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institutions in the 1990s**

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Abstract

South African trade unions' criticisms in the 2010s of the institutional framework for minimum-wage-setting mark a dramatic departure from the central role they played in the design of these institutions in the 1990s. The four key features of the institutional framework – i.e. the emphasis on sectoral rather than national wage-setting, the primacy attached to collective bargaining, the role of technocrats in wage-setting in sectors where there was insufficient worker or employer organisation for effective collective bargaining, and the stipulation that employment effects be taken into account in setting minima in unorganised sectors – all reflected concerns raised by trade unions themselves. The trade unions' approach in the 1990s reflected their own sectoral organisational form, their strong shopfloor organisation and distrust of the state, and anxieties about job destruction (especially in unions in labour-intensive sectors and among allied intellectuals).

Introduction

Since 2012, South Africa's dominant and powerful trade union federation – the Congress of South African Trade Unions (COSATU) – has proposed that the country's minimum wage-setting institutions be transformed through the introduction of a high national minimum wage in place of the existing system of varied sectoral minima, with the level of the minimum being set through a political process. COSATU's lobbying ensured that the African National Congress (ANC) included in its 2014 election manifesto a rather vague commitment to a national minimum wage and, after the election, initiated a consultative process to sort out the details. COSATU's demands for a national minimum reflected the unions' discontent with the entire existing wage-setting institutional framework, established by the ANC-led post-apartheid government through the 1995 Labour Relations Act (LRA) and 1997 Basic Conditions of Employment Act. The LRA provided for

minimum wages to be set in sectors with strong trade unions through bipartite collective agreements between them and employers' associations, in 'bargaining councils', and then 'extended' countrywide by the Minister of Labour. The Basic Conditions of Employment Act provided for the Minister of Labour to set minimum wages covering 'vulnerable' workers in sectors without their own bargaining councils, through a 'sectoral determination', on the advice of a new tripartite Employment Conditions Commission (ECC). From 2012, COSATU criticised this wage-setting framework on the grounds that the "apartheid wage structure" had barely changed, with "the majority of black workers continu[ing] to live in poverty". In many sectors, COSATU claimed, both bargaining councils and the ECC had, in practice, been captured by business or allied technocrats. The "entire wage-fixing system" needed "to be re-evaluate", COSATU stated, with the adoption of "effective, large-scale state intervention in the wage structure" (Coleman, 2013: 2-3, 6-7; COSATU, 2015). COSATU proposed that the existing decentralised, corporatist or technocratic institutions be replaced with a highly centralised system through which trade unions could use their political power to effect a national minimum wage between two and three times higher than the lowest sectoral minima set by bargaining councils or the ECC.

COSATU's criticisms of South Africa's post-apartheid wage-setting institutions entailed a reversal of its position in the 1990s, when COSATU had played a major role in establishing these very institutions. In the early 1990s COSATU debated the redesign of apartheid-era institutions, opted to preserve a decentralised, sectoral system of wage-setting, and supported the relevant legislation. If COSATU succeeds in the mid-2010s in pushing for a high, national, centrally-imposed minimum wage, then the mid-2010s will prove to be more of a 'critical conjuncture' than the moment of democratisation in the 1990s. This paper explores how and why COSATU supported in the 1990s the design of institutions that now, two decades later, it criticises. The paper focuses on the politics of wage-setting in lower-wage sectors, drawing on selected files from the COSATU archives at the University of the Witwatersrand,¹ parliamentary debates and secondary sources.

¹ I am grateful to Patrick Craven for permission to use the COSATU archive, and to the archivists in the Wits William Cullen Library for their assistance. The COSATU papers are AH 2373. Below, they are referenced as *COSATU*, with the file number.

The international context

Most advanced capitalist and middle-income countries have institutions for regulating wages. Unfortunately, although there is a large literature on the political economy of labour market policies generally, very little has been written about the political economy of minimum wage-setting institutions specifically. Scholars have explored variation in the overall shape of labour market regulation, i.e. why some advanced capitalist countries developed more tightly co-ordinated systems of centralized bargaining, others invested in active labour market policies and yet others provided only a minimum floor through statutory minimum wages or tax-financed income support (see, for example, Bonoli, 2003, 2013; Crettaz & Bonoli, 2010), but analysis is constrained by the challenges of measuring precisely institutional design (see Kenworthy, 2001). One thing that can be measured is the level of the minimum wage, so it is unsurprising that there have been attempts to measure the causes of variation in minimum wages. The existence of sub-national variation in minimum wages in the USA has generated a large literature on its political (and other) correlates (summarized in Neumark & Wascher, 2007: Chapter 8). Boeri (2012) examines how the extent of governments' delegation of authority over wage-setting to organized labour and business affects the level at which minima are set. But – with the exception of a recent case-study of recent reforms in Germany (Mabbett, forthcoming)² – there is no comparative literature explaining variation in the design of minimum-wage setting institutions.

The international context is important not only for analytic purposes, but also because reformers in South Africa in the 1990s – as in many other countries at different times – were not unaware of the existence of diverse 'models' for reform. For the preceding seventy or more years, the International Labour Organisation (ILO) had collated and distributed widely information about the design of minimum wage-setting institutions as part of its promotion of minimum wage-setting. The ILO adopted relevant Conventions (and accompanying Recommendations) in 1928 (the Minimum Wage-Fixing Machinery Convention, no.26, covering manufacturing and commercial trades), 1951 (the Minimum Wage-Fixing Machinery (Agriculture) Convention, no. 99) and 1970 (the Minimum Wage-Fixing Convention, no. 131, which with Recommendation 135 paid closer attention to the needs of developing countries) (see Marinakis, 2009; Rodgers *et al.*, 2009: 126-36). The ILO's approach was spelt out in its handbook on minimum wage-setting: *Minimum Wage Fixing: An International Review of Practices and*

² Mabbett focuses on 'delegation' (to corporatist or technocratic institutions) rather than the choice between national centralization versus sectoral decentralization.

Problems, by Gerald Starr, first published in 1981 and republished in 1993 with corrections. Starr's book remained the basic 'text' until 2005, when the ILO published *The Fundamentals of Minimum Wage Fixing* by François Eyraud and Catherine Saget.

In practice, as Starr wrote bluntly, there was "little uniformity among countries in the methods they use to fix minimum wages or to decide upon the groups of workers who should receive legal protection of their wages". Some countries' systems reflected distinct colonial or regional influences, but overall, "diversity prevails" (Starr, 1993: 61). The ILO's publications informed national policy-makers about the diverse options for institutional design, including especially over the 'delegation' of authority (from government to corporatist or technocratic institutions) and 'decentralisation' (from national to sectoral or regional levels). With respect to 'delegation', the ILO promoted a particular approach. With respect to 'decentralisation', it avoided identifying any one design as 'best practice'.

The ILO advocated what it called a 'balanced approach' with clear recommendations on the composition of the wage-setting institutions and the criteria to be taken into account in setting the wage. The ILO's 1970 Convention suggested (with some qualifications) that wage-setting should be undertaken by representatives of employers and workers, together with 'persons having recognised competence for representing the general interests of the country and appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law or practice' (Article 4). Article 3 specified "the elements to be taken into consideration in determining the level of minimum wages":

'(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment'.

The inclusion of these Articles in the 1970 Convention marked a departure from the earlier 1928 and 1951 Conventions, and reflected the developmental imperatives facing developing countries. The accompanying Recommendation provided more detail, but without prescribing any specific institutional form (ILO, 2014). The ILO was clear that design matters: "minimum wage systems need to be well designed"

and “carefully crafted”, with minimum wages set at a level that “balances the needs of workers and their families with economic factors, to avoid counterproductive macroeconomic and employment effects” (ILO, 2013: 45-6).

In practice, the wage-regulatory process in most countries involved delegation to organized labour, business and technocrats. In most countries minima were recommended or set by an independent, ‘almost invariably tripartite’ institution, often called a ‘wage board’. In some countries (such as Costa Rica, Mexico and the UK in the late 1970s and 1980s), minima were set by the board itself. In others, the executive had some discretion in accepting the board’s recommendation or advice. Boeri (2012) categorized these as ‘bargained’ and ‘consultative’ respectively. In some cases, the executive had more discretion, and in exceptional cases (notably the USA) the legislature set the minimum. ILO researchers later collated data on the delegation of authority. They found that in 16 percent of the cases on their database, a specialist agency set the minima itself, and in another 14 percent of cases the government simply ratified the decision of a bilateral corporatist process. In 45 percent of cases the government set the minimum after consulting with or after receiving a recommendation from a specialist agency (for example, the UK, from 1999). In another 11 percent of cases the government set the minimum after consulting with business and labour (for example, Brazil). In only 13 percent of cases did the government alone set the minimum (Belser & Sobeck, 2012: 109). Delegation mattered. Boeri (2012) demonstrated that less delegation correlated with lower minima, as economic and developmental concerns were taken into account. Minimum wages were highest in ‘bargained’ fora and lowest when government had sole authority. Corporatist wage-setting institutions also increased unemployment (Nattrass & Seekings, 2015: 24).

In contrast, the ILO had no clear position on the merits of ‘decentralisation’, i.e. of national as opposed to sectoral (or regional) minimum-setting. Starr recognized that a national minimum had both advantages and disadvantages, especially in developing countries. On the one hand, a national (‘basic floor’) minimum wage was easier to administer and helped to ensure broader coverage. On the other, it was “difficult to establish” because “deciding upon an appropriate level for the floor is more complex and subject to greater uncertainties than fixing wages in individual industries” (Starr, 1993: 41-2), and often posed problems of enforcement. Any minimum might require either exemptions (for example, for small businesses) or abatements (for example, for younger workers), but a national minimum might require additional sectoral exemptions (most obviously in sectors such as agriculture and domestic work) (*ibid*: 55-9).

The absence of clear ‘best practice’ with respect to centralization reflected the diversity of minimum wage-setting institutions around the world. Minimum wage-setting originated in Australia and New Zealand at the end of the nineteenth century, before being taken up in the United Kingdom in 1909 (with very limited coverage) and 1918 (more generally). The British model, which diffused widely across its colonies, was sectoral, focused on the regulation of ‘sweating’ (i.e. on low-wage ‘sweatshops’) in selected industrial and commercial sectors. Minimum wage-setting was less extensive across much of Europe, especially in countries where collective bargaining had widespread coverage. Germany, for example, passed legislation in 1952 that made residual wage fixing possible, but did not use this legislation over the following sixty years. In most of these advanced capitalist countries minimum wage-setting developed as a residual system, protecting workers who were not covered by collective bargaining. Collective bargaining was given priority. The result was a general preference for sectoral wage-setting, in sectors not covered by collective bargaining. Wage-setting had different origins in the USA (and Canada). Minimum wage-setting began with the regulation of employment for women and children specifically, and at the sub-national level. In 1938 the Fair Labor Standards Act in the USA provided for the first time for a national minimum for workers involved in inter-state (or international) commerce. The design in the USA was therefore regional and national rather than sectoral.

In many developing countries, where collective bargaining was very limited, governments followed the US lead in opting for a national minimum. Spain adopted a national minimum in the 1960s, and Portugal in 1974. A number of former British colonies (for example, Jamaica in 1975) shifted from sectoral minimum-setting to a national minimum. India considered doing so in the 1970s (Starr, 1993: 23-9 etc). In Brazil, a single national minimum replaced regional minima in the 1980s (de Melo *et al.*, 2012). In the 1990s, the UK followed suit. The Conservative Party government had whittled away the scope of sectoral minimum wage-setting before finally abolishing it in 1993. The opposition Labour Party committed itself to introduce a national minimum if elected into government. After taking office in 1997, the Labour government established an independent Low Pay Commission to recommend a national minimum, taking into account the effects on costs, competitiveness, employment and inflation (Metcalf, 1999; Thornley & Coffey, 1999). One reason for the growing interest in national minima in the UK and elsewhere was the decline of collective bargaining (itself the result of, *inter alia*, globalization) (Eyraud & Saget, 2005: 2). By the 2010s, approximately one half of minimum wage systems entailed a single national or regional minimum, whilst about one half provided for multiple minima by industry or occupation (ILO, 2013: 50).

At the time that South Africa was considering reforms to its minimum wage-setting institutions, however, several other countries were explicitly deciding not to introduce a statutory national minimum. In Germany, a national minimum wage was discussed, but at the time neither trade unions nor the major political parties were enthusiastic, and proposals were put aside (Mabbett, 2015). In India, also, another round of debate over reforming the country's extraordinarily complex system of regional and occupational minima did not lead to a statutory national minimum. In 1991 the National Commission for Rural Labour recommended the introduction of a national minimum wage floor, but the government cautiously only set (in 1996) an *advisory* (i.e. non-binding) national minimum wage floor. The international landscape in the 1990s was characterized not only by an enduring diversity of institutional forms for wage regulation but also by diverse choices being made over the direction of reform. There was no self-evident model for South Africa to copy.

South Africa's Wage-Setting Institutions Prior to Democratisation

Other countries might have offered an array of possible institutional models for wage-setting, but South Africans' choices in the 1990s were framed by their institutional inheritance. The ANC-led government formed in 1994 inherited a set of wage-setting institutions that had atrophied and enjoyed uneven support among employers and unions, but nonetheless offered models that might be reformed more easily than discarded and replaced. The institutions had obvious flaws: Both the existing LRA, which provided for collective bargaining through industrial councils, and the existing Wage Act, which provided for a Wage Board to set minimum wages for workers in sectors without collective bargaining, had for the most part been used to protect the interests of white workers against competition from black workers, and not to protect the interests of low-wage black workers. Could these procedures and institutions be reformed to be inclusive, i.e. to benefit black workers? This question was of special concern to the 'independent' trade unions, organising black workers, which emerged in the 1970s and grew rapidly in the 1980s. The new unions' approaches to wage-setting played a decisive role in the post-1994 institutional redesign.

The original design of South Africa's wage-setting institutions was informed by experiences in the UK and its dominions Australia, New Zealand and Canada. The origins of the LRA lay in the 1924 Industrial Conciliation Act, which provided for

the institutionalisation of collective bargaining in sectoral ‘industrial councils’ and for the statutory application of collective agreements to both the parties to the agreements and ‘non-parties’ (i.e. employers and workers who had not signed up to the agreements) through ‘extensions’ gazetted by the Minister of Labour. Non-compliance with an agreement or extension that had been gazetted by the Minister constituted a criminal offence. The sectoral design replicated the UK and dominions. In contrast to the UK, however, the South African legislation discriminated racially. The result was a system of minimum wage-setting through collective bargaining that protected the interests of organised white workers, ensuring that they were paid well in compensation for desisting from strikes and acquiescing in systematic discrimination against less skilled, black workers (Van der Horst, 1942: 245-51).

Wages in sectors where unions and employers were too weak to engage in collective bargaining were first regulated under the 1925 Wage Act, which established a Wage Board to set minimum wages through sectoral ‘wage determinations’. Although the Wage Acts did not exclude all black workers from the scope of wage determinations, their purpose was also primarily to use minimum wages to protect white workers from competition from black workers (van der Horst, 1948: 252-66). At times the Wage Board did set and raise minimum wages for some African workers, at times even reducing the racial ‘wage gap’. For the most part, however, the wages of unskilled black workers remained unregulated. Farm workers, domestic workers and all public sector employees were explicitly excluded from the jurisdiction of the Wage Board. Under apartheid, the bantustans were also not covered by the Wage Act, although some of the bantustans enacted their own legislation (Standing, Sender & Weeks, 1996: 143ff; Natrass & Seekings, 1997).

Economic growth and change under apartheid reduced the need for minimum wage-setting for white workers whilst empowering black workers to demand full inclusion in wage-regulating machinery. In the 1970s, university-based ‘student wage commissions’, working with African workers in nascent non-racial ‘independent’ trade unions, lobbied the Wage Board for minimum wage increases in line with the estimated cost of living (Davie, 2007). Unrecognised by the state and excluded from the industrial council system, the nascent non-racial trade unions found that Wage Board hearings provided a useful opportunity to embarrass low-paying employers. Faced with rising militancy from African workers and their unions, as well as demands from employers that African workers be allowed to enter into more skilled occupations, the government-appointed Wiehahn

Commission recommended that trade unions representing African workers should be allowed to register and to participate in industrial councils (South Africa, 1979).

The ‘white’ trade unions and most employers were ambivalent about the industrial councils, but the fast-growing ‘independent’ trade unions began to be attracted to the prospect of negotiating over wages and benefits at the sectoral level, through the councils, rather than factory by factory. In 1981, for the first time, one of the smaller independent unions joined the industrial council in the metals industry. “By mid-1987”, almost all of the unions affiliated to the newly-established COSATU “were committed in principle to centralized bargaining and participation in industrial councils” (Baskin, 1991: 257). Participation fuelled the growth of the new unions, which soon became the majority unions on the councils. COSATU pushed for industrial councils to cover the entire country (Godfrey & Macun, 1992: 400).

The new unions reinvigorated the industrial council system, using it just as white workers’ unions had used it earlier in the century, to push up minimum wages and to secure improved benefits and working conditions. Unions affiliated to COSATU rightly saw that the ‘wage gap’ – i.e. the gap between the salaries and wages paid to better-paid (mostly white) employees and the wages paid to unskilled workers – was very wide, and that most of their members (including semi-skilled as well as unskilled workers) were paid less than a ‘living wage’. The industrial councils enabled unions to push for higher wages despite high unemployment and competition from cheap imports. The councils also enabled unions to regulate wages even in firms where they had failed to organise the workers, taking some of the pressure off union organisers. At the same time, union-allied organisations sought to use the Wage Board to raise the wages of workers in sectors without strong unions. COSATU identified low wages as a priority, in both sectors where it organised and those where it was weak or absent altogether. At its founding congress in 1985, COSATU passed a resolution calling for “a legally enforced national minimum living wage for all workers” (quoted in Young, 1991: 1). In 1987, COSATU initiated a ‘Living Wage’ campaign, although it avoided specifying what constituted a living wage (Baskin, 1991: 248-252).

Debating Minimum Wages within COSATU, 1990-92

In February 1990 the National Party Government unbanned the ANC (and South African Communist Party) and committed itself to negotiations over political change. The ANC had already begun to consider policy in anticipation of political change, and discussions now intensified. In September 1990, the ANC produced a first draft of a Discussion Document on Economic Policy. The most important discussions about wage-setting took place within COSATU, however. The ANC's Discussion Document was drafted at joint ANC-COSATU workshops. At the same time – in September 1990 – the South African Government committed itself (under the 'Laboria Minute') to negotiating any reforms of labour legislation with COSATU (and other unions) and employers (Nattrass, 1994). COSATU had considerably more capacity to consider wage and labour policy reforms than the ANC.

Registration, participation in industrial councils and the prospect of the democratisation of state power swung the COSATU unions in favour of using state or parastatal institutions to achieve their goals. COSATU's Living Wage Campaign led to serious debate over a national minimum wage in the early 1990s. Deeply divided over the merits of a national minimum compared to sectoral minima, COSATU opted to reform rather than transform the existing institutions.

In February 1990 the Central Executive Committee of COSATU decided to 'intensify and broaden' its campaign for a living wage. It seems that COSATU's Living Wage Committee (LWC) may have asked the union-aligned, Cape Town-based Labour Research Service (LRS) to prepare some documentation for discussion.³ In March, Gordon Young of the LRS distributed a document entitled 'A National Minimum Wage: Stepping stone to the Living Wage' (Young, 1990). This discussed a national minimum wage as an "intermediate demand in addition to the ultimate goal of the Living Wage". It proposed the figure of R700 per month (the equivalent of approximately R3500 per month in 2012, or R4000 in early 2015). This was just above the average wage at the time, but was far below a 'living wage' (which Young calculated to be more than R1100 per month). The goal seems to have been primarily to ensure that more low-paid workers would be

³ This seems to be implied in 'Report of the Living Wage Committee to the NCC, April 1990' (COSATU file 12.45).

covered and would be paid a minimum wage. Crucially, farmworkers would be covered. Young asserted confidently that there was

‘no reason why farming operations should not be able to afford reasonable wages. Some wine farmers in the Western Cape have agreed recently to pay R500 per month; unions in the farming sector should therefore have no difficulty in demanding a minimum of R700’.

The proposed national minimum would not be entirely national, however, in that it would not apply to domestic workers.

The COSATU structure responsible for discussing this was the LWC (also or later known as the Living Wage Working Group, LWWG), chaired by Jane Barrett (from COSATU’s transport workers’ union), which met fortnightly. Initially, the LWC proposed that the issue be discussed at the May 1990 COSATU National Campaigns Conference, with presentations for and against. It is not clear what kind of debate ensued, but it seems that several unions – including especially the Southern African Clothing and Textile Workers Union (SACTWU) – raised concerns.

‘SACTWU said that the National Minimum Wage will have serious economic consequences. The clothing industry world-wide is busy moving to area [sic] with low labour costs. A National Minimum Wage will cause great unemployment at [sic] it will remove the competitive advantage of the major clothing producing areas. SACTWU favours a policy of sectoral minimum wages based on the ability to pay. The National Minimum Wage demand may have some value as a political statement or a mobilizing tool, but its adoption will work against the clothing industry in the future. SACTWU has no official position, however, on the National Minimum Wage’.

The municipal workers’ union also worried that rural municipalities had little money. Two small unions worried that a national minimum wage would allow employers to avoid paying a living wage.⁴ The conference mandated the LWWG “to establish what National Minimum Wage should be suggested to develop a program of action to achieve a National Minimum Wage”, and deferred the

⁴ ‘Notes on the discussion on the National Minimum Wage’, COSATU LRA/LWC conference, 11-12 May 1990 (COSATU file 12.9.3).

decision on the actual level to the next National Campaigns Conference, then scheduled for August 1990.⁵

In June, the LWWG debated the issue further. Martin Nicol (of the National Union of Mineworkers, NUM) circulated a document in which he criticised the Gordon Young proposals (as well as an article in the *South African Labour Bulletin* by Renee Roux) for suggesting that a national minimum wage could be set lower than a living wage. He criticized the others' claim that a low national minimum was 'realistic' because they relied on poverty datum lines rather than on Marxist analysis. He called instead for a renewed campaign for a living wage.⁶ The LWC discussed this, but agreed to recommend the figure of R700 as a 'mobilising tool'.⁷ This was a minimum wage, not a living wage. After the meeting, the LWWG circulated a photocopied *National Minimum Wage Reader* comprising Young's document, relevant past resolutions and summaries of discussions, and a document entitled 'How to set the level of the National Minimum Wage'. This was concerned entirely with the level of a national minimum wage, and thus reflected a rejection of Martin Nicol's arguments. The document first suggested that any national minimum had to be higher than the poverty line of R550 per month. Ideally, it would be set at about two-thirds of the average wage – which was the demand of trade unions in Britain. This, in South Africa, would be about R1000 per month. The document immediately suggested caution: "But given the depth of the low-pay problem in certain key sectors of the economy, it is not realistic to set a National Minimum Wage at the two-thirds level immediately". The document insisted also that the wage had to be 'credible': "This is not the same as saying that it will be achievable, only that employers will be obliged to take it seriously". It should be 'useful' to unions in wage campaigns: "In high-wage industries, unions will use the National Minimum Wage as a floor or safety net to wages; in low-wage industries, unions will use it as a goal" (implying that it would not be binding immediately). The document concluded that a national minimum should be set somewhere between R550 (poverty line) and R750 (half of the average wage) per month, and recommended the figure of R700 per month (or R160 per week or R3.60 per hour) for 1990-91. The document suggested that this would affect 1.2 million workers excluding domestic and farmworkers. The document did not discuss procedures, and did not mention the Wage Board.⁸

⁵ 'Introduction' to 'The National Minimum Wage Reader' (COSATU file 12.9.3).

⁶ 'For a living wage or a national minimum wage?' (COSATU file 12.9.3).

⁷ Minutes of the LWC meeting, 19th June 1990 (COSATU file 12.9.1).

⁸ *The National Minimum Wage Reader* (COSATU file 12.9.3).

This proposal was too low for some but too high for others. SACTWU was the primary critic in the latter camp. Lesley Maasdorp and Mark Bennett of SACTWU immediately responded in a document circulated within the LWWG. They recognized the benefits of calling for minimum wages, covering all workers (i.e. with countrywide coverage), but argued that these should be sectoral not national. The “main reason” for preferring sectoral minima “is one of economics”: Low wages do cause poverty, but low wages can be the result of low profitability in the sector; a uniform national minimum “might wipe out some industries altogether”, whereas sectoral minima can take into account the cost structure of the sector. They argued that

‘... a minimum wage that is determined according to the cost structure of each industry would be better able to look after the interests of that sector and thereby the interests of the workers employed in that industry. ... Undoubtedly the introduction of a minimum wage which does not take into account the cost structure of the industries would be disastrous. We know that in the clothing industry the profits made by employers are not as big as those made in the chemical industry. A similar situation exists in the mining industry where the price of metals, like gold and platinum, are determined by factors beyond the control of the local mining industry. The cost structure of the agricultural sector and the domestics sector would mean that hundreds of thousands of these workers would be turfed out of the jobs they are in’.

They added that “we all know that one of the main crises facing South African society today is the high rate of unemployment”. A high national minimum would discourage job creation, and the state certainly did not have the resources to employ everyone on high wages. SACTWU worried also that the South African economy needed to expand its exports once sanctions were lifted, but a nationally-determined high wage would inhibit international competitiveness. Indeed, they added, few trade union cooperatives could pay such high minima.

‘A minimum wage should also take into account regional wage disparities ... We all know that wages in the rural areas are often much lower than those paid for the same jobs in the urban areas. A nationally determined minimum wage, which does not take into account that rural area employers pay lower wages may have the effect of wiping out all industries within the rural areas. ... Unless the minimum wage policy recognizes the regional disparities it would destroy industry on a wide scale’.

SACTWU argued that sectoral minima could and should allow for appropriate regional variation in minimum wages.⁹

SACTWU later summarized its position in a pamphlet ('What are the alternatives to minimum wage laws?'). This asserted that minimum wages inhibit higher wages for some workers (for example in the chemicals sector or at South African Breweries) whilst risking the jobs of lower-paid workers. In a section titled 'It undermines job security for lower paid workers', it stated that R150 per week

'... is several times higher than wages in Isithebe or Babalegi [i.e. industrial areas in the 'bantustans', outside Durban and Pretoria respectively]. Accordingly the probability is that employers in these areas would go bankrupt immediately. *Worse, people who are employed on farms, in the domestic sector and especially in the mines would immediately face huge retrenchments.*' (emphasis in pamphlet).

The union advocated sectoral collective bargaining as the alternative, with sectoral minima in unorganized sectors. SACTWU also argued against a national minimum in articles in the press, pointing out that the labour-intensive clothing sector would be very hard hit by a uniformly high national minimum:

'If we set an across-the-board minimum wage without considering several unique factors which have an impact on every industry, we may adversely affect the future of many of these industries. We may completely wipe out some industries which will be vital for the social and economic reconstruction of a post-apartheid society. Some sectors of our economy can pay better wages than others because different factors affect industrial sectors differently... A minimum wage determined according to the cost structures of each industry would be better able to look after the interests of that sector and the interests of the workers employed there.' (*South*, 27th September 1990, quoted in Lundall, 1991: 7)

COSATU debated the issue at its National Campaigns Conference in September 1990. NUM, supported by the Transport and General Workers Union, supported

⁹ 'The National Minimum Wage: A Contribution to the Debate', by Lesley Maasdorp and Mark Bennett for SACTWU, sent to the COSATU Living Wage Working Group, 24 June 1990 (COSATU file 12.9.3.).

the R700 per month call. Several unions opposed it on the basis that this was too low. Other unions supported SACTWU's position that minima should be sectoral, preferably set through collective bargaining. The National Union of Metalworkers of South Africa (NUMSA) reportedly argued strongly against the R700 national minimum because this would have a 'disastrous' effect on employment (Baskin, 1991: 440-1; Moll, 1996: 44). The debate was later described as 'heated'. The conference resolved that further research was required.¹⁰

Gordon Young and the LRS reworked their proposals more fully in a paper published early the following year, making important concessions to criticisms such as SACTWU's (Young, 1991). He proposed that the Wage Board – whose members were all appointed by the Government – be replaced by a new tripartite national institution and tripartite sectoral institutions, all with equal representation of trade unions, employers and 'independent' government-appointed members 'to represent the national interest' (as recommended by the ILO). The national minimum would provide a floor with regard to wages and employment conditions. Sectoral minima would have to be at or above the national minima. Trade unions would bargain collectively for wages above these minima. The national minimum wage 'should not aim for a general rise in wages, but to protect the weakest sections of the workforce from gross exploitation' (*ibid*: 16). The national institution would take into account factors such as the cost of living, affordability, and effects on employment and inflation. The LRS acknowledged that minimum wages in agriculture and perhaps some other sectors should be set at a lower level than minimum wages in urban areas, partly because a higher minimum 'might well lead to considerable retrenchments amongst farm workers' (*ibid*: 17). He referred to possible minima of R550 and 700, as discussed in COSATU, but did not himself recommend any specific level. His focus, rather, was on the procedures.

Union-linked intellectuals discussed the minimum wage issue at a workshop at the University of the Western Cape (UWC) in March 1991, as part of a series of events bringing together ANC- and union-aligned economists to think through issues of post-apartheid policy-making. Gordon Young's proposals for a national minimum were criticised by Dudley Horner, who had long been involved in struggles against low wages (Davie, 2007). Based at the University of Cape Town in the 1980s, Horner became an authority on minimum wages, producing meticulous digests of industrial council and Wage Board agreements. At the UWC workshop, Horner argued that it would be 'irresponsible' to ignore the social consequences of raising

¹⁰ Martin Nicol (NUM), on behalf of the LWC, report to COSATU's National Campaigns Committee, April 1991 (COSATU file 12.2.1).

wages to the level (R700/month, except for farmworkers, for whom the minimum should be R500/month)) proposed by Young (Horner, 1991). Other researchers also emphasised the risks of negative employment effects, especially in labour-intensive sectors employing less skilled workers (Lundall, 1991; Bhorat, 1991).

COSATU was also wary. At its Campaigns Conference in March, delegates called for a campaign for job security and job creation ('Jobs for All – No Retrenchments') but rejected the LWC's proposal to specify either a minimum or a living wage. Retrenchments pushed minimum wages out of the limelight. The LWC organised a "wage policy workshop" in order "to help affiliates develop wage policies within which context we can rediscuss the demand for a National Minimum Wage".¹¹ The national minimum was, however, hardly discussed at the workshop, although the workshop report mentioned it and a reformed Wage Board as two (alternative) ways in which 'weak' workers (outside of the trade unions) could be protected (Cooper, 1991). A 'policy discussion paper' presented to and discussed at the Central Executive Committee in April asked 'Should there be a national minimum wage, a sectoral minimum wage or no minimum wage?'. But this question remained unanswered, and COSATU was distracted completely by the issue of retrenchments.¹² By May, the LWC was reporting that the minimum wage issue has been put to one side:

'The debate about a National Minimum Wage: During 1990, COSATU debated whether or not we wanted to set a National Minimum Wage. There were fierce arguments for and against a minimum wage. However in the end it was decided that it was wrong to isolate the issue of a national minimum wage. Low wages were as a result of a particular kind of economic system and we should rather see the campaign for a minimum wage as part of a campaign for a better economy. It was felt that we should rather look towards adopting a WAGE POLICY as a federation – and not just a position on a national minimum wage.'¹³

The conference report even recorded that "there should be minimum wages in different sectors".¹⁴

¹¹ 'Head Office Report to the CEC of 27-28 April 1991' (COSATU file file 6.6), p.8.

¹² 'Policy Discussion Paper', presented to CEC, April 1991 (COSATU file 6.6).

¹³ 'Towards a wage policy for COSATU: Document produced by the Living Wage Committee'; COSATU Economic Policy Conference May 1991 (COSATU file 16.3).

¹⁴ Report of COSATU Economic Policy Conference May 1991 (COSATU file 16.3), p25.

This is the last mention for some time of the issue of a national minimum wage in COSATU's papers. The Central Executive Committee met in June, September and November 1991, and in March, July, August and October 1992. COSATU held a National Congress in mid-1991, a Living Wage Conference in June 1992 and a Campaigns Conference in September 1992. There is no mention of minimum wages in any of the documentation relating to these events. The issue had dropped off the agenda.

Retrenchments, economic policy and wages

From early 1991 COSATU was preoccupied by the challenge of retrenchments, especially in manufacturing industry. Manufacturing employment declined by 6 percent between 1988 and 1992, with employment falling in the metal products industry by 12 percent and in clothing and textiles by 23 percent, Mining employment fell by a massive 32 percent between 1987 and 1995 (South Africa, 1996a: 97). This affected massively two of COSATU's largest affiliates. Between its 1991 National Congress and 1994 National Congress, the membership of NUMSA fell from 273,241 to 169,598, i.e. a drop of close to 40 percent. COSATU's third biggest affiliate, SACTWU, lost one-fifth of its members over the same period. Despite the rapid growth of the public sector unions, and rising union membership in the (shrinking) mining sector, the total membership of COSATU's affiliates actually declined between 1991 and 1993.¹⁵ It was hardly surprising that COSATU chose to campaign over 'Jobs for All – No Retrenchments'. In practice, COSATU was even more distracted by the challenges of negotiating with the state over reforms to labour market policies and institutions and other public policies affecting unions (including VAT and pension reforms), and negotiating with (and within) the ANC over post-apartheid economic policy. In late 2002, COSATU hatched the idea of a 'Reconstruction Accord' to address the challenges of rebuilding the post-apartheid economy. This evolved into the Reconstruction and Development Programme (RDP) adopted by the ANC as its de facto manifesto for the 1994 democratic elections.

COSATU embraced the idea that the state should play a prominent role in regulating the economy. Its 1990 'Draft Document on Economic Policy' accepted that the economy would remain 'mixed' (in terms of public/private ownership) but

¹⁵ Audited membership as reported to COSATU Congresses: see documents for Special CEC Meeting 29 June 1991 (COSATU file 6.6), 1993 Special Congress, 10-12 September 1993 (COSATU file 5.6) and 1994 National Congress, 7-10 September 1994 (COSATU file 5.7).

would be ‘reconstructed’ and ‘restructured’ through a mix of ‘developmental’ industrial policy and ‘growth through redistribution’ in a ‘high employment, high wage, high productivity’ economy. COSATU denounced low wages, not least because of the apartheid or racial wage gap between high-earning white employees and lower-earning black workers. But COSATU was well aware that the economy was in crisis, that retrenchments were wrecking havoc on its affiliates in manufacturing, and wages were not irrelevant to the competitiveness of South African firms.

The result was caution on minimum wages even among the most statist proponents of reform. The Macro-Economic Research Group (MERG), dominated by economists linked to the British and South African Communist parties, published its report in late 1993. The report argued that low-wage employment was inefficient, and advocated a national minimum wage to improve efficiency in the use of unskilled labour. A higher wage would push employers to innovate, restructure and invest in their employees’ skills and productivity. Low-wage – i.e. ‘unprofitable and inefficient’ – enterprises should not be tolerated. But MERG’s actual proposal was for what MERG itself called a “conservative and cautious initial approach to setting” a national minimum, covering only the very lowest-paid:

‘The primary aim of the national minimum wage is not to achieve a rapid general rise in wages, but to improve the wages and productivity of the lowest-paid members of the work-force, say the bottom 10 per cent of the current wage distribution’ (MERG, 1993: 163).

The report seemed to endorse Young’s lower minimum of R550/month (in 1990 prices). MERG recommended the establishment of a tripartite national Wage Board to set a national minimum as well as sectoral boards to set higher sectoral minima (MERG, 1993: 162-5).

Even more cautious than MERG was the union-linked Industrial Strategy Project (ISP), whose recommendations were circulated widely in 1993-94 (see, e.g. ISP, 1994) although the full synthesis report was finally published in 1995 (Joffe *et al.*, 1995). Whereas MERG’s brief was macro-economic, the ISP was concerned specifically with restoring South Africa’s industrial competitiveness. The ISP declared that the first objective of industrial policy was to create employment. Raising wages was not included in its four objectives. The ISP’s proposed strategy did revolve around increased productivity in manufacturing sectors but, in contrast to MERG, the ISP did not propose increasing real wages as a way of forcing

employers to improve their productivity. One of the ISP's authors, Raphael Kaplinsky, went out of his way to emphasise that the ISP did *not* endorse a national minimum wage and even contemplated reduced real wages through currency depreciation and the informalisation of manufacturing (Kaplinsky, 1994: 535).¹⁶ The ISP endorsed a primarily sectoral approach to collective bargaining over wages (with the expansion of regulation by Wage Boards to all sectors without collective bargaining) (Joffe *et al.*, 1995: 92-3).

With left-wing economic policy-makers urging caution on the minimum wage issue, it was unsurprising that minimum wages were hardly mentioned in the RDP. COSATU played a major role in drafting the RDP. In its initial 'Proposal for a Reconstruction Accord', COSATU identified political democratization as the top priority, followed by job creation. Wage increases were absent from the list.¹⁷ COSATU did insist that the RDP reject explicitly a low-wage economic growth strategy.¹⁸ The final RDP declared that 'all workers should be entitled to a living wage', emphasised collective bargaining and mentioned minimum wage regulation as a component in the strategy "to achieve a living wage for rural and urban workers and reduce wage differentials" (ANC, 1994: 113). But it did not refer to either the Wage Board or a national minimum wage.

Overall, the RDP reflected an "implicit intense suspicion of the future central state" on the part of COSATU and the left (Nattrass, 1994: 359). Shopfloor organisation and sectoral bargaining were pillars of COSATU's strategy, as was evident in the 'Platform on Worker Rights' adopted by COSATU in 1993. Collective bargaining should be conducted at workplace and sectoral levels, with sectoral bargaining forums for the negotiations of wages and working conditions. Pension and provident funds – a pressing issue for the unions at the time – should also be organized industry by industry. In sectors without strong trade unions, minimum wages and conditions should be set sector by sector, under a revised Basic Conditions of Employment Act.¹⁹ There was "a lively discussion on the issue of national and sectoral minimum wages" at a COSATU workshop in November 1993, with some participants complaining that there was "still no policy" after

¹⁶ The ISP's synthesis report sat uneasily with Kaplinsky's declaration, warning explicitly against the view that reduced wages would create jobs (Joffe *et al.*, 1995: 19, 30).

¹⁷ "COSATU's Proposal for a Reconstruction Accord" (third draft, Feb 1993, for discussion at CEC March 1993) (COSATU file 6.8).

¹⁸ COSATU's comments on the 4th draft of the RDP, included in Documents for COSATU Special Congress 1993 (COSATU file 5.6).

¹⁹ The adoption of the Platform was proposed by SACTWU (misspelt as SACTU) and seconded by NUMSA. Documents for COSATU Special Congress 1993 (COSATU file 5.6).

“three years of discussion” (adding that COSATU needed a policy in part so that it could respond to the MERG Report). But unions remained as divided as in 1990-91, with SACTWU especially emphasising that the unions should rely on collective bargaining rather than legislation.²⁰

The minimum wage issue surfaced again at COSATU conferences in early 1994. A commission on ‘wage policy’ noted that three positions had emerged within COSATU:

1. “to have no minimum wage legislation and let wages be decided entirely through collective bargaining”: this position begged the question of what to do about unorganized sectors;
2. “to call for a relatively high minimum wage (say R1000 per month)” – but this “would be difficult to enforce and could lead to massive job loss”;
3. “to call for a low minimum (say R500 per month) in order to reduce the unemployment effects” – but this posed the question “How will it look if COSATU supports such a low amount, even if it will improve things for millions of workers?”²¹

This dilemma left COSATU unable to call for any national minimum wage. Instead, COSATU swung behind modest reforms, including the restructuring of the existing Wage Board and the extension of its remit to cover all sectors without collective bargaining (i.e. including farm and domestic workers), with continued regional differentiation ‘if necessary’, and taking into account (explicitly, for the first time) the cost of living and workers’ ability to meet their basic needs.²²

SACTWU played a major, perhaps decisive role in COSATU’s failure to endorse a national minimum. SACTWU organised in the low-wage shoe, leather and clothing manufacturing sectors, and the slightly higher wage textile manufacturing sector. Its membership in shoe manufacturing plummeted in the face of declining tariffs, despite the depreciation of the rand (Mosoetsa, 2005). This left the bulk of the union’s membership in the clothing sector. Minimum wages were highest in the Western Cape. Here, the starting wage for a machinist was raised to R196/week in

²⁰ ‘Summary of discussions and recommendations, COSATU CEC Workshop 18 November 1993’, included in documents for COSATU Labour Market Policy Conference 18-20 Feb 1994 (COSATU file 16.4)

²¹ Documents for COSATU Campaigns Conference, March 1994 (COSATU file 12.2.1).

²² Proposals discussed at March 1994 Campaigns Conference, summarised in ‘Report to COSATU CEC 21 October 1994’ (COSATU file 6.9(4)).

mid-1994, through a collective agreement in the industrial council. In Port Elizabeth, however, the minimum starting wage was raised in late 1994 to only R182/week, and in the Northern Cape and Free State it was raised to only R140/week.²³ Approximately 30 percent of clothing workers were employed in factories in the bantustans, where wages were not regulated at all, and were a small fraction of those in the industrial council areas. Whilst there are no definitive data, it is likely that more than one-third of South African clothing workers were paid less than R500/week at the end of 1994, and many more were paid little more than this. This was a sector where the union understood very well that a high national minimum would accelerate job destruction.

SACTWU leaders were also strong proponents of unions' continued independence from government even after the achievement of political democracy. SACTWU general secretary John Copelyn argued strongly that minimum wages should be negotiated by workers, through collective bargaining, rather than be set by the state; minimum wage legislation would "fundamentally undermine union independence" (Copelyn, 1991: 31).

SACTWU's assistant general secretary (Ebrhaim Patel) was at the forefront of developing an industrial strategy that would protect clothing jobs. The strategy revolved around government subsidies to employers to invest in new technologies that would result in higher labour productivity, and enable employers to pay higher wages whilst remaining competitive (or even improving their competitiveness). Neither the National Party government (in the early 1990s) or the ANC-led government from 1994 allocated the budget for the proposed subsidies. In the absence of any improvement in productivity, the union was compelled to moderate its wage demands, and to oppose the imposition of a high national minimum wage without regard for the conditions in individual sectors (Seekings & Natrass, forthcoming).

SACTWU and Patel were staunch defenders of a sectoral approach to wage bargaining and minimum-setting, but COSATU itself was organised sectorally. COSATU was formed in 1985 through the merger of industrial unions (mostly within FOSATU) and general or 'community' unions. The strength of the industrial unions ensured that COSATU adopted a policy of "one union one industry", in terms of which unions in the same industry or sector should merge. Mergers were rarely straightforward (see Baskin, 1991: Chapters 7, 19 and 24). In the clothing sector, the two COSATU-affiliated unions only merged to form SACTWU in 1989

²³ Government Notices 779 (22 April 1994), 18313 (21 October 1994) and 2250 (23 Dec 1994).

(*ibid*: 304-7, 393-4). By the early 1990s, COSATU has achieved its goal of sectoral affiliates (although it continued to experience difficulties as unions poached members across sectoral lines). COSATU's sectoral character predisposed it towards the continuation of the sectoral system of minimum wage-setting.

Review and reform under the ANC-led government, 1994-96

In May 1994 Tito Mboweni was appointed as Minister of Labour in South Africa's first democratically-elected government. From the outset Mboweni made it clear that he had two objectives: To protect the interests of working people "within the context of tripartite agreements" involving the "social partners" (business and unions) and the state;²⁴ and "to represent those whose voices are not heard loudly enough through the medium of organized business and labour", i.e. small businesses and the "millions of unemployed".²⁵ In Mboweni's view, the former required that business and labour negotiate at the sectoral level. The latter required that the state play an active role: "A certain amount of flexibility and mutual sacrifice is necessary if the imperatives of small business and the unemployed are to be addressed".²⁶

Over the following two years labour legislation was subject to two separate processes of review. On the one hand, discussions continued within the existing, corporatist National Manpower Commission (NMC), until its role was taken over in 1995 by the new, but also corporatist, National Economic, Development and Labour Advisory Council (Nedlac). On the other hand, President Mandela appointed a Presidential Labour Market Commission to report on "the development of an institutional framework for integrating the dual requirements of rapid and sustainable economic and employment growth and rising average living standards" (whilst paying particular attention to "the impact of alternate mechanisms of wage determination on the development of small- and medium-scale enterprises" – South Africa, 1996a: xiii). With respect to minimum wage-setting, both processes converged on the reform of existing institutions rather than the introduction of a NMC. In both processes, trade unions helped to drive and endorsed this outcome.

²⁴ See, for example, Mboweni's maiden speech in Parliament, Hansard, 27 May 1994, col. 269.

²⁵ Address to the Labour Law Conference, Durban, 1994 (included in Kalula and Woolfrey (1995)), 2-4.

²⁶ *Ibid*.

Progress was fast on the reform of the LRA providing for collective bargaining and the regulation of disputes including strikes. Discussions had begun within the NMC. A Bill was discussed in Nedlac, the reforms were discussed within the Labour Market Commission, and the new LRA was enacted, all in 1995. The Act provided for minimum wages to be negotiated by trade unions and employers' associations in sectoral "bargaining councils" (the former industrial councils), and then extended countrywide by the Minister of Labour. This was, in part, a compromise, between employers (some of whom preferred enterprise-level bargaining) and the unions (who had demanded that employers should be required to participate in bargaining councils, doing away entirely with the need for extensions). One issue was not entirely resolved. In Nedlac, big business agreed to the near-automatic extension of bargaining council agreements, and this was incorporated into the LRA. The Labour Market Commission, however, recommended that extensions be more discretionary. As commissioner Gwede Mantashe, the assistant general secretary of the National Union of Mineworkers, reported back to COSATU: "In granting such extensions the Minister will have to be sensitive to possible disemployment effects of such extensions".²⁷

The regulation of sectors without strong trade unions was less urgent and proceeded more slowly. Discussions continued in both the NMC/Nedlac and Labour Market Commission. These two processes were connected through specific individuals as well as through the support provided by the ILO (which readmitted South Africa as a member following the democratic elections). In May 1994, immediately after the democratic elections, the NMC hosted a workshop on minimum wages, with a presentation by the ILO's Zafar Shaheed (1994). Two years earlier the NMC had been 'restructured', accommodating representatives of COSATU and other independent trade unions, as well as experts appointed by the government (obviously in consultation with the ANC, given that most of the experts were ANC or COSATU-aligned). Minimum wages were one of the issues on the new NMC's agenda, but the NMC did not appear to do anything other than host the workshop. At the workshop, Shaheed focused on the ILO conventions and avoided any discussion of the choice between national and sectoral (or regional) minima. The following year the ILO appointed a 'Country Review' team to support the Presidential Labour Market Commission by analysing the South African labour market. The ILO team was sharply critical of the existing Wage Board system, which it described as "haphazard", "with almost arbitrary selective coverage, low wage minima, infrequent revisions and poor conditions of employment attached to

²⁷ Record of COSATU Living Wage Conference, 19-21 April 1996 (Jane Barrett papers, University of the Witwatersrand Historical Papers A 2168, box O.5).

them”. But the team did *not* propose any new mechanism for setting minima and did *not* endorse calls for a national minimum wage. Indeed, the report seemed to conclude that a system of sectoral minima through “a reformed Wage Board” was the only real option. The ILO team summarised, with apparent approval, a submission by consultants Andrew Levy and Associates that suggested that

‘while a national minimum wage would send out a signal that the Government cares about unprotected workers, the monitoring and enforcement functions would be “a continual headache”, so that the enforcement bureaucracy would be ineffectual and would be “public money poorly spent”’ (Standing, Sender & Weeks, 1996: 212).

The ILO “country review” team was clearly influenced by the South Africans – especially in the Labour Market Commission – with whom they worked. The Commission comprised prominent trade unionists, businessmen and independent experts. The unionists included co-chair David Lewis (who was Special Advisor to the Minister of Labour, Tito Mboweni), Jeremy Baskin (who headed COSATU’s new research unit, Naledi) as well as Mantashe (from the NUM). Baskin had long been involved in thinking about the minimum wage within COSATU. On the Commission he articulated strongly the dilemma posed at the COSATU workshop earlier that year (see above): the unions could not leave sectors unregulated, could not demand a high national minimum given the difficulties facing the economy, but nor could they defend a low national minimum.²⁸ Baskin was very aware of the perception that unionised workers in formal employment constituted a semi-privileged “labour aristocracy” (Baskin, 1996: 6-7). All three of the positions above risked fuelling criticisms because all three invited the accusation that COSATU did not really care about unorganised workers. The solution was to reform the existing Wage Board and avoid a national minimum entirely.

In its report, the Commission emphasised the imperative of creating more as well as better jobs through a “labour-absorbing growth path” that expanded labour-intensive production (in sectors such as clothing manufacturing) and improved productivity (South Africa, 1996a: 9, 18-22, 34-6, 51). The Report acknowledged that labour costs were high, but argued for a balance between security and flexibility.

‘The Commission does not believe it is realistic to set one national minimum wage. Rather, sectoral minima should be set. And while there

²⁸ Recollections by Nicoli Nattrass, who was one of the independent experts on the Commission.

is a need to avoid too complex a set of minimum determinations, there may at times be a need to differentiate geographically or to set a cross-sectoral minimum for a specific locality. ... In reaching its decisions, the [Wage] Board should be guided by the need for a fair wage and decent conditions, the financial circumstances of the employers, and the social conditions and economic prospects prevailing in the sector/locality concerned. It should be particularly mindful of the employment implications of its recommendations. ... [T]he Commission notes that, in practice, minimum wages will need to be set at modest levels if employment generation is not to be harmed' (*ibid*: 66-7).

The Commission did not rule out the possibility of agreement “at some future point” over a national minimum wage (*ibid*: 66). It recommended that the Wage Board be especially cautious in setting minima for farm and domestic workers (*ibid*: 69-70), and proposed that the Wage Board include members with (*inter alia*) “an appropriate degree of independence from unions and employer organisations” (*ibid*: 67). The key recommendations of the Labour Market Commission were reported back to COSATU by the unionists on the Commission. In April 1996, for example, Mantashe reported back to COSATU that “the Commission supports sectoral minima instead of a national minima” (*sic*).²⁹

Shortly before the Commission completed its report, but after it was clear what the report would recommend, the Ministry of Labour published a Green Paper on ‘Policy Proposals for a New Employment Standards Statute’. This proposed that “the Wage Board should be revitalised and reconstituted as an Employment Standards Commission and its functions extended” (South Africa, 1996b: para 12). The new government’s thinking was explicitly framed by its anxieties about unemployment. In his foreword to the Green Paper, Mboweni wrote that:

‘This year the government has stressed the critical importance of job creation. This raises important questions for the debate on the law proposed in the Green Paper. Can we use the proposed law to promote employment creation? Could some rights hinder employment creation? The Department has taken these issues into account in preparing its proposals. This is an important issue for debate. The first prize is a law that can set fair employment standards and promote the creation of new

²⁹ Report of the COSATU Living Wage Conference, 19-21 April 1996. See also Baskin (1996): 13.

jobs. Striking the correct balance will be a difficult issue but it is one in which wide public participation is important' (South Africa, 1996b: 2).

Mboweni also appointed an interim Wage Board, with Dudley Horner as the interim chairperson. Horner had previously been a fierce critic of the Board in the 1980s but in the 1990s began to argue that it should be strengthened, not abolished (Horner, 1991, 1995).

The practical difficulties inherent in setting any national minimum were revealed again later in 1996, when Mboweni directed the interim Wage Board to examine minimum wages in the clothing industry. Clothing workers outside of areas covered by regional bargaining councils were covered by Wage Determination (WD) 471. Like other WDs, however, this excluded workers in the former bantustans. In the case of the clothing industry, about 30 percent of workers were in the former bantustans. Mboweni asked the Wage Board to recommend how to extend WD 471 to the former bantustans, "with due regard to the problems being experienced in this industry".³⁰ On the basis of the Wage Board's recommendations, WD 471 was amended to cover the bantustans in mid-1997. The minimum wage was set at R91.60/week, except in Phutaditjaba (in QwaQwa, in the southern Free State), where the minimum was only R81/week (and employers were given a further six months grace before the minimum came into effect). These minima were far below the lowest national minimum ever proposed within COSATU. They were so low – and much lower than in either the areas covered by regional industrial councils or the old areas covered by WD 471 – because Horner was deeply concerned by the possibility of factory closures and massive retrenchments (see further Natrass, 2000).

Whilst the interim Wage Board was reviewing WD 471, Mboweni presented the draft of a new Basic Conditions of Employment Bill to Nedlac. The Bill provided (inter alia) for the establishment of a new 'Employment Conditions Commission' (ECC) to replace the Wage Board. The new ECC would recommend minima for sectors where there was no collective bargaining between unions and employers. Unlike the Wage Board, its remit would cover agricultural and domestic workers. It

³⁰ 'Partial Wage Board Investigation: Amendment of Wage Determination 471: Clothing and Knitting Industry, RSA', *Government Notice* R.1733 (25 October 1996). It is not clear why Mboweni did not ask Horner to examine also other WDs with similar limits, for example WD 478 on the wholesale and retail trade. It is possible that WD 471 was singled out because of the influence of SACTWU, which was at the time trying to pull and push employers into forming a national bargaining council. Revising WD 471 might have been politically useful to SACTWU as an incentive to employers to come to the table.

would also have representatives of business and labour, alongside experts appointed by the government.

Nedlac was established to provide for corporatist negotiation over, especially, labour legislation. In 1995, business and labour had reached agreement over almost all of the provisions of a new Labour Relations Bill. Two years later, however, business and labour failed to agree over much of the new Basic Conditions of Employment Bill. Negotiations were “adversarial and difficult” (Godfrey, Maree & Theron 2006: 85). Mboweni met separately with organized business and organized labour because, as he later told parliament, they had become “unwilling to meet in one room” together!³¹ In October 1997, Mboweni took his Bill to Parliament despite having failed to reach agreement in Nedlac. The Bill was first discussed in the portfolio committee, then in the full parliament. The Act was eventually passed by the ANC majority, in the face of opposition from other parties, at the very end of 1997.

Introducing the Bill, Mboweni emphasized that the Bill extended “protection to vulnerable and low-paid workers who are not covered by existing legislation”. He drew attention to three major sectors that were not covered under existing legislation:

‘As Minister of Labour, I am often stopped at airports, in supermarkets and restaurants and in the streets, and asked many questions. Somebody will say: “I used to work for a security company. I was dismissed and given one day’s notice. Is that lawful?” Somebody else will say: “I am a domestic worker and I am forced to work for weeks on end, without a day off. Is that legal?” When I travel around farming areas of the country, I am confronted by farmworkers who ask: “When is this democratically elected Government going to stop farmers from paying farmworkers exploitative wages?”’³²

He drew specific attention to the fact that statutory wage setting was to be extended to domestic and farm workers.³³

The Bill was opposed, in Nedlac and then in Parliament, not by trade unionists but by business and business-aligned opposition parties. Their criticisms were not of

³¹ Hansard, 5th November 1997, col.5940-1.

³² Ibid, col. 5932.

³³ Ibid, col. 5935.

the expansion of wage-setting to agricultural and domestic workers, but rather concerned the regulation of conditions of employment, including especially restrictions on the length of the working week, provision for maternity leave, their effects on small business and (critics claimed) the possible effects on job creation. The only substantive concern raised by COSATU was over what it identified as a shift in discourse between the LRA and the new Bill, with increased use of the term ‘flexibility’. This reminded them of the ‘dual labour market’ model advocated by some economists and strongly opposed by COSATU.³⁴

The Act provided for an ECC that was a mix of corporatist and technocratic, as recommended by the ILO. The ECC would include members nominated by trade unions and business, as well as experts appointed by the Minister after consultation with Nedlac. One of the experts would serve as chairperson. The primary responsibility of the ECC was to recommend minimum wages and conditions of employment when asked to do so by the Minister. The ECC was required to take into account ‘the ability of employers to carry on their businesses successfully; the operation of small, medium and micro enterprises, and new businesses; the cost of living; the alleviation of poverty; ...; wage differentials and inequality; and the likely impact of any proposed new condition of employment on the creation of employment’.

Conclusion

The establishment of the ECC completed the reform of South Africa’s wage-setting institutions. The Minister of Labour and ANC emphasised that this was a new system, and it was in the sense that it brought all workers under the jurisdiction of institutions that had been concerned primarily with white workers hitherto. But the institutions themselves were essentially the ones that had existed for more than half a century, had atrophied, and were not resuscitated. In sectors with strong unions and employers’ associations, these parties negotiated in sectoral bargaining councils, and the Minister of Labour then extended the agreements countrywide. In sectors without strong unions and employers’ associations, wages and conditions were regulated by an institution (the ECC) that combined corporatist and technocratic elements. The approach was fundamentally sectoral. There was no national minimum wage. Collective bargaining took precedence. If a bargaining

³⁴ For COSATU’s response, see its Press Statement on 13th February 1996 and its undated ‘Focus on the Employment Standards Bill’ (<http://www.cosatu.org.za/show.php?ID=677> and <http://www.cosatu.org.za/show.php?ID=2003>, accessed 24th January 2015)

council was established in a sector hitherto regulated by the ECC, then the ECC ceded responsibility to the bargaining council.³⁵ Only if corporatist bargaining fora were clearly unrepresentative (as in the contract cleaning, civil engineering and private security sectors) did the Minister of Labour continue to instruct the ECC to recommend minima. Nonetheless, through the 2000s the ECC regulated the wages of somewhere between three and four million workers (and possibly more).

As expected, sectoral procedures meant that conditions in the sector were taken into account in setting minima. In practice this was true under both the LRA and the Basic Conditions of Employment Act. Although the LRA did *not* require bargaining councils or the Minister to take employment effects into account (as the Labour Market Commission had suggested), in practice the bargaining councils sometimes did consider employment effects because job destruction generated bad publicity and some of the workers whose jobs might be destroyed were union members. The ECC was required to take into account employment effects, and its technocratic and corporatist members usually ensured that it did so. The result was that minima were generally set at a low level in labour-intensive, low-wage and low-profit sectors, including clothing manufacturing (until 2002, when a National Bargaining Council was established), the private security sector, domestic work and (until 2013) agriculture.

In practice, and in contrast to institutions such as the Low Pay Commission in the UK, neither the Department of Labour nor the ECC had much capacity to conduct sectoral research, and they generally worked with very limited information about affordability and likely job destruction. They tended towards caution when setting minima, and subsequently raised minima incrementally. They also persisted with regional differentiation, allowing lower minima in (especially) rural areas. The minima recommended by the ECC did, however, rise steadily over time in real terms (i.e. taking inflation into account), and they did so more or less in line with the minima in comparable sectors that were negotiated by trade unions through bargaining councils. The trade unionists on the ECC rarely dissented from the commission's recommendations (Seekings, forthcoming).

Business was opposed to the centralisation of wage-setting at the national level, whether through collective bargaining or the Wage Board/ECC, and the ANC Minister of Labour (Mboweni) was keen to keep business within the corporatist

³⁵ For example, when a National Bargaining Council for the Clothing Manufacturing Industry was established in 2002, the ECC ceded responsibility for regulating clothing workers in areas outside of the jurisdiction of the existing, regional bargaining councils.

fold. But the preservation of sectoral wage-setting reflected especially the position of labour, and labour-allied intellectuals. Some unions favoured national wage-setting, but sectoral wage-setting was defended strongly by unions in more labour-intensive sectors, especially SACTWU, and by allied intellectuals (such as Horner and Kaplinsky) who worried about the effects of high minima on employment in low-wage sectors such as clothing, agriculture and domestic work. COSATU leaders and intellectuals (such as Baskin) came to see the demand for a national minimum as a trap that the unions should avoid, because whatever level it was set at would result in criticisms of the unions as uninterested in the welfare of low-wage workers. Many unionists were also jealous of their independence and distrustful of the state. They sought to preserve the tradition of shopfloor organization within unions and a sectoral demarcation of responsibility between unions. Massive retrenchments in manufacturing in the early 1990s fuelled unions' anxieties about high unemployment, compelled them to moderate wage demands and focused their attention on industrial restructuring and economic growth rather than wages per se. The ILO also advised sensitivity to employment and other economic issues. In the absence of compelling alternative models on the agenda, the existing institutions (industrial councils and the Wage Board) were reformed (and renamed). This was a good example of path dependency in institutional design.

Through the 2000s and into the 2010s, the Department of Labour, appointed technocrats, business and labour broadly concurred over the sectoral regulation of wages and conditions. The Department of Labour and business and technocrat members of the ECC generally adopted a more caution approach to raising minima, whilst labour representatives (and, in 2013 with respect to farmworkers, the ANC) advocated larger increases, but the differences in practice were almost always small. There was general consensus that minima should rise steadily, but from low starting-points and at a modest pace, taking into account conditions in each sector.

Only in the 2010s did this consensus begin to unravel, as COSATU apparently embraced demands for more radical restructuring of labour market institutions to increase its own power and effect a massive increase in minimum wages. This is not the place for an analysis of what changed between the 1990s and the 2010s, but factors contributing to this shift probably included the weakening of collective bargaining,³⁶ the associated general shift in the union movement from a strategy

³⁶ Generally, trade unions are less enthusiastic about statutory minimum wages when collective bargaining is strong, and become more interested when collective bargaining weakens (as in the UK in the late twentieth century and Germany in the early twenty-first century).

based on workplace organisation to one increasingly dependent on political access to the state (Buhlungu, 2010), the concomitant decline of manufacturing unions relative to public sector unions and a shift in the composition of unions' membership from less to more skilled and lower to higher-paid workers (Seekings, 2015), growing interest in national minimum wage-setting elsewhere in the world, and the political fragmentation of and competition within the union movement.

References

ANC. 1994. *The Reconstruction and Development Programme*. Johannesburg: African National Congress.

Baskin, J. 1991. *Striking Back: A History of COSATU*. Johannesburg: Ravan.

----- . 1996. Introduction. In Baskin, J. (ed.) *Against the Current: Labour and Economic Policy in South Africa*, 1-19. Johannesburg: Ravan.

Belser, P. & K. Sobeck. 2012. At what level should countries set their minimum wages? *International Journal of Labour Research* 4(1): 105-27.

Bhorat, H. 1991. Wage fixing and the South African reality. Paper presented at workshop on *Budgeting for Redistribution*. Cape Town: University of the Western Cape.

Boeri, T. 2012. Setting the minimum wage. *Labour Economics* 19(3): 281-290.

Coleman, N. 2013. Towards new collective bargaining, wage and social protection strategies in South Africa – Learning from the Brazilian experience. *Working Paper No. 17*. Geneva: ILO, Global Labour University.

COSATU. 2015. *The case for a national minimum wage*. <http://www.politicsweb.co.za/party/the-case-for-a-national-minimum-wage--cosatu>, accessed 16th May 2015.

Bonoli, G. 2003. Social Policy through Labor Markets Understanding National Differences in the Provision of Economic Security to Wage Earners. *Comparative Political Studies* 36(9): 1007-30.

----- . 2013. *The Origins of Active Social Policy: Labour Market and Childcare Policies in a Comparative Perspective*. Oxford: Oxford University Press.

Buhlungu, S. 2010. *A Paradox of Victory: COSATU and the Democratic Transformation in South Africa*. Pietermaritzburg: UKZN Press.

Cooper, C. 1991. COSATU's first-ever wage policy workshop. *South African Labour Bulletin* 16(1): 55-9.

Copelyn, J. 1991. Collective bargaining: a base for transforming industry. *South African Labour Bulletin* 15(6): 26-33.

Crettaz, E. & G. Bonoli. 2010. Why are some workers poor? The mechanisms that produce working poverty in a comparative perspective. *REC-WP Working Papers on the Reconciliation of Work and Welfare in Europe* 12. Edingburgh, RECOWWE: University of Edinburgh.

Davie, G. 2007. Strength in Numbers: The Durban Student Wages Commission, Dockworkers and the Poverty Datum Line, 1971-1973. *Journal of Southern African Studies* 33(2): 401-20.

De Melo, F. L. B., Figueiredo, A., Mineiro, A. & S. E. A. Medonça. 2012. Rescuing the Minimum Wage as a Tool for Development in Brazil. *International Journal of Labor Research* 4(1): 27-44.

Eyraud, F. & C. Saget. 2005. *The fundamentals of minimum wage fixing*. Geneva: International Labour Organization.

Godfrey, S. & I. Macun. 1992. The Politics of Centralised Bargaining. In Moss, G. and I. Obery (eds.), *South African Review* 6, 388-402. Johannesburg: Ravan.

-----, Maree, J. & J. Theron. 2006. Conditions of employment and small business: Coverage, compliance and exemptions. *DPRU Working Paper* 06/106. Cape Town: Development Policy Research Unit, University of Cape Town.

Horner, D. 1991. An Appropriate Mechanism for Minimum Wage Fixing. Paper presented at workshop on *Budgeting for Redistribution*. Cape Town: University of the Western Cape.

-----, 1995. Reconstituting the Wage Board: Rescue and resuscitation. In Kalula, E. & D. Woolfrey (eds.), *The New Labour Market: Reconstruction, Development and Equality*, 62-69. Cape Town: Labour Law Unit, University of Cape Town.

International Labour Organization (ILO). 2013. *World of Work Report 2013: Repairing the economic and social fabric*. Geneva: ILO.

-----, 2014. *General Survey of the reports on the Minimum Wage-Fixing Convention, 1970 (no.131), and the Minimum Wage Fixing Recommendation, 1970*

(no.135). International Labour Conference, 103rd Session 2014: report ILC.103/III/1B. Geneva: ILO.

ISP. 1994. Industrial strategy for South Africa: the recommendations of the ISP. *South African Labour Bulletin* 18(1): 48-75.

Joffe, A., Kaplan, D., Kaplinsky, R. & D. Lewis. 1995. *Improving Manufacturing Performance in South Africa: Report of the Industrial Strategy Project*. Cape Town: University of Cape Town Press.

Kalula, E. & D. Woolfrey (eds.), *The New Labour Market: Reconstruction, Development and Equality*. Cape Town: Labour Law Unit, University of Cape Town.

Kaplinsky, R. 1994. 'Economic restructuring in South Africa: the debate continues': a response. *Journal of Southern African Studies* 20(4): 533-37.

Kenworthy, L. 2001. Wage-setting measures: A survey and assessment. *World Politics* 54(1): 57-98.

Lundall, P. 1991. Reflections on Minimum Wage Policies. Paper presented at workshop on *Budgeting for Redistribution*. Cape Town: University of the Western Cape.

Mabbett, D. Forthcoming. The Minimum Wage in Germany: What Brought the State In? *Journal of European Public Policy*, in press.

Marinakis, A. 2008. The role of the ILO in the development of minimum wages. Discussion paper for *ILO Century Project*. Geneva: ILO.

MERG (Macro-Economic Research Group). 1993. *Making Democracy Work: A Framework for Macroeconomic Policy in South Africa*. Cape Town: Centre for Development Studies and Oxford University Press.

Metcalf, D. 1999. *The British National Minimum Wage*. London: Centre for Economic Performance, London School of Economics.

Moll, P. 1996. Compulsory centralization of collective bargaining in South Africa. *American Economic Review* 86(2): 326-9.

Mosoetsa, S. 2005. The consequence of South Africa's economic transition: Remnants of the footwear industry. In Webster, E. & K. Von Holdt (eds.) *Beyond the Apartheid Workplace: Studies in Transition*. Pietermaritzburg: University of KwaZulu-Natal Press.

Nattrass, N. 1994. Politics and economics in ANC economic policy. *African Affairs* 93: 343-59.

----- . 2000. Wage strategies and minimum wages in decentralized regions: the case of the clothing industry in Phuthaditjhaba, South Africa. *International Journal of Urban and Regional Research* 24(4): 873-88.

----- & J. Seekings. 1997. The Wage Board: Empowerment or Emasculation? *South African Labour Bulletin* 21(5): 16-20.

----- & ----- . 2015. Should and can labor-surplus, middle-income economies pursue labor-intensive growth? The South African Challenge. *CSSR Working Paper No. 351*. Cape Town: Centre for Social Science Research, University of Cape Town.

Neumark, D. & W. Wascher. 2008. *Minimum Wages*. Boston: MIT Press.

Rodgers, G., Lee, E., Swepston, L. & J. Van Daele. 2009. *The International Labour Organization and the quest for social justice, 1919-2009*. Geneva: ILO.

Saget, C. 2008. Fixing minimum wage levels in developing countries: Common failures and remedies. *International Labour Review* 147(1): 25-42.

Seekings, J. 2015. Workers, the State and Wages. In Seekings, J. & N. Natrass (eds.) *Policy, Politics and Poverty in South Africa*, 53-79. London: Palgrave Macmillan.

----- . Forthcoming. Minimum wage-setting by the Employment Conditions Commission in South Africa, 1999-2015. *CSSR Working Paper*, in press. Cape Town: Centre for Social Science Research, University of Cape Town.

Seekings, J. & N. Natrass. Forthcoming. Setting the level of a national minimum wage: What can South Africa learn from other countries' experiences? *Transformation*, in press.

Shaheed, Z. 1994. Minimum Wages and Low Pay – An ILO Perspective. *International Journal of Manpower* 15(2-3): 49-61.

South Africa. 1979. *Report of the Commission of Inquiry into Labour Legislation* (i.e. the Wiehahn Commission). Pretoria: Government Printer.

----- . 1996a. *Report of the Commission to Investigate the Development of a Comprehensive Labour Market Policy*. Pretoria: Department of Labour.

----- . 1996b. Employment Standards Statute: Policy Proposals. Green Paper, published as Notice 156 of 1996. Pretoria: Ministry of Labour.

Standing, G., Sender, J. & J. Weeks. 1996. *Restructuring the labour market: the South African challenge*. Geneva: ILO.

Starr, G. F. 1993, first published 1981. *Minimum wage fixing: an international review of practices and problems*. Geneva: ILO.

Thornley, C. & D. Coffey. 1999. The Low Pay Commission in Context. *Work, Employment and Society* 13(3): 525-38.

Van der Horst, S. 1942, republished 1971. *Native Labour in South Africa*. London: Frank Cass.

Young, G. 1990. A National Minimum Wage: Stepping stone to the Living Wage. Unpublished.

----- . 1991. The National Minimum Wage, or How to Fight Low Wages in South Africa. *Economic Policy Papers* 1. Cape Town: Labour Research Service.