Party condemn corruption, more senior Party members and officials are being exposed, including an official from the Central Political Bureau from Shanghai. From December 2002 to June 2007, the Disciplinary Authority handled 677,924 cases and condemned 518,484 Communist Party and government officials.
According the World Bank report, China scores 40.6 points on the rule of law scale of 0-100 which is lower than Mexico, Brazil and India. On the corruption scale, China ranks 71 and falls behind Mexico and Thailand.

Access to Farm Land

At present each farmer is given a small piece of land, around 1.5 mou or 1/6 of an American farmer's average or less than 40% of an Indian farmer. Due to rapid industrialization in the coastal provinces and other factors, the seizure of farmland has made more than 55 million farmers landless. Neither local governments nor developers compensate dispossessed farmers and so they not only lose their means of subsistence, but are excluded from the social security system and are the "new poor" in China.

Education and the Girl Child

The government policy is to provide free education for nine years. However, there is no free preschool education and as a result only 1.3% of the child population is enrolled. Another issue related to education in the villages is that children drop out after completing primary or junior high school especially girls who are frequently asked to give up their further studies in favour of their brothers. Furthermore, migrants face difficulties getting their children into public schools. According to the official report, 71.92% of the children of migrants in the city are enrolled in public school, 22.03% are enrolled in private school, and 1.05% have no access to schooling.

(5) WORKER RESPONSES TO OPPRESSION AND UNFAIR LABOUR PRACTICES

There was a record of 94,000 'disturbances' in China during 2006, most of them being labour disputes, land issues and instances of farmer resistance. (Global Labour Strategies website) On the labour front, disputes have grown at a rate of 30% per year. Between October 1986 and December 1987, the labour arbitration machinery only handled 5,606 cases, however, in 2006, the figure reached 317,000. This is 41 times more cases. Collective labour disputes increased from about 300 cases in 1991 to 14,000 in 2006, an increase of 45 times. In 2006 this involved 350,000 workers. In the labour courts, workers won more than 50% of cases, which indicates the high level of violations of workers' rights especially in privately owned enterprises. Most of these cases revolved around wage issues and Guangdong (where Hong Kong investment is concentrated) had the highest record of cases. The resort to courts has increased the waiting period for cases to be resolved, especially after the new Labour Contract Law and Labour Disputes Conciliation and Arbitration Law of 2008.

In many instances, however, workers get what they want through direct action such as work stoppages, sabotage, go-slows or blocking highways. Thousands of women workers took part in the 'winter of discontent' in the Pearl River Delta before the Chinese New Year or at the end of 2007 and early 2008. This is an example of the rise in direct action. The fact that in most instances workers win their demands for wage increases, back pay and improvements of working conditions has further encouraged this form of response and issues are resolved through direct negotiation between management and workers or through the intervention by the unions and labour department.

The economic downturn and closures, however, may impact negatively on this trend Hundreds of toy, garment, metal and electronics factories closed down one after another in South China, due to withdrawal or reduction of overseas orders. Local governments have been paying wages to workers on behalf of the run-away employers to avoid further disturbances. (China Daily) It was estimated, however, that more than 10 million migrant workers have returned to their hometowns in 2008 with little hope of finding jobs.

(6) TRADE UNIONS IN CHINA

The Chinese government recognises only the All China Federation of Trade Unions (ACFTU). In terms of membership, this is the biggest union on earth. The profile of the ACFTU in 2007 is captured from their website: "There are 31 provincial trade union federations, 10 national industrial unions and 1.324 million grassroots trade union organizations (in 2.753 million enterprises and institutions) affiliated to the ACFTU. The membership of the ACFTU totals 169.94 million (of which 61.778 million are women, accounting for 36.4% of the total number of union members, and 40.978 million are migrant workers, accounting for 24.1% of the total), the membership rate is 73.6%. There are 543,000 full-time trade union cadres and 4.568 million part-time cadres." (http://www.acftu.org.cn/)

The ACFTU has a heroic historical background. Formed in the midst of workers' struggle against capitalism and imperialism in 1925, it led big campaigns and was closely linked to the Chinese Communist Party (CCP) and the Communist Red International. After the purge by the Nationalist government in 1927 in which hundreds of activists were killed or imprisoned, this militant federation went underground to continue its operation. In 1948, it was resurrected as a pillar of people's organisation. (Wang, Gao 2008)

Although it still identifies with its militant history, the ACFTU's position today is radically different in that it identifies itself with the government. It has adopted the role of being a 'bridge and link through which the Party keeps in contact with the masses of the workers and staff members, an important pillar of society for the political power of the state.' (ACFTU, 2002) Its objectives are to defend workers' rights, to educate workers, to promote the construction of socialist market economy, and to participate in public affairs and management and it sees itself as an indispensable partner in what has been termed 'building a harmonious society'. (Gao, Wang 2008)

Most workers, however, particularly the migrant workers, see it as an extension of the government, as the human resources department of management or as a relief agency as it plays no supportive role in the direct action of workers so prominent today.

The international labour movement represented by the ITUC and the global union federations (GUFS) have, since the 1989 crackdown on the Tiananmen democratic movement, complained that the ACFTU does not serve working class interests internally and externally. They have lodged numerous complaints to the ILO over the suppression of free trade unions and violations of labour rights. They also adopted an isolationist strategy towards the ACFTU.

Since December 2007, however, the ITUC executive made a shift in approach by a adopting a new critical dialogue to normalise its relationship with ACFTU. Furthermore, in 2008 the ACFTU got the subtle consent of the ITUC to win a seat as a substitute member in the governing body of the ILO. Exchanges have been more frequent between union officials of the ACFTU and many national federations, regional federations and some Global Union Federations. However, the ACFTU seems to take third world countries' unions more seriously and have maintained a cordial relationship with the World Federation of Trade Unions and many third world country unions.

The breakthrough in successfully organising Wal-Mart, Foxconn and a number of big TNCs has won much applause for the ACFTU. There is a joke in the labour movement that the US unions must employ Chinese organisers to guide them or to replace them in organising at Wal-Mart, since there is no single union in the US that successfully organised at the company. However, the Wal-Mart union in China recently confronted a dilemma where the local unions preferred decentralized bargaining with the company while the ACFTU signed a memorandum of understanding with the company to bargain centrally and this has no doubt caused tensions in the union. (Anita Chan 2008)

The bottom-up approach in organising is very different from the traditional top-down approach that the ACFTU is used to and which makes them reach agreements with employers first before consulting workers. (China Labour News Translations, Global Labour Strategies, Labour Notes) In fact it is not uncommon to find a union chair concurrently holding a management position such as human resources manager, being a party official and being a close relative of the employer - what is called 'three in one'. These 'union officials' are quite open and proud in playing this role, claiming it is the most effective and convenient way to settle any labour dispute. And in the rush of setting up unions to meet the targets, this approach is being tolerated by the superior unions. As a result of traditional top down practices, many union officials are pro-management or de facto management staff themselves.

On a day to day basis the ACFTU acts mostly as a social club. In times of crisis when there are work stoppages the ACFTU is criticised for not siding with workers, or only playing a 'firefighter' role. In recent years, the active promotion of 'collective consultation' (the term 'bargaining' is rarely used), 'wage consultation' and tri-partite consultation with the facilitation by the ILO will certainly help to frame a better image of ACFTU.

Open recruitment in public spaces outside the factory gate, home visits and direct elections of union officers which are common tactics in other countries are adopted.

There have been attempts to form independent unions in China, however, this is either ruthlessly suppressed or alternatively co-opted into the mainstream union federation. The crackdown on the Beijing Workers Autonomous Federation is one such example. (A Moment of Truth) These groups were formed to support the students' movement in 1989, and to vent workers' frustration over corruption and the malpractices of the factory management. Similar independent workers' organizations were formed in other cities during that period. At one stage, the ACFTU showed sympathy towards the democratic movement but this changed after the movement was suppressed and hundreds of worker activists were arrested or forced underground. Learning from the lessons of the Polish Solidarnosc and the East Bloc, the Communist Party and the Chinese government reacts swiftly to any independent union and civil society movement. (Zhang 2008)

The increase in the number of labour NGOs operating in South China is an interesting development and warrants further investigation. Influenced by the Hong Kong labour organisations, these groups began to emerge as workers' centres, health clinics and cultural groups in industrial districts providing legal aid, evening classes, and library services for migrant workers. The organizers are mostly ex-factory workers who regularly visit industrial victims in hospitals, and help them to claim compensation. Right now, there are around 100 labour NGOs in China, the majority of them found in South China, many being funded by overseas bodies. There is a weak link between intellectuals in China and these NGOs, unlike in the Polish case and the authorities keep tight surveillance over developments and are ready to suppress any alliance of these groups. As these groups cannot register with the Civil Affairs department as a society, they either register as business entities or they operate clandestinely. (Zhang 2008, SCMP 2/11/08)

Apart from police harassment, NGO workers have to face intimidation or violence from the businesses. In November 2007, an organiser from Dagongzhe (a local labour NGO), Huang Qingnan, was assaulted and seriously wounded by several assailants employed by local businessmen. It is said that his work of promoting labour rights and helping workers in labour cases in the locality upset the local business circle. (ALU 64) After the arrest of five suspects, two hearings were held one year later but it was clear that the process was biased after the court set up hurdles to deter a public hearing.

As most industrial actions are spontaneous, the ACFTU plays no role in organising them. It may intervene as a mediator when the action becomes known to them. If there is a gross violation of labour rights, the ACFTU will take up the role of publicizing this or informing the Labour Department to seek a remedy. The ACFTU has not been very assertive in taking up violations of labour rights as indicated by the example of the Danish electronics factory, Ole Waff, in Yantai, Shandong province. The factory management resisted reinstatement of union officials and back pay after a dispute. While the ACFTU did not take much interest in this case the Danish unions intervened and the matter was then settled in favour of the workers. (Globalisation Monitor website)

In contrast to the passive role of the ACFTU, NGOs play a more active role, trying to mobilise as many workers as possible, and provide guidance and assistance. If disputes emerge in TNC-related factory, NGOs will appeal for international solidarity.

In theory the ACFTU is well positioned to influence legal reform. It is an ex-officio party in the drafting and consultation process of regulations and is well represented at the Political Consultative and National People's bodies. It is also well-connected with the Party. The present chair of the ACFTU is a high ranking Communist Party member, and it is a position that the ACFTU holds dearly and proudly. The labour NGOs are less fortunate as they have to go to great lengths to get their voices heard at any level. Their advantage, however, is their connection to the overseas labour movement and civil society and so are able to assist Chinese workers to get support, especially in disputes with TNCs, from fellow workers overseas.

Most of the overseas workers are not organised. Only state employees sent overseas are members of a union, if one exists for them. The ACFTU does not have a plan to help overseas workers when for example, they return home to take up the unfair practices they were exposed to or labour rights violations they experienced while they were away.

CONCLUSION BY WAY OF RECOMMENDATIONS

This paper should be viewed as a modest contribution to building concrete relations around workers 'interests between the labour movements of Africa and China. It concludes by way of making recommendations for future joint work.

A genuine south-to-south dialogue between the labour movements in Africa and China

Western NGOs tend to dictate the terms of engagement with the Chinese labour movement and NGOs. Chinese and African labour activists get to meet each other only through international conferences or exchanges held in the US or Europe and therefore do not get a chance to develop an independent agenda. It is the responsibility of Chinese and African labour activists to think creatively about how to develop a dialogue that can deepen their understanding of each other's contexts and which develops alternative strategies of engagement.

Genuine solidarity

Global companies operate in our countries and use similar strategies to exploit workers. Social and working conditions are largely the same in both Africa and China and it appears that the progressive labour movement and labour activists confront similar challenges, including the inability of trade unions to take up workers' demands effectively and to organize workers in new forms of work and in new forms of employment.

Although many African union officials visit China at the invitation of the ACFTU there is no real exchange about the conditions of workers and developing strategies to build solidarity around pressing issues of informalisation and precarious work, social protection and the organizing of migrant workers. For example African unions should inform the ACFTU of labour violations at Chinese operations in their countries and request assistance and solidarity. If African unions do not show that they are engaging with the ACFTU on real issues, their visits to China are in danger of amounting to little more than "trade union tourism".

So the progressive trade union movement and labour activists need to develop a more strategic approach to these exchanges and to monitor and assess their value.

Cultural Exchange

The need to understand each other must take priority and the need to develop a clear programme to educate and inform each other about current dynamics and history. This must be a programme for grassroots worker leaders rather than trade union officials in order to overcome the negative perceptions and fears that workers from the different countries may hold of one another. It is this fear that breeds racism and divisions. Exchanges at the banquet table among senior union officials will not find solutions to these historic problems let alone resolve them.

Further Research

Further research on the growing economic and political relations between Africa and China from a labour perspective is necessary. Regional groups such as AMRC have started a study on this and the results should be shared between the regions. There are also other regional studies of China in Latin America that should be considered. This research should be translated and distributed more widely than at present. Furthermore the questions should not be restricted to those that trade unions alone will be interested in. They should incorporate questions of democracy, equality, economic development, gender, environment and racism and provide alternative perspectives on these questions for the broader progressive movement.

The future is bright in front of us!

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