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#### ATTACKING THE POOR: SOUTH AFRICAâ\200\231S LABOUR LEGISLATION

The latest proposal by the government to extend the Basic Conditions of Employment Act (BCEA) and ultimately the Labour Relations and Wage Acts to domestic and farm workers, represents an expedient sop to entrenched elites, like Cosatu, to buy-off economic â\200\234stabilityâ\200\235 at any cost. Importantly, there are no economic gains to be made by the implementation of the proposed legislation over these two large sectors of the economy. The driving force behind the extension of the BCEA to domestic and farm workers, rests on the notions that it is a response to the widespread â\200\234exploitationâ\204¢ and â\200\234unfair labour practicesâ\200\235 which ostensibly take place in these sectors.

#### 1. IS LABOUR A SPECIAL CASE?

The major problem confronting conventional thinking about labour relations generally, is the view that labour, due to its human face, is not a commodity, but something special that requires protected rights and privileges. Arguments advanced for removing wages and labour from the competitive nature of the market system, such as demands for a â\200\234living wageâ\200\235 or attempts to define â\200\234unfair labour practicesâ\200\235, have invariably been couched in ideological and sociological rhetoric. This has tended to cloud the economic realities that govern the voluntary interaction of employees and employers in the market place.

Labour is a commodity - something of value. The employee sells labour and the employer buys labour. Wages are the price paid for this labour. Contrary to those calling for social or economic â\200\234justiceâ\200\235, there are no objective standards of justice which can be applied to the arbitrary determination of wage levels, or to what may constitute an â\200\234unfair labour practiceâ\200\235. The determination of what constitutes a â\200\234fair wageâ\200\235 or â\200\234fair labour practiceâ\200\235 is based on highly subjective values, rather than market reality, and are therefore impossible to quantify. Both these aspects can only be effectively solved by the impersonal determination of wages by the market and the terms of the employment contract.

## 2. THE DESIRE FOR LABOUR LEGISLATION

Labour relations are invariably directed by the state; driven by the misguided belief that employees can only benefit via the forced collectivization of their efforts, rather than through voluntary arrangements. In the search for â\200\234social justiceâ\200\235, unions are invariably granted â\200\234exclusive agentâ\200\235 status on behalf of employees in terms of a battery of government-enacted labour legislation which very often discriminates not only against the employer, but also against the employee.

The case that is advanced for government intervention in the labour market is the â\200\234market failure principleâ\200\235: the argument being that the market cannot define â\200\234fair wagesâ\200\235 or â\200\234fair labour practicesâ\200\235

which are themselves indeterminable and heavily value-laden concepts. The problem is that governments cannot intervene without cost to what are perceived to be imperfect markets. Somebody has to pay the price for government intervention, whether it be the consumer, the employee or the employer. The result is that while certain sectors of society may benefit from labour legislation in the short run, the long term costs of intervention far outweigh any perceived benefits. The pursuit of economic justice through state intervention in the labour market fails three crucial tests: a) it does not increase employment; b) it does not increase economic growth; and c) most importantly, it does not maximise greater personal economic freedom.

### 3. THE ATTACK AGAINST THE POOR

Notwithstanding the theoretical debate as to whether there is a case for specific labour legislation of any kind, on a practical level, the desire to bring South Africa's labour legislation in line with internationally accepted standards, as laid down by the International Labour Organisation, is ill considered. As a developing country, South Africa is not suited to the super-imposition of the type of labour legislation which is found in developed countries, on economic sectors that are a wash with unskilled or, at best, semi-skilled labour. Basic conditions of employment - especially aspects such as minimum wage legislation - are far easier to apply in developed countries, where the target groups affected by such legislation (ie, those who fall below set basic conditions of remuneration), are far smaller than those found in developing countries. The greater the number of people affected by minimum remuneration requirements, the greater the dislocation to the economy and the threat of increased unemployment in the labour market. Nowhere is this more clearly illustrated than with the introduction of minimum wage legislation.

#### 3.1 An Ally of Unemployment

One of the most destructive weapons in the legislative armoury of labour market interventionists is the statutory setting of minimum wages. Though South Africa does not have a national minimum wage level, the current Wage Determination Act defines certain minimum requirements for specific economic sectors, as do the country's twelve Industrial Council Agreements. While there is no immediate plan to extend the Wage Act to domestic and farm workers, it is certainly the longer term objective of both Cosatu and the government.

The demand of the South African Domestic Workers Union (SADWU) for a flat R450,00 per month minimum wage level for domestic servants, best illustrates the problem. A recent World Bank report by economist Peter Fallon is critical of minimum wages saying they significantly reduce employment in labour intensive sectors. The fundamental problem is that any define

d wage level discriminates against, for example, the youth, women, the unskilled, and the unemployed, who are willing to sell their labour for less than the set wage level. Simply put, it denies entry into the job market for many people, resulting in higher unemployment. With up to 40 percent unemployment in South Africa, there is a need to equalise access to job opportunities in the marketplace rather than to enact legislation that will protect workers at artificially high remuneration levels.

#### 3.1.1. Impact of the BCEA

Logically, this analysis can be extended to the consequences of the proposed extension of the BCEA to domestic and farm workers. Almost every aspect of the BCEA, whether it be the setting of fixed working hours, outlawing "child labour", or setting compulsory pay for overtime, all constitute higher barriers of entry into the labour market for prospective job seekers. Such legislation strips the poor or unemployed of their most effective bargaining weapon "their ability to voluntarily

provide a cheaper service than their protected counterparts who fall under legislation such as the BCEA.

Given that unemployment will inevitably increase as a result of state intervention in the labour market, the suggestion by some, that employers must simply "bite the bullet" and pay more, does not solve the unemployment problem. Short of introducing draconian Stalinist-type legislation forcing employers to employ X number of employees under pre-determined conditions of employment

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ment, the market will deal harshly with any coercive tampering of the going wage or remuneration rate, either by increasing unemployment or inflation.

Contrary to trade union objectives, it is the employee and consumer rather than the employer, who bears the greater brunt of any manipulation of the labour market.

### 3.2 Unions: Enemy of the Poor

Most unions specifically dislike competition in the market place, especially in the market for labour. Stripped of their humanitarian facade of improving worker conditions, unions demands for collective bargaining clauses; work preservation clauses to ensure that dismissals do not occur; the last-in first-out (LIFO) principle; picketing rights to deny employers the ability to employ workers from outside the union; and minimum employment conditions, all essentially constitute a protection racket to shield their members from irritants such as scab labour and the intrusions of the poor and unemployed into the labour market. Furthermore, trade unionists and labour relations experts concede that there might be a few dismissals or a knee jerk reaction to the implementation of the BCEA, but merely an aberration that will soon correct itself. This expedient approach once again underscores a cynical, at best ambivalent, consideration for workers who, however small their numbers, may lose their jobs.

Though difficult to quantify, the South African Agricultural Union (SAAU) has estimated that the extension of South Africa's current labour legislation to the farming sector could result in ten percent of 1.3 million farm workers facing unemployment. A similar assessment could be made for the country's 1,4 million domestic workers. Many full time employees will also face the prospect of part time employment, resulting in a real drop in earnings

No proponents of state intervention, though, have bothered to consider the fundamental question as to whether an individual has a right to offer his or her labour at a lower rate than the legislated minimum requirement. Instead, labour legislation has served to entrench a labour aristocracy increasingly immune to the forces of market competition. The extension of the BCEA to all sectors of the economy will further entrench this elite who are essentially hostile to the poor, the unskilled and unemployed who threaten their protected position.

### 4. THE REQUIREMENT FOR FLEXIBILITY IN WORKING CONDITIONS

A major flaw in extending the BCEA to domestic and farm workers is that it attempts to standardise working conditions for sectors of the economy which require a degree of flexibility. Though not finalised, the proposed legislation for farm workers, for example, does not take into consideration

the seasonal requirements of farming which, under certain conditions, may require lengthy working hours to ensure the successful production of a crop.

Similarly, household work for domestic servants may also require working hours that fall outside the proposed legislated maximum of eight and a half hours per day, as well as during weekends. Not only does inflexible legislation concerning work place conditions inconvenience the employer, it also penalises employees who desire extra income from extra work.

#### 5. PRIVATE PROPERTY RIGHTS VS WORKER RIGHTS

A potential area of conflict which has not been duly considered is that of the rights of property owners vis a vis the rights of union organising. Importantly, the proposed new labour legislation for domestic and farm workers recognises the right for these sectors to organise freely into trade unions. Freedom of association is a fundamental pillar of economic freedom.

\_ This right, however, should not include the right of trade unions to organise workers on private property without the consent of the owner. Any legislation which undermines any aspect of property rights needs to be strongly opposed. Furthermore, any legislation overruling common law trespassing

laws protecting property owners from outsiders, will result in conflict, especially with regard to union organising in rural areas. Trade unions should be treated no differently to any other entity concerning access to private property.

## 6. LETTING THE MARKET FIND SOLUTIONS

For a number of years, long before the current legislation was considered, Western Cape wine farmers had already voluntarily taken important steps to improve overall conditions for the labourers. In some instances, worker committees have been set up to liaise with the farmer over various issues, as well as to deal with workers' problems on a social level. This development has helped minimise victimisation and heavy handed law enforcement measures. Most wine farmers have already implemented aspects contained in the pending legislation concerning new employment conditions for farm workers. In the long run, farmers with a contented labour force will perform better than farmers who continue to cling onto poor employment practices.

Furthermore, non-governmental organisations are also playing an important role in facilitating this process on the farms. Groups such as the Rural Foundation have helped introduce farmers to new, more participatory, concepts of management, and improved working conditions for labourers. In all these instances, no state intervention was required.

In the final analysis, the labour market should not be excluded from the general consensus that to reduce employment and boost economic growth, massive deregulation of the economy is needed. In the long run, only the free market, rather than administrative fiat, can successfully raise living standards for all employees in South Africa.

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