Halton Cheadle: South Africa

Background:

- Please provide an overview of your country's approach to bargaining and give us a sense of the most important political/historical factors that enabled the enactment of your system.
  - The 1995 South African Labour Relations Act (LRA) promotes voluntary collective bargaining at both sectoral and enterprise levels.
  - The legislation prior to the LRA instituted a system of sectoral bargaining councils in 1924 but which excluded African workers from participation in those councils. So called ‘works committees’ (with no right to strike) were provided for in special legislation applicable to African workers as an alternative to trade unions.
  - Despite waves of political repression of trade unions organizing African workers through to the 1960s, there was a resurgence of unions organizing African workers in the 1970s. Because they were excluded from sectoral bargaining councils, they developed an enterprise level strategy either using the ‘works councils’ or a recognition agreement strategy (based on examples of US recognition agreements).
  - Because of the pressure that these unions were able to initiate at both domestic and international levels, the 1956 LRA was amended in 1979 to admit trade unions organizing African workers. The major unions joined the councils and transformed them giving rise to a huge growth in union membership.
  - Public sector workers were excluded from the 1956 LRA but included in the 1995 LRA on a sector level basis.

- How do workers exercise power in bargaining? What strike rights exist? How are contracts settled?
  - All workers have the constitutional right to strike. Workers may not be dismissed for engaging in a protected strike and the use of temporary replacement labour is very restricted.
  - Secondary strikes are permitted under certain circumstances.
  - Trade unions have immunity from criminal and civil liability for protected strikes.
  - A protected strike is limited to a simple procedural process of pre-strike conciliation and notice. Strikes are not permitted in essential services although there is recourse to compulsory arbitration.
  - If the dispute is at sectoral level, the parties to the sectoral agreement may request the Minister of Labour to extend the agreement to non-party employers and employees.
  - Collective agreements are binding on the parties whether at sectoral or other levels.

- What percentage of workers are covered by collective bargaining. And how has this changed over time? Same for key sectors such as metal, education, other public, private services.
It is difficult to determine exact coverage by collective bargaining overall because there is no reporting or registration requirement in respect of enterprise level bargaining.

However because collective agreements at sectoral level require Ministerial (albeit limited) approval, there are figures for coverage of bargaining councils.

Approximately 2.5 million workers are covered by bargaining council agreements representing approximately 25% of the workers in the formal economy.

- **What is the mean wage for workers in your nation and how has that changed in recent years? Same for key sectors?**
  - To be added

- **Are any of the following not provided as public services in your nation: child care, higher education tuition, health care, long term care?**
  - Only health care is provided as a public service

### Mechanics of the sectoral system:

- **How are sectors defined and who defines the sectors? What sectors are covered/excluded from coverage?**
  - Sector defined by the parties but subject to oversight by NEDLAC, a statutorily established tripartite body and registration by the Department of Labour.
  - Only one bargaining council per sector/area.
  - No sector is excluded from being subject to a bargaining council.
  - The current sectors covered are the public sector, the municipal sector, various sectors in manufacturing and construction and various sectors in services.

- **What bargaining occurs at national level, regional level, sectoral level, or worksite level? How does sectoral bargaining interact with worksite bargaining, works councils, representation on corp. boards, etc.?**
  - Bargaining takes place at sectoral level, though within a sector there are national and regional forms of collective bargaining.
  - Where there is no sectoral bargaining council. Bargaining takes place either at a multi-employer (mining) or enterprise level.
  - Where there is sectoral bargaining, bargaining at enterprise level is governed by any provisions related bargaining at that level in a sectoral collective bargaining agreement.
  - Provision is made for work councils, called workplace forums in the LRA, but they have not been utilized by the trade unions.

- **Who represents workers in bargaining at each level?**
  - Registered trade unions.

- **Who represents employers?**
  - Registered employer associations.
  - At enterprise level, the employer or its employer association

- **Who decides?**
  - The trade unions and employers decide on their scope and constitution
  - Registration is a simple process requiring only compliance with three principles: non-racialism and non-sexism; democratic practice and financial accountability.

- **How are nonunion workers represented?**
• As individuals they are not represented. However, minority trade unions do have limited organizational and representation rights.

• Is collective action protected for workers outside of the organized sectors? If so, how?
  o All workers whether in trade unions or not are entitled to declare disputes, have those disputed conciliated, and if not settled, to strike.

• What is the mechanism by which collective bargaining coverage is achieved?
  o The LRA permits employer associations and trade unions to establish a bargaining council on a sector/area basis. The councils have collective bargaining, compliance and dispute resolution roles all funded by employer and employee contributions.
  o The LRA permits the Minister, on application, to extend sectoral agreements to all employers and employees in the sector if the majority of employees are covered by the agreement.
  o At enterprise level, the collective agreement applies to all employees in the bargaining unit.

• How involved is the government in the process of bargaining (or contract extension)?
  o The Government has no role in the process of collective bargaining other than requiring-
    ▪ coverage requirements for extension of collective agreements
      • automatic if more than 50% of the employees in the sector are covered by the agreement,
      • ministerial discretion if less than 50%.
    ▪ an independent process in respect of exemptions from extended collective agreements

• To what extent does the law mandate sectoral bargaining?
  o The LRA provides for the establishment of bargaining councils on a sector/area basis with the following functions:
    ▪ The negotiation of sectoral agreements which include agreements on medical aid funds, sick pay funds, pension or provident funds, unemployment funds and the like.
    ▪ Policing collective agreements and the labour legislation in general
    ▪ Dispute resolution functions
    ▪ Training functions

• Is there a mechanism for supply chain bargaining?
  o No specific mechanism but multi-employer bargaining along a supply chain is permitted and processed through conciliation with a right to strike if no agreement is reached.

Successes/Challenges:
• How has composition of the workforce (race, national origin, immigration status, gender) posed a barrier to successful bargaining?
  o To be expected race and gender have posed serious challenges historically to successful collective bargaining.
  o Women remain under represented in leadership positions in both management and unions.

• How have structural characteristics—including fissuring, precariousness, isolation of workers, lack of a single physical worksite, and globalization—posed a barrier to successful collective bargaining?
  o These characteristics constitute serious challenges to collective bargaining at enterprise level.
- Sectoral agreements which apply to all employees irrespective of who employs them or where they are employed is a more effective way of protecting workers

- **What would you identify as the biggest successes and challenges of your system?**
  - The major success of the system has been the creation of self-governing employer/trade union institutions responsible for terms and conditions of employment that suit the sector; sick pay and medical aid schemes, retirement funds, and training schemes in the sector.
  - Because of the economy of scale, employees of small employers who could never afford medical aid and retirement funds are covered by the council benefits.
  - The biggest challenges are the limited number of national bargaining councils and the difficulties in persuading regional councils in the same sector to amalgamate.
  - Other challenges are the systematic attack by neo-liberal employer associations bent on destroying the sectoral bargaining council through litigation (largely unsuccessful) and joining councils with the specific intention of preventing them from functioning (one national bargaining council has been placed under administration because of this strategy).

- **To what extent is your system successful at building worker power at the work site, in the economy, and in politics? At creating and sustaining strong and inclusive worker organizations?**
  - Sectoral bargaining has assisted in the building of worker power at the workplace, in the sector and in the economy. The major trade unions in South Africa are members of bargaining councils

- **What legal reforms to the sectoral bargaining system has your country adopted recently? What were the political forces that led to those changes?**
  - Because of the litigation attacks by employer associations on the coverage requirements for the extension of agreements, the LRA has introduced amendments to limit the representativeness requirement to coverage (and not 50% of trade union membership).

- **Did any ancillary worker voice mechanisms — like works councils or board membership -- by law or practice predate the rise of sectoral bargaining in your country? If so, did the existence of those mechanisms soften opposition to sectoral bargaining and/or extension — or even simply facilitate the transition?**
  - No.