

The Relevance and Effectiveness of Nedlac as a Social Dialogue
Forum: The Marikana Crisis

Liesel Dentlinger

(11357984)

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Supervisor: Andries Bezuidenhout

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Declaration

I declare that this dissertation is my own original work. It is submitted in partial fulfilment of the requirements for the degree of Master of Social Science, University of Pretoria. It has not been submitted before for any other degree or examination at any other University. I further declare that I have obtained the necessary authorisation and consent to carry out this research.

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Liesel Dentlinger

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Acronyms and Abbreviations

AMCU	Association of Mineworkers and Construction Union
ANC	African National Congress
ANCYL	ANC Youth League
CCMA	Commission for Conciliation, Mediation and Arbitration
COSATU	Congress of South African Trade Unions
GEAR	Growth, Employment and Redistribution
ILO	International Labour Organisation
NEDLAC	National Economic Development and Labour Council
NMC	National Manpower Commission
NUM	National Union of Mineworkers
SAPS	South African Police Services

Abstract

Far from signalling the end of social dialogue, the Marikana massacre underscores the importance of refining and adapting existing peak-level negotiating fora such as the National Economic, Development and Labour Council (Nedlac). To ensure social dialogue remains an integral component of the South African policy-making and national decision-making system, social partners rely on a system of consultation and dialogue to build on a shared national vision. Dialogue is accepted as a means of consolidating a young, democratic but deeply divided South African society. It's also a medium through which to enhance participation in policy formulation and decision-making.

The study reaffirms the critical role that social dialogue plays in a developing economy such as South Africa using the case study of the Marikana massacre to illustrate this point. However, through an analysis of official documents and media reports, as well as selected interviews, the study highlights that the effectiveness of social dialogue through a statutory structure such as Nedlac, is at risk of collapse due to the low levels of commitment of the social partners involved in the Council's processes. The enhanced maturity of collective bargaining in creating a platform for engagement between labour and business is also emphasised through the outcomes of the research. The research recommends an overhaul of social dialogue principles and practices in order to derive benefit from the numerous benefits inherent in social dialogue.

Key words: Nedlac, social dialogue, collective bargaining, Marikana, social partners

Chapter 1: Introduction

1.1. Nedlac called into question

The National Economic Development and Labour Council (Nedlac) was established under the legislative governance of the National Economic Development and Labour Council Act No. 35 of 1994, as a representative and consensus-seeking body aimed at facilitating cooperation on economic, labour and development issues. At the time of its establishment, Nedlac aimed to promote economic growth, participation in decision-making and social equality, in an attempt towards seeking resolutions for socio-economic disputes (www.new.nedlac.org.za). In September 2014, during the 19th Nedlac Annual Summit, South Africa's Deputy President Cyril Ramaphosa cited Nedlac as one of the country's successes, having been of the first key national institutions established post the 1994 democratic elections. He reaffirmed that Nedlac was established at a difficult time during the country's transition and noted that it had been successful in playing a critical role in meeting the challenges of social development and economic growth through structured engagement among key social partners. Ramaphosa further acknowledged that although Nedlac could be considered an achievement of the country's democracy, as an institution, it has had mixed success and its performance had been "uneven" (www.thepresidency.gov.za).

Nedlac's effectiveness as an institution to drive social dialogue has come under criticism from various sectors in recent years. In 2012, Trade and Industry Minister Rob Davies was quoted as saying that Nedlac "takes too long and achieves too little" (Jones 2012a). In the same year, the Democratic Alliance (DA)'s finance spokesman Tim Harris was quoted as calling Nedlac "a place where policy goes to die" (Van Rensburg 2012) - a statement subsequently used quite often in relation to Nedlac. Also in 2012, Chamber of Mines Chief Executive Officer Bheki Sibiyi said he regarded Nedlac to be so

ineffective that he refrained from attending meetings of the Council (City Press 11 September 2012). Vic van Vuuren, the International Labour Organisation (ILO) country director for South Africa, has said that Nedlac is not as effective as it was in the late 1990s (Independent Online 15 October 2014). In June 2014, Mining Minister Ngoako Ramatlhodi publicly claimed that the five-month-long platinum strike “could have been settled much sooner” if the Council for Conciliation, Mediation and Arbitration (CCMA) and Nedlac had “done their jobs” (Barron 2014).

August and September 2012 were dark months for South Africa. On August 16, 2012 the South African Police Service (SAPS) opened fire on a crowd of striking workers at Lonmin’s Marikana mine in Rustenburg. The workers were striking in response to a demand for a wage increase. The events of that day resulted in the deaths of 34 mine workers. A further 78 people were wounded and more than 250 people were arrested. That day became a blot on South Africa’s history as the country’s biggest incident of police brutality since the advent of democracy. It also resulted in the largest loss of life in a single incident in democratic South Africa (South African History Online n.d). Nedlac has born much of the brunt of the blame for the strike and by default the resultant deaths (Jones 2012a).

Despite the public criticism levelled against Nedlac, it remains a distinctive statutory body and social dialogue institution in so far as labour market issues as well as trade and industry policy, monetary and fiscal policy and developmental issues are concerned. Nedlac differs from traditional tripartite structures because it includes community organisations (Webster & Joynt 2014). Social partners who participate in Nedlac’s processes share the view that Nedlac displays areas of ineffectiveness, but that its social dialogue value remains a critical feature of the South African landscape.

Despite a barrage of public criticism, Nedlac continues to work towards carrying out its mandate of promoting growth, equity and participation. During

his tenure as Executive Director of Nedlac, Alistair Smith defended the Council from its critics by acknowledging that the social dialogue forum is in need of an overhaul (Maswanganyi 2012). If Nedlac “wasn’t relevant, there would be complete silence about Nedlac now” was Smith’s view three months post the events of Marikana. At the time he regarded Nedlac as a “primary forum, a key institution” that “still has a role and is still very relevant” (Jones, 2012b). But, since making these statements in 2012, little change has been evident within the Council and more critically, little perceived value has been added by the Council in light of widespread strikes which continue to plague South Africa’s mining sector.

1.2. Research Question

Internationally, Nedlac is regarded as a model of peak-level social dialogue. Nedlac’s achievements in the first decade post democracy - particularly regarding the development and finalisation of policy and legislation - is well-known and recognised. How then did it come to pass that the blame for the unprecedented labour unrest the scale of that reached at Marikana, has been laid at Nedlac's door?

At the 21st Nedlac Annual Summit held in September 2016, Ramaphosa reaffirmed the intention behind the formation of Nedlac: that it was “established as a platform for social dialogue, marking a decisive break with the discord and antagonism of the past”. He went on to say that Nedlac “must continue to be our country’s most effective mechanism to facilitate consensus among the social partners in finding appropriate solutions” (South African Government 2016). Therefore, despite the criticism that has been levelled against Nedlac, the importance of social dialogue within South Africa remains undisputed as the key mechanism to ensure effective policy decision-making on matters pertaining to economic, social and labour growth.

The rationale for the establishment of a social dialogue forum such as Nedlac

is not disputed in South Africa. At the time of establishment it was a much-needed structure to formalise the involvement of government, labour, business and communities in rebuilding levels of trust that could ensure that policy decision-making would result in positive economic and social growth for South Africa. In more recent times however, against the backdrop of increased levels of labour unrest resulting in violence, the effectiveness of the Council has been called into question in so far as its ongoing relevance to achieve social cohesion and harmony through social dialogue.

The intention of this research paper is to critically evaluate the effectiveness of Nedlac since its inception, with a view to determine whether Nedlac in its current form remains a viable social dialogue mechanism for South Africa. Nedlac is therefore the key unit of analysis investigated. In particular, this research paper will evaluate the role that Nedlac played and/or could have played, in the events leading up to and during the strike at Lonmin's Marikana mine. It will further seek to ascertain whether Nedlac failed in its duties and thus was in a position to avoid the events that unfolded at Marikana in August and September 2012. The events at Marikana will constitute the anchor event of this case study against which the effectiveness of Nedlac will be assessed.

Given that the South African labour relations landscape continues to be plagued by strike action, unrest and violence, the analysis contained in this study will debate the degree to which the current institution of Nedlac as it was set up to drive social dialogue, continues to provide the necessary social cohesion required. A critical analysis of whether Nedlac should be held solely accountable for bringing about social cohesion in South Africa or what, if any, other factors are required to support greater effectiveness of this ideal will be undertaken.

This qualitative research study evaluates Nedlac as a social dialogue forum since its inception, with a specific focus on the current relevance of the Council in the field of labour. The events at Marikana and Nedlac's

involvement or lack thereof, will be used as a case study from which to establish an opinion on the ongoing effectiveness of Nedlac.

In arguing and addressing the research question, sub questions that have formed part of the body research include:

- Has Nedlac delivered according to the mandate against which it was created? If so, what successes can be attributed to Nedlac?
- If lacking in effectiveness, when did Nedlac cease to be effective?
- Why was Nedlac not central to the Marikana crisis?
- How has the economic, political and social landscape changed since the inception of Nedlac, and how has this influenced the effectiveness of the institution and its ability to guide and manage social dialogue?
- If the economic, political and social landscape has changed, what is required to ensure effective social dialogue in the new era?

1.3. Rationale

Commissioned by the ILO's South African office, Webster, Joynt and Metcalf conducted a thorough review of Nedlac in 2013. Their report revisits recommendations that were made in a 2006 external review of the Council in light of various parties to the social dialogue forum questioning whether the cost of Nedlac outweighed its benefits. Through interviews with key Nedlac informants, the research concluded that Nedlac is an institution that could help South Africa "overcome the current policy stalemate". The authors recommended that Nedlac reposition its role not only as a bargaining forum, but also as a space for social partners to participate in the decision-making process. In addition, it was recommended that Nedlac provide support and knowledge on key socio-economic policy issues and allow for the exploration of common solutions to socio-economic challenges (Webster, Joynt and Metcalf 2013:pp3-7).

Webster et al (2013:pp2-3) acknowledged that there are parallel social

dialogue initiatives that characterise the South African labour relations landscape and that Nedlac was therefore not an island in matters pertaining to social dialogue. Webster et al also referred to the political influences at play in the effectiveness of Nedlac, but noted that collective bargaining and how effective it is, has an equally influential role to play in influencing sound labour relationships. The relationship therefore between social dialogue and collective bargaining and in turn the structures set up to promote sound collective bargaining between two of the three key social parties that engage in this dialogue within Nedlac, are equally influential components of sound labour relations.

The relevance of this research therefore, is to determine the degree to which social dialogue and collective bargaining, both within and external to Nedlac, may have contributed to a labour unrest incident such as witnessed at Marikana.

The aim of this research is to contribute to the academic body of knowledge related to South Africa's changing labour relations landscape as pertains to social dialogue. It focuses on a review of Nedlac as the apex of social dialogue in the South African labour regulation framework. The research critically assesses the effectiveness of Nedlac with specific reference to the role that the Council played in the Marikana saga.

1.4. Limitations

The research limitations of this research paper relate to those that are inherent to the research method adopted. Content analysis is the primary method of research applied and therefore the key limitation identified is the accurate interpretation of the content as it was intended to be understood. As far as possible, participants who were interviewed were engaged on content already available in the public domain to support the accurate interpretation of content relevant to events of the case study.

A further limitation identified included lack of access to participants that could potentially have contributed to the accurate understanding and analysis of key concepts that inform the research question.

1.5. Dissertation outline

The five chapters that follow build on the central argument that the events of Marikana have reaffirmed the relevance of social dialogue through an institution such as Nedlac. The conceptual framework against which the analysis is structured is outlined in the second chapter. The framework explores the theoretical foundations of pluralism, corporatism and neo-corporatism that have shaped the establishment and inception of Nedlac and concludes with a discussion on more recent concepts of social dialogue and collective bargaining as critical practices that characterise the South African labour landscape. The case study methodology applied in this research is described in chapter 3 as well as the key sources of data collection used, namely document and content analysis.

The research analysis of the paper is outlined in three chapters. The first of the chapters provides an analysis of Nedlac as an institution focusing on the structural elements that make up the Council, a review of the successes, critiques and limitations that have been identified through external reviews of the institutions as well as thorough interviews conducted as part of this research undertaking. The Marikana case study is outlined in chapter 5, elaborating on the events that characterised the massacre and an analysis of the underlying causes that resulted in the events of August 2012. The final chapter of this paper draws from content in the case study to reinforce the importance that social dialogue plays in South African labour relations, however highlighting the risk posed to successful dialogue as a result of the levels of commitment of social parties to participate effectively in the processes of Nedlac as well as collective bargaining between labour and business.

The paper asserts that failures of social dialogue in South Africa over the last decade as outlined through the Marikana case study are not solely the failures of Nedlac as an institution. Instead, blame for ineffective social dialogue should reside with social partners and their commitment to effective engagement, consultation and consensus - seeking on critical elements of the country's national labour agenda.

Chapter 2: Social Dialogue, Collective Bargaining and Social Crisis – A Conceptual Framework

2.1. Introduction

Nedlac is regarded as an institution created to allow for social dialogue between labour, government and corporates within South Africa. In order to investigate the present day effectiveness of this social dialogue forum, a conceptual framework is needed against which to evaluate its relevance. An understanding of social dialogue in this dissertation will be based on various descriptive concepts that social scientists and development practitioners have used to consider the concept, namely “corporatism”, “neo-corporatism”, “social pacts”, “social partnerships” and “social concertation” (Edigheji & Gostner c. 2000-2003). In addition, a framework from which to debate the effectiveness of collective bargaining will also be offered.

2.2. Pluralism

Pluralism and neo-corporatism are the two primary theories that provide a framework for how interest groups can influence public policy. Pluralism recognises that society is made up of differences. These differences manifest in various forms including moral outlooks, ethnic, culture and natural identities and religious beliefs.

Pluralism is a defining feature of modern democracy. Pluralism asserts that power structures within a democracy are made up of many varied competing elites. Pluralism regards political and economic power as not equally distributed within society and that a political system is open to multiple interests. In instances where these interests share a strong view on an issue they will mobilise power in the collective to bring about policy change. Given the varied interests of inherently different groups, compromise and bargaining

are defining features of pluralism as consensus on policy reform is achieved (Manley 1983).

The pluralist theory regards immaterial power as a key source of power distributed to all members within the social contract. A social contract, as described in the work of Jean-Jacques Rousseau, regards the social compact as a survival mechanism within the human race that ensures that in order to survive new forces, man can but only unite directly against existing forces as he has no other means of self-preservation but to form a united front against such new forces. Therefore, through the creation of a social contract, man will act in concert and ensure survival (Rousseau 2014). The power that exists within the social contract can take the form of political, religious, skill or persuasive power. Within the social contract, nobody has more or less say than another. The pluralist theory suggests that no one party controls the social contract as all parties in the contract have an equal stake in it. While other theories argue how a system should be run and who should be the head of such a system, pluralism argues that there be many systems and not only a single head of such a system. Hyper-pluralism is one of the weaknesses of the pluralist theory as it is said to occur when the pluralist society feels as if it doesn't give the people enough power, so they rise up against the government. Hyper-pluralism has the potential to cripple a government as the government bends to the will of all the interest groups within the system (Manley 1983).

Pluralism therefore contends that a political system is made up of many or plural perspectives that are represented by individuals, political parties and interest groups. The varied interest groups compete to have their views heard and policies approved. Because of the competition that exists between the varied interests of the groups, no single interest is likely to succeed consistently over others. Pluralism is based on the energetic engagement with diversity, the active seeking of understanding across lines of difference, the encounter of commitments and is rooted in the concept of dialogue (The

Pluralism Project n.d.).

In practice, pluralism is less than ideal in achieving policy changes, as interest groups are not always equal. Interest groups contain natural disparities, which result in some interest groups having more resources than others and which in turn results in an advantage of one interest group over another. A further criticism of pluralism is that governments are seldom neutral in addressing conflict between interest groups as they may naturally favour one group over the other. The concerns related to pluralism and the associated modifications made to the pluralist model to compensate for its shortcomings, have given rise to the elitist perspective. This perspective acknowledges that parties or interest groups that are well connected to government policy makers and that are also well financed will tend to have the upper hand in interest group activity and policy-making. In essence, the elitist perspective argues that elite groups have an advantage in their engagements with policy makers (The Pluralism Project n.d.).

Pluralist negotiation is deemed to be a successful way of addressing diversity as it is carried out in good faith. Concessions are not only made because it is deemed to be in the best interest of all parties but because parties have more to gain this way rather than by employing force. The toleration that is applied in such negotiations is regarded as pluralism's central political virtue. The toleration is derived by a pluralist society recognising the plurality of values in the world and that while not all may share the other's values, they are all moral beings who deserve a certain minimum of respect (Blattberg 2009).

2.3. Corporatism and neo-corporatism

The history of corporatism is said to be traceable as far back as the medieval era during the time of a co-existence of monarchy and the church, as well as the guild system. The co-existence of guilds as a third force alongside that of the church and monarchy resembles present-day tripartite corporatist

structures. Early theories of corporatism included those associated with the Roman Catholic Church whose focus in the 1800s was on addressing social problems associated with deteriorating conditions of labour. This classical form of corporatism allowed all classes of society to be united through the church. Corporatism became stronger through both World Wars when total mobilisation was needed to wage war and therefore it justified the integration of state, business and labour. In fighting an external enemy, internal conflict derived from societal actors became less important. The corporatist state became more prevalent after World War I, the financial crises of the 1920s and 1930s and the need that arose to protect the national economy. During this time, corporatism was associated with various countries' unique political economic situation (Kim 2014).

Fascism is a prominent example of corporatism. During the period 1922 to 1943, corporatism became influential in Italy amongst nationalists led by Prime Minister Benito Mussolini. Italian fascism involved a corporatist political system in which the economy was managed collectively by the state, labour and business, operating through a formal mechanism at national level. A distinctive feature of corporatism under fascism during this time was that it legitimated the use of coercion to resolve social conflict (Kim 2014).

More recent theories of corporatism, which have emerged since 1970, have started to look at corporatism as a so-called "neo-corporatism". A "higher degree of cooperation" amongst groups in the decision-making process is what Lehbruch, 1979 said differentiates neo-corporatism from corporatism. He regards "bargaining" among "automatous" groups as a critical element of corporatism coupled with the "high degree of cooperation" amongst groups in the decision-making process (Kim 2014).

Schmitter in his 1974 work "Still the Century of Corporatism", defines the ideal type of corporatism as:

"Corporatism can be defined as a system of interest representation in

which the constituent units are organised into a limited number of singular, compulsory, non-competitive, hierarchically ordered and functionally differentiated categories, recognised or licensed (if not created) by the state and granted a deliberate representational monopoly within their respective categories in exchange for observing certain controls on their selection of leaders and articulation of demands and supports” (Schmitter 1974).

The central element of Schmitter’s definition, that of the “system of interest representation” (which is similar to the work of Lehmbruch), focuses on the institutional structure of interest representation (Kim 2014). Schmitter’s definition of corporatism distinguishes between state corporatism and societal corporatism, with the key difference noted as state corporatism being regarded as having the characteristics of an authoritarian society in which the state creates interest groups. Societal corporatism in turn refers to corporatism where participants enjoy their own autonomy (Schmitter 1974). In the 1990s and 2000s, the definition of corporatism changed focus to emphasise the policy-making process within corporatism (Kim 2014).

Kim, 2014 argues that corporatist theories from the 1990s onwards show two key trends. The first is that macro-corporatism deals with the agendas at national level and the second is that of meso-corporatism, which focuses on sectoral and regional level matters. In recent years, the main focus of the theory of corporatism has therefore changed to no longer deal with representation systems but that of policy-making processes (Kim 2014). Therefore a discussion about Nedlac and its effectiveness in the 1990s and 2000s must be based against the backdrop of policy making processes rather than representation systems alone, in order to understand how the voice of labour and matters of labour interest are addressed within the council. Kim, 2014 argues that the imbalance of power among actors has negatively impacted corporatism and that the dynamics between the state, business and labour displays evidence of this imbalance of power.

Schmitter and Lehmbruch as cited in Makino 2008, define corporatism as a system of interest representation and intermediation and as an institutional pattern of policy formulation, respectively. Within this definition, corporatism is a system whereby policy-making and the implementation thereof comes about due to the cooperation of large interest groups with public authorities (Makino 2008). Sonia Bendix provides a definition of the type of corporatism according to theorist Karl von Holdt, in which corporatism is described as an “institutional framework, which incorporates the labour movement in the economic and social decision-making of society”. Von Holdt’s definition of corporatism regards such a framework as necessary to bring about more cooperative relations between the three parties - capital, labour and the state - as well as for the capacity to negotiate on matters of common interest (Bendix 1996).

Policies that are introduced in a corporatist system are generally initiated by governments that have the support of labour but as these policies have the potential to promote economic activity, the interest of business must also be considered. In a corporatist system, government obtains input from both labour and employers but it retains the right to make a final decision on policy-making (Bendix 1996).

Corporatism or corporativism refers to a political power structure and practice of consensus formation that is based on the functional representation of professional groups. Corporatism lies at the heart of associations of like-minded groups that act as a self-governing body on their own behalf and as intermediaries between members of their group and a government. In terms of labour, political status and rights would be attached to an occupational level and/or group membership (Donnelly & Dunn 2007; also see Baccaro 2003).

Corporatism focuses on the political and social impact of a limited number of interest groups and the complexities in their relationship with the state. A benefit of corporatism is that it has the capacity to reduce tensions between

the state and societal actors by way of negotiation and creating trade-offs (Kim 2014, also see Baccaro 2003).

State corporatism is deemed coercive while neo-corporatism is theoretically based on the voluntary agreement between government, labour and business interest. The goal is predominately economic in nature as the neo-corporatist model manages inflation and costs so that the country can remain competitive in international trade, and maintain and improve the domestic standard of living (Von Beyme 1983; also see Donnelly & Dunn 2007).

Neo-corporatism is defined as being a more structured theory of interest group activity as compared to that of pluralism, and is deemed to reflect a modern version of state corporatism. State corporatism exists where a society is regarded as a corporate with typical corporate traits such as being united behind a common purpose and hierarchical in nature. In such a state, the government dominates and all sectors of society are required to work for the public interest as defined by the prevailing government. As such, labour, the military and business are united in delivering against what is deemed in the interest of the greater public good. Historically such states were characterised by Adolf Hitler's Germany and Francisco Franco's Spain in the first half of the 20th century (Von Beyme 1983).

Critics of neo-corporatist theory argue that it is not a distinct interest group system but rather another form of pluralism. The reason for this is that interest groups function within a pluralist political environment and it is only the major groups that are involved in a special relationship with government while all other groups compete as they would in a pluralist system. A further criticism is that because in practice neo-corporatism is varied, it lacks any core characteristics. Neo-corporatism operates differently in different countries, as it is dependent on the socio-political and historical context of that country (Von Beyme 1983).

2.3.1. Corporatism in South Africa

Corporatism has been in existence in South Africa as far back as the apartheid era. As the apartheid government was firmly in control of society as a whole, the period of apartheid strengthened corporatism in South Africa. The aim of apartheid was to ensure white domination over other racial groups through a process of racial separation. The 1948 apartheid laws institutionalised the segregation of society according to skin colour with a focus mostly on white and non-white. An intricate web of laws strengthened the effectiveness of the state and ensured that the power of the state was entrenched in all parts of society. The participants in the corporatist alliance at the time were the apartheid state, business and labour. Labour was mostly dominated by white trade unions. However, during this time, business and labour represented only the interests of the white racial group of workers. The labour movement increased alongside that of the liberation movement and over time the state could no longer ignore the growing power of black labour (Kim 2014). The dawn of democratisation in South Africa, fuelled by the increase power of labour and which eventually lead to the establishment of a corporatist institution such as Nedlac, carried with it the characteristics and baggage of a discriminatory labour relations system.

At the time of establishing Nedlac, the intention to have labour incorporated as an equal partner to the state and business was evident. However, recent instances of government failing to include Nedlac in matters pertaining to labour, provides evidence that the corporatist institution has been ignored by the state and other societal actors. This situation begs the question whether a corporatist institution is still a workable option for South Africa.

2.4. Concertation

A more recent conceptual framework that has been put forward by Jeremy Baskin argues that some of labour is involved in decision-making that extends

beyond the confines of the conventional industrial relations systems and now includes involvement in multipartite processes. Baskin refers to this as concertation. It aims to describe a less structured approach to policy bargaining. By definition, Baskin defines concertation as “an institutional role for interest organisation (mainly economic) in the formulation and implementation/regulation of state policy”. He elaborates that concertation involves a multiple of “collaborative interchanges between state, labour and capital” (Baskin 1993). Social dialogue in South Africa can therefore also be linked to the notion of concertation.

Neo-corporatist theory assumes that the structural economic elements of corporatism, namely wage bargaining coverage and coordination and unionisation, are functionally related to its procedural political dimensions which exist in the interaction between state and organised interest groups in policy-making. This lies at the heart of concertation. Concertation therefore creates a process of policy-making through the close collaboration between labour, capital and the state through the various phases of the policy process and through the engagement with institutions and networks that provide input on behalf of organised interests. This form of social concertation is defined by a process through which governments share their policy-making prerogatives with trade unions. Employers associate through more formalised means by not only incorporating their inputs, but also by governments formally setting up bargaining engagements with them over public policy (Baccaro & Simoni, 2008 as referenced in Alonso 2013). High trade union density and collective bargaining are considered a precondition for the existence of social concertation. Governments won't engage in negotiations regarding public policy with trade unions or employer organisations that are organisationally weak and therefore are not credible negotiating partners. As such, most governments adopt a corporatist concertation method that requires parties in the negotiations to be organised in such a way that ensures that they carry a mandate from and comply with their members' agreements that have been negotiated. This is specifically important for a government's relationship with

trade unions. Governments and employers negotiate mostly with trade unions that are credible representatives of the workforce (Alonso 2013).

Trends in concertation as a means of policy-making show that governments continue to be willing to engage in concerted reforms with trade unions and employers. In a study conducted by Baccaro and Simoni 83% of European governments in 1977 were willing to engage on wage policies and while there was a drop to 47% in 1985, an increase to 77% was reported in 2003. An upward trend in willingness to negotiate on welfare policies was also noted - increasing from below 50% in the 1970s to approximately 80% in 2000 (Alonso 2013).

The intention of Nedlac at the time that it was established and as defined in its founding declaration, acknowledges that South Africa is characterised by severe inequalities in income, skill, economic power, ownership as well as a skewed pattern of social development. This acknowledgement of the inequalities indicates that a pure pluralist environment was not in place in South Africa after 1994. The intention of Nedlac was therefore to allow for the government, organised labour, organised business and community-based organisations to develop and strengthen cooperative mechanisms to address the challenges that the new South Africa faced (www.new.nedlac.org.za). Against this backdrop it would appear that the theoretical construct of neo-corporatism is a more relevant theory against which to assess Nedlac and its objectives at the time that it was established. Willingness to engage with organised labour and business representatives in a structured method further indicates the grounding of concertation as the intention or according to which Nedlac was established.

Twenty years since the establishment of Nedlac, a review of the role of the council viewed against the effectiveness of outcomes delivered by the institution and the backdrop of the Marikana strike of 2012, will bring to the fore whether the theoretical frameworks upon which Nedlac was conceived,

are still relevant today.

2.5. Social dialogue

The ILO regards social dialogue as made up of “all types of negotiations, consultation and exchange of information between, or among, representatives of governments, employers and workers on issues of common interest” (www.ilo.org). By this definition, the ILO regards social dialogue as including all types of negotiation, consultation or information-sharing among representatives of governments, employers and workers or between employers and workers on matters of common interest that relate to economic and social policy. Social dialogue is therefore a means to achieve social and economic objectives as it provides participants with a voice and a stake in the societies and workplaces in which they reside and work (www.ilo.org; also see Parsons 2010).

The way in which social dialogue is constructed varies from country to country. Social dialogue can take place at different levels and in various forms as determined by the national context that prevails in a country. Social dialogue provides a means of achieving social and economic goals as it provides parties in the dialogue with a voice and a stake in the societies and workplaces within which they exist (Webster & Joynt 2014).

Social dialogue is known to exist as a tripartite process in which the government is an official party to the dialogue. It is also known to be a bipartite process - managing relations between labour and management, with or in the absence of government intervention. Social dialogue can be informal, institutionalised or a combination thereof that takes place at national, regional or at an enterprise level (www.ilo.org).

Social dialogue when operating effectively is supported by structures and processes that have the potential to resolve critical social and economic

matters that will in turn enhance industrial stability and economic progress (www.ilo.org).

For social dialogue to be effective, it is dependent on respect for the fundamental rights of freedom of association and collective bargaining; worker and employer organisations with the capability to participate in social dialogue; political will and commitment to engage in social dialogue by all parties involved and the appropriate institutional support (www.ilo.org).

Social dialogue occurs between interest groups that are made up of any association of individuals that formally organises itself in order to influence public policy in line with the shared interest of the group. Through engagement and lobbying, interest groups aim to achieve a goal that will either benefit group members or the causes they represent (www.ilo.org).

Social dialogue as a concept therefore assumes the existence of a pluralist society made up of autonomous groups with divergent interests. The relationship between these parties is one in which they recognise each other's existence, while promoting their own distinctive views (Webster & Joynt 2014). Vic van Vuuren of Business Unity South Africa (BUSA) is quoted in Webster and Joynt as having said that "social dialogue is vital for balancing market needs on one side, and the social needs of the broader society, on the other. Without social dialogue the market can overrun social needs or vice versa" (Webster & Joynt 2014).

2.6. Collective bargaining in South Africa

An industrial relations system in any country is made up of various actors, actions, processes, rules and regulations. Collective bargaining is one of the predominant processes within the industrial relations system and it involves the practice of workplace participation in matters pertaining to labour. Participation by various role players in society within collective bargaining is

determined by their various priorities and points of emphasis. Participation can either be compulsory or voluntary and highly centralised or decentralised (Bendix 1996).

Under apartheid, collective bargaining in South Africa occurred mainly at industrial council level, which was a dualistic bargaining system that established itself during the 1980s. Industrial council agreements were concluded at industry, regional or area level. Because of the segregation that characterised apartheid, a proliferation of recognition agreements between individual employers and the unions representing black employees prevailed. As a result, the same group of employees could be covered by two different agreements (Bendix 1996).

Collective bargaining as a process provides labour unions with fundamental rights in their duty in representing their members who have entrusted their interests to them. During the apartheid period, the Industrial Conciliation Act of 1924 was the key piece of legislation that governed collective bargaining in South Africa. Until the recommendations of the Wiehahn Commission - set up by the government after the Durban strikes of 1973 and the Soweto uprisings of 1976 to look at the country's industrial relations system in South Africa - collective bargaining benefited only White, Indian and Coloured employees. Prior to then, Black workers were not defined as employees and therefore were prohibited from joining trade unions and industrial councils. Black employees were therefore not recognised under the Industrial Conciliation Act and excluded from bargaining systems. Black workers were only formally recognised for the first time as employees in terms of legislation in South Africa when changes were made to the country's labour laws in the early 1980's as a result of the Wiehahn Commission. These changes gave Black employees the right to form and join trade unions as well as participate in industrial councils for the purposes of collective bargaining (Ndungu 2009; see also Kim & van der Westhuizen 2015; Desai & Habib 1997; Chinguno 2013, Anstey 1993).

Post apartheid, an interim constitution was put in place in South Africa. This constitution (200 of 1993) recognised collective bargaining as one of the essential features of the post-apartheid labour market. The “right to organise and bargain collectively” was granted in Section 27(3) of the interim constitution while subsection (4) stated that workers had the “right to strike for the purposes of collective bargaining”. These two rights intrinsically linked the right to strike with collective bargaining. However today’s Constitution, which came into effect in 1996, does not contain similar phraseology as that of the interim constitution. The Constitution provides for collective bargaining and the right to strike as separate, stand-alone rights (Ndungu 2009).

Section 23 of the Constitution refers to all matters related to Labour Relations in South Africa. Section 23 (1) provides that “everyone has the right to fair labour practices” while Section (2)(c) enforces the right of every worker to strike. Section 23(5) affords every trade union, employer’s organisation and employer, the right to engage in collective bargaining, which may be regulated through national legislation (South African Constitution).

Section 23 of the Constitution thus separates the right to collective bargaining from the right to strike and therefore workers cannot argue that they may resort to strike action to enforce their right to collective bargaining (South African Constitution).

In post-apartheid South Africa, the Labour Relations Act (LRA) is the cornerstone of collective bargaining. The Act entrenches collective bargaining in South Africa through the creation of two main bargaining structures namely bargaining councils and statutory councils. An additional mechanism that runs parallel to the collective bargaining system - that of workplace forums - is also established under the LRA. Workplace forums as outlined in Chapter V of the LRA have been established to deal with matters that traditionally were managed through bargaining councils. These matters include work organisation and job grading and other matters linked to workplace change

(Ndungu 2009).

Today, collective bargaining is voluntary in South Africa. This is a significant difference from the earlier years when both unions and employers had a statutory duty to bargain. Bargaining councils are the foremost bargaining structures in South Africa's labour relations framework. The LRA affords one or more registered trade unions and one or more registered employers' organisations the right to establish a bargaining council for a sector or area in either the public or private sector. The powers and functions of a bargaining council as defined by Section 28 of the Act, include the power to conclude collective agreements, enforce agreements, prevent and resolve labour disputes, conduct education and training and establish medical aid schemes and provident and pension funds.

Bargaining councils in post-apartheid South Africa have not been as successful as initially envisaged that they would be. Despite their less than expected success, bargaining councils remain the most viable means of defending the rights and interests of workers in the South African labour landscape (Ndungu 2009).

Over the years, the creation and registration of bargaining councils have showed a consistent decline. Since 1995 the total number of bargaining councils has declined from 80 to 50 (www.labour.gov.za). By May 2008, a total of 44 registered councils existed in the private sector and only six in the public sector. As of June 2016, a total of 38 private sector bargaining councils were registered with the Department of Labour. At the time of writing, no registered private sector bargaining council existed for the mining industry (Office of the Registrar of Labour Relations, June 2016).

Various factors can be attributed to the decrease in the number of bargaining councils in South Africa including mergers, ineffectiveness in functioning, employer resistance to joining and participating in the activities of councils as

well as poor financial and administrative support provided by the Department of Labour. A significant increase in the change in the employment relationship from permanent to non-formalised employment contracts is however one of the bigger reasons that have lead to the decrease in bargaining councils and also the decrease in total union memberships (Ndungu 2009).

The rationale behind statutory councils is that they are meant to boost collective bargaining in sectors that have low union and employer organisation numbers. It is less onerous to set up a statutory council than to establish a bargaining council, as the former requires that a union or employer organisation only represent 30 percent of workers or employers in that particular sector in order to register (LRA, Section 39 (1) and (2)). Despite the simple process and requirements for setting up a statutory council, the establishment of these councils since the introduction of the relevant legislation, has been low. As at June 2016, the Department of Labour reported that a total of three statutory councils were in existence (Office of the Registrar of Labour Relations, June 2016). None of the registered councils operate within the mining industry.

The third collective bargaining structure, for which the LRA makes provision, is that of workplace forums. The concept of workplace forums hails from the German and Dutch system of work councils. The intention of these forums is to facilitate joint worker and employer decision-making. Provided for under section 80 of the LRA, workplace forums can be established by a trade union or trade unions that represent the majority of workers in a workplace in which more than 100 employees are employed. A workplace forum is assigned a wide range of matters that it can address under section 84 of the LRA. These include matters pertaining to work restructuring, product development, education, training, job grading, plant closures and retrenchments. Workplace forums have not moved from paper to actual establishment. To date no such forums have been established (Ndungu 2009).

Ndungu 2009 argues that given the unequal relationship of power between employers and employees, the interests of workers within collective bargaining in the South African context, can be strengthened. He also contends that it is not surprising that workers have had to resort to industrial action in a bid to win or overturn demands that employers have opposed during bargaining processes, as the provisions governing collective bargaining in both the Constitution and the LRA, favour employers (Ndungu 2009).

In summary, this chapter has outlined the conceptual framework proposed to support this research paper. The theoretical concepts of pluralism and corporatism provide a well-established understanding of the motivation and intentions that entice social parties to engage on matters of mutual interest. These concepts also provide an understanding of the rationale that informed the establishment of an institution such as Nedlac. Many of these concepts and underlying principles continue to be relevant and are evidenced through established research conducted in South Africa. The applicability of these concepts and how they play out in the industrial relations system is addressed in the analysis chapters of this paper.

Also outlined in this chapter is the more recent conceptual framework of social dialogue and how it relates to collective bargaining as an entrenched right within the South African context. These concepts will be used in an analysis of the successes and limitations that prevail in the South African labour landscape using Marikana as a case study. The chapter that follows outlines the methodology that will be applied in the case study method.

Chapter 3: Methodology

3.1. Introduction

The content of this chapter outlines the methodology adopted in conducting the research project along with a rationale as to why the specific method was chosen. The chapter will also provide insight into limitations that were encountered during the research.

The research paper takes the form of a case study. A plethora of information is available on both the institution of Nedlac as well as the events that occurred at Lonmin's Marikana mine in August 2012. As such, a substantial source of information used within the research paper is of pre-existing documentation, media reports and studies available in the public domain.

3.2. Objectives of the research

The intention of the research is to establish a view on the effectiveness of Nedlac as a social dialogue forum in present day South Africa using the events at Marikana as a case study to determine effectiveness. The study reviews the intention of Nedlac when it was established against the events that transpired at Marikana as it seeks to answer whether or not the role that Nedlac did or could have played in the events of August 2012, could have minimised the dramatic outcome for the Lonmin workers.

The research is conducted against the backdrop of the conceptual framework related to corporatism, social dialogue and collective bargaining in South Africa as outlined in the theoretical framework documented in Chapter 2.

3.3. Rationale for the methodology

The study is a qualitative research paper with the primary aim of being exploratory in nature. The research method is used to understand the underlying reasons, opinions and motivations that relate to the research topic. The research paper therefore aims to provide insights into the effectiveness of Nedlac as a social dialogue forum as well as the events at Marikana to support or refute the hypothesis of the study.

3.4. Research process

As a research method, the case study is utilised in order to gain an in-depth, contextualised examination of social interaction in a single social setting. This may be within an organisation or focused on how a specific social process plays out (Yin 1994). Case study research is often used in instances where the case constitutes empirical evidence in a project. Case studies are also used as illustrations, examples and anecdotes to facilitate understanding of a concept or theory (Gummesson 1991). The case study method allows for the utilisation of several data collection methods. These methods could include observation, interviews and documentary evidence. Case study research is exploratory in nature and is used to create models and hypothesis of the process under investigation in a specific context. A case study does not allow for the generalisation about a wider social situation directly from the findings of a single case study (Haralambos & Holborn 1991). It is for this reason that the events at Marikana have been chosen as the backdrop against which the current day effectiveness of Nedlac will be analysed. The research paper constructs its evaluation around the critical events that occurred at Marikana in 2012, as well as events in the aftermath of the strike.

Case studies allow the researcher to make use of several approaches and purposes. The most common use of the case study method is for research in which the case being analysed constitutes the empirical evidence in a project.

A second use of the case study method is to detail an event for the purpose of illustration, examples or anecdotes. The purpose would therefore not be to prove anything specifically but rather to use the case study to facilitate an understanding or theory. Case studies are also used as a means of showcasing a practical method of implementation. In such an instance for example, a case study will tell the story of how an organisation implemented a specific process. Case studies can also be used in a classroom setting for the purposes of training (Gummesson 1991). The use of the case study method in this research paper will be to detail an event for the purpose of furthering the understanding of the topic being discussed. As such, Marikana is used as the case study event against which to debate the effectiveness of the role that Nedlac has played as a vehicle for social dialogue within South Africa.

The case study method has been chosen as the primary research method as this method is designed to provide insight into questions pertaining to the “why” and “how” of events that have occurred. Answers to the why and how are required in order to provide the researcher with the context of the real life situation and the events that occurred. This method of research does not require any control of the researcher over behaviour that has occurred and allows for the recording of contemporary events that occurred at a specific point in time. The case study method is particularly effective in dealing with understanding ambiguous and dynamic processes that involves a great degree of complex relationships and variables (Gummesson 1991).

The case study as a method of research is used in situations that aim to contribute to the “knowledge of individual, group, organisational, social, political and related phenomena” (Yin 1994). The events leading up to, during and post Marikana, fall within a multiple of the entities noted above and therefore the method has been chosen to record an accurate account of real-life events that occurred in 2012.

The flexible nature of the case study method aids the intended research since

a case study method can be used to either prove or disprove a hypothesis. The case study method also allows for the introduction of new and unexpected results (Yin 1994). Therefore, while the research sets out with a view on the effectiveness of Nedlac, deeper analysis of the events at Marikana may bring to the fore information that may not have been considered at the time of commencing the research.

The research paper uses a literature source method as its predominant source of evidence. The primary documentary evidence analysed included inter alia, policy documents and media reports. Documentary analysis was conducted on the evidence that was sourced. The aim of the analysis was to understand the substantive content and develop an awareness of the style of coverage that the events under scrutiny received. The events at Marikana have been documented as a historical event of significant relevance in South Africa and therefore all events prior, during and post the period under review of this paper have been documented publicly.

Content analysis is a research method that allows for a researcher to interpret and provide meaning around the topic being assessed. It is a technique that allows for the examination of both information and content. Content analysis is used in both exploratory and explanatory research and refers to the analysis of both written and non-written documents. Content analysis requires that the content of documents be quantified objectively in a systematic manner that can be replicated. Pre-determined categories or themes are created through the review of the content, which is then analysed quantitatively (Saunders 2008).

Various documentary types can be used in document analysis. For the purposes of this research paper, the documentary types used included that of public records and official records of Nedlac and the events of Marikana. Further documentation used in the research included the founding documentation, mission statements, annual reports, governing legislation,

annual reports and policies of Nedlac. Content analysis in the form of published articles, reported views from various forms of media and court documentation informs a significant component of the research paper. A further form of documentary evidence is that of personal documents. These are first person accounts of events, actions, beliefs and experience. Examples of these include calendars, emails, social media posts, incident reports, newspapers and journals. Individuals interviewed as part of data gathering for this research included individuals who were and continue to be involved in Nedlac processes as well as those who were present during the events that unfolded at Marikana. The final type of document from which analysis can be derived, is that of physical evidence. Physical evidence can take the form of physical objects found within the study settings, referred to as artefacts. Examples of such artefacts include flyers, posters, agendas, handbooks and training material. No physical evidence formed part of this research paper.

This paper draws extensively from work commissioned by the Department of Labour and the ILO to review the effectiveness of Nedlac. The work of Webster & Sikwebu of 2006 and the subsequent update on the outcomes of their work as represented through Webster Joynt & Metcalf in 2003 form a primary documentation source used in the analysis of Nedlac. The reports generated through these two studies are informed by the outcome of extensive in depth interviews that were conducted with key Nedlac informants. The outcome of the reports have been shared with the various constituencies within Nedlac and are accessible publicly.

A secondary form of data collection for this research paper included interviews with individuals who have worked within Nedlac processes and/or continue to form part of processes lead by the council. Interviewing is a purposeful conversation between an interviewer and interviewee with the intention of collecting data on a specific topic. Interviewing can be used for the purposes of collecting both qualitative and quantitative data (Persaud 2010). Interviewing allows participants to share their first-hand experience,

attitudes and beliefs. This provides a valuable assessment method since direct quotations in the assessment findings can aid in providing an accurate depiction of the events that are being evaluated.

Interviews can span a wide continuum of forms ranging from structured to semi-structured or unstructured. Interviewing can also utilise a range of techniques including face-to-face, telephonic, videophone or email (Persaud 2010). Structured interviews are typically well-controlled engagements that make use of fixed, pre-planned questions. Semi-structured interviews involve some planning but allow for freedom to vary the course of the discussion based on the responses received from the participant. Semi-structured interviews are guided by major questions or themes that are used in the same way in all interviews. The interviewer may however vary the sequence of the questions as well as the depth to which the interviewee is being probed on each question. A semi-structured interview is best suited to a situation where the researcher already has an above basic level of understanding of the topic being discussed in the interview. Both unstructured and semi-structured interviews require that the questions being asked are as open-ended as possible. As far as possible, questions should not be crafted in such a way that a yes or no answer will be elicited from the respondent (www.healthknowledge.org.uk).

As the name suggests, unstructured interviews are the least rigid form of interview and involve little to no pre-planning. An unstructured interview method allows the respondent the opportunity to tell their own story in their own words with prompting by the interviewer. The overall objective of the unstructured interview is to derive detailed information from the interviewee as they recall events as they unfolded as well as their unedited views on underlying causes. In such an interview, a list of topics will be prepared for discussion with the interviewee. The sequence of questions and the manner in which they are phrased will vary from one interview to another, and they will be determined by the flow of the discussion during the interview

(www.healthknowledge.org.uk).

A semi-structured interview was chosen for the collection of data for this research paper. An interview guide was used to support the semi-structured interviews conducted, as it allowed for directing the interview and ensuring the interview remained focused. The themes derived from the documentary evidence sourced were used to construct an interview guide that was used in interaction with interview participants. An interview guide can provide assistance in instances where interviewees are unresponsive or provide limited answers (Sims 2008). All interview participants were highly responsive and participated actively in the interviews. Semi-structured interviews unfold in a conversational manner and this was the experience of all interviews conducted. Interviews were set up for 90 minutes however most of them naturally exceeded this time limit as conversations spanned a wide range of topics related to the case study.

Data collection through qualitative interviewing allows for deeper introspection of the responses received and thereby the true meaning of concepts and individual opinions of events can be determined (Simms 2008). Interview participants chosen to be part of this research were all able to share first-hand experience of the events at Marikana while some continue to be actively involved in Nedlac processes and therefore were a valuable means to clarify and compare documentary evidence with first-hand experience and examples.

Using interviews as a data collection technique provoked the interviewee to think about the concepts related to this case study in a way that they may not have previously been considered, to form views on the subject in a different way to previously viewed and to share these views in a way that best expresses their thoughts and ideas (Wortham 1999 in Sims 2008). As interviewing is an active data sourcing technique, an interview can be regarded as more than a data collection method but also as a data creation

method. Interviews could lead to new data being made available that did not previously exist (Sims 2008). This method of creating oral history is well suited to a case study research method as new ways of thinking about incidents related to an event in history further develops the knowledge and interpretation of events of the case study.

The “contamination” of interview data is a risk that occurs in interviews as this data collection method may allow for interviewers to influence the interviewee and therefore create data that may otherwise not have been the view of the interviewee. A method of limiting the contamination of data is to give the interview process some structure. Semi-structured interviews provide the appropriate level of standardisation and structure that will limit interview data contamination (Sims 2008).

In this research, all interviews conducted were recorded through note-taking and audio recording. Each interview participant provided prior consent before recording took place. Note-taking has the disadvantage of losing connectivity with the interviewee as it causes the interviewer to lose eye contact while scribing the content of the discussion. As such, an additional recording mechanism of audio taping was used to allow the interviewer to remain connected to the discussion, engaged with the interviewee and therefore better positioned to probe in further detail, key components of the discussions. A further benefit of audio-taping is that it allows the researcher to pick up on any non-verbal cues such as body language that may be displayed during the interview.

Interviews were transcribed following the recording of the interview. The transcripts have been used to support direct quotations made during the interviews. A combination of note-taking and audio-taping allowed the researcher to record via transcripts not only the content that was discussed but also the tone of voice and inflexion as picked up by the audio recording as well as visible body and non-verbal language and facial expression cues

(Simms 2008).

Interview participants included individuals who were directly involved in the events at Marikana. Interview participants who agreed to be named as having participated in this research included:

- Nerine Kahn: former CCMA director who facilitated the dispute resolution process at Marikana on behalf of the CCMA
- Frans Baleni: former Secretary General of the National Union of Mineworkers (NUM) who lead the union at the time of the Marikana crisis.
- Gavin Hartford: Executive Director of the Esop Shop, an industrial sociologist and author on various articles related to Marikana as well as advisor to Lonmin on matters pertaining to the events of 2012.
- A fourth interview was conducted with an interview participant who requested to remain anonymous so as not to be identifiable through the role or organisation to which the individual is linked. The experience of the interview participant spans multiple years in roles that directly interfaces with all parties of the social dialogue process and various chambers within Nedlac. The participant is also currently a member of various task teams as set up through formal Nedlac structures.

Interview participants who were approached to participate in the research and who provided consent but due to inaccessibility were not able to participate included:

- Alistair Smith, former Executive Director of Nedlac
- Brendan Barry, a legal representative for NUM at the Marikana Commission

The subsequent two chapters provide an understanding of the institution of Nedlac and the Marikana case study respectively.

Chapter 4: Nedlac – A Brief History

4.1. Introduction

This chapter outlines the establishment of Nedlac - what it was created to deliver and a review of its successes. The content of this chapter provides a foundation from which an assessment of the criticism levelled against the institution will be conducted. This assessment is undertaken against the backdrop of the theoretical framework that underpins Nedlac's function and in relation to the events that unfolded at Marikana.

4.2. The establishment of Nedlac

Social dialogue was institutionalised in South Africa during the apartheid era through two key bodies. The first of these was that of the National Manpower Commission (NMC), a statutory body which was set up in 1980 as a result of the Wiehahn Commission (15th Nedlac Annual Report 2009/2010). The focus of the Commission was labour market policy.

The second corporatist institution in existence before 1994 was the National Economic Forum (NEF). The NEF was borne out of union federation protests against the introduction of Value Added Tax (VAT) in 1991. The intention of the State was to replace General Sales Tax (GST) with VAT. It was estimated at the time that the introduction of VAT would have led to a 5 percent increase in the amount of sales tax paid by low-income households. It prompted the Congress of South African Trade Unions (COSATU) and the National Council of Trade Unions (NACTU) to embark on a series of mass action that culminated in a two-day general strike in November 1991. Despite widespread support for the strike, the union federation was not able to prevent the introduction of VAT. A year after the VAT strike, the State established a non-statutory NEF that was composed of state representatives, COSATU,

NACTU, the Federation of South African Labour (FEDSAL), the South African Chamber of Business (SACOB), the Afrikaanse Handelsinstituut (AHI), the Foundation of African Business and Consumer Services (FABCOS), the Steel and Engineering Industries Federation (SEIFSA) and the Chamber of Mines. The NEF's agenda related to matters pertaining to macro-economic issues such as unemployment and privatisation, policy proposals such as the government's Normative Economic Model and the national budget. This was the start of engagement and negotiation between labour, capital and the State (Habib 2007).

Post 1994, the State merged the NMC and the NEF to form the National Economic Development and Labour Council (Nedlac). The Council was established to be the vehicle through which government, labour, business and community organisations would seek to cooperate and engage on matters related to economic, labour, development and other challenges facing South Africa (www.new.nedlac.org.za).

While the NMC and the NEF were predecessor bodies that focused on the facilitation of cooperation between organised business, organised labour and government on matters of labour policy and industrial relations, the formation of Nedlac was intended to support and address the various challenges presented by South Africa's economic and labour policies. Nedlac was thus established as a single statutory body that incorporated the NMC and NEF to address economic, labour and development issues (www.new.nedlac.org.za; also see Parsons 2010, Gostner & Joffe 1998).

Collaborative problem solving and negotiation are the means used by Nedlac to fulfil its mandate. Upon its establishment, the following three defining challenges were identified as giving rise to the need for a social dialogue forum such as Nedlac:

- The facilitation of wealth creation with the intent of creating sustainable economic growth. The implementation of financial social programmes

was one of the means that Nedlac introduced to promote better opportunities for more South Africans to occupy well-paying jobs.

- Promoting greater social equality both within the workplace and in communities in an attempt to address large-scale inequalities and thereby ensuring that society provides the basic needs for its people.
- Increased levels of participation by all major stakeholders in economic decision-making at national, organisational and shop floor level with the intention of improving cooperation in the creation of wealth and how wealth is distributed (www.new.nedlac.org.za).

A focus on meeting these challenges at the time that Nedlac was created was seen as being critical to the success of the Reconstruction and Development Programme (RDP) (www.new.nedlac.org). The RDP was a programme initiated by the Government of National Unity (GNU) after the fall of apartheid in South Africa with the intention of integrating the socio-economic framework aimed at integrating development, reconstruction, redistribution and reconciliation that was much-needed in the country, into a single, comprehensive programme (Cameron 1996).

Nedlac was established by law through the National Economic Development and Labour Council Act, Act 35 of 1994 and subsequently launched in February 1995. Nedlac operates under its own established constitution (www.new.nedlac.org). The Nedlac Act was one of the first laws enacted in a democratic South Africa. This statutory body's primary objective is to "bring together government, business, labour and community interest to, through negotiation, reach consensus on all labour legislation, and all significant social and economic legislation" (Nedlac Act 1994).

4.3. The functions of Nedlac

The functions of Nedlac as defined in the founding documents of the Council include:

- Nedlac shall seek to reach consensus and make recommendations on matters pertaining to economic policy. Areas of focus would include monetary and fiscal policy, socio-economic programmes, policy on trade and industry as well as all aspects of labour policy including training and human resources development.
- The Council is tasked with considering all proposed labour legislation and social-economic policy prior to being implemented or introduced to Parliament.
- The constitution of the Council should ensure that it affords the Council the ability to consider any matter in its terms of reference.
- Nedlac assumes all functions of the NMC and NEF and is established to be the constitutional successor to the NMC.
- The Council shall create the required mechanisms for interacting with other relevant bodies.
- The Council is responsible for building capacity of its participants within the activities of the Council (www.new.nedlac.org.za).

4.4. Stature, structure, character and governance of Nedlac

Nedlac was created with the intention of it being an enabling statute. By definition, an enabling statute is one that is permitted to do what was previously prohibited or is permitted to create new powers. It is a statute that gives new or extended authority or powers, generally to a public official or to a corporation (www.uslegal.com). Nedlac was created as an institution that would exercise rights over labour, economic and social policy that was previously forbidden during the apartheid era.

In terms of structure, Nedlac is represented in equal numbers by government, organised business and organised labour, on the executive council. Organisations that represent community and development interests are represented on the Development Chamber and on the Executive Council on

condition that their combined representation does not exceed that of any other parties in the executive council (www.new.nedlac.org.za; Gostner & Joffe 1998). The way in which Nedlac has been structured is aligned to pluralist ideology, as all social parties are represented equally.

Nedlac is designed to be a representative and a consensus-seeking body. The parties to the Council are tasked with seeking agreement through negotiations and discussion. Should no agreement be reached, each party retains its freedom of action within its own sphere of responsibilities (www.new.nedlac.org.za).

The agenda of the Council is a combination of what the members of the Council determine it to be, as well as matters referred to the Council by the legislature, the executive of the government and other bodies (www.new.nedlac.org.za).

Nedlac is made up of four separate chambers or councils. The first three focus primarily on public finance/monetary policy, trade/mining/agriculture/industry policy and labour market issues. These chambers are comprised of equal representation from organised labour, business and the government. The fourth chamber caters for the involvement of communities and is known as the Development Council - made up of representatives of national community organisations. An executive council and management committee that is constituted of no more than 16 members oversees the four chambers. These members include overall convenors of labour, government and business, as well as convenors of the partners in each chamber. A full-time secretariat that includes an executive director is accountable for managing the daily affairs of Nedlac (Habib 2007).

All agreements, reports and findings of the Council are made public unless the Council decides otherwise. The statutory framework of the Council affords the Council the right to determine its own constitution and structures

(www.new.nedlac.org.za).

The Minister of Labour is the minister responsible for Nedlac and acts as a link between the Council and government. Nedlac has the mandate to interact with any ministry as required. Government representation on the Council may include a core number of Ministers and Deputy Ministers. In addition to core Ministers represented on the Council, various ministries, government departments, provinces and other authorities may become involved in the activities of the Council as and when issues so require. The founding documents of Nedlac also recommend that the Reserve Bank of South Africa be part of the Council (www.new.nedlac.org.za).

Nedlac's annual reports are tabled in Parliament (www.new.nedlac.org.za).

4.5. Nedlac – the early years

Following the launch of Nedlac in 1995, it was acknowledged that its starting point was to have agreements in place that would govern the key areas in which social partners would be seeking consensus and agreement. A working plan that would prioritise engagement would emerge out of the socio-economic priorities within South Africa. In the early years, Nedlac drew from the past experiences of its predecessors - the NEF and NMC. It also modelled its way of working on successful institutions of social dialogue in other parts of the world such as Holland and Ireland (Parsons 2001).

Despite drawing from the positive qualities of other structures, Nedlac established itself as distinctively South African. At the time of establishment it was South Africa's most representative policy body ever, as it included government, labour, business and the community. It was established to be an agreement-making body of equal parties and not only an advisory body. Representatives on Nedlac are mandated and serve together as a mechanism for continued “accord making”. South Africa therefore is said to

have its own “hybrid” system of social dialogue (Parsons, 2001).

Nedlac’s first important focus at inception was that of the Labour Relations Act (LRA). An extremely tight deadline of less than three months was set for the respective parties to complete negotiations and reach consensus (Parsons 2001; Parsons 2010). The LRA was promulgated in 1995 followed closely by the establishment of the CCMA in the same year. Other labour legislation that passed through Nedlac included the Basic Conditions of Employment Act (BCEA), the Health and Safety Act and the Skills Development Act. In the early years, Nedlac was instrumental in the establishment of the labour framework that governs labour and employment in South Africa.

One of the challenges experienced by Nedlac at the onset was that it attempted to reach consensus without any approved framework for economic policy-making. The absence of an economic vision for South Africa at the time was one of the reasons offered for why no overall policy-making framework could be established. The lack of a vision and the high levels of mistrust between social parties that prevailed created a vacuum. The eventual publication of government's Growth, Employment and Redistribution (GEAR) strategy in mid 1996 which aimed to set out a broad vision for the South African economy, helped somewhat in closing the vacuum. While business was happy with the strategy set out in GEAR, labour was not, as they felt that some of the policy choices that were made threatened their position (Parsons 2001; Parsons 2010).

While GEAR provided some strategic structure to Nedlac's processes, the way in which the government introduced GEAR was the start of government bypassing Nedlac when it suited or served its purpose. GEAR was a socio-economic policy of macro-economic intervention and as such fell within the ambit of content that should have been tabled before Nedlac for engagement and dialogue. However this did not happen and was instead released at a press conference and announced in Parliament by the Minister of Finance,

Trevor Manuel, who announced the policy, was “not negotiable”. Business did not oppose the GEAR policy however COSATU, the ANC and the SACP all expressed their unhappiness with its content and complained of not having been approached for engagement on the policy which was deemed non-negotiable (Webster & Sikwebu 2006).

The lack of engagement with the ANC alliance partners created tension within government on how to deal with GEAR. Some felt that the policy should be given a chance and that government should not be attacked at a time when the country was facing a currency crisis. Others wanted to oppose the policy. Representatives within COSATU expressed the view that in hindsight they should have taken government to court for having breached the Nedlac Act, which required government to “seek to reach consensus and conclude agreements on matters pertaining to social and economic policy”. Bypassing Nedlac to approve GEAR would have profound implications for the Public Finance and Monetary Policy Chamber of Nedlac. Members of the Chamber felt that government did not take their work seriously (Webster & Sikwebu 2006).

GEAR was not the only policy that bypassed Nedlac in the early years of its existence. The council was also sidelined on health, education and housing policies including the Health Bill, Policy on Regulation and Pricing of Medicine, the Health Charter, Higher Education Funding Formula and the National Housing Strategy. Ironically, the ensuing outcry over how GEAR was approved subsequently found its way to Nedlac for engagement (Webster & Sikwebu 2006).

Matters tabled before Nedlac can be raised by any of its constituencies. However, the role that government plays as a key policy driver and thus bypassing Nedlac on its policy decisions raised legitimate concerns about its commitment to supporting the aims of the Council in its early days. The consequence of government’s actions in 1996 to bypass Nedlac marked the

start of ongoing concerns about the state of social dialogue in South Africa. Bypassing South Africa's highest-level social dialogue forum on a major macro-economic policy continues to haunt the effectiveness of the Council (Webster & Sikwebu 2006).

In the early years one of the Council's successes was the Presidential Job Summit, which yielded 40 programmes and projects for employment creation. The programmes were useful in various forms and ensured that the plight of the unemployed was addressed as a multi-dimensional phenomenon and all key stakeholders cooperated in the process of developing the programmes (Parsons 2001). The summit was not only hailed a success of Nedlac, but it was a turning point in the way the organisation was perceived. But the summit also had the opposite effect and dissatisfaction regarding the efficacy of Nedlac started to set in. Disillusionment about Nedlac had started during the deadlocked negotiations on the basic conditions of employment legislation in 1997. Government in particular started to regard Nedlac as an obstructive force rather than as a facilitator of policy outcomes. In addition, the protracted process of implementing the recommendations of the job summit started to cast doubt on whether the process had been worthwhile. Nedlac's failure to offer a shared economic vision and its inability to monitor the proper implementation of policies, were also amongst the criticisms levelled against the Council (Parsons 2001).

Early critiques of Nedlac included concerns about the institution's ability to transition from the body that lead the development of frameworks, into one that could effectively implement policy (Parsons 2001). At the same time an additional challenge faced by the Council, was the resignation of its first executive director, Jayendra Naidoo. The position of executive director was subsequently vacant for 12 months before Phillip Dexter was appointed.

Ten years after its establishment, the Minister of Labour commissioned an external review of Nedlac in 2005 to assess the effectiveness of the social dialogue forum. The ILO was co-opted as a partner in the joint review

process alongside Edward Webster and Dinga Sikwebu of the University of the Witwatersrand. The 2006 review outlined how Nedlac had contributed to the social and economic reform of South Africa over an eleven-year period. The Council is highlighted, as having supported the development of a democratic South Africa by creating new labour market institutions through the inclusion of constituencies that previously were excluded from policy-making. Nedlac successfully achieved the creation of social capital through the emergence of a network of individuals and institutions that started to build the bridge to narrow the historic divide that existed. Social capital includes social networks, a sense of mutual obligation and trustworthiness, an understanding of the norms that govern behaviour and the social resources that enable people to act effectively (Bourdieu 1992). The World Bank regards countries with high levels of social capital as more likely to experience growth. The Council has also enabled processes that created the opportunity for constituencies of organised business, government, labour and community to shape both the content and pace of economic and social policies. A third success of Nedlac has been identified as the important role it's played in impacting the content, sequence and pace of policies that contributed to a common economic vision, trade reform, competition policy, restructuring of the labour market, active labour markets and financial sector reform (Webster & Sikwebu 2006).

The Nedlac report identified the key challenges that faced social dialogue in South Africa at the time and cautioned that should these challenges not be addressed, they could undermine the achievements that the Council had made in its first eleven years of operation. The challenges identified were categorised as those external to the Council and institutional challenges pertaining to the internal functioning of the Council. The external challenges identified included the high level of inequality and unemployment in South Africa. In 1991 the Gini coefficient was 0.67, making South Africa one of the most unequal societies in the world. The Council also had to contend with government departments that were ambivalent about social dialogue as a

policy-making approach and a weak relationship between the Council and the legislative arms of government. The internal challenges facing Nedlac included the efficiency of the Council as an institution, the capacity of the organisation's secretariat, contribution and commitment of constituencies (Webster & Sikwebu 2006).

The challenges of the 2006 report identified the need for government to acknowledge the role of Nedlac in policy-making by ensuring that the President and the Deputy President establish a closer working relationship with it. The head of state also needed to provide clarity on the relationship that Nedlac has with Parliament, as well as what policies should be tabled at Nedlac. The report further recommended that in order to support the effectiveness of Nedlac, that the role of the Council be broadened to include a monitoring function. Expertise within the Council also had to be strengthened to allow for stronger input in policy-making (Webster & Sikwebu 2006).

How Nedlac operated in the early years is distinctively unique, not only because of the historical context from which it originated but also because of the community's inclusion as one of its social partners. Nedlac commenced its work at a time when a deep divide existed in the labour market and through the tripartite social partners, it successfully established itself as a multiparty institution that sought to narrow corporatist agreement between the big three, namely: labour, organised employers and government (Bird & Schreiner 1992).

In practice however, bringing together social partners proved challenging in the early years of the institution. Labour Minister Membathisi Mdladlana who held office in 2005 held the view that Nedlac would find itself unable to perform its function as a result of it not being able to bring together all stakeholders (Jacks 2005).

Nedlac compares favourably with the social dialogue institutions of other

countries. Webster and Sikwebu's 2006 review, compared Nedlac to 40 social and economic councils, all of which are members of the International Association of Economic and Social Councils (IAESC). Nedlac compares favourably as being on par with almost a third of the countries that allow for institutional participation of community constituencies in multipartite concertation. Almost all these countries have broadened the scope of their activities to extend beyond the labour market to include social and economic issues (Webster & Sikwebu 2006).

Parsons argues that despite the criticism of Nedlac that began around 1997/8, South Africa would not have been better off without a structure such as this. He argues that without the “conflict management potential of a structure like Nedlac, the transition to democracy would have been more problematic” than it would have been for an emerging market like South Africa. He further notes that it can be argued that labour and capital reaching consensus on key labour matters was reassuring for investor confidence given how vulnerable economics are during a transition phase (Parsons 2001).

The initial views of Nedlac by some of its social partners and by members of government, was that it operated as a collective bargaining structure rather than a consensus-seeking body (Parsons 2001). Nedlac, however, was not created to be a collective bargaining structure. While it may have been seen to operate as one, or its outcomes may have been perceived as those that would result from collective bargaining, the perception that this may have created about the core function of the institution, may have lead to expectations of Nedlac that may not have be realistically achievable and beyond the Council's mandate.

4.6. Nedlac 2006 – 2016

The external review of Nedlac conducted by Webster and Sikwebu in 2006 was subsequently revisited in an updated assessment of the Council in 2013

in a paper titled “Repositioning Peak Level Social Dialogue in South Africa: Nedlac into the Future.”

This review was conducted against the backdrop of shifts within policy-making after the ANC’s Polokwane conference, recovery from the global economic crises of 2008 and an increase in labour unrest in both the workplace and in response to poor service delivery that prevailed in South Africa. The report revisited the recommendations made in the 2006 review and aimed to provide evidence that the costs of running Nedlac outweighed the benefits that the social dialogue institution had provided in the period under review (Webster, Joynt & Metcalf 2013).

The research identifies the main challenges facing the institution through in-depth interviews with key Nedlac roleplayers. The outcome of the research is that Nedlac remains a viable institution that when functioning optimally can help South Africa overcome the policy stalemates it faces. However this is only possible if the various social partners recognise the impasse that exists. The research also recommended that Nedlac emphasise the social dialogue components of its activities more. The review recommended that Nedlac reposition its role not only as a bargaining forum but also as a “space for the social partners to participate in the processes of decision-making.

“Nedlac should provide support and knowledge on key socio-economic policy issues and be a space where information is shared and common solutions to socio-economic challenges are explored” (Webster, Joynt & Metcalf 2013).

To achieve this, the report recommends that key leaders of the social partners that would include Cabinet Ministers, should meet with the Executive Council of Nedlac to set broad guidelines and to develop a socio-economic vision. The report also recommends that operational activities that pertain to reaching agreement on legislation and key policy issues through the Council’s Chambers should continue. The report further suggests that shifts in the

Council's focus could provide for a forum for developing a national framework agreement that could set parameters that could revitalise social dialogue processes in the country (Webster, Joynt & Metcalf 2013).

A key recommendation applicable to all social partners participating in Nedlac is for senior leaders to recommit themselves to full participation in the Council including attending all Exco meetings. The report calls for the Deputy President to become a "central actor" in the functioning of the Council and not only a "visitor" (Webster, Joynt & Metcalf 2013). Participants within Nedlac have publicly admitted that they do not attend meetings of the Council as they regard the institution as being ineffective. This was the view shared by the Chamber of Mines Chief Executive Officer Bheki Sibiyi in 2012 (City Press 11 September 2012).

The level of participation within the Council and the seniority of the members who attend meetings, were unanimously reiterated in interviews conducted with participants for this research paper. Nerine Kahn, the former Director of the CCMA, concurs that the seniority of people delegated to participate in the processes, impacts on the effectiveness of Nedlac. Her experience has shown that when the wrong status of person is sent to attend meetings of the Council, these representatives are not able to effectively contribute and negotiate the key points of discussion. These junior representatives of their constituencies arrive at meetings ill-prepared for the role they are expected to play in the process. As a result, meetings are cancelled and progress is retarded. Kahn regards sending the wrong level of person to engage with social partners at Nedlac as a sign of disrespecting the institution and its processes.

"People send their junior managers because they get so irritated because you sit there for hours and hours and hours negotiating the semantics of one word when people are starving and don't have access to water "(pers.comm., 2 November 2016).

Representing Nedlac as an organisation, Smith a former director is quoted as acknowledging the criticism levelled against the institution as having some validity however that the organisation has little control over its social partners. “In a sense Nedlac is being held to account for a whole range of failures within the democratic setup and the social partners themselves”. His views at the time were that government was “ambivalent” about the forum, recognising its importance but not being fully committed to the institution (Jones, 2012b).

The recommendation in the 2013 report calling for the Deputy President to become more directly involved in the work of the Council, was applied in a recent process within Nedlac whereby the Deputy President was mandated to directly lead a task team that was assigned to find solutions to addressing prolonged and violent strikes, as well as the determination of a national wage for South African workers. An interview participant who was part of this task team but requested not to be named or linked to the organisation she represented, compares this experience in 2006 as more favourable than earlier processes of the Council. She directly attributes the improvement in process to, amongst other things, the strong involvement of the Deputy President.

The creation of parallel processes and incidences where government has bypassed Nedlac in the quest to have legislation approved without opposition, has furthered undermined the role that Nedlac has been able to play in social dialogue over the past decade. While in Nedlac’s early years government bypassed the social dialogue platform in the establishment of the GEAR policy, within the second decade of Nedlac, government bypassed the Council on the Employment Tax legislation. The legislation proposed the implementation of a youth wage subsidy. Labour’s criticism was that Nedlac was not actively engaged with the labour industry and the community, as had been customary for Nedlac. Given that the proposed legislation directly impacted on labour, it would have been imperative that the industry be

effectively consulted on this matter. The Employment Tax Incentive was formally introduced by Government on January 1, 2014 as part of a suite of programmes aimed to address the social and economic problems of youth unemployment. The incentives payable aim to stimulate employment of 18 to 29-year-olds in the formal sector by reducing the risks and costs associated with hiring younger, inexperienced workers (www.gov.co.za). The failure of government to use Nedlac for the purposes of social dialogue in this instance, showed a decline in Nedlac's status (Kim 2014). This view is supported by the outcomes of the 2013 Nedlac review, which noted that Nedlac is not an island and that it operates within each constituency, which has its own political alliance and networks. The parallel social dialogue initiatives that are initiated by these alliances and networks, including those that are sparked through Presidential dialogue processes, have the potential to either compliment or undermine Nedlac's processes (Webster, Joynt & Metcalf 2013).

An ongoing challenge of the Council has been its capacity and resourcing provided by the Department of Labour as its lead institution. The 2013 review of the Council recommended that support from the Department of Labour be strengthened to support Nedlac as a premier, peak-level social dialogue institution (Webster, Joynt & Metcalf 2013).

Further efficiency improvements to the Council that have been recommended include the need to set clear but sufficient timeframes for issues that are tabled by government with defined processes and actions for task teams. There is a need for consequences to be established for task teams that fail to deliver required outcomes within the allocated timeframe and for the matter to revert to the relevant Chamber for resolution when not resolved at task team level. Consistency of representatives at all levels is also required for a period of two years to ensure continuity. These representatives must carry the appropriate authority and decision-making power on behalf of their constituency (Webster, Joynt & Metcalf 2013). Kahn's experience provides further evidence that due to the junior level of representatives sent to

participate in Nedlac processes as well as the unpreparedness of attendees, meetings are often cancelled, which slows down the process of finalising engagements with social partners. The tardiness in concluding matters at Nedlac has further added to the perception and experience of the inefficiency of the Council.

The 2013 review recommends that Nedlac should strive for consensus however it shouldn't be its only goal. Social dialogue should be regarded as successful even if full consensus is not reached, but instead a percentage of agreement is still achieved. More integrative bargaining and less positional bargaining is needed between constituencies (Webster, Joynt & Metcalf 2013). Gavin Hartford, an industrial sociologist interviewed for this research paper, holds the view that while consensus is the upside to the process, parties seeking consensus need to be clear on what they are prepared to "give up" in order to reach agreement. "Everyone wants to keep what they have and get more," is Hartford's view on the status quo of how parties enter consensus-seeking processes. Kahn's view is that South Africa may have outgrown the era of consensus-seeking and instead needs to look towards a post consensus environment. "Settling at all costs is actually not solving the problem." A new way of engaging and reaching consensus may need to be considered by all parties, says Kahn (pers.comm., 2 November 2016).

Recommendations that call for Nedlac to become more proactive include the need for the creation of a media and communication strategy that will better communicate to the public the positive outcomes of agreements reached by the Council. The improved utilisation of the Annual Summit for open interactive discussion on a broader range of issues, including holding seminars and workshops, the introduction of a strategy for monitoring and implementing selected Nedlac agreements, greater authority for the Executive Director of Nedlac to take proactive steps in revitalising Nedlac and the revitalisation of Exco as a structure for the active participation of senior leadership, are further recommendations to this end (Webster, Joynt &

Metcalf 2013).

However the recommendation most aligned to addressing the research question posed by this dissertation is that Nedlac “should take a more proactive role in volatile labour market situations, alongside the CCMA, such as Marikana and the recent Western Cape farm strikes” (Webster, Joynt & Metcalf 2013). Where this dissertation diverges from this recommendation is that there is an opportunity for Nedlac’s proactive role not only during and after a crisis event such as Marikana, but instead Nedlac’s agenda should include discussions on addressing underlying social and economic issues that directly impact on labour. In so doing, it could play a role in preventing repeat occurrences such as Marikana in future. It is proposed that this would be a more proactive way of enhancing Nedlac’s role in the South African labour market.

There is little debate that the events of Marikana cast a dark shadow over labour relations between 2012 and 2014. This shadow extended to Nedlac with many laying blame at the Council’s door for the events of August 2012. The role that Nedlac played in so far as its effectiveness as a social dialogue forum, is detailed later in this section.

4.7. Successes and critiques of Nedlac

In September 2014, Deputy President Cyril Ramaphosa addressed delegates at the 19th Nedlac Annual Summit. Reflecting on 20 years of democracy, he regarded Nedlac as one of the country’s success stories. As one of the first key national institutions established after the 1994 elections he noted that the Council was established on the back of a difficult negotiated transition and that it had played a critical role in meeting the challenge of social development and economic growth (www.thepresidency.gov.za).

The Deputy President summarised the focus of Nedlac since its establishment

as being that of promoting sustainable economic growth and greater social equity. He said that Nedlac had sought to promote increased participation by all stakeholders in economic decision-making at national, company and shop floor level (www.thepresidency.gov.za).

Despite the successes, Ramaphosa acknowledged that like most broader transformation efforts, the Council had had mixed success. He described the performance of the Council as being “uneven” and as such that the work of the Council at the time was far from complete (www.thepresidency.gov.za).

Various high-ranking political office-bearers have been less than complimentary of Nedlac. In 2012, former Deputy President Kgalema Motlanthe regarded the quality of participation - a critical requirement for the effective functioning of Nedlac - as declining. Tim Harris, a former DA MP has been quoted as saying that Nedlac is “a place where policy goes to die” (Jones 2012a). Trade and Industry Minister Rob Davies said in the same year that Nedlac “takes too long and achieves too little” (Jones 2012a).

Criticism of the effectiveness of Nedlac has not only come from key politicians. A direct allegation made by an unnamed commentator quoted in the Financial Mail of November 21, 2012 blamed Nedlac for contributing to the Marikana massacre. CEO of the Chamber of Mines Bheki Sibiyi also regards the failure of Nedlac as part of the reason that the events of Marikana took place. He is quoted as saying that “the government officials responsible for organising meetings are not doing their work” (City Press 11 September 2012).

The published annual reports of Nedlac outline what the Council regards as successes achieved. The 2014 Annual Report is the most recently available report published on the official website of the Council. The report summarises the period during which Alistair Smith was the Executive Director of the Council. The theme of the report is the need to reform Nedlac. This viewpoint

is expressed both in the Executive Director's overview as well as in the message from the Overall Convenor for Business, Lorraine Lotter. In his summary of the period under review, Smith notes that much of the criticism levelled against the labour framework under which institutions such as Nedlac and the CCMA were established, has come from business-orientated media. He regards them as lacking in understanding of South Africa's labour relations systems and therefore seeking easy scapegoats for more deep-rooted problems. Instead, Smith regards many of the country's labour challenges as being less attributable to the design of labour laws and rather to the capacity, conduct and commitment of social actors involved in labour dialogue. Smith calls for less focus on legislative intervention and more attention on improved leadership and a shift in the culture of adversarialism to relationship-building and creating a network of trust and collaboration (Nedlac Annual Report 2014). Interview participants for this research paper concur with Smith's sentiments in that they agree that little to no change needs to be made to the existing legislative framework that governs Nedlac. Instead, the changes that are required within the Council are more directly linked to the behaviours of the parties who participate in Nedlac.

Smith further notes that Nedlac's objective of promoting a shared vision and social cooperation to improve South Africa's socio-economic prospects, has not been realised. Quoting Jay Naidoo, who served as the minister responsible for the Reconstruction and Development Programme in 1994, Smith concurs that: "Nedlac has been weak in building a national vision between constituencies or an agreement on overall policy direction". Smith has called for social partners to agree on a common vision and to strengthen the political resolve needed to transform the South African workplace and thereby accelerate inclusive growth (Nedlac Annual Report 2014; also see Parsons, 2013).

Lorraine Lotter, the convenor representing business in 2014, noted that achieving a goal of inclusive growth has eluded the Council. She however

confirmed that the need for social dialogue had never been greater. She called for Nedlac's recognition as an opportunity for social partners to debate the ways in which growth can be achieved (Nedlac Annual Report 2014). Despite acknowledging the limitations of Nedlac, Smith's view of the Council in 2014 was not to abandon it but rather that each constituency within the social dialogue relationship take responsibility and show leadership commitment towards building trust while also changing the engagement between partners to one focused on the national interest. Smith called for less "finger pointing when things go wrong" and rather to find a "new path leading to a new social consensus". He further noted that: "If nothing else the Marikana tragedy should have promoted serious soul-searching amongst all social partners" (Nedlac Annual Report 2014).

Smith was approached to be an interview participant for this research paper in order to engage his views on the Council, particularly given that he headed Nedlac at the time of the Marikana saga. While Smith agreed to be interviewed, limitations related to his availability resulted in his input not being directly obtained.

Despite challenges related to various operational matters and chasing deadlines for processing legislation before the 2014 elections, Smith noted that the achievements of Nedlac during the time under review included the completion of reports on key legislation including the Public Administration Management Bill, the Expropriation Bill and the Restitution of Land Rights Amendment Bill (Nedlac Annual Report 2014).

Smith regards the intense scrutiny that Nedlac has been under since the Marikana strike, as giving credit to Nedlac's relevance. If Nedlac were irrelevant "there would be complete silence about Nedlac", Smith is quoted as saying after the Marikana strike. At the time, Smith noted that Nedlac still has a role to play and remains very relevant as a social dialogue forum in South Africa (Jones 2012a). He further regarded Marikana as an opportunity "to

have a serious conversation and to accept the hard realities and choices that needed to be made. As a society and leadership, we have to accept that we are not living up to the promise of the democratic dream and vision that so inspired us all in 1994 and led to us setting up institutions like Nedlac to encourage growth, equity and participation” (www.new.nedlac.org.za).

Hartford’s critique of Nedlac highlights the need to build capability to translate the intentions and plans created at Nedlac, into implementation. This is not a failure that he only attaches to Nedlac but rather one that that is pervasive on multiple fronts.

“Nobody talks about how to get there – we never agreed to a plan of what the social partners need to do in order to create the conditions – the investment conditions, the employment growth conditions, the GDP growth conditions, the cost of business conditions, competitive administrative conditions, competitive ports conditions the entire matrix of what we all need to do inclusive of what we need to give up in order for the magic to happen.” (pers.comm., 9 November 2016).

Kim & van der Westhuizen (2015) identify four issues that they believe have lead to the collapse of Nedlac. These are listed as the asymmetrical balance of power between actors, the inability of labour to represent the interests of a broader constituency beyond labour itself, labour’s lack of technical capacity within Nedlac and Nedlac’s own organisational inefficiency. The power balance within Nedlac is seen to practically sway towards that of State and business, and thereby relinquishing labour to a place of inferior power (Kim & van der Westhuizen 2015).

An interview participant for this research paper who asked not to be named, reiterated the challenges of negotiating with labour through COSATU representatives at Nedlac - a similar experience as noted in the research of Kim & van der Westhuizen.

“Negotiating with COSATU is pure hell. Why? Because they are so

weak. So disorganised. They do not have leadership...(COSATU are) weak and disorganised and still feel that they must participate and then it degenerates the process ... As far as social partners are concerned, at this stage, COSATU is incredibly weak and rather than promoting social dialogue, it is destructive to social dialogue...Anytime, rather a well-organised, well-structured, cohesive body sitting on the other side. And this is still a big problem. It doesn't help social dialogue when one partner is clearly very weak. Having a weak social partner as your opposite is not beneficial to social dialogue. To the contrary, it undermines social dialogue“ (pers. comm., 10 November 2016).

While evidence exists from experience of those who engage at Nedlac that labour holds less power and skill in the Council, this is not the desired state advised by the interview participant.

Kahn's experience has also been that COSATU uses its position in the tripartite alliance and negotiates in Nedlac, with the intention of being the dominant party.

“COSATU is not bargaining honestly in the Nedlac environment anymore ... not bargaining with integrity. It suits their end to get the needs of their membership but not for the greater good. Government is influencing the Nedlac process and they also don't have strong enough people representing government. Their tactic is to stick to a point so long that people eventually give in.” (pers. comm., 2 November 2016).

Changes in the representation of labour have also contributed to a further weakening of the role of labour. In the last three years, the lead negotiator for labour has changed three times. One of the negotiators represented NUMSA but when NUMSA broke away from COSATU, the negotiator was no longer accepted in that capacity and had to be replaced. Experience in engaging

with labour representatives is that they appear duty-bound to comment on all matters raised, even if their comment does not augment that of their colleagues. They do not have a prior caucus session to align their views and therefore do not engage with a shared view representing their constituency (pers. comm., 10 November 2016).

To compensate for their lack of power within the Nedlac structures, labour has resorted to exercising its power by using the tripartite alliance between the ANC, COSATU and the SACP. This attempt to bolster its power has in turn led to the weakening of the status of Nedlac (Kim & van der Westhuizen 2015). The exertion of this power is evident in the most recent amendments to South African labour law related to labour brokers. After extensive consultation, the proposed legislation for regulating the relationship between labour brokers and business proposed that after a period of six months, employees that were placed at an organisation through a labour broking relationship, would be entitled to conditions that would not be less favourable than had they been permanent employees. However, the law that was passed displayed COSATU's influence of a reduction of the six-month period, to that of only three months, indicating that labour had used its relationship through the political structure of COSATU and the ANC to influence the regulation of labour-broking (pers. comm., 10 November 2016). Thus, despite labour being weak in dialogue at Nedlac, they have their own unique position of strength given their relationship with the ANC ruling party. Labour through its relationship with COSATU, has a backdoor to the ANC that helps the union federation to influence decisions outside of the chambers of Nedlac. Therefore, while COSATU may have a skills weakness, they have positional strength (Gostner & Joffe 1998).

Kahn attributes a further reason for the breakdown at Nedlac as the main constituency of Nedlac being government. She holds the view that the situation that unfolded at Marikana represented a wholesale rejection of government because workers' unhappiness was directly linked to

government's failure to address and deliver core social issues, which she refers to as the "social wage". To the outside world, the breakdown and rejection of what transpires at Nedlac is communicated by people who are not party to the processes and who see little to no evidence of what comes out of the social dialogue process. She further criticises the tripartite alliance and how it has negotiated at Nedlac, as one of the reasons why other parties have stopped negotiating at Nedlac.

The lack of appropriate funding from Government to enable the appointment of the right calibre of people has further impacted the effectiveness of Nedlac. Kahn's experience has been that the "people running Nedlac are not good facilitators". Government needs to consider providing sufficient resources so that Nedlac can employ "senior enough people" to drive Nedlac processes.

The positive effect of the inclusion of trained external specialists to support Nedlac's processes was evident in 2016 when a task team was established to recommend ways of addressing prolonged and violent strikes. The experience of an interview participant who formed part of the task team was that the trained facilitators were well-skilled and positioned to be able to effectively guide the process and manage the participants in the process. The intervention led to a positive improvement in the outcome of the process and the time in which the process was concluded. In addition to the experienced facilitators, a legal specialist was also brought onboard to support the task team in evaluating the legitimacy of the recommendations made. This skill expedited the creation of legally sound final recommendations presented by the task team. In the past and in the absence of an external facilitator, the social dialogue partners would debate concepts amongst themselves without any authority assigned to any member of the team to ensure that a final agreement is reached.

4.8. Nedlac's role and parallel processes

Since the inception of Nedlac in 1995, various parallel processes have

emerged within the labour social dialogue arena. These include the CCMA and the Employment Equity Commission. While the creation of these additional structures supports social dialogue in South Africa, they have the potential to duplicate structures and thereby frustrate policy-making (Parsons 2001). An added challenge of these duplicated structures is that they create a public misperception of the roles and accountabilities of the various social dialogue structures. In his early review of Nedlac, Parsons 2001 noted that better coordination of some of the parallel processes may be needed “under the aegis of Nedlac” (Parsons 2001). The media’s perception is that government has on occasion bypassed Nedlac in order to get anti-worker policies into law (Musgrave 2016).

In 2013, Treasury presented a proposed Employment Tax Incentive Bill to Parliament. The content of the bill was not presented to Nedlac prior to tabling in Parliament. National Treasury obtained the opinion of a senior legal counsel in support of its view that government was not obliged to consult with Nedlac before tabling legislation. This legal opinion referred to Nedlac as an advisory body only (Joffe 2013).

While Government is known to hail Nedlac as one of the country’s greatest successes of the democratic era and demonstrates this often by showcasing the institution and its ideals to foreign visitors wanting to learn from the rainbow nation, the dichotomy however is that Government bypasses the very institution it exalts internationally and therefore undermines its effectiveness.

4.9. Nedlac’s role in Marikana

Nedlac as an institution created to facilitate social dialogue, is made up of social partners and its effectiveness is based on the quality of their engagement. Therefore in determining the role that Nedlac played in the events that unfolded at Marikana and to determine whether any blame can be apportioned to the Council, it is the social partners and the quality of their

engagement that need to be assessed.

Speaking about the fallout of the August 16 massacre, Kahn said:

“Nedlac had no role ...but the Nedlac social partners who are part of Nedlac, participated. They were able to be convened there through the working relationship that everyone has through the tripartite structures” (pers. comm., 2 November 2016).

A participant interviewed as part of this research paper who participates as one of Nedlac’s social partners within the labour chamber and who asked not to be named, shared the following views on the role that Nedlac played in the situation at Marikana.

“Before Marikana – did what we do there (at Nedlac) lead to Marikana? – I think we must take some blame as the social partners that we didn’t pick up the warning signs or if we picked them up, we chose not to bring them to the labour chamber where we should have brought them to engage as social partners” (pers. comm., 10 November 2016).

On the issue of apportioning blame, the interviewee goes on to say:

“To blame Nedlac for Marikana – there can be some blame. It is broader than just the institution or its members. Ultimately, Nedlac is the social partners getting together and engaging and negotiating. Nedlac is the organisation but it is us as the social partners who make up Nedlac and then we must take some blame. And yes, perhaps someone should have brought to the table the issue of majoritarianism when we saw this becoming an issue” (pers. comm., 10 November 2016).

The events at Marikana were sparked by employees’ unhappiness with wage increases and living conditions. These issues usually constitute the dialogue

that occurs between employer and employee through collective bargaining. The failure however of collective bargaining to address and resolve these issues lies at the heart of the Marikana uprising.

A participant interviewed in the review of Nedlac conducted by Webster, Joynt and Metcalfe between 2012 and 2013 noted that there is an opportunity for Nedlac to play a role in assisting the CCMA when collective bargaining breaks down. Nedlac was not however set up to be a collective bargaining institution (Webster, Joynt & Metcalfe 2013). As such the expectation of Nedlac to support the breakdown in the collective bargaining processes of South Africa is misplaced given that it was not established as an institution mandated to perform this function. A more relevant discussion point may however be whether Nedlac should be overhauled to include a mandate and the capacity to support collective bargaining when required. In this way Nedlac could play a proactive role in addressing issues that are tabled at collective bargaining fora as well as provide support in instances where collective bargaining efforts have failed.

The divergent views held by labour and business makes solving problems and reaching consensus on matters related to labour, all the more challenging (Webster, Joynt & Metcalfe 2013). Given the prevailing violence that has become synonymous with strike action in South Africa and specifically in instances where it's as a result of failed collective bargaining processes, Nedlac could be positioned as an institution that proactively steps in to provide support where collective bargaining has failed and has the potential to lead to labour unrest.

If Nedlac is indeed being limited to being merely an advisory body, then it was again bypassed during the events of Marikana in 2012 to provide its advisory support (Joffe 2013).

4.10. Nedlac - a failing corporatist institution?

Nedlac was founded on corporatist ideological principles. The Council has however in recent years fallen short of being successful in living up to these principles. While some critics of Nedlac regard the Council as neo-corporatist, Parsons, 2001 argues that the social dialogue structures and processes in South Africa are weak when compared with classical neo-corporatist models of prior decades (Parsons 2001).

Irrespective of whether the Council is currently regarded as corporatist or neo-corporatist, the founding corporatist principles define the way in which the institution was established - namely that it is by definition one that is representative of all parties and seeks to reach consensus through negotiation and discussion. Parties carry equal representation in a corporatist institution. The reality of Nedlac however, has been that over the past years it has been an institution where the equality of power has not been in line with the ideals of the archetypical corporatist institution. Kim & van der Westhuizen (2015) argue that there is an imbalance of power within Nedlac, which has resulted in diminishing the power of labour to bargain. This has had the effect of making the State and business stronger negotiating forces in the Council. Labour faces the challenge of not being able to adequately represent a broader constituency than the country's formally employed workers. In addition, a lack of technical capacity within the South African labour movement and organisational inefficiencies of the Council, all affect the effectiveness of Nedlac as a corporatist institution which the authors regard as being "on the verge of demise" (Kim & van der Westhuizen 2015).

A comparative study of why corporatist institutions have failed using South Africa and South Korea as examples, highlights the deteriorating quality of these institutions in both countries. The Nedlac equivalent in South Korea is the Korea Tripartite Commission (KTC). Both these institutions were at the time of creation, expected to play a role in contributing to further economic

growth by bringing about peace between conflicting social partners through a process of consensus–building. Kim, 2014 argues that the initial sentiments about the institutions expressed by labour, were those of hope, as it was the marginalised group under the respective authoritarian governments. Both South Africa and South Korea pursued reforms that were aimed at transforming the political and economic institutions inherited from their authoritarian governments to ones that would be more appropriate to the liberal democracies and liberal market economies that they were transitioning to. Labour expected to gain political rights as well as fair access to economic redistributions under new governments, however Kim argues that neither country has corporatist institutions that are functioning in a manner that makes this a reality (Kim 2014).

Nedlac was set up to be a corporatist structure within which the social pact would find expression. By its design, Nedlac aimed to limit the power of any one interest group so that no one single interest is likely to succeed consistently over others. The practical reality however indicates that labour, through the COSATU and ANC alliance, has proven to have greater power than other parties. In practice, pluralism has proven to be less than ideal as the social parties have not always been equal. As per the criticism of the pluralist theory, governments are seldom neutral, and the Nedlac experience has shown that the South African government has through the ruling majority created a situation where labour operates more closely aligned to elitist theory, than pluralism.

4.11. The reality of the social contract in South Africa

Philosopher Jean-Jacques Rousseau regarded a social compact as a survival mechanism by which the human race unites against forces as a means of preservation (Rousseau 2014). It is this social pact that lies at the heart of effective collaboration so that an institutional structure such as Nedlac can thrive. Hartford however shares a view on the reality of the effective working

of the social contract as follows:

“Nobody starts by telling the truth. The truth is that in any social contract there is always a story about giving up. Social contracts are created by people giving up. People only ever talk about the upside. The upside is the consensus on an economic policy, consensus on a labour market standard ... But they never talk about how different social partners both have to significantly give up to create the new... give up rights and interests that they currently hold dear to themselves. Employers have to give up profits or investment decisions - all of the stuff where they have sole jurisdiction. Unions have to give up the heavily regulated labour market, they have to create more flexible markets, they have to allow people to be hired and fired more easily...all the no-go areas, all the holy cows – those are the ones you have to start to address if you are going to build a social contract.” (pers.comm., 9 November 2016).

The 2012-13 Nedlac annual report notes a challenge facing the institution at the time, which has been reaffirmed by interview participants in this research, as collective bargaining being “dominated by inflexible mandates from often fragmented constituencies” (Gertnetzky 2013).

The practical reality of participating successfully in a social pact that aims to reach consensus, has shown its limitations within Nedlac in recent years. Hartford adds to the challenges faced by Nedlac and the reality of participating in a social pact based on his past experience as a chairman of Nedlac processes. His experience has been that when parties are asked to articulate their problems and propose solutions that:

“typically you get on the table a lot of polar opposites – even if there is an agreement on the problem. Labour’s solution is against business, business’ solution is against labour, government is against both.”

(pers.comm., 9 November 2016).

A further challenge to the social pact as expressed by Hartford, is that parties aren't willing to sacrifice any component of their stance or demand in order to reach consensus.

“...what are you prepared to give up that you currently have as a right and an interest in order to realise a solution – the resistance to the very idea that I have to contribute towards this solution - it's not going to just be delivered by the other...it's single issue against the other one.”
(pers.comm., 9 November 2016).

Furthermore, Hartford says that South Africa's political maturity and lack of sense of national identity limits the conversation that will result in addressing sacrifices that need to be made in order to bring about the true value of the social pact. It has been suggested that while political dialogue is being embraced in Africa, social dialogue remains undeveloped (Webster and Sikwebu 2006). Alistair Smith reaffirms this point in a quote as having said “social partners are still polarised and entrenched in their positions, as much of the economic policy debate and discussion on the labour market are dominated by rhetoric and remains adversarial” (Gertnetzky 2013).

This chapter has intended to provide an outline of Nedlac as a social dialogue institution. The institution, established 22 years ago, is steeped in the complexities of South Africa's history. The effectiveness of Nedlac therefore requires an assessment in terms of more than merely the foundations upon which the institution was established. Nedlac's effectiveness is the sum of a complex equation including the theoretical framework underpinning its structure, the intentions and behaviours of the social partners and the expectations and perceptions that are held of the institution. This dissertation will therefore assess how well Nedlac has fared and its role in promoting and sustaining effective social dialogue in relation to the case study of Marikana,

the details of which follow in the next chapter.

Chapter 5: Marikana

5.1. The story of Marikana

On August 16 2012, the South African Police Services (SAPS) opened fired on striking mineworkers at Marikana near Rustenburg, some 100 kilometres northwest of Johannesburg in the North West Province of South Africa. The mineworkers were employees of Lonmin Plc's platinum mine and were protesting for an increase in wages. A total of 112 people were shot of which 34 died. That day marked the largest incident of police brutality since the advent of a democratic South Africa. (www.sahistory.org.za; also see Cohen, n.d).

The mining strike at Lonmin took place against a backdrop of a series of other protests within the same community and were related to the living conditions of migrant workers. These include a strike at Implats, another platinum mining house in South Africa, led by rock drill operators that were aggrieved with the outcome of wage negotiations that had taken place. The wage negotiation process at Implats commenced in April 2011 and was concluded in October of the same year with a two-year collective agreement signed between the parties. As part of the 2011 negotiations, Implats management recommended additional adjustments to the salaries of rock drill operators but this was rejected by NUM, which opted for a uniform increase across all employee bands. Despite the union's rejection of the offer at the collective bargaining table, management decided after the signing of the collective agreement to unilaterally adjust the salaries of first line supervisors of mining working teams by a total of 18%. The additional adjustment was made in January 2012. The message that this adjustment sent to miners was that irrespective of what was agreed to through collective bargaining, the company had the additional funds to spend on labour, but that they chose to do so only for certain categories of workers within the bargaining unit. Gavin Hartford, in an opinion piece titled

“The Mining Industry Strike Wave: What are the Causes and What are the Solutions?” makes the point that the while the rock drill operators would have heard NUM negotiators opposing the increase to one group of employees, they would have harboured resentment knowing that the NUM chairpersons of both the north and south branches would have benefited from this increase as they fell within the employment category to which this increase applied. He also argues that while on their end-of-year break, the employees who mostly come from the same parts of the Eastern Cape, would have deliberated amongst themselves and returned in the new year of 2012 aggrieved to the point of taking matters into their own hands (Hartford 2012; also see Cohen n.d).

Those who downed tools at Implats on January 12, 2012 had only two demands - a monthly net pay of R9 000 which was equivalent to the net pay of miners who received the additional 18% adjustment, and that further negotiations not take place through NUM (Hartford 2012). Their reason for not wanting NUM to negotiate on their behalf stemmed from inter-union rivalry that had erupted between NUM and the Association of Mineworkers and Construction Union (AMCU) (Fasken Martineau 2012a).

To bring an end to the strike, Implats gave in to rock driller operators' demands and adjusted their earnings to match the additional adjustment made to other miners' salaries. At the same time, 10 000 employees resigned as NUM members and joined AMCU. The Implats strike cost the industry in excess of R1-billion in production and resulted in three deaths and multiple injuries. Implats management was left trying to verify a process that would allow them to institute procedures to de-recognise NUM and restructure their relationship with organised labour (Hartford 2012).

The wild cat Lonmin strike that would ensue in August of the same year was a direct consequence of the industrial action at Implats. The strike was unprocedural in that it occurred despite a collective agreement in place

governing the relationship between the parties. Similar to the Implats strike, the Lonmin strike was also lead by rock drill operators amidst growing dissatisfaction with NUM leadership (Hartford 2012).

The strike at Lonmin's Marikana mine officially commenced on August 9, 2012 when a number of employees downed tools demanding a wage increase. The very next day, employees who reported for work at the mine reported incidents of intimidation and assault by striking workers. On the same day, two employees were reported to have been shot. Between August 11 and 12, factional fighting occurred with reports of more employees shot in various incidents in the surrounding areas. Three employees were shot on August 11 and five more employees were reportedly shot on August 12. Meanwhile two mine security officials were hacked to death allegedly by protesters and their vehicles were torched. During this time, striking workers infiltrated mining production areas assaulting employees on duty, fatally wounding one of them. Three mine workers' bodies were found on August 13 and SAPS members were attacked while trying to escort protesters. Two officers were subsequently killed, while three protesters were also fatally wounded in response to the attack on the police (www.sahistory.org.za, Alexander 2013).

The attack on police got the attention of Mineral Resources Minister Susan Shabangu, who voiced her concern on August 15 about the violent nature of the protests while the police were attempting to negotiate a truce with miners on a hill, which had become a gathering point for the disgruntled mine workers. Lonmin decided not to issue warning letters to the striking workers to avoid destabilising the negotiations that were underway (www.sahistory.org.za).

On August 16, Lonmin reported six days of lost production at its Marikana mine, the equivalent of 15 000 ounces of platinum. This loss would make it unlikely that the mine would reach its full-year production targets regardless of whether striking workers were issued with an ultimatum to return to work or

face dismissal (www.sahistory.org.za).

The shootings at the koppie at Marikana on August 16, 2012 have gone down in the country's history as one of the most gruesome days in post apartheid South Africa. A total of 34 miners were killed - the majority on that day - in what has now become known as the massacre at Marikana. The deaths of approximately a dozen of the deceased employees were captured live on television, while the majority of deaths reported on that day occurred beyond the view of cameras at a nondescript mound of boulders some 300 meters beyond Wonderkop. The deaths were as a result of shots fired by police at close range. The officers claimed to have been defending themselves against striking workers, but there are no official reports of any police officer injured as a result of the August 16 shootings (Marinovich 2012).

Police Minister Nathi Mthethwa interviewed on a local radio station on August 17, confirmed that more than 30 people had been killed in the violence at Marikana, with many more injured. On the same day, NUM General Secretary Frans Baleni reported that 36 union members had been killed at Marikana. The Lonmin share price dropped by almost 5% in London and 4% in Johannesburg following breaking news of the massacre. Police Commissioner Riah Phiyega confirmed that 34 people had been killed, 78 injured and 259 arrested. President Jacob Zuma who at the time was attending a SADC summit in Mozambique, returned to South Africa to visit the site of the massacre (www.sahistory.org.za).

On August 18, Julius Malema who had recently been expelled as leader of the ANC Youth League (ANCYL) addressed the striking miners telling them that they should die for the cause and urged other miners to join the strike (de Wet, 2012). In the wake of so much violence, a political leader was now advocating that change in South Africa could only come about through violence and loss of life.

A national day of mourning was observed for the loss of lives at Marikana on August 23. On the same day, President Zuma announced the appointment of a commission of inquiry into the events at Marikana. The commission became known as the Farlam Commission, named after Judge Ian Gordon Farlam, a retired judge of the Supreme Court of Appeal who led the commission. The Marikana Commission of Inquiry into the August 16 killings commenced in Rustenburg on October 1, 2012 (www.sahistory.org.za).

A total of 270 workers were arrested and charged for the murders of their colleagues who had died alongside them on August 16. The charges laid on August 30 were withdrawn only days later on September 3, and all workers who had been detained were released from custody (www.sahistory.org.za).

The Lonmin strike was eventually settled after six weeks through direct negotiation with the strike committee that had been endorsed by union parties (Hartford, 2012). A mediated process led by the CCMA was undertaken resulting in a wage settlement being reached of an increase between 11 and 22%. The strike officially ended on September 18, 2012 with striking workers eventually returning to work two days later (www.sahistory.org.za).

Lonmin and AMCU had signed an agreement recognising the union as the majority union at the mine (www.sahistory.org.za) on August 14.

The final casualty list from the events at Marikana total 112 mine workers - 34 lost their lives and 78 were wounded (Marinovich 2012). As the numbers reflect, the Marikana strike was deeply violent but it had the effect of inspiring workers at other platinum mines such as Royal Bafokeng Platinum and Angloplats and even the gold sector to follow a similar course of action. The strike in the gold sector was triggered by different demands from that of the platinum sector, however Hartford (2012) has argued that many of the underlying trends were identical. These included a growing hostility towards NUM, a disregard for the collective agreement process, unprocedural

industrial action and a wage demand equal to the R12 500 agreed to at Lonmin (Hartford 2012).

It's Hartford view that a key characteristic of the industrial action undertaken at Lonmin was that it was driven by workers for workers and that this action went against the advice from their unions. The rivalry between a former majority union and a new emerging majority union has since been the focus of much analysis around Marikana. While this rivalry intensified during a strike that was neither endorsed nor supported by the unions, Hartford argues that the matter of union factionalism was “tail-ending the mass action, rather than initiating it” (Hartford 2012).

While the Lonmin strike was sparked by the culmination of various underlying factors including a growing dissatisfaction with NUM, which workers viewed as siding with company management in the wage negotiation process, it also sent a clear message from workers that they rejected the established collective bargaining process. The reason for this rejection included the perception by the union's rank and file that the collective bargaining process had become outdated and did not meet the aspirations of workers (Fasken Martineau 2012b). Baleni, who held the position of Secretary General of NUM at the time of the Marikana crisis, reiterated this point in an interview conducted for the purposes of this research saying that: “collective bargaining requires to be reviewed from time to time and things should not be taken for granted”. The employees' revolt against both management and union structures as well as their disregard for established collective bargaining processes at Marikana, can therefore be viewed as evidence of the outdated manner in which collective bargaining took place at that time.

5.2. The underlying issues that led to the Marikana crisis

A lot of focus around Marikana has been on the violent nature of the strikes and a painstaking breakdown of the details of events that led to the miners'

deaths. However, the intention of this paper, while not in any way disregarding the gruesome way in which the mine workers were attacked and killed, has instead chosen to focus on the underlying issues that resulted in the labour unrest and that eventually lead to those violence-filled days in August 2012. The point of departure of this paper's hypothesis is the perceived failure of those involved to effectively bargain on matters that impact labour. This paper contends that this failure contributed to the unrest that erupted at the Lonmin mine. It further questions whether Nedlac as a social dialogue forum may or may not have been able to prevent such an occurrence. In analysing the causes and possible solutions to these causes and to ensure the correct interpretation of the opinion piece written by Hartford in which he explores the underlying issues that sparked the strike wave in the mining industry, he was interviewed for this research paper on November 9, 2016 in Johannesburg.

His departure point for analysing the events within the mining industry, is that there is a general lack of analysis of the economic and socio-political drivers that have created the environment within which miners currently find themselves. He holds this view to be true for all sectors of mining that have participated in unprocedural strike action as initially experienced at Implats and then which reverberated across the platinum, chrome, diamond and gold sectors. It is within this environment that the power of the previous majority union and the established collective bargaining institutions, agreements and norms that were in place, collapsed (Hartford 2012).

Hartford argues that at the heart of the economic and social crises is South Africa's historic migrant labour system and the connotations it carries. This system he notes, has largely remained unchanged since inception, in post apartheid South Africa. The migrant labour system has created a double economic burden on miners as they support families both at their place of origin as well as at their place of work. A second reason for the crises Hartford contends, is that the collective bargaining processes and institutions

have failed to hear the signs of discontentment and to effectively address the causes thereof. This assertion supports the hypothesis of this paper in so far as determining whether the labour agenda as tabled during social dialogue in South Africa has accurately predicted and addressed the root causes of the labour unrest. A final reason put forward by Hartford is that of the abdication of responsibility of management to the human resources function. As a result of the way in which the human resources function has evolved, collective bargaining that should occur between manager and employee at shaft and mine level, has ceased to exist (Hartford 2012; also see Chinguno 2013, Cohen n.d., Harvey 2014).

With reference to Marikana, Hartford links the essence of the “Achilles Heel that inflamed and propelled the migrants and the RDO (rock drill operators) in particular, onto the street in strike action” as the harsh reality of the migrant labour system reflected in the lives of mine workers. The inability of the mining industry to find alternative and more humane ways of recreating the nuclear family for migrant workers and to seek ways that would improve the take-home pay to increase cash flow to the rural areas from where workers originate, he regards as the crux of the problems that led to the events at Marikana (Hartford 2012; also see Chinguno 2013, Bradshaw & Haines 2014).

Baleni concurs with Hartford’s view in so far as management’s lack of foresight to raise and address matters that would change the circumstances within which black workers found themselves. The reason for this shortcoming he maintains is because mining managements have stuck to what history has put in place. He notes that while all black workers were expected to live in single, same-sex hostels during apartheid, they are still expected to do so in a democratic South Africa. The unfairness of this practice is evident when comparing the living situation of white mine workers, none of whom are expected to live in hostels and instead are all given mine houses. Mine managements, Baleni noted, have had no incentive to undo the structures of

the apartheid past in so far as addressing the living conditions of mine workers (pers. comms., 14 November 2016).

Baleni further supports Hartford's contention that in the case of Lonmin, management abdicated the management of employees to the human resources function and minimised engagement between manager and employee at shaft and mining levels. He notes that instead of management addressing matters that impact the living conditions of workers, they developed a reliance on the union to raise these matters through the collective bargaining and negotiation process. Companies failing to address the living conditions of mine workers directly and not taking unions seriously when they raised these matters, led to workers resorting to violence because history has shown that managements have only made concessions when under threat of violence.

Rock drill operators who were at the heart of the Marikana saga in their quest to have their basic pay increased to R12 500 per month, have employment conditions characterised by the toughest, most dangerous and most critical to mining production. The perception that they are underpaid has prevailed for a long time, compared to their other colleagues in the mining industry. The rock drill operator role lacks financial incentives or allowances and their plight is further exacerbated by no prospect of any real career progression given their functionally illiterate status and the structure of mining job categories which requires basic academic training for advancement to the next occupational level (Hartford 2012).

Baleni's view on the underlying causes of financial unhappiness as experienced by the rock drill operators, is that it came about due to the implementation of a job grading system that is modelled on levels of accountability and responsibility as advocated through the Patterson job grading system. The rock drill operator in executing his duties carries no to low levels of accountability and as such the salary for this job is low. Baleni

pointed out that recommendations were made to the Chamber of Mines by NUM to compensate rock drill operators differently because of the conditions under which they have to work, regardless of the level of accountability linked to the role. Instead of creating a central committee however to investigate the issue of pay for this job category, each mine made concessions to address the matter at mine level. An investigation by Goldfields mine revealed that rock drill operators were overpaid. This outcome Baleni said, supported his assertion that the issue of pay for rock drill operators that came to the fore in 2012, was a long-standing point of unhappiness and a critical mass of workers were then rallied by AMCU on a matter regularly raised through engagement between NUM and mine management (pers. comms., 14 November 2016; also see also see Chinguno 2013).

Hartford argues that rock drill operators are the personification of all the “worst features of low literacy skills, poverty-driven migratory labour, which apartheid was founded upon”. They are therefore a “class of people who have gained the least from post apartheid South Africa”. The demographics of rock drill operators carry a specific pattern namely that they are mostly from the Eastern Cape, entirely migrant and functionally illiterate (Hartford 2012).

Hartford’s analysis of the symptoms and causes of the Marikana strike provides a framework from which to debate finding a sustainable solution. While the argument is well-made on matters of poverty and inequality, this research paper aims to ascertain why Nedlac has not over the years addressed these underlying issues, which because they were left unattended for so long, lead to a national disaster such as the Marikana massacre.

When asked in an interview whether another incident like that witnessed at Marikana could occur in South Africa, Hartford indicated that he was not optimistic that a similar incident would be avoided in the future. Failure to address the underlying issues through existing approved structures lies at the heart of the low levels of optimism in preventing a repeat occurrence.

5.3. The breakdown of collective bargaining

In post-apartheid South Africa, the Constitution provides that “every trade union, employers’ organisation and employer has the right to engage in collective bargaining”. This right is specific to “engage” in collective bargaining and does not make it a compulsory requirement of our labour relations system.

The Marikana massacre is said to have signalled the start of the decline of NUM’s credibility amongst its members. NUM has been accused of not effectively representing workers in Rustenburg and Marikana throughout 2012. Workers chose to take matters into their own hands and wildcat strikes erupted. However, given that collective bargaining processes were in place between Lonmin and NUM, management refused to engage with striking workers directly and insisted that they would only communicate with them through NUM. Because management would only engage with NUM, workers lost faith in NUM and also did not respect their role to represent them. It has been suggested that part of the blame for the massacre should be placed at the door of NUM’s leadership. Union members voted to oust Baleni, the union’s secretary general at the time of the Marikana unrest, indicating their unhappiness with union leadership (Morken 2015).

5.4. The Farlam Commission of Inquiry

On August 26, 2012, President Jacob Zuma appointed a commission of inquiry to investigate the incidents that occurred at Lonmin's Marikana mine from 11 to 16 August 2012. The investigation was aimed at bringing to the fore matters of national and international concern that arose during the period in question (www.thepresidency.gov.za).

Retired Judge Ian Farlam was appointed as the chair of the commission and was assisted by Advocates PD Hemraj, SC and BR Tokota, SC. The

investigation included engagement with the family members of those who lost their lives before and during August 16, witnesses to the events, legal teams representing workers and their families, and injured workers.

The mandate of the Commission was to probe and make findings and recommendations that concerned the conduct of Lonmin Plc, SAPS, the AMCU, NUM, the Department of Mineral Resources and other government departments as well as individuals and groupings.

5.4.1. Outcome of the Commission

The findings of the commission as related to the social pact and collective bargaining processes that underpin social dialogue, were mostly against Lonmin management and NUM.

The commission found that Lonmin did not use its best endeavours to resolve the disputes that arose between itself and its workers who were participants in the unprotected strike, as well as between the strikers and the workers who did not participate in the strike. Lonmin was further found to not have responded appropriately to the threat of and the outbreak of violence that occurred. The Commission criticised Lonmin's implementation of its undertakings with regard to its social and labour plans. The recommendations put forth by the Commission included that Lonmin's failure to comply with the housing obligations under its security and labour plans, should be drawn to the attention of the Department of Mineral Resources, which should in turn take steps to enforce the performance of these obligations by Lonmin.

Findings against NUM included that the union failed to exercise appropriate measures to resolve the dispute between itself and the striking workers. The union was found to have incorrectly advised rock drill operators that no negotiation between Lonmin and themselves was possible until the end of the two-year wage agreement. Furthermore, NUM was found to have lacked the initiative to persuade and enable Lonmin to engage with workers.

Chapter 6 Nedlac's effectiveness: the sum of its social partners

In determining the effectiveness of Nedlac, an assessment must be made in relation to the principles upon which it was created. Nedlac was established to be a consensus-seeking body through which South African social partners can engage on key matters of economic, labour and social policy. Nedlac was established on the foundation of corporatist ideology, requiring that the social partners engage through a social pact to collaboratively seek to create and lead policy implementation that will create and attract wealth more effectively and efficiently.

Nedlac is however not just an institution founded on a theoretical framework. Instead, it is an institution that was created with the intention of bringing together social partners with diverse views and interests. It commenced its work at a time when South Africans were divided, but filled with the hope of what a democratic country could be to its people. Twenty-two years later, Nedlac continues to deliver on its mandate in a country beset by a myriad of economic, social and political challenges. In assessing Nedlac, a multifaceted approach is required to realistically determine its real and perceived effectiveness.

This research paper has sought to identify how effective Nedlac has been in achieving its aims when assessed against the backdrop of the events leading up to, during and post the Marikana tragedy of 2012. A review of Nedlac's successes for the first eighteen years post democracy provides an indication of the effectiveness of the Council. In conducting this review, an analysis of documents, reports and media was undertaken. To support this analysis the opinions of interview participants who have engaged with Nedlac over this period were also canvassed. The case study method using Marikana as the focal point has provided the context for assessing the effectiveness of Nedlac since 2012. Data gathered through document analysis, media, publicly

accessible reports and engagement with people who participated in events related to Marikana, as well as Nedlac forums, were used.

The Marikana case study provides a relevant South African context within which to engage on the changing landscape of the labour market since the inception of Nedlac and how the changes that are reflected in the market - place may require a shift in perception of the expectation of the social dialogue forum. This case study has presented the opportunity to consider whether a reform of the Council is necessary and to reassess the role that social dialogue partners play in the Council to enhance its effectiveness during a turbulent time in the labour landscape.

The outcomes identified through this research have been summarised in key themes and highlight the role of the various social partners who participate in Nedlac, how they carried out their roles in relation to the situation at Marikana, the failures inherent in South African collective bargaining processes, the breakdown in union relationships and the need to review the national labour agenda that informs the engagement between social partners.

This chapter concludes with a recommendation to practically address the limitations of social dialogue as identified through this research paper. The recommendations are intended to enhance the effectiveness of the role played by social partners in Nedlac processes, entrenching social dialogue principles and engaging on a national agenda that ensures that pertinent issues of labour are addressed.

6.1. Nedlac's involvement as related to Marikana

In determining Nedlac's involvement in Marikana, an assessment of its role prior to the events that sparked the unprotected strike and outbreak of violence in the days leading up to, including and post August 16, 2012 and the years immediately after the Marikana massacre, is required. The view held by

those who were interviewed for this research paper and who played a role in the events prior to and post August 16, 2012, is that Nedlac's presence was not felt at Marikana. However, interviewed participants are in agreement that by virtue of Nedlac being made up of the tripartite partners, and given that the social partners played various roles during the period of the Marikana unrest, that while Nedlac as a forum or institution may not have been seen to be present, through the representation of its members, Nedlac did play a role in Marikana. Assessing the effectiveness of Nedlac in the case study of Marikana thus leads to the determination of the effectiveness of the various parties that were involved in the process, rather than a purely holistic assessment of the institution itself. Alistair Smith quoted three months after the events at Marikana said: "it's a cynical stretch to link the alleged failure of Nedlac to the events of Marikana" as "Nedlac cannot be the be-all and end-all of social dialogue. It is one important cog in that (wheel)" (Jones 2012b).

Evidence gathered as part of this research indicates that the underlying issues that lead to the tragedy of Marikana included a wide range of social issues that have prevailed within the mining industry for some time. These are deep-rooted issues stemming from the apartheid era and which by the time of the Marikana uprising, had not been effectively improved or addressed. As a result of workers' growing unhappiness with the failure of mine management to address these issues, coupled with a related incident that widened the unfair pay disparity between workers, Lonmin workers decided to take matters into their own hands and embarked on an unprotected strike.

Given that the underlying issues that lead to the Marikana tragedy were not new and were largely well-known to all social partners, it calls into question the effectiveness of the agenda that informs engagement amongst the social partners. This holds true for the agenda of engagement at an individual level for any one of the three social partners, as well as forums of collective engagement between them. The Farlam Commission found that the mine

management of Lonmin failed to effectively utilise existing mechanisms to resolve the dispute that arose between itself and its aggrieved workers. A further aggravation on the part of management was the failure to effectively implement undertakings it had made in its Social and Labour plan to address the living and working conditions of employees. One such undertaking pertained to the improvement of housing conditions for employees - a long-standing inequitable practice that is pervasive in the mining industry. This finding of the Commission squarely lays blame at the door of Lonmin management for the groundswell of discontent among workers. However, given that the underlying cause of discontent is not unique to Lonmin but prevails across the South African mining industry, it would be expected that this matter would find its way onto the agenda of businesses across the mining sector. Given that a large majority of South Africa's unskilled and semi-skilled labour are employed by the mines, it would also be reasonable to expect that engagement at Nedlac would have highlighted the need to engage more proactively to address social issues that have negatively characterised the mining industry since the apartheid era. Had living conditions been on the social dialogue agenda, social partners could have endeavoured to reach consensus on how to approach the improvements required to address underlying social and labour matters pertaining to living conditions, as well as other factors that have aggravated employees for a protracted period of time. An industry standard could have been set to improve living conditions either through agreed terms to be included through collective bargaining processes with labour, or through collaboration within the mining industry.

The first finding of this research therefore, is that the lack of engagement within the formal sitting of Nedlac to discuss the social and economic issues that impact labour, either at industry level or across all industries in South Africa, can be regarded as one of the key inefficiencies of the Council that contributed to the uprising at Marikana.

Over and above the absence of a discussion on key social and economic

issues at Nedlac, the way in which social partners engage within the social pact, be it within formal sittings or outside, also poses a potential risk to the effectiveness of the Council. Research outcomes on the assessments of Nedlac dating back to the early reviews of the Council have highlighted the declining commitment of partners to ensure that the correct level of attendees representing constituencies are present within formal sittings of the Council. Interview participants in this research have indicated that little to no improvement in overcoming this obstacle has been achieved in recent years. This includes the period post the events of Marikana and therefore no meaningful change in the quality of attendees at Nedlac has come about despite this being a long-standing challenge. Social partners continue to be represented by attendees who are inexperienced, ill-prepared, lacking in skill to reach consensus and lacking in mandate from the social partner they represent to make decisions in the social dialogue process.

The second conclusion that can be reached on this score is the lack of commitment on the part of Nedlac's social partners to ensure that the correct level of representatives from their constituency avail themselves for engagement at the Council, and therefore through their actions are directly impacting the effectiveness of social dialogue within South Africa.

6.2. The failure of collective bargaining

The case study of Marikana has brought to the fore the failures of collective bargaining at Lonmin and the platinum mining sector as a whole. South Africa has for the past two decades operated in a labour environment supported by progressive labour regulation that entrenches the right to collective bargaining. Despite this, the level at which collective bargaining should be performing to effectively address the labour challenges in South Africa appears to be less than desirable, falling short of the required standard.

This research paper proposes that it is the failure of effective collective

bargaining at industry level and specifically at Marikana as the real reason for the events that unfolded there, rather than apportioning blame on Nedlac as a social dialogue forum. While this paper does not suggest that the failure of collective bargaining is the only reason for the Marikana crisis, it purports that it is one of the key contributing factors involving the social partners to the dialogue process. The events leading up to the Marikana massacre indicate that by removing the duty on the part of employers to participate in collective bargaining as prescribed in the South African labour relationship framework and replacing it with organisational rights as well as workers' right to strike, have not proven to be a sufficient means of compelling employers to effectively reach consensus around the bargaining table. Lonmin's decision to implement a salary increase to a select group of workers that went outside of the agreed principles of a collective agreement, shows a blatant disregard for the collective bargaining relationship between the parties. Frans Baleni formerly of the NUM is quoted as having said, "we need to start taking bargaining seriously." He regards the trigger for the Marikana situation, as management having bypassed the collective bargaining system. For him, "undermining of the bargaining process has to be a serious lesson for employers". (www.new.nedlac.org.za). However, NUM is not blameless in its role of collective bargaining. The union's failure to address its members' request to engage with management on the disparity in pay created by the unilateral increase given to the miners, indicates another breakdown in the collective bargaining processes. Lonmin, NUM and workers showed through their respective actions, an open disregard for the collective bargaining process and thereby rejected the collective bargaining agreement and processes that had governed their relationship prior to the August 2012 events at Marikana.

Collective bargaining is the way in which the majority of workers in the country address the most sensitive of labour matters, namely the wage increase. The challenges identified in collective bargaining in the country therefore pose a significant risk to effectively engaging on wage matters. The gold and coal

industries participate in centralised bargaining as regulated through union federations and the Chamber of Mines. The platinum industry however, does not participate in centralised bargaining. The case study of Marikana has showed how the lack of a centralised bargaining system can lead to an explosive labour position. Neil Coleman, a strategies coordinator for COSATU, attributes the lack of centralised bargaining in the platinum sector as directly contributing to the situation at Marikana.

“Currently we have a fragmented wage structure, with so many different wage-setting mechanisms. The lack of centralised bargaining in platinum was a significant factor in the unfolding of events around Marikana” (Coleman 2013 as quoted in “Marikana and the future of South Africa’s labour market”).

Another contributor to the failure of collective bargaining is the increased complexity of labour relations put in place through revised labour legislation implemented after 1994. While these laws are deemed necessary, they have resulted in the unintended consequence of disintermediating the relationship between workers and management to the human resources function. In interviews for this research paper granted by Gavin Hartford and Nerine Kahn, they highlighted the added complexity brought about in labour legislation that has resulted in the ballooning of the human resources function and its responsibility in managing employee relations in organisations. Management and employees engage less directly with one another in such a context.

In addition to management no longer engaging directly with employees, they have also become more reliant on engaging with employees through a union. The Marikana case study has revealed the increasingly tenuous relationship between union leadership and members and that overall these relationships are declining in quality. This relationship decline has impacted on the effectiveness of collective bargaining in the platinum industry. The weakening relationship between union leadership and members, as well as between

management and employees, poses a great risk to the effectiveness of collective bargaining, as limited trust exists between the parties. In the case of Marikana, failing union relations with its members is evidenced through the way in which NUM was discredited by its members while perpetuating the rise of a new majority representation through AMCU. To limit the risks of centralised bargaining, Hartford recommends that instead, companies should be creating an “inclusive structure at the lowest possible level and to start listening to their employees” (de Waal 2012). He recommends that mining companies should be asking of every shaft and operation to create forums that involve workers, the union and community representatives at the lowest possible occupational level. He advocates that these forums should operate in the “most participatory way possible”. However, he says, currently companies are preoccupied with their human resources, public relations and industrial relations alongside collective agreements with unions “that they no longer listen to employees” (de Waal 2012).

The strike wave in the mining industry in recent years, has highlighted the inefficiencies of collective bargaining. Hartford in a report titled “The mining industry strike wave: what are the causes and what are the solutions?” proposes that “the institutions of collective bargaining, both in the form of the company and the union structures and processes, were found wanting in their ability to arrest and address the root causes of the social crises” (Hartford 2012). The Marikana case study provides evidence of the social crisis that sparked the events of August 2012.

The need to change the way in which collective bargaining takes place within the changing South African context is reiterated by Nicoli Natrass, a professor of Economics at the University of Cape Town in the statement made and quoted in “Marikana and the future of South Africa’s labour market” (2013):

“We are likely to see less and less unity within unions on specific

issues. As a result collective bargaining would have to become more and more differentiated or less collective”

Changing the way in which social partners reach consensus is what former CCMA director Nerine Kahn proposes is needed to improve the quality of collective bargaining. Her view is that South Africa is in a “post-consensus environment” and that approaching social dialogue with the intention of “settling at all costs is actually not solving the problem”. South African dialogue to date has been one characterised by negotiating with the intention of settling at all costs and that the “parties to the negotiating process have not updated their negotiating tactics post 1996” (pers.comm., 2 November 2016).

To effectively change the way in which parties participate in social dialogue, Hartford proposes that parties need to determine what they are prepared to give up in order to reach better consensus on matters impacting the labour market. He regards the status quo as “a lose-lose situation” in which “nobody is talking about what they will put back into the equation. No one is looking how the cake can be grown so that all can benefit, and instead the conversation is locked into a very adversarial and one-dimensional curve which is crises-driven”. He calls for stakeholders in the mining sector to be focusing efforts on how to “share the spoils so that the goose that lays the golden egg can do so again for the benefit of all tomorrow”? If this is not the focus, Hartford regards the future of the mining industry to be nationalisation (de Waal 2012).

6.3. Union relationships

As noted in the previous section, the evolving role of unions and the relationship between union leadership and its members, creates an impediment to collective bargaining and therefore the effectiveness of social dialogue.

Between 1994 and 2010, the increase in total trade union memberships to registered trade unions grew, however the total number of registered trade union memberships as a proportion of total employment declined over the same period. In addition, splits between unions have intensified as a result of members being dissatisfied with the leadership of their unions, choosing instead to create or join a different union. Within the platinum industry this has resulted in the most drastic of examples with rivalry between NUM and AMCU a core feature of the Marikana unrest. NUM was a hegemonic union amongst workers in the post-apartheid mining industry, however through growing dissatisfaction from members against union leadership, the revolt eventually led to an increase in AMCU memberships (Webster, Joynt & Metcalfe 2013; also see Webster 2015, Alexander 2013).

One of the reasons for the declining relationship between unions and their members, is the latter's need to be represented differently from how they have been represented in the past. The ability of a union leadership to address this changing need of its members has not been adequately dealt with, leading to members choosing to join or create other union structures. Professor Sakhela Buhlungu, Dean of the Faculty of Humanities at the University of Cape Town, who participated in a round table discussion of the Centre of Development and Enterprise in November 2012, is quoted as saying: "Unions represent an increasingly small crust of the workforce.... (and)... many people who actually pay union fees don't feel represented by unions and don't feel they benefit from unions" (Buhlungu 2013 quoted in "Marikana and the future of South Africa's labour market")

Ongoing leadership changes and affiliations also have the potential to impact the effectiveness of Nedlac processes. All indications are that the South African labour scene will soon have a new labour federation. The new federation shows signs of being the second largest organised labour union after COSATU. The formation of this federation is a direct fallout from the expulsion of the former General Secretary of COSATU, Zwelinzima Vavi and

NUMSA's subsequent withdrawal from COSATU in November 2015. The new federation is anticipated to be launched in early 2017 (eNCA 2016). The new federation has said that it does not want a relationship with the ANC and has rejected COSATU's alignment to the ruling party. Backers of this new federation have accused COSATU of being a "shadow of its former self and of bowing to its political masters in the tripartite alliance instead of furthering the gains of workers" (Musgrave 2016). The yet-to-be named federation does however draw from COSATU's experience, which has moulded the 57 unions which have expressed interest in joining the new federation (Nicolson 2016). Given the plight of South African workers including the large percentage of unemployed South Africans, what the new union will purportedly stand for, may find resonance with a large number of disgruntled workers and the disillusioned unemployed.

A change in the union landscape to include a new federation will have an impact on Nedlac too, as allowances will have to be made for the representation of a new federation on the Council. A potential impact of this as shared by an interview participant, is that work on legislative changes undertaken through Nedlac processes in the last two years, may have to be reconsidered should a new federation not agree with work already completed. Given that a new federation would not have participated in the work already completed and awaiting approval, it would be unrealistic to expect a new social partner representative to Nedlac to give consent to implement such policy without affording the new federation the opportunity to engage with the content in the same way as other social partners who were privy from the onset.

Changes in union membership and union numbers will have a direct impact on labour relations in South Africa. The largest unions will no longer be those that represent labour in the private sector. Instead the biggest unions are now within the government sector. Weakened relationships between employer and employees, employees and unions and prior challenges noted in terms of

collective bargaining, pose a significant risk to the effective functioning of the South African economy if public servant workers act on their right to strike. This risk is amplified given the propensity for striking workers to resort to violence.

6.4. The national labour agenda

The case study of Marikana showed that what lay at the heart of the social and labour issues that resulted in the violent events of 2012, was not unique to that situation. This finding therefore begs the question why these matters have not yet found their way onto the agenda of Nedlac's social partners for discussion.

The agenda of the Council is made up of matters that are brought to the Council by its members as well as matters that are referred to it by legislature, the executive of government and other bodies (www.new.nedlac.org.za). Given that the agenda is largely determined from within and therefore by the social partners, they can be blamed for not directing the attention of the Council to addressing pertinent issues that have the potential to impact on the stability of the labour market. A recommendation has been made earlier in this paper for Nedlac to become more proactive in its approach to addressing underlying currents within the labour market. The changing political and social influences on labour market reform in South Africa require that the legislative structure created for engagement on social, labour and economic matters, directs engagement amongst the social partners towards relevant historic and futuristic challenges. South Africa's labour challenges are immense, with high levels of unemployment and poverty characterising the majority of the labour scene for the past 20 years. This paper suggests that these are the kinds of issues that Nedlac needs to proactively engage on. This would require that social partners engage with the view of best benefit for all, rather than aiming to attain a mandated position that requires one party to lose in order for the other party to gain.

While the national labour agenda should be discussed at Nedlac, engagement on components of the national agenda should be driven through engagement that originates through senior structures of business, government and labour. The outcome of these discussions should then be brought to Nedlac structures and forums for further engagement. Hartford asserts that it is unlikely that the executive and board committees of organisations engage on matters pertaining to the Nedlac agenda, neither do organisational representative bodies or central committees of unions engage on such matters. The conversation about critical social and economic factors that impact on labour, must be had by the parties that are bound by the social pact and upon which Nedlac is premised.

The issues that lay at the heart of the Marikana unrest were not unique to Marikana. The issues that stoked the unhappiness of employees at Marikana, still linger within the mining industry in general. These challenges originate from high levels of dire poverty and the social inequality that prevails in the country.

The challenges that the Marikana situation brought to the fore and that should inform engagement on the labour agenda going forward, is summarised by Kuben Naidoo, the deputy director-general of the National Treasury and the former head of the secretariat to the National Planning Commission as follows:

“...the key political-economic challenge we must confront after Marikana is how do you govern such an unequal country? What type of institutions do you need to govern with such steep inequality? What does leadership mean in such a country where interests are so different?” (Kuben Naidoo, quoted in Marikana and the future of South Africa’s labour market).

An outcome of this research paper suggests that engagement at industry level

on matters pertaining to the social and living conditions of employees, has been insufficient. Because industry engagement on these matters has not occurred, there has been no influence in shaping the national labour agenda to include addressing the underlying causes of employees' unhappiness as was the case at Marikana. While Lonmin made commitments to a Social and Labour plan, a finding of the Farlam Commission was that there had been insufficient delivery against these plans and commitments. The mining industry currently does not have a collective plan to address the root causes of employees' unhappiness that dates back decades both during and post apartheid. While components of the mining industry, coal and gold specifically, have chosen to conduct wage negotiations at industry level through the Chamber of Mines, this is not true for engagement on social and living conditions which is currently only being addressed at business level.

6.5. The prevailing South African labour market

The South African labour market has been transforming since 1994. The focus since then has been one that has aimed at eliminating the inequality of the past and improving general working conditions for all workers. The landscape is heavily regulated through legislation that includes the Labour Relations Act, Basic Conditions of Employment Act, the Employment Equity Act and the Skills Development Act. Legislation is supported by codes of good practice. Occupational health and safety is highly regulated. Despite the deliberate transformation that has been initiated, the labour market still carries the legacy of the apartheid era in present day practices and perceptions.

The key characteristics of the labour market that should inform the engagement between social partners includes:

6.5.1. Unemployment

While the labour market has reported an increase in the total number of employed people over the past two decades, over the same period of time, there has been an increase in the overall unemployment rate. Between 2008 and 2014, the total number of employed in South Africa increased from 14.6 million to 15.1 million. However, over the same period of time the number of unemployed increased from 4.3 million to 5.1 million, resulting in an increase in the unemployment rate from 22.5% in 2008 to 25.1% in 2014. The absorption rate in 2014 was 42.8%, which was 3.1 percentage points below the peak that was reached in the country in 2008 (Stats SA 2016).

Unemployment rates are higher amongst the younger workforce and absorption rates are lower. Unemployment rates for people with a qualification less than Grade 12 is close to three times more than those with a tertiary qualification (Stats SA 2016).

With an unemployment rate of 25%, the largest challenge facing the South African labour market is the creation of jobs. In playing a proactive role in addressing challenges in the labour market, a key recommended focus for Nedlac should be reducing unemployment through protecting the employment of those who are employed and seeking out opportunities to promote job creation. The case study of Marikana did not raise issues of unemployment in relation to Nedlac, as those impacted by the case study were all formally employed.

6.5.2. The right to strike

The labour environment within South Africa showed a significant increase in the incidence of strike activity between 2006 and 2012. More concerning however, is that while strike activity has not only increased in duration and raised the number of working days lost, a drastic increase in the levels of

violence attached to protests has been recorded (Webster, Joynt & Metcalfe 2013, Alexander 2013). Unrest has become a standard feature accompanying many strikes in South Africa including service delivery and community protests, attacks against foreign nationals in an outburst of xenophobic violence and attacks on local government offices and officials. The prevailing unrest since 2006 culminated in the violent August 2012 attack and murder of workers at Marikana (Webster, Joynt & Metcalfe 2013; also see Webster, 2015).

While Marikana left its mark on 2012, two years earlier was another record year in its own right with the highest number of days lost due to strike action in three decades according to data from the South African Institute for Race Relations (SAIRR) and Standard Bank as reported by Webster, Joynt & Metcalfe in 2013. The statistics of 2010 show that negative labour sentiment had been brewing well before the events at Marikana. Since then, South Africa has systematically been experiencing an increase in the total number of work days lost and this is evident in the increasing unwillingness of employers and employees to compromise on matters mostly pertaining to wage increases (Webster, Joynt & Metcalfe 2013).

In an attempt to curtail the impact of violent and prolonged strikes, deputy president Cyril Ramaphosa convened a task team through Nedlac to discuss ways to minimise the impact and occurrence of such strikes. The task team was not set up directly after Marikana but only after a five-and-a-half month strike that took place in 2014. A participant in the task team who was interviewed as part of this research paper was asked to identify possible reasons as to why the task team was not convened directly after the Marikana massacre given the severity of the violence. He could not provide any specific reason other than to suggest that it was because of the volume of other challenges being addressed. The task team has since concluded its work and recommendations are awaiting approval for implementation. The outcome of the task team advocates a compulsory advisory arbitration

process to limit the incidence of prolonged strikes.

6.5.3. The role of leadership

One of the outcomes of the Farlam Commission highlighted the role that Lonmin management, NUM and AMCU leadership played prior to and during the Marikana uprising. Lonmin management was found to have fallen short of attempting to resolve disputes that arose between itself and its workers as well as not having adequately responded to the threat of an outbreak of violence that could and did occur. Gavin Hartford's assertion that management and employees no longer effectively engage with one another and instead have outsourced this relationship to either union officials or human resources people, finds synergy with the commission's own investigation outcomes. These sentiments are shared by Kahn who believes that "we need to re-evaluate and relook at what is happening". Part of that requires bringing human resources and industrial relations back into the boardroom. Her view is that while an overhaul of the system is not necessary, there is an over-reliance on using the courts to manage the employer-employee relationship, which does not always solve problems. "We need to start listening to what workers are saying," she said. In addition, it is Kahn's experience at the helm of the CCMA for many years, that labour and labour matters are not regarded as important by business, as the CCMA structure is viewed as there to solve the problems of labour (pers. comms., 2 November 2016).

Following on from Kahn's view, Baleni is quoted as having said that "there has been a brain-drain in terms of industrial relations practitioners" and the new generation adopts a very legalist approach (www.new.nedlac.org.za).

In November 2012, a round table discussion was hosted by the Centre of Development and Enterprise (CDE) on what South Africa could learn from markets such as India, Brazil and Malaysia on processes of reforming or

failing to reform. While the diverse group of expert participants from business, labour, academia and government failed to reach agreement on all the key lessons that emerged from the events at Marikana, there was an acceptance of some common themes that characterised the discussions. Of these points of convergence included the acknowledgement of the failure of leadership on the part of all parties both before and after Marikana (Centre of Development and Enterprise 2012). Marikana highlighted management's growing alienation from engaging with employees on the issues that directly impact them.

To improve on the relationship between management and employees, greater focus and attention will need to be placed on effective communication between all parties.

6.5.4 The mining industry

The South African mining industry has displayed significant tension in recent years. The tension exists between all parties, namely workers, capital owners and unions, as they pull in different directions based on their divergent needs. There are various underlying causes for this tension. The mining workforce has become increasingly militant in demanding a living wage, decent working conditions and what is being called the "democratisation" of the mining sector. Mining companies in turn, have taken a very hard stance with miners with the toughest being reacting aggressively by declaring strikes illegal and threatening workers with dismissal when they down tools. The third player in the game is the unions. They are regarded by workers as being too strongly aligned with government and business and as having sold out the labour force. Larger unions such as NUM, have material interest through its investment structures in mining capital, furthering the argument that their interest no longer solely lies in the plight of workers (de Waal 2012).

The real causes for the spate of violent strikes amongst mineworkers Hartford attributes to the migrant labour system, which still largely resembles the same system that was created under apartheid. The characteristics of this system

include those of migratory housing conditions which has created a double economic burden on many mineworkers who support and sustain two family households – one at their place of work and the other at their place of origin. Another cause of discontent proposed by Hartford is the failure of collective bargaining processes and institutions to hear employees' plight and address the causes thereof. The blame for this he levels at mining company leadership and the human resources departments of these mines.

To address the underlying causes, Hartford recommends a re-think of the migrant labour system and an overhaul of the collective bargaining process. In addition, the relationship between employee and manager needs to be restored to one where the manager is directly accountable for all components of the employment relationship at shaft and mine level. The future of the mining sector is dependent on addressing these underlying causes as well as interventions that confront the shared rewards by all stakeholders. Failure to do so will render mining an unattractive investment destination for South Africa (de Waal 2012).

The mining industry in South Africa is 150 years old and as such it has a strongly entrenched institutional memory. It is not known to be quick to change its approaches. This coupled with its extremely hierarchical and institutional structures are evidence that any change in the way in which the industry operates is likely to take many years.

Not only is there a need for radical change in the way mining companies engage employees in matters related to collective bargaining, Hartford advocates that change in the sector will only come if there is political will to do so. The events at Marikana was a key topical discussion point in 2012 and 2013, however the five-and-a-half month strike in the mining industry that followed in 2014, either emphasised the need for a change or detracted from the harsh lessons that were learnt as a result of the deaths of 34 workers. Hartford believes that the real conversation that ought to be had in the mining

industry is missing and that is a conversation “about what must be given up to ensure that all constituencies can enjoy real rewards over time. Without this, it will continue to be a lose-lose situation” (de Waal 2012).

6.6. Nedlac in the media

As the fourth estate, the media has unique influence in a country like South Africa and thus the ability to shape public opinion on a subject. How the media has portrayed Nedlac over a period of time has contributed to the perceptions that society has formed about the institution and the state of social dialogue in the country.

In the initial years, Nedlac broke new ground by establishing labour laws needed to develop and deepen South African democracy. Since then however, Nedlac has become more technical in its functioning. The work of Nedlac in relation to its founding mandate has become harder to explain to the general public than it was at its inception. The successes of Nedlac were determined by the processes leading up to the creation of laws, which served as hard evidence of the work of the Council. Today what the media reports creates a less than positive image of the Council. While few disagree with the limitations identified about the Council, even fewer try to understand the work required of the Council in order to accurately link this to its present day success. As noted by Alistair Smith, the role of the Council would not be spoken about in relation to Marikana if it was not still a relevant entity. If anything, the events of Marikana created a platform from which to debate what is required from social partners and from institutions within which these social partners engage in social dialogue.

When analysing the perception of Nedlac that the media has been influential in creating, trends that emerge include:

Nedlac is accountable for addressing labour disputes: A misperception of the

institution that the media has consistently reinforced, is that Nedlac is accountable for addressing labour disputes. An example of this is a pull quote in an article titled “Experts query relevance of Nedlac ‘talk shop’ which reads: “The body has never been effective in resolving dispute” (Sathekge 2014).

The founding mandate of Nedlac does not give it jurisdiction over dispute resolution. Instead, South African labour law established the CCMA for exactly the purpose of addressing labour disputes. What could however be argued, is that Nedlac and the CCMA could work together to prevent disputes from arising and/or resolving them when they do. This would indicate the reciprocal relationship that the two bodies have in addressing labour disputes that have the potential to negatively impact the country. A more accurate account of the role that Nedlac could play in dispute management would be that of focusing social dialogue on divergent matters of interest between the parties. Trained CCMA facilitators who are skilled in the mediating engagement between polar entities could aid the resolution of complex issues. When however a dispute has already started, Nedlac is not the formalised structure mandated to - nor are they capacitated to – resolve a dispute.

Nedlac is accountable for the behaviours of its social partners: Significant criticism has been levelled at the effectiveness of Nedlac and expressed through quotes in the media from various social partners. These quotes are however not reflected by the media as an indication of the commitment level and behaviour of the social partners within Nedlac but instead allow for social partners within Nedlac to admit their own poor behaviour that impacts the effectiveness of Nedlac and thereby condoning it. A key theme of external reviews conducted on Nedlac has consistently identified a limitation of the Council’s effectiveness as that of a lack of commitment from the social partners. This criticism is premised on the fact that Nedlac is an institution and therefore is made up of its social partners and in turn the institution is only as effective as the partners who are represented within its structures. However

the media perpetuates the belief and condonation that social partners are not accountable for the effectiveness of Nedlac. Examples of these instances include the following quotes:

‘Rob Davies says Nedlac “takes too long and achieves too little”’(Financial Mail 16 November 2012:48)

‘DA finance spokesman Tim Harris calls it “a place where policy goes to die”’(Financial Mail 16 November 2012:48)

“Chamber of Mines CEO Bheki Sibiba says its meetings are a waste of time because the relevant government officials do not bother to attend” (Financial Mail 16 November 2012:48)

“Business Unity SA CEO Nomaxabiso Majokweni says the partners involved – government, labour, business and civil society appear to be flagging in their ability to come up with dynamic economic policy” (Financial Mail 16 November 2012:48)

Negative Nedlac headlines: The headlines used on print reports about Nedlac, are extremely negative in tone as is the introductory paragraph. The reader is drawn into the report from a point of reaffirming that the institution has failed before the facts are objectively stated. Examples of headlines that have appeared in print between 2005 and 2014, carry the following negative perception.

- “A tipping point” (Financial Mail 5 October 2012:21)
- Experts query relevance of Nedlac ‘talk shop’ (Satheke 2014)
- “Is it relevant?” (Financial Mail 16 November 2012:48)
- “Lack of life but not dead yet” (Financial Mail 25 June 2005:46)
- “Nedlac in peril” (Pela & Salgado 2005)
- “Nedlac not dying – Cosatu” (Lourens 2005)
- “Nedlac’s downfall from grace” (Biyase 2013)

Government's role within Nedlac: Reporting on Nedlac almost always reflects the ineffectiveness of the institution in areas where it is believed to have been involved. In supporting the allegation of ineffectiveness, media reports directly quote the comments made by various social partners including that of government. What the reports seldom bring to the attention of its readership however, is the role that government plays in ensuring that the Council, that was established as an act of law, is effectively supported by government. While government is a member of Nedlac, it has the added advantage of being able to drive the direction of the institution through government policy-making and influence.

In an article titled “Nedlac’s downfall from grace” that carried the subheading “Body ‘irrelevant’ for business, labour and state’ published in the Sunday Times of 6 October 2013 (Biyase 2013), the following quote from Dawie Roodt, chief economist at the Efficient Group:

‘Nedlac has a role to play, but the problem is that “unfortunately government has undermined Nedlac by ignoring agreements pertaining to labour issues..... Nedlac isn’t meant to be a decision-making body, but it should be the place for discussion and informal agreement. “Parliament is the forum for agreements. But Nedlac can regain lost status if government actually recognises the importance of the informal agreements. (Government) say they will do something in Nedlac, but then they do something else in Parliament. The result is that business, labour and the community do not get the opportunity to give their inputs’ (Biyase 2013).

Media reports like this have failed to obtain comment from government nor does it interrogate the role that government plays in undermining the principles of Nedlac. If comment are sought to counter such statements, it is sought from Nedlac’s executive director and not directly from government officials who have the ability to negatively or positively influence the

effectiveness of Nedlac.

The media has therefore influenced the negative external perception held about Nedlac. Media reports have not educated the reader about the challenges facing social dialogue and the social partners by reflecting on the inherent challenges in the system namely the breakdown of the social pact, the role played by government, unequal distribution of power between social partners, creating an expectation of the Council to be a dispute resolution forum and the limitations placed on Nedlac through lack of capacity and resourcing.

6.7. Institutional reform

In addition to the convergence on matters pertaining to weakening leadership, the CDE round table also agreed that there is a need to reform important institutions that deal with labour market regulations including local and provincial governments (Centre for Enterprise and Development, 2012).

The sentiments expressed during interviews for this research on the topic of reforming an institution such as Nedlac, were similar. These views however don't call for a structural or legislative framework reform. Instead the reform that is required is for social partners to take institutions such as Nedlac more seriously. To the outside world, Nedlac is hailed as one of the great successes within the formalised statutory structure of South Africa. When assessed against leading practice in social reform structures, Nedlac ranks amongst the best, if not better. The South African challenge is therefore, how best to participate in the structure to derive the benefits it is capable of providing.

The view of interview participants in this research is that there is no incentive for government and labour representatives within Nedlac to change their behaviour. The reason for this is that the way in which Nedlac functions suits

their purposes, as it allows both parties to circumvent the processes that do not aid their respective desired outcomes. As a result there is a lack of adherence to the guidelines and structures that have been established. Interview participants also highlighted the challenge of a “total lack of governance” within the Council. It is these behavioural matters that require attention and less so the legislative framework that governs the institution.

A further challenge identified through engagement with research interview participants is that of the need of government to be decisive about the role that it wants Nedlac to play. The view held by participants is that government doesn’t have a consistent policy process and as a result there are conflicting and competing policy outcomes that impact the effectiveness of Nedlac. One interview participant expressed this challenge as: “government’s strategy has no strategic direction because it has different strategies every week”.

An outcome of this research paper is therefore that no immediate legislative reform is needed to alter an institution such as Nedlac rather the social partners who participate in Nedlac have to transform the way in which they participate and engage in the Council.

6.8. Nedlac post Marikana

With criticism and blame levelled at Nedlac for the events of Marikana, the question can be posed as to whether the institution has heeded the call to bring about change in the wake of the lessons learnt from Marikana. An interview participant in this research who asked not to be named as an individual or the constituency represented, shared first-hand experience in engaging with Nedlac after the events at Marikana. The interview participant regards the engagement at Nedlac as “much improved” over the past two years. The key improvements that were noted are from experience working within a task team that was set up and lead by Ramaphosa. Two task teams were set up within Nedlac to find a way of resolving prolonged and violent

strikes and to make recommendations on a minimum wage for South Africa. These task teams weren't established directly after Marikana - only after the protracted 2014 strikes within the mining industry, the longest in South African mining history.

The interview participant's experience of working within the task team aimed at addressing prolonged and violent strikes is noted as being more positive and productive than prior Nedlac engagements for the following reasons:

- 1). The process was lead by and had direct involvement from the deputy president. This is aligned to recommendations noted earlier in Chapter 5 as made by Webster, Joynt and Metcalf in their 2013 review of Nedlac. The recommendation called for the deputy president to become a "central actor" in the functioning of the Council and not just a "visitor" (Webster, Joynt and Metcalf, 2013).
- 2). A committee of principles was established that served to give guidance when the task team hit snags in the process. The committee of principles was comprised of senior leaders within each of the constituencies.
- 3) An external, seasoned facilitator from the CCMA was tasked with facilitating the discussion between the social partners and
- 4). External labour and legal specialists were brought on board to support the review and development of material that has grounding in law.

These four changes to the way in which Nedlac ran engagement processes significantly improved the timeline and outcome of social dialogue between the parties. The improvements have had further benefits in addressing the shortcoming of skills and experience of parties involved in the social dialogue process and thereby has reduced the time taken to reach consensus. While the interview participant noted that Nedlac is still beset by problems and difficulties, improvements have been evident over the past two years.

Alongside the task team that focused on prolonged violent strikes, another was established to recommend the implementation of a national wage. The task team's recommendation has been that the proposed national minimum

wage be R3 500 per month (Bonorchis 2016).

The creation of these task teams, the way in which they were conducted and the turnaround time to reach consensus on how to address their focus points, reflects the start of reform within Nedlac. These improvements are also evident in both the present day content of discussion regarding labour challenges in South Africa as well as the internal workings of the Council.

6.9 A way forward for social dialogue

As inequality, poverty and unemployment deepen in our society, conflict will increase. Until such time as a solution is found to address the root cause of the social problems in society, a parallel process is needed to ensure that social partners have a structure within which to engage and resolve conflict. The levels of trust between social partners has historically been low and very little has improved on this trust relationship in the last decade. If anything, incidents of extreme violence that have erupted where parties have not been able to amicably settle on labour related matters have further eroded the trust relationship between labour and business.

To rebuild the trust relationship and/or to address the trust deficit that exists, a new social compact is required. While many critiques of social dialogue have called for a new approach to addressing the social compact, over the past 15 years (Lund 2012) few alternatives have been proposed. This may be a result of critique being easier than to initiate a new form of social dialogue. Nonetheless, various circumstances across multiple environments have shown limited alternatives to that of social dialogue. Instead, social dialogue is identified as the solution to address a variety of challenges over all other alternatives.

This paper has argued that social dialogue remains necessary in South Africa and that Nedlac, with some enhancements to the commitment levels and

approach of social partners, remains a relevant format to structure social dialogue. The Marikana case study has demonstrated through a recent event that social dialogue remains applicable, even though the ultimate structure through which social dialogue should be structured has shown limitations. These limitations have mostly been behaviour related on the part of the social partners more so than the framework, which underpins the Council. Social dialogue alone will not address the root causes of South Africa's socio-economic challenges. It is however a vital mechanism required in supporting the achievement of a new reality in South Africa.

Having asserted that social dialogue remains relevant but that the format that it takes needs to be revisited, what then needs to be the new form of social dialogue? What structure and shape must it take? What needs to be introduced or eliminated from the system to allow for effective social dialogue outcomes to be implemented?

As social dialogue is grounded in pluralist theory, it is inherent that not all interest groups in the process are equal, however as a result of the need to seek new ways of self-preservation, parties will unite against forces that may impact them collectively. A way forward for social dialogue in South Africa must ensure that these two pluralist characteristics are balanced in order to achieve maximum gain.

In considering a method of enhancing social dialogue in such a way that it addresses the limitations that have been evident in South Africa for more than a decade and augmenting the positive attributes of the process, it is proposed that the following aspects be considered in overhauling social dialogue in South Africa.

6.9.1. Entrenching social dialogue practices

In various spheres of the economy, such as that of business, engagement on

finding solutions to complex processes that impede the increase in profits for shareholders, needs to find favour on many boardroom agendas. Deliberation and brainstorming new ways of ensuring that business processes withstand the challenges of the time are part of the fibre of business. One is however less likely to find the same time or even a fraction of the time spent on finding solutions to complex people-related problems. When such time is created, either at business or national level, the debate is undoubtedly vigorous, however it seldom translates into implementable action to overcome the stalemate on matters such as the breakdown of the social compact.

Hartford's analysis of the reasons for the failure of social dialogue as summarised in prior sections of this paper provide a realistic and honest view as to why social dialogue in South Africa is failing – namely that of not engaging in what should be sacrificed in order to achieve a combined greater good for the social partners. The solution to addressing this would appear to be that social partners need to start considering, alongside the demands they have and present at forums of social dialogue, what they are prepared to forego to achieve the collective outcome of the process. This is however much easier scripted than actioned. The reasons for this extends across a wide continuum ranging from issues of severe poverty of the South African labour force which makes asking for a sacrifice from those who have so little morally arduous, all the way through to the ever-demanding requirement to increase business profits which is easier achieved through a low profit-to-labour overhead ratio.

Social dialogue needs to become more entrenched in the way in which all spheres of society engage. This holds true for business, community, labour and government. Social dialogue as a practice needs to not only become more entrenched throughout various structures in society, but it needs to be more honest and more direct in focusing on the critical matters that impact labour. More rigorous debate on matters of socio-economic relevance needs to be had across various forums within society. The content and the manner

in which these forums engage on these matters require structure and focus so as to limit lip service being paid to the practice of social dialogue resulting in limited outcomes of the process.

6.9.2. Nedlac is not solely accountable for the successes and failures of social dialogue

On the premise that social dialogue practices need to be entrenched throughout society, it would then be acknowledged that Nedlac is not solely accountable for the successes and failures of social dialogue in South Africa. The role that various entities in society play in positively progressing social dialogue needs to be recognised, and in so doing all these entities need to be held accountable to promote sound social dialogue. In this way, when engagements on specific national agenda items occur within forums such as Nedlac, the focus will be on the correct level of debate, as matters pertaining to the national agenda would have been addressed in engagements with relevant partners.

6.9.3. The principles underpinning social dialogue need to be clarified

On the basis that social dialogue occurs throughout society, a framework that guides how social dialogue is conducted is required. The intention of this is not to police social dialogue processes but rather to create a standardised approach through which social dialogue can occur. Similarly too, for the structures involved in processes of dispute resolution through mediation and arbitration, binding processes should guide effective outcomes of social dialogue.

South Africa has proven that engagement on matters of socio-economic importance have seldom shown positive progression unless enforced through legislated structures. Transformation ideals such as those linked to the Broad-Based Black Economic Empowerment Act and Employment Equity Act,

have systematically had to be boosted through the introduction of more stringent legislation over the last 20 years. Business has not shown that it has the upper hand in terms of promoting an equal society when it comes to effecting decisions on labour.

6.9.4. Dialogue needs to occur based on priority of agreed national agenda items

As argued in section 6.4, the absence of a national agenda that prioritises social dialogue engagement negatively impacts the effectiveness of the outcomes of social dialogue. An agreed prioritisation of labour matters that require engagement is required to ensure positive progress is made in addressing the challenges facing South African labour. These agenda items should include an acknowledgement of the root causes of these challenges and how social partners commit to overcoming these challenges.

The agreed national agenda should carry commitments to a timeline against which social partners will deliver change. These timelines should be aggressive on matters of national importance. In creating timelines and holding social partners accountable within their natural constituencies, measurable outcomes can be achieved when the partners are collectively engaged in Nedlac forums.

Social dialogue in South Africa is not an activity. It's a process that requires structure, commitment and measurable outcomes to effectively bring about change.

6.10. Conclusion

The aim of this study was to explore the effectiveness of Nedlac as a social dialogue forum against the backdrop of Marikana as a case study. In determining the effectiveness of the Council, a review of the principles against

which it was set up and the expectations against which social partners determine its success, was established through a literature review and detailed review of the Council over the last two decades.

This research paper confirms that all key stakeholders continue to regard social dialogue as a key requirement in the South African labour landscape. Along with confirming the importance of social dialogue is the view that the way in which social dialogue is conducted in the country needs to be refined in order for the process to be beneficial. The practical experience of engaging with social partners through Nedlac forums highlights numerous frustrations in the process and the way in which parties conduct themselves.

Changes in the way in which parties approach collective bargaining and consensus-seeking processes, need to be effected. Parties engage with the intention of obtaining all they set out to do and potentially also derive additional value without being prepared to compromise on any of their demands. This method of engaging is deemed to be outdated and impeding effective social dialogue progress.

The research aimed to determine whether Nedlac as a social dialogue forum continues to be effective using the events of Marikana as a case study. The research established that Nedlac as an institution was not present in events leading up to, during or immediately after the Marikana massacre. However, given that Nedlac is an institution made up of the tripartite social partners who were present at Marikana, some degree of responsibility for the events of Marikana can be attributed to Nedlac. As such, the social partners and the way in which they conducted themselves in setting the agenda for engagement at Nedlac, also carry responsibility for the events of Marikana.

The case study has also highlighted the need to improve relationships between unions and the members they represent to ensure not only the accurate representation of members, but also that members trust their union

leadership to effectively speak on their behalf.

Furthermore, the case study has highlighted that the underlying issues that led to Marikana were issues that have been prevalent in the mining sector for decades, and that up until now, mining managements have failed to heed. Given the extensive nature of the problem of living conditions across the mining sector, it is safe to say that these matters were never points of discussion and engagement at Nedlac as a proactive step to addressing labour concerns in South Africa.

It is therefore this researcher's central assertion that within the context of the Marikana case study, Nedlac's purpose as a peak-level social dialogue forum has been reaffirmed. The ideology upon which Nedlac was established continues to bear relevance in creating a structure of equally represented parties participating in social dialogue. What the Marikana case study highlights is that for social dialogue to be effective, there is a dependency on not only the fundamental rights of freedom of association and collective bargaining to be respected but also highly dependant on the effectiveness of the calibre of the participants, their willingness and commitment to participating in the processes. What is required to improve the quality of labour dialogue in South Africa over the next decade is that of greater levels of maturity and commitment on the part of its social partners in order to set the correct agenda in social dialogue engagements. The social partners also need to effectively participate in social dialogue by not only representing the interests of their constituencies, but also by bargaining in the best interest of South Africa, and the collective commitment to reshape strained labour relations in the country.

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