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**SAFTU’s submission to Parliament on national minimum wage bill and amendments to labour laws**

1. **Introduction**

The South African Federation of Trade Unions (SAFTU) welcomes the opportunity to present to Parliament its views on the very import pieces of labour-related legislation currently being discussed in the National Assembly.

The debate on these labour matters cannot be isolated from the broader debate about how we can extend our freedom and democracy to bring *economic* transformation to all citizens. It must be rooted in the living reality of the shocking levels of poverty, unemployment and inequality for the majority of South Africans.

In economic terms the first 24 years of democracy have benefitted more those who benefitted during the apartheid and colonial era - white monopoly capital in particular and the white population in general.

During the past seven years most South Africans have been talking about “the second phase of radical economic transformation”, in recognition of the reality that the first two decades of freedom and democracy has seen largely only political, and not economic benefits.

This has left the black majority of workers still facing poverty wages, casualisation and the use of labour brokers. The population as a whole have been largely left propertyless and landless, just was planned by the imperialist forces that occupied the land of the indigenous people, who were then balkanized into Bantustans that were created to provide cheap labour reserves to feed the booming agriculture, mining and other industries.

SAFTU fully endorses the 1069 ANC Morogoro strategy and tactics document which we believe is so relevant in this debate. The ANC said:

“In our country — more than in any other part of the oppressed world — it is inconceivable for liberation to have meaning without a return of the wealth of the land to the people as a whole. It is therefore a fundamental feature of our strategy that victory must embrace more than formal political democracy. To allow the existing economic forces to retain their interests intact is to feed the root of racial supremacy and does not represent even the shadow of liberation.

“Our drive towards national emancipation is therefore in a very real way bound up with economic emancipation. We have suffered more than just national humiliation. Our people are deprived of their due in the country’s wealth; their skills have been suppressed and poverty and starvation has been their life experience. The correction of these centuries-old economic injustices lies at the very core of our national aspirations.

“We do not underestimate the complexities which will face a people’s government during the transformation period nor the enormity of the problems of meeting economic needs of the mass of the oppressed people. But one thing is certain — in our land this cannot be effectively tackled unless the basic wealth and the basic resources are at the disposal of the people as a whole and are not manipulated by sections or individuals be they white or black.”

We are making an appeal to our honourable members of parliament to debate whether these new pieces of legislation will help or hinder our efforts to give an economic meaning to our freedom and help dismantle the current status quo and not just modify it.

SAFTU’s view is that the Bills should be seen as part of a radical economic transformation and not to launch another assault on the small gains made so far but gains which have so far not helped to reshape the power and property relations in society.

This is particularly true of the proposed national minimum wage of R20 an hour. The current discussion on this issue is not taking place in a vacuum; it is taking place against the background of extreme poverty, inequality and unemployment, which is summarized below. What we are talking about is the lived life of the majority of South Africans.

**2. Poverty, hunger and social grants**

In 2015, 30.4 million South Africans, 55,5% of the population, lived below the upper-bound poverty line of R992 a month, an increase of 2.3% from 53,2% in 2011. 40% lived below the lower-bound poverty line of R544 and 25.2% had to live below the food poverty line of R441.

These figures are per person not for a household. Even on the upper bound line a person with a family of four, and with the revised 2017 line of R1138 would have to earn about R4500 to just keep their heads above water.

it should be remembered that the operative words here are “poverty line”, meaning mere existence.

According to Oxfam, 26% of South Africa's population are hungry on a daily basis; and half of all South Africans do not have sufficient access to affordable, nutritious and safe food to meet the basic health requirements.

In addition, malnutrition is the major underlying cause of death in 64% of deaths of children under the age of five; one in five children are stunted because of malnutrition and many more are deficient in the minerals and vitamins necessary for optimal development.

These hunger-related indicators of extreme poverty exist despite the fact that South Africa is officially food secure, i.e. it produces enough food to feed the entire population. But every year R61.5bn worth of food is wasted along the production-to-consumption chain.

Given that 47% of all workers earn below the proposed national hourly minimum wage of R20, it is hardly surprising that so many are going hungry.

We have reached these levels of hunger and food insecurity despite the very important growth in spending in social grants. In 1994 less than 2% of government spending was allocated to social grants, and it has now reached around 9% of government spending.

There is no doubt that poverty has been alleviated for many. 17 million people currently receive social grants of between R360 and R1600 a month. Social grants are the largest source of income for one in five households. But most unemployed people of working age are left out of the grant system and depend on others who are grant recipients.

It is therefore no surprise that the poorest 20% of households is now largely made up of young unemployed couples with one or two children and no grandparents. This serious gap is what has driven the demand for a universal Basic Income Grant, for which all adults would be eligible

**3. Unemployment**

By far the biggest cause of these appalling levels of poverty is the high level of unemployment. In the fourth quarter of 2017, 9.2 million people were unemployed, 36.3% of the working population by the more realistic expanded definition which includes people who are unemployed but have stopped looking for work.

Even by the ‘official’ definition of unemployment which includes only those who are not employed but actively looking for jobs, 27.7% - 5.9 million people - are unemployed.

According to reports compiled by the International Labour Organisation (ILO) only six countries in the world have higher levels of unemployment than South Africa. They all either have very very small and dependent economies such as Lesotho and Mauritania, or have been ravaged by war and/or occupation such as the West Bank and Gaza Strip of Palestine, and Macedonia.

Why does a country with massive natural resources, a well established manufacturing base, a solid banking system, a functional agricultural sector and a large government bureaucracy find itself in this position?

Why has unemployment risen from 1994, when one out of every five adults of working age and actively seeking work did not have a job, to 2017 when this figure had risen to more than more than one out of every four?

The rising levels of unemployment in general are made even worse by declining numbers of jobs in the crucial areas of mining, manufacturing, agriculture and construction. Although there has been growth in the total number of jobs in the trade, financial, transport and communications and public sectors, this growth has not kept up with the growth in population, and so these jobs have not dented the ever-rising rate of unemployment. Increasingly young people entering the job market have found it very difficult to find a job.

3.1 Youth and women’s unemployment

There are now fewer young people between the ages of 15 and 24 in work or studying than there are unemployed youth of the same age range. The expanded unemployment rate for this age group is a staggering 63.8%, meaning almost two out of every three. And for the age group 25 to 34 years, the expanded unemployment rate is 40.6% and 39.9% for women.

3.2 Non-metro (or rural) unemployment

The chances of finding a job also vary according to where a worker lives. Most of the non-metro areas of South Africa have higher expanded rates of unemployment than the metro areas, as shown in the table below:-

|  |  |  |
| --- | --- | --- |
| **Province**  |  | **Expanded Unemployment rate** |
| Western Cape | Cape Town | 25.3% |
|  | Non metro | 20.7% |
| Eastern Cape  | Buffalo City | 36.1% |
|  | Nelson Mandela Bay | 30.2% |
|  | Non metro | 46.3% |
| Free State | Mangaung | 40.1% |
|  | Non metro | 41.2% |
| KZN | eThekwini | 28.0% |
|  | Non metro | 48.3% |
| Gauteng | Johannesburg | 30.2% |
|  | Tshwane | 29.1% |
|  | Ekurhuleni | 34.4% |
|  | Non metro | 38.5% |
| Limpopo | All non metro | 34.1% |
| Mpumalanga | All non metro | 42.1% |
| North West Province | All non metro | 40.9% |
| Northern Cape | All non metro | 43.3% |

3.3 Unemployment by racial group

There are also quite stark differences in the rates of unemployment according to racial group. The overall rate of unemployment (expanded definition) amongst African people is 40%, compared 27.3% for coloured people, 14.7% for Indian people, and 9.1% for white people. So even among white people, nearly one out of every ten is unemployed.

This in itself would be regarded as something of a state of emergency in most countries, let alone a situation of 35.6% overall unemployment! The skewed racial breakdown of unemployment continues to reflect unequal access to decent education and training. We appeal to MPs to recognise that the majority of their constituents are indeed living in a state of emergency.

3.4 Rise of precarious and informal work

Of crucial importance to the debate in parliament is the growth of precarious employment. All workers with an employer are vulnerable to dismissal, which is why workers join unions to protect them against this. But some workers are more vulnerable than others. More and more workers are in jobs that even less secure than the jobs of permanent full-time workers.

Precarious employment includes short-term contracts, seasonal work, piecework, casual day labour, and zero-hour contracts (where the contract does not guarantee any hours of work). Work in the informal sector is usually also precarious, as income is generally very low and unpredictable. Today in South Africa one in seven workers has a fixed term limited duration contract.

Even many permanent full-time workers can also find themselves in a precarious position when they are extremely low paid, or have no employment benefits. They constantly feel as if they are falling off a cliff – anxious about where the next rand is going to come from and what will happen if they lose their job.

Evidence of this kind of precarious work is that:-

* + Just over half of all workers have no pension or provident fund
	+ Roughly one third of all workers do not get paid leave
	+ Roughly one third of all workers do not get sick leave
	+ One third of workers are not signed up by their employer to UIF
	+ Two thirds have no medical insurance

Workers who report more than two of the above conditions are defined as being “informal”. Agricultural and private household (domestic) workers are counted separately. In addition, own account workers and workers in places of employment with less than five workers are also counted as informal.

When all these categories of informal workers were added up in the 2016 Quarterly Labour Force Survey, in the last quarter of the year, 2.6 million workers (excluding agricultural and domestic workers) were counted as informal. Adding an estimated half of agricultural workers who are informal i.e. 450,000, plus almost all of the 1.3 million workers who work in private households, there are at least 4.35m workers who can be classified as informal. This amounts to at least 27.5% of all workers. The numbers of informal workers per sector (excluding agriculture and private households) are as follows:

|  |  |
| --- | --- |
| **Sector** | **Number of informal workers** |
| Mining | 6,000 |
| Manufacturing | 215,000 |
| Utilities | 9,000 |
| Construction | 479,000 |
| Trade | 1,091,000 |
| Transport | 253,000 |
| Finance | 196,000 |
| Community and social services | 447,000 |

These are very significant numbers of very vulnerable workers who mostly remain unorganised. Most of those in manufacturing are in very small companies; most of those in construction are day labourers and short-term contract workers, and most of those in transport work in the taxi industry.

The majority of those in the trade sector are either working in very small restaurants and shops, or are own-account workers in the informal economy without an employer. In community and social services EPWP and "volunteer" workers in NGOs make up a big chunk.

**4. Inequality**

Right at the centre of the debates in parliament, particularly on the national minimum age, are South Africa’s levels of inequality.

We live in the world’s most unequal country, with the highest Gini coefficient, which measures inequality, at about 0.68. 10% of the population earn more than 50% of the household income while 20% earn less that 1.5%.

In 2014, the median salary in South Africa is R3400, which means that 50% of workers earn below this R3400. It is an indictment on our democracy that we have sidelined millions of workers in the farms, security, domestic, cleaning services, and informal sectors to continue facing this kind and extent of humiliation at the hands of those who humiliated and exploited them during the apartheid and colonial era.

Meanwhile Deloitte accountants revealed that the average pay of executives in the country’s top 100 companies is now R17.97 million a year, which amounts to R69 000 a day and R8 625 an hour!

If that is the average, there must be many who receive even more! Executives’ salaries have risen from 50 times to 500 times bigger than workers’ wages.

Many of the companies who are paying these grotesque amounts to their executives support the R20 an hour poverty wage and are demanding that the unions should agree to lower wages for their workers.

The total net wealth of 3 South African billionaires is the equivalent of the total combined wealth of 50% of the population; the richest 1% of the population has 42% of the country's wealth; and the wealth of South Africa's top 10% grew 64% in first 17 years after 1994, whereas the wealth of the poorest 10% did not grow at all. (*Economy for the 99%*, Oxfam Report, January 2017)

According to the Quartz, a British think tank, in its *CEO Worst Fact Cats* report, South African CEOs topped the list of fastest earners in the world. It shows that it takes CEOs in South African just seven hours to make R180 252, which is the country’s average yearly wage.

Bloomberg’s *Global CEO Pay Index*, which calculate the comparative index, says that “South Africa’s CEOs earn far less on average than their American counterparts but their salaries are 541 times more than the average income in their own country”.



We have already provided averages that show the extent of income inequality between the workers who produce the wealth and the executives. Below is a graph that indicates the extreme cases. It must be noted that many of the companies listed below are not solely operating in South Africa; some are dual-listed multinationals and many of these CEOs are paid in British pounds or US dollars, which have favourable conversation rates against the rand.



Total salary includes benefits, short term and long term incentives and bonuses | shaded indicates full year 2015.

BusinessTech lists the top 20 richest South Africans, as identified by Entrepreneur Magazine.



We are not being personal but we cannot avoid drawing to your attention the obvious fact that the biggest supporter of the current levels of the National Minimum Wage is President Cyril Ramaphosa who is ranked number 14 in the list of the richest South Africans.

The second obvious issue the list highlight is the reality that 24 years into our democracy, the economy remains in the hands of whites in general and white male monopoly capitalists in particular.

Before anyone rushes to count heads and look for names bearing African or black sounding, consider the facts from a class perspective. There are 55 million citizens in our beautiful country. Think about all of them, black and white, who are in this picture above. But then remember that there was apartheid, imperialism and colonialism that placed the black majority at the bottom of the food chain. Think about them not a narrow BEE but black people as a whole.

Lastly without playing the race card, consider that the recipients of the R11, R15, R18 and R20 an hour minimum will be the blacks in general and Africans in particular.

**5. Economic background to debate on minimum wage**

All the evidence listed above vindicates SAFTU’s view that the South African economy is in free-fall, with no sign of recovery, and, as always it is the working class and the poor who suffer most as a result. The crisis has created a swelling army of unemployed, temporarily employed, part-time, casual and marginalised workers who live in deep poverty.

Apartheid deliberately absorbed and expelled workers so that they were never integrated into the heart of the social and economic system. The Bantustans acted as huge reservoirs of labour that were ignored by the political and economic powers controlling South Africa. With the demise of influx control and ultimately the demise of the whole apartheid system, it was expected that employment would grow rapidly.

However this was not to be, as the rising levels of unemployment explained above demonstrate. The 1980s had seen a growing stagnation of the dominant mining and heavy industrial sectors, interacting with the growing political crisis. During the dawn of democracy the six conglomerates dominating the Johannesburg Stock Exchange sought to restore their profits in a way that even the conservative last apartheid Minister of Finance Derek Keys described as "Victorian".

Instead of responding positively to the demands of the trade union movement that they invest to expand and deepen industrialisation, they pursued the two pronged strategy of removing their holdings offshore whilst at the same time seeking political legitimacy by drawing into their businesses a handful of politically connected black individuals (ironically at a high level of indebtedness). They invented the current form of BEE long before it became policy.

The result of this unproductive strategy was to keep private fixed investment low, at a post 1994 average of 13% of GDP. This is lower than all other comparative middle-income countries. Without productive and job rich investments, it is little wonder that our levels of unemployment have continued to grow.

What this picture of unemployment means for us:-

* We have to make clear demands for job creation through investment, especially in manufacturing
* We need to support the organisation of the unemployed and link arms with such organisations in struggle
* We need to make a special effort to link arms with youth unemployed, women unemployed, and unemployed people in the non metro and rural areas
* We need to see the differences in unemployment rates between racial groups not as a reason to concentrate only on African unemployment, but rather as a reason to reinstate non racialism in our organising. Unemployment rates are unacceptably high for ALL race groups.

This is the context of the debate the parliament is having.

**6. National Minimum wage**

It is from all of the facts above that we appeal to the members of parliament to reject the National Minimum Wage Bill.

The President of the country is reported to be earning R3,6 million a year. That translates to R300 000 a month, R10 000 a day and R1250 per hour! We know that this is all peanuts to him because, as a multi-billionaire, he owns much more than what government gives to him as a salary.

Yet his National Minimum Wage Bill before Parliament at present will introduce a poverty wage which will legitimize and entrench the apartheid wage structure. It is a poverty minimum wage on which nobody should be expected to live.

The Bill introduce a poverty wage which will legitimize and entrench the apartheid wage structure. It is a poverty minimum wage on which nobody should be expected to live. The new minimum wages will be:

 • R20 an hour for most workers

 • R18 an hour for farmworkers

 • R15 an hour for domestic workers and

 • R11 an hour for Extended Public Works staff

Each MP must decide whether s/he want to perpetuate the status quo of whether they want to stand firmly on the side of the most vulnerable in society an make an intervention to stop this from continuing as a feature of our democracy.

It is also worth again reminding those who will vote on this Bill, and the executives of the companies who complain about R20 per hour, that it is these workers who pay their wages. The country's wealth in created by the surplus value created by workers, who create enough wealth to pay their own wages within the first or two hours of working a day, while the rest got towards paying the executives these excessive salaries.

The share of wages in the GDP has plummeted from 57% in 1991 to below 50% today. The Forbes report of 2017 shows that South Africa has fast growing list of the dollar billionaires class. Whilst this class of multibillionaires is growing the economy is not growing with the same speed and wages of workers remain suppressed.

The poverty of the many explains the opulence of the few. There was no greater example of this than the protracted strike on the platinum belt in 2012. The executives of the company involved, all of whom earned huge salaries brought not an ounce of platinum out of the ground, yet maligned the rock-drillers for demanding a wage of R12, 500. It is workers who create wealth, some of which is assigned to those in society who service the economy, doctors, teachers, office staff and the executives who believe they are worth millions of rand each year.

Those who support the Bill would never dream of having to live on R20 an hour, a figure which for a family of four with one person working means that they would still live below the poverty line! No foreign travel, no decent medical cover, no school fees - in fact no life, simply a day to day existence.

It does not break with the past levels of super exploitation and the programme designed in the apartheid and colonial era to keep black workers as a pool of cheap labour to be exploited in the farms and other industries. It doesn’t break the pattern that developed during our ugly past and that unfortunately deepened during the first two decades of freedom and democracy, which is growing income inequality.

The irony of this imposition of poverty wages for the most vulnerable sections of workers there is no talk of measures to curb the runaway executives pay in South African.

If there are any in Parliament who do not believe this to be obscene then they must cease to purport to care about the poor and working class majority in South Africa.

From the outset it should be noted that SAFTU supports the principle of a national minimum wage but insists that it must be a living wage, on which workers and their families can live in security and comfort. This is to us a real meaning of a slogan “a better life for all”.

The Bill in its current form simply turns that slogan on its head and embrace a new slogan “a better life for some”. A meaningful minimum wage and a living wage would still mean workers begging to get back a greater proportion of the wealth they create.

SAFTU utterly rejects the argument that this bill should be supported because R20 an hour is “better than nothing”. The scandalous fact that so many employers currently pay workers even less than this poverty wage in no way justifies a minimum which, even if properly enforced, will still leave employees mired in poverty.

It will also entrench structural inequality in this, the world’s most unequal society.

SAFTU believes that the National Minimum Wage will do nothing except:

* Entrench the apartheid wage structure
* Keep millions of workers trapped in poverty and slave wages
* Widen income inequalities that have made our country the most unequal in the world.

Workers have fought and paid dearly for demanding a National Minimum Wage, but the R20 and hour level is spitting on the graves of the Marikana martyrs who were murdered for demanding a R12 500 a month. It is an insult to outsourced workers demanding a minimum wage of R10 000.

Even those union leaders who signed the Nedlac agreement now claim that the government has smuggled into the new legislation provisions that were not in the agreement, like the definition of “worker” which was intended to include those in insecure forms of employment and those who are deemed to be “self-employed contractors” but which provision has been dropped.

And not all workers currently earning less than R20 an hour will get an increase. Some employers have already indicated that they will simply employ workers for fewer hours and thus keep their monthly wage bill the same as before. The workers who will be the most affected by this are those who are already vulnerable, those in atypical forms of employment such as part-timers who could find cuts in shifts to ensure wages remain the same.

Another huge problem is the enforcement of the national minimum wage. This will move from the Department of Labour to the CCMA. A worker who is being underpaid will have to refer the case to the CCMA. The average time for a case to reach arbitration is 60 days, but can take many more months.

Even if a worker eventually receives an arbitration award, many employers will simply ignore it. The next step is for the worker to have the award certified by the CCMA. If the employer still refuses to abide by the award the worker has to get a writ of execution, which is then served by a sheriff but often only after the demand for a deposit has been met.

By making the CCMA the primary enforcer of the National Minimum Wage, the process is likely to become fraught with legal and practical difficulties, making the whole process unworkable.

SAFTU does not believe that their is any justification for exclusions or “phasing in” of a national minimum wage.

During the various processes and discussions outside of Nedlac on the National Minimum Wage it was clear that international best practice was that you set the wage and all must comply.

Of course this would mean that much creative thinking would have to take place to deal with potential job losses. Domestic Workers for instance could be employed by government and assigned to those who most need help, the elderly for instance. This not only provides proper dignified employment for domestic workers and moves them away from the idea of maid and madam, but helps to keep people in their own homes and out of care facilities and reduces costs to the state.

EPWP workers are no longer used as envisaged by the original idea, which was flawed in and of itself, but to do jobs which should be done by permanent workers with a decent wage and benefits. R11 an hour is insulting. These workers should be absorbed immediately by municipalities to deal with the backlog of infrastructure projects. The EPWP has become nothing more than a government’s cheap labour scheme.

It is a disgrace that in a country where land is surely at the centre of the national question, where food security for ever-growing cities is a national requirement, that farm workers are not deemed to be worthy of R20 per hour and must work up to this over a few years!

If those who own the land were using it properly it would surely be inconceivable that they could not afford this paltry amount.

SAFTU also dismisses with contempt the idea that business can’t afford a decent wage. Profits, which are the unpaid wages of the working class are being spent on executives and shareholders rather than on the wealth creators. Shareholders who have in the main had their initial investment back many times over continue to demand tightening of belts and lowering of standards. Even those who claim to be activist shareholders and demand remuneration committees to decide executive pay only do it to increase their share of the pot they do nothing to create.

SAFTU demands as a starting point a minimum wage across the board of R12,500 per month. Workers deserve no less.

**7. Labour Law amendments**

The Parliamentary Portfolio Committee on Labour has also been considering amendments to labour laws that we believe represent a frontal assault on the constitutionally guaranteed right to strike and to bargain collectively.

These rights are enshrined in the Bill of Rights. All parties in parliament played an important role in negotiating our constitution.

We believe that the Bills upset the delicate balance that was struck between workers’ and employers’ rights in the constitution. They represent the most glaring attack on workers since the dawn of democracy and are no different to those introduced in Britain by the late Prime Minister Margaret Thatcher and Ronald Reagan in the United States. Their project, just like these Bills, was designed to disarm and emasculate workers.

Class peace cannot be imposed by diktat.

Before we consider the specific issues we wish to raise it is important to look at what the constitution says about the workers rights.

 **Labour relations**

23. (1) Everyone has the right to fair labour practices. (2) Every worker has the right—

1. (a)  to form and join a trade union;
2. (b)  to participate in the activities and programmes of a trade union; and
3. (c)  to strike.

(3) Every employer has the right—

1. (a)  to form and join an employers’ organisation; and
2. (b)  to participate in the activities and programmes of an employers’ organisation.

(4) Every trade union and every employers’ organisation has the right—

1. (a)  to determine its own administration, programmes and activities;
2. (b)  to organise; and
3. (c)  to form and join a federation.

(5) Every trade union, employers’ organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

(6) National legislation may recognised union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

**Limitation of rights**

36. (1)

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, including—

1. (a)  the nature of the right;
2. (b)  the importance of the purpose of the limitation;
3. (c)  the nature and extent of the limitation;
4. (d)  the relation between the limitation and its purpose; and
5. (e)  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.

At this time in our history it is clear that workers need more and not less protection from unions. Already the Labour Relations Act (LRA) favours employers in strikes. They have been given a right to employ scab labour that makes the strike irrelevant to them.

Since the dawn of democracy workers and unions have had to jump through hoops to attain a certificate to strike even after what is often a long and protracted negotiation process.

That of course is where there are negotiations. Many workers in South Africa do not even get to negotiate wages or conditions. The employer simply decides if and when workers will get increases.

Employers acting alone without any negotiations with any union or workers set a staggering 62% of all wages. Between 5 to 10% of workers do not receive any kind of an increase.

Only 23% of workers receive wages through collective bargaining. This means 77% of workers do not receive any wages increase as a result of collective bargaining. Only 9% of wages are set through centralised bargaining structures.

It is estimated that some 76% of employees are non-unionized. Some will of course be covered by Main Agreements, which are extended but many are not.

Given that it is already difficult for unionised employees to go on strike, which will be worsened by these amendments, then what chance to the majority of non-unionised workers have of ever exercising their power?

The Bills are also a product of an undemocratic process. They were agreed to behind workers backs at Nedlac, a forum where SAFTU, which is the second largest Federation that now represents 30 unions with nearly 800 000 workers, remains locked out. There was no consultation with workers who are going to be negatively affected by these draconian Bills.

The worst attack on workers is on their constitutional right to strike, not by an explicit ban, but a mass of legal obstacles and lengthy processes for trade unions, which are going on a lawful, protected strike almost impossible. The most worrying areas are:

7.1 **Balloting**

This amendment seems innocuous at first glance. The only change to the existing act is that the ballot is defined and their are changes to the requirements on record keeping.

The provision of the existing Section 95(5)(p) states “that the trade union or employers' organisation, before calling a strike or lock-out, must conduct a ballot of those of its members in respect of whom it intends to call the strike or lock-out”.

This is to be amended to cover “any system of voting by members that is recorded and in secret”. It further will compel union to keep ballot papers and “any documentary or electronic record of the ballot” for three year from the date of the ballot.

It is however a back-door infringement on the right to strike, another hoop to be jumped through by a trade union, that will be used by employers to try to influence the outcome of a secret ballot. Threats to jobs etc. will become the order of the day.

What of non-unionized workers? Most of them would decide to strike with a show of hands; must they now hold a ballot? How would they possibly be able to do so!

Even unionized employees, after months of negotiations, CCMA processes must then organise a secret ballot.

Who organizes the ballot? Many small unions would simply not have the capacity to organize such a ballot or the financial wherewithal to pay for an independent body.

Whilst not organizing a ballot will not render the strike unprotected it could open up the trade union to attack from the Department of Labour in relation to its registration.

Even the inclusion of the present section in the LRA is an insult to workers. One of the intentions of the Department of Labour is to ensure that unions are controlled by their members and not by outside bodies. Section 95 however shows that such a prohibition does not to apply to them. They are allowed to instruct a union what to do if it wishes to be registered, even if the members disagree.

Instead of tinkering with what is already an infringement on the rights of members to determine the content of their union’s constitution, SAFTU demands the repeal of the entire section 95 of the Act. Power to run and control their own organizations must be given back into the hands of members.

Trade unions which do not represent their members or whose leadership abuse their positions will soon be brought to book by those members.

7.2 **Strike notices**

The amendments include new rules for strike notices, which place more obstacles in the path of workers in dispute.

SAFTU contends that the current requirement to give notice is an infringement on the right to strike. Employers simply prepare to sit out a strike.

There can be no requirement on a trade union to agree a notice period. A strike is the last resort of workers. The exercise of their power to their benefit not for the benefit of their employer!

The notice must include the date and time when the strike is to commence and the demands that the other party is required to meet, which must not be different from those upon which the parties deadlocked”.

This is a nightmare scenario. Most unions and employers go into negotiations with a list of demands. Some are more important than others and will be prioritized. The fact that there is no official deadlock on some issues does not make them go away.

If everything has to be deadlocked on the negotiations will become more and more protracted, accompanied by an increasing and mounting anger on the shop floor.

Shop stewards are not lawyers; they are worker leaders but every action they take in a strike notice will be seen by the employers’ lawyers and there will be an increasing number of court cases, most of which many unions will not be able to defend because of financial constraints.

7.3 **Picketing rules**

An amendment will ban picketing unless a union’s picketing rules have been agreed, preferably prior to the conclusion of the CCMA process. If they are not agreed then rules can be decided by the Commissioner and imposed.

This is one of the biggest infringements on the right to strike in the current amendments.

Picketing during strikes has always been a contentious issue. Employers have been able to run to the court ,with little or no evidence, on an urgent basis.

This has often resulted in interim orders pending return dates, which have brought strikes to an end for no good reason. This change is open hunting season for employers!

The onus to oversee the rules lies with the commissioner, whether agreed or imposed. But if a strike commences without he or she having done this, then the sanction is on the striking workers and the trade union.

This is an open invitation to employers not to agree on the basis that they know that the imposed rules will always work in their favour. That is the experience of the past.

Workers are told to stand 100 or 500 metres away from gates, with no access to toilets etc. That is not a picket. This is disarmament!

Workers must have the right to stop and talk to anyone entering the employer’s premises and ask them not to do so.

That is a picket!

In fact government is handing over the conduct of strikes to people who in the main will never have worked on a shop floor, never had to suffer the racism and sexism that workers suffer daily and never had to live on poverty wages.

Together with the arbitration amendment this is supposedly in response to increasingly “violent” pickets and strikes.

The amendments are silent however on the main reason why strikes, and a minority at that, become violent, that of replacement labour.

One of the reasons given by the Department of Labour for these amendments is to bring us into line with the ILO. We set out what the ILO Principles on the right to strike have to say on this issue, that “*the hiring of workers to replace strikers seriously impairs the right to strike an is acceptable only in strikes in an essential service or in situations of acute national crisis”.*

In general the ILO says the following on picketing: “*Restrictions on picketing should be confined to cases in which such actions ceases to be peaceful and picketing should not interfere with the freedom to work of non-strikers”.*

The new amendments demand that restrictions on picketing be “agreed” prior to the end of the conciliation and if they are not, they will be imposed. The ILO indicates that in normal circumstances that there should be no restrictions.

It would appear that some ILO principles are more important than others.

Parliament should not accept the same flimsy evidence provided by employers to the courts to curtail the right to picket.

7.4 **Conciliations and arbitrations**

The length of the conciliation process is at present 30 days but an amendment allows the CCMA to extend this period by up to 5 days.

A new section deals with the circumstances under which a process of an “advisory arbitration panel” should be convened.

The panel can be convened by the Director of the CCMA, if the Minister of Labour so directs or by one of the parties to the dispute.

The amendment also directs the CCMA Director to propose alternative means to reach a settlement, such as an “advisory arbitration”, under which a panel is convened to recommend an “advisory ruling” to both parties to the dispute. It is pretty clear that the CCMA will be inundated with such requests from employers in future.

The Labour Court can also hear an application from an interested party to convene the panel.

One can almost see the various employer bodies in the country already queuing on the court steps!

The Director had to satisfy herself of the following before convening the panel:

1 the strike is not longer functional to collective bargaining;

2 there is an imminent threat or use of violence or damage to property; or

3 the strike may or is causing an acute national or local crisis affecting the normal, social and economic functioning of the community or society”.

What is the evidence that the Director would require to make any such findings?

The system is an open door for abuse by employers and employer organizations who no doubt will attend any such arbitration with a herd of attorneys and counsel.

The most chilling however is number 3. A strike is the worker’s side of power, and the lock-out is the option of the employer.

The point of a strike is that it causes harm to the employer and through the non-production of goods affect his business and that of those who trade or deal with him. There is no other purpose to a strike and it is a legitimate purpose. It is intended to force an employer back to negotiations and to settlement.

Where can it be the role of government, parliament or the Department of Labour to protect business against the legitimate rights of workers to withdraw their labour?

In effect if your strike is effective and your employer is adversely affected then he can run to the CCMA who will intervene on his behalf. The worker becomes a slave!

Those in favour will say well it is only advisory and doesn't effect the strike, but it does. It says to the workers: you have no right to be on strike because of one of the issues set out above.

We return to our question as to what evidence will someone not involved in the strike use to make such a determination. The hearsay of the employer that we see in strike interdicts? The self interest of employer organizations who can approach the court?

The parties are then told they have seven days to accept or reject the determination and they must consult their members. If it is not rejected in the time then it becomes binding.

How does a union of 400,000 members do that in the time given?

In fact this is not voluntary arbitration as set out in the ILO principles on the right to strike. If the Director of the CCMA or the Minister or one of the parties or even, through the court, an interested party, decide on arbitration then it is in effect compulsory. You have to attend and then unless you opt out ,the award becomes binding.

This is far removed from the voluntary arbitration approved by the ILO.

All these amendments, when seen together, seek to place even more obstacles for trade unions than those already in existing laws. They open up the likelihood of even more and longer court battles around laws, procedures and codes of conduct.

They take no account of the way strikes frequently erupt when workers are confronted with unfair dismissals, racist abuse, health and safety violations. They quite justifiably want to respond immediately and effectively, by walking out of the workplace there and then. But under these laws, their union will often be unable to support them without going through long and difficult legal battles with the employers.

It thus seriously weakens the unions and rather than ending potentially long or violent strikes is if anything likely to cause more, as workers lose patience not only with the employers but also with their unions whose hands are tied behind their backs by these laws.

We demand that the Bill be scrapped and that the process returns to Nedlac but a Nedlac that will not lock out important constituencies such as SAFTU. We request that the portfolio committee allows SAFTU and others to make oral and written submissions so that we can expose our MPs to the real meaning of this attack on hard-won worker rights of workers and to the lived lives of the working class in South Africa of 2018.

8. **Conclusion**

We have demonstrated that the Labour Amendments Bill represents a savage attack on the right of workers to strike. We have likened these Bill to the era of Margaret Thatcher of Britain. The sole intention is to defeat the workers and hand them over to their class enemy as a defeated class.

We appeal to members of parliament not to agree to the emasculation of the working class at the time when you should intervene to stop the workers falling onto deepening poverty, inequality and unemployment. A debate instead must be how should we strengthen the weak and the vulnerable in the face of the increasing power of the ruling class.

In our view this debate should be based on the following key points that have been debated in the past without any concrete steps.

1. The introduction of a wealth tax
2. The introduction of a solidarity tax
3. The reviewal of the corporate taxes that were around 45% during the apartheid era but driven down to around 28% during the era of democracy.
4. The reviewal of the personal income tax to ensure that those who can pay more make more contributions to the fiscus
5. Capping the salaries of those earning grotesque amounts not through declaration of intent but practically
6. The full implementation of the Freedom Charter clause 3 and 4 on land and sharing of the economy

These measures and more will take us to the direction of the radical economic transformation and a better life for all.

The National Minimum Wage Bill and the Labour Amendments Bills including the scrapping of the Sectoral Determinations are taking us to the opposite direction of not only maintaining the current status quo but actually postpone the dreams of the many permanently.

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