



**WHY SOUTH
AFRICA'S
PROPOSED
LABOUR
LAWS ARE
AN ASSAULT
ON
WORKERS**



On 17 November 2017 three bills were released.

- Amendments to the Labour Relations Act (LRA)
- Amendment to the Basic Conditions of Employment Act (BCEA)
- The National Minimum Wage Bill.

Public consultation has been rushed and limited.

- Initially less than 2 weeks for public consultation. 2 extensions were granted. Deadline for public comment now 16 March 2018.
- **But** the Parliamentary Portfolio Committee on Labour is meeting the w/b 19 March 2018 with the Bills due to be tabled in Parliament on 27 March 2018.



If passed in their current form the Bills will have the following effects.

- Limit the right to strike.
- Change the conditions of collective bargaining allowing minority unions to dominate sectors.

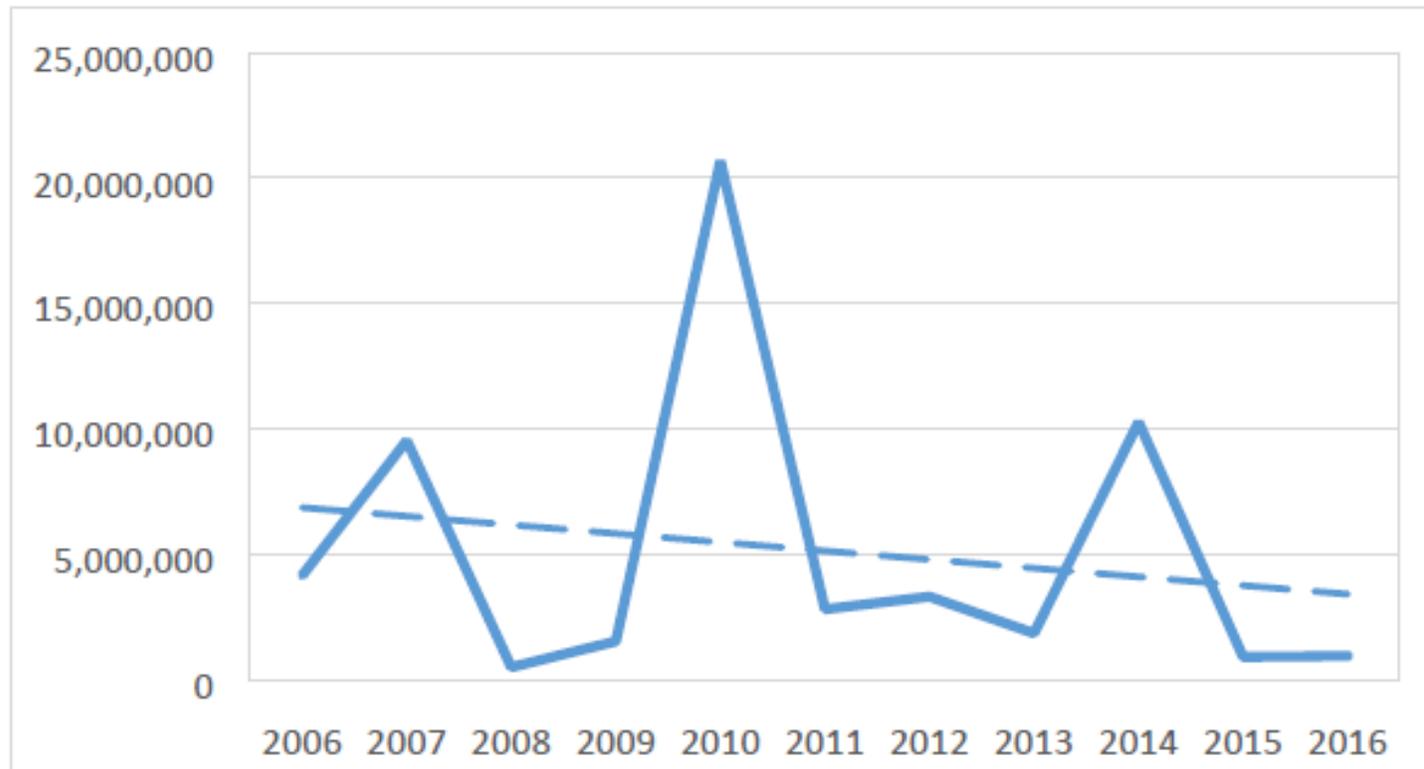
The National Minimum Wage

- Many workers will not even get R3,500 a month.
- Enforcement of NMW will be rendered ineffectual.
- It will overburden and potentially collapse the CCMA.
- The introduction of the NMW will take away important protections for vulnerable workers.



WHY THE DEPT OF LABOUR SAYS WE NEED NEW STRIKE REGULATION?

Figure 2: Number of working days lost 2006-2016



Source: Department of Labour Annual Industrial Action Report



VIOLENT STRIKES?

Figure 4. Estimated number of orderly and disorderly labour protests 1997-2013



Extend conciliation to 35 days

- Frustrates workers.
- Provides employers longer to prepare for strikes through stockpiling and employing alternative labour.

Secret ballot

- Interferes in the constitutional rights of unions to decide their own democratic processes.
- Individualises an essentially collective decision.
- Organisational and institutional burden placed on unions.
- Provides employers an avenue to interdict the strike.

Compulsory picketing rules

- Likely to increase conciliation time and further burden the CCMA.
- Commissioners do not know the workplace. Generic picketing rules could lead to increased frustrations and tensions between workers, unions and employers.



Advisory arbitration

- The circumstances under which advisory arbitration panel can be convened are extremely broad.
- 'Public interest' or if the Minister of Labour/ Labour Court/ CCMA commissioner/ 'anyone materially affected' decides the strike is no longer functional to collective bargaining.
- Employers can apply for advisory arbitration as soon as the strike certificate has been issued and before a strike even happens.

- The process of advisory arbitration will mean that unions are now expected to involve experts and technically inclined personnel to engage in the deliberations of the advisory arbitration panel.
- Collective bargaining will become more technical in character and far removed from the control and direction of workers.

- Even if unions do not take part in the advisory arbitration they are still forced to take account of it.
- Unions must indicate whether it agrees or disagrees with the advisory arbitration recommendations. If they disagree then they must provide reasons and demonstrate that its rejections are based on a mandate from its workers.



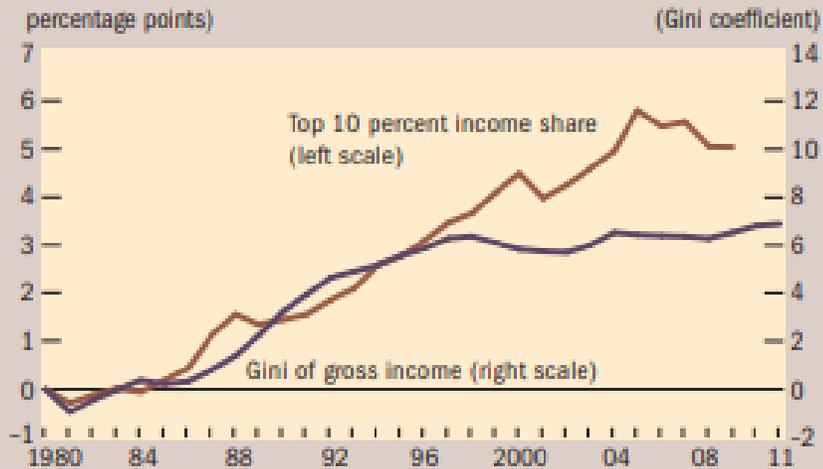
LIMITING STRIKE ACTION MAY INCREASE INEQUALITY

Chart 1

More for the top

Over time, those at the top of the income distribution in advanced economies have enjoyed an increasingly larger share of total income, exacerbating inequality.

(cumulative change since 1980, percentage points)



Sources: World Top Incomes Database; and Standardized World Income Inequality Database Version 4.0.

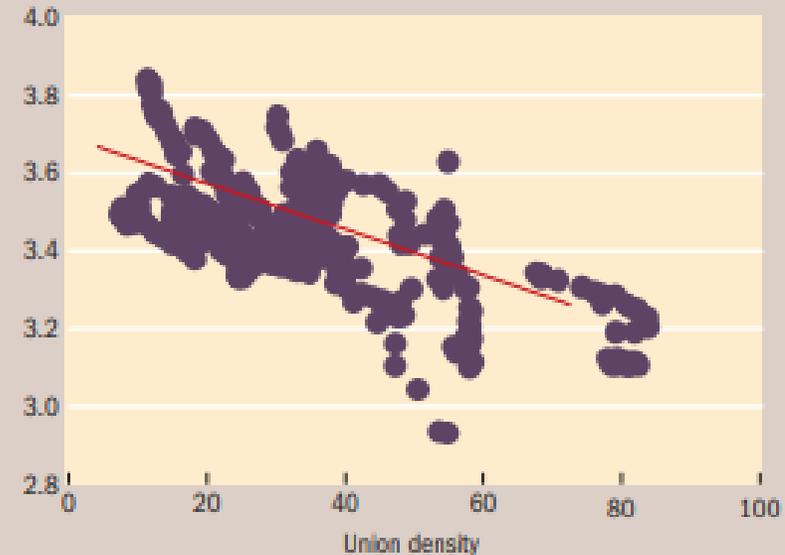
Note: Gini coefficient equals 0 if all income is equally shared within a country and 100 if one person has all the income. Advanced economies = Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, and United States: simple average. For top 10 percent income share, Austria, Belgium, Canada, Denmark, Finland, Germany, Netherlands, New Zealand, Portugal, and United Kingdom are excluded due to missing data.

Chart 2

In fairness

Lower unionization in advanced economies is correlated with an increase in top 10 percent income share.

(log of top 10 percent gross income share, 1980-2010)



Sources: Organisation for Economic Co-operation and Development; and Standardized World Income Inequality Database Version 4.0.

Note: Advanced economies = Australia, Canada, France, Germany, Ireland, Italy, Japan, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and United States. Union density is the share of workers affiliated with trade unions.



NATIONAL MINIMUM WAGE: THE PROBLEMS

- There will be no legislated monthly minimum wage of R3,500. Only R20 p/h, meaning many workers will not earn R3,500.
- The CCMA will become responsible for the majority of the enforcement of the NMW.
- Sectoral determinations will be repealed as a result of the NMW.
- The Employment Conditions Commission will be replaced with the NMW Commission to the detriment of all workers.
- Little public detail on how exemptions will be granted. Online system – open to abuse?



THE CCMA IS NOT AN ENFORCEMENT INSTITUTION

- Originally established as a forum for individual dispute resolution. It, therefore, is not designed for collective dispute resolution.
- Only lawyers or registered trade union officials can represent you at the CCMA, but nearly 75% of workers are not unionised.
- Ever growing caseload, an average of 745 cases referred a day.
- Many arbitration awards are never enforced.



CHANGES TO COLLECTIVE BARGAINING

Currently

- In order to establish a bargaining council or have an agreement extended to non-parties, a trade union must organise the majority of workers in a sector and the employer organisations must employ the majority of workers.

Proposed changes

- Now that representivity can be determined if **either** the employer organisations employ the majority of employees or the trade unions represent the majority of union members.

The problem

- Protects the interests of minority unions at the expense of workers.
- Non-standard workers are likely to be excluded from how representivity is calculated.
- The majority of workers, who are not unionised, can be bound to agreements they were not party to and may prejudice their pay and conditions.



WHAT SHOULD BE DONE?

1. The proposed amendments on strike ballots, default picketing rules, extended conciliation and advisory arbitration be scrapped.
2. The LRA to be amended to prevent employers from using scab labour during procedural strikes.
3. Reinstatement into the LRA of workers' right to strike over disputes of right.
4. Trade unions organise a majority of workers in a sector before the establishment of a bargaining council is permitted or for bargaining council agreements to be extended to non-parties, without this being an equivalent requirement for employer.
5. A national monthly minimum wage be enacted. The setting of the amount must involve workers through a process of mass consultations with various options put to a popular vote.



6. The Minister of Labour's right to make sectoral determinations must be retained.

7. The making of new determinations for sectors currently covered only by the BCEA.

8. The National Minimum Wage Commission to have the power to investigate not only wages but also other conditions of employment in specific sectors and advise the Minister of Labour on the making of further sectoral determinations.

9. Enforcement of worker rights to remain the responsibility of a completely overhauled Labour Inspectorate, with a dramatic increase in personnel, training and monitoring of their performance and extended powers for labour inspectors, especially to enforce compliance orders.

10. Mandatory obligations on labour inspectors to consult with and account to workers when workplace inspections are carried out.



WHAT CAN YOU DO?

- Make a submission to parliament.
- Join the Stop the Labour Bills campaign.
- These changes effect everyone, whether you are working or not working!

