University of Cape Town

Proportionate Income Differentials: A Long Walk to Social Justice

A case study on the Entgeltrahmenabkommen (ERA) Baden-Wuerttemberg, a general agreement on pay grades, that seeks to achieve pay equity in this region of the German metal and electrical industry and a critical evaluation of how this model can assist in the implementation of section 27 of the Employment Equity Act (EEA) of South Africa.

by

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LLM Thesis

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Abstract

Vertical income differentials between occupational levels in South Africa are among the highest in the world. Under apartheid skilled work performed predominantly by white employees was artificially overvalued, while unskilled work performed predominantly by black employees was systematically undervalued. These discriminatory social and legal norms laid the foundation for the existent disproportionate income differentials.

The post apartheid government headed by Nelson Mandela acknowledged the existence of the apartheid wage gap. They were mindful that the vertical pay gap need not only be 'deracialized',[1] but needs to be eradicated. In this regard the South African Constitution of 1996 and the Employment Equity Act of 1998 (EEA) underpins the demand for non-discriminatory pay structures. Section 27 of the EEA was enacted to address disproportionate income differentials, but has not yet been adequately implemented.

The purpose of this thesis is to consider whether the Entgeltrahmenabkommen (ERA) (a general agreement on pay grades) which resulted in the redesign of the pay structure in the German metal and electrical industry correcting long-standing pay differentials between so-called blue and white collar workers, can add value to the implementation of section 27 of the EEA. The thesis consists of six chapters. After the introduction chapter, chapters 2 and 3 consider the historical and current context of income inequality in South Africa; and chapters 4 and 5 provide a detailed analysis of the ERA in Germany and the recommendations that derive from the ERA. Chapter 6 concludes the thesis.

There are important lessons to be derived both from the drafting and the implementation phases of the ERA. The ERA process revealed that being conscious of the different challenges that might arise in each phase is a prerequisite for success.

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[1] Report of the Presidential Commission to Investigate Labour Market Policy: Restructuring the South African Labour Market, June 1996 (The Labour Market Commission), para 228.

The development of norms and benchmarks in the drafting phase minimised pay discrimination. The implementation phase of the ERA showed that prejudicial views and attitudes can hinder the complete eradication of discriminatory payment practices if sufficient heed is not paid to their strong influential role.

This thesis concludes that the lessons derived from the implementation of the ERA can assist in introducing proportionate vertical income differentials as required by section 27 of the EEA.

1. Introduction

The South African Constitution[2] is centred on redressing unjust social divisions through the introduction of provisions that promote equality.[3] The legal concept of equality consists of both formal and substantive equality. Substantive equality differs considerably from formal equality.

Formal equality is the notion that everyone is equal before the law and enjoys equal rights and protection from the law.[4] It concentrates on the formal treatment of individuals according to legislation. The Constitution seeks to establish a society founded on substantive equality and prohibits unfair discrimination.[5] In labour law substantive equality is centred on the evaluation of the personal performance of an abstract individual.[6] Formal equality on the other hand overlooks the personal circumstances of individuals and groups, their historical background, their social and economic situation, their opportunities or lack thereof, whether they were previously discriminated against and the lasting effects of systemic discrimination on their current condition.[7]

In contrast, the concept of substantive equality is deduced from the insight that structural and systemic circumstances can prevent the access to equal opportunities for some individuals or groups.[8] Substantive equality therefore consists of the introduction of legal measures to redress inequalities inherited from the past and to promote the advancement of disadvantaged groups. Disadvantaged groups are given

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[2] Constitution of the Republic of South Africa (Constitution) of 1996.

[3] Section 1 of the Constitution; section 9 of the Constitution.

[4] Currie, Iain & De Waal, Johan. (2013). *The Bill of Rights Handbook,* 5 ed, 213.

[5] De Vos, Pierre (Ed); Freedman, Warren (Ed); Brand, Danie; Gevers, Christopher; Govender, Kathigasen; Lenaghan, Patricia; Mailula, Douglas; Ntlama; Nomthandazo; Sibanda, Sanele & Stone, Lee *South African Constitutional law in Context* Oxford University Press (2014) 421.

[6] Fredman, Sandra 'Providing equality: Substantive equality and the positive duty to provide' *S.Afr.J.on Hum.Rts.* vol 21 (2005) 163-190, 165.

[7] De Vos et al (2014), 421.

[8] Ibid, 422.

preferential treatment because substantive equality acknowledges that historical discrimination shaped current opportunities and living conditions according to 'race' and gender.[9] Formal equality discards this context by disregarding the disparities between previously advantaged and previously disadvantaged vulnerable groups.[10] The specific approach of substantive equality is to remedy the systematic wrongs inherited from the past through measures that advance equality such as affirmative action, for example.[11]

The Constitution of South Africa promotes substantivr equality.[12] Section 1 of the Constitution provides that South Africa is built on the foundational values of human dignity, the attainment of equality, non-racialism and non-sexism.[13] Section 9 (2) of the Constitution declares that 'equality includes the full and equal enjoyment of all rights and freedoms.'[14] In National Coalition for Gay and Lesbian Equality v Minister of Justice the following was said:

> 'It is insufficient for the Constitution merely to ensure, through its Bill of Rights, that statutory provisions which have caused such unfair discrimination in the past are eliminated. Past unfair discrimination frequently has ongoing negative consequences, the continuation of which is not halted immediately when the initial causes thereof are eliminated, and unless remedied, may continue for a substantial time and even indefinitely.'[15]

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[9] Fredman (2005), 165.

[10] Currie & De Waal (2013), 213; De Vos et al (2014), 422.

[11] De Vos et al (2014), 422.

[12] Albertyn, Catherine, & Fredman, Sandra (2015). Equality beyond dignity: Multi-dimensional equality and justice Langa's judgments: Part III: Reflections on Themes in Justice Langa's Judgments. *Acta Juridica: A Transformative Justice-Essays in Honour of Pius Langa*, 430-455, 433; Currie & De Waal, 214, Fn. 19.

[13] Section 1 of the Constitution.

[14] Section 9 (2) sentence 1 of the Constitution.

[15] *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* (CCT11/98) [1998] ZACC 15, para 60.

The above quotation is taken from the Constitutional court decision, *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and others*,[16] the Constitutional Court importantly noted that substantive equality includes 'remedial or restitutionary equality'.[17] This restitutionary component of substantive equality contains 'the start of a credible and abiding process of reparation for past exclusion, dispossession, and indignity within the discipline of our constitutional framework.'[18]

It is with this constitutional understanding of substantive equality that legislation was subsequently drafted with the intent of realizing the constitutional call for equality in all spheres of life.[19] The legislation introduced to promote equality is of significant importance to this thesis and will be briefly discussed below.

In 2000, to promote section 9 of the Constitution, the legislator passed the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA).[20] This legislation states in the definition-clause that equality 'includes the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes de jure and de facto equality and also equality in terms of outcome.'[21]

In order to address workplace inequality more specifically, the Employment Equity Act was drafted and enacted in 1998.[22] The achievement of equality within the workplace is the central objective of the Employment Equity Act (EEA). It includes section 27 of the EEA, a provision that calls for the progressive realisation of proportionate income differentials between the top and the bottom income earners in

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[16] (CCT11/98) [1998] ZACC 15

[17] *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* (CCT11/98) [1998] ZACC 15, para 60; *Minister of Finance and Other v Van Heerden* (CCT 63/03) [2004] ZACC 3, para 31.

[18] *Minister of Finance and Other v Van Heerden* (CCT 63/03) [2004] ZACC 3, para 25.

[19] For example the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), Act No. 4 of 2000.

[20] See footnote 18.

[21] Section 1 (1) of the PEPUDA.

[22] Preamble of the Employment Equity Act (EEA), Act No. 55 of 1998.

the country.[23] In PEPUDA the legislator stated that disproportionate vertical income differentials are an ongoing disadvantage inherited from the past.[24]

Taking into account the restitutionary approach of s 9 of the Constitution, the specified guidance given in PEPUDA and section 27 of the EEA can be considered as a significant substantive equality measure to remedy the continuing effect of past discrimination on the existing disproportionate income structure in South Africa.

1.1. Presentation of the problem

In a business, the contributions of its employees and the productive output of the establishment are interlinked.[25] The various employees whose efforts contribute to an establishment's productivity receive different incomes. In a hospital doctors, for example, receive higher pay than nurses. While numerous professionals are necessary for the productivity of an establishment, the shares of income received by different occupational levels vary to a great extent. This may flow from the continuance of existing pay structures. When new persons are hired or existing workers are promoted they are classified in existing pay structures.[26] In addition, new establishments follow existing models, at least as a benchmark.[27] For example a new hospital will generally adopt existing wage structures as to how employees of a hospital are remunerated; this may be because the people they wish to employ are familiar with such a remuneration structure. This often results in wage structures being inherited from the past without any modification, adaptation or updating to suit current circumstances and

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[23] Helm, Ruediger (2015). *The Vertical Effect of Section 27 of the Employment Equity Act* Development and Labour Monograph Series, Institute of Development and Labour Law, University of Cape Town, 63.

[24] Section 1 of the PEPUDA.

[25] Böckerman, Petri & Ilmakunnas, Pekka (2012). *The job satisfaction-productivity nexus: A study using matched survey and register data.* Industrial & Labor Relations Review, 65(2), 244-262.

[26] Bahnmüller, Reinhard 'Diesseits und jenseits des Flächentarifvertrags. Entgeltfindung und Entgeltstrukturen in tarifgebundenen und nicht tarifgebundenen Unternehmen' *Industrielle Beziehungen/The German Journal of Industrial Relations* (2002), 402-424, 407.

[27] Ibid.

conditions. It is evident that this is the case in South Africa, where past views and attitudes on remuneration have largely influenced the existing pay structure.[28]

Formative views and attitudes of every generation track and record the views of the dominant social group. In a male-dominated society men are given preferential access to leadership positions.[29] The influence of views and attitudes can result in discriminatory income differentials within and between the occupational levels, as is visible in South Africa today.[30] Existing wage structures stand in contrast with the present law on equality. These pay structures are often traditionally characterised and shaped by the formative views and attitudes of the past.

The income differentials between the occupational levels that exist today arise from multiple factors. One such factor is that the wage structure is shaped by outdated views that fail to account for new social views and realities. To provide an example looking at the position in Germany, the former wage structure in the German Metal Industry was based on outdated practices, views and attitudes such as the distinction between white and blue collar workers.[31] The lack of adaptation and development of the former collective wage agreements in the workplace made these increasingly inappropriate and inapplicable in present times.[32] Ultimately, the debate on the former wage system resulted in the complete revision of the wage structure in

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[28] Section 27 of the PEPUDA.

[29] Ryan, Michelle K.; Haslam, S. Alexander; Morgenroth, Thekla; Rink, Floor; Stoker, Janka & Peters, Kim 'Getting on top of the glass cliff: Reviewing a decade of evidence, explanations, and impact' *The Leadership Quarterly*, vol 27 No 3 (2016) 446-455, 448.

[30] Triventi, Moris 'The gender wage gap and its institutional context: A comparative analysis of European graduates' *Work, Employment & Society* (2013)., 27(4), 563-580, 574.

[31] Berthold Huber, the former head of the IG Metall and former head of the IG Metall region Baden-Wuerttemberg was the pioneer and champion of the ERA-Agreements. He described this development in a telephone interview on the 12th of November 2015. During the industrialization, in the 1920s and beyond white collar workers were called the officials of the employer. There was a strict differentiation between the white and the blue collar workers. The technical developments within the workplace and changing views and attitudes progressively removed the initial justification for the differentiation. From the 1960s the justification for the differentiation decreased.

[32] Brandl, Sebastian in Bahnmüller, Reinhard, & Schmidt, Werner *Riskante Modernisierung des Tarifsystems: Die Reform der Entgeltrahmenabkommen am Beispiel der Metall- und Elektroindustrie Baden-Wuerttembergs* edition sigma. (2009), 9.

this sector in the 1990s.[33] It is evident that the existing South African wage structure will require similar revision, or modification and/or adaptation to bring it in line with existing equality law.

Unjust income differentials between the top and the bottom levels of an establishment are a long-standing but current local and global issue. The ILO Declaration of Philadelphia from 1944 provides that it is important 'to ensure a just share of the fruits of progress to all'.[34] The claim for 'a just share to all' raises the question of what can be said to be a just share to all, to what extent can income differences between occupational levels be considered proportional or deemed just? In 1996 The Presidential Commission to Investigate Labour Market Policy (hereinafter: Labour Market Commission) called on the legislator to address this issue:

> 'When, for example, are wage differentials justified between different categories of workers, what is the legitimate extent of these differentials, and what are the best methods for identifying and rectifying inequitable differentials?'[35]

An issue of pertinence to the Labour Market Commission was the achievement of proportionate pay differentials between different occupational levels. They assessed how this can be realized, not only conceptually, but also, practically. As the Labour Market Commission stated in 1996:

> 'The Commission is mindful that discrimination in remuneration persists and needs to be addressed in ways that are both conceptually and practically demanding.'[36]

Conceptual and practical solutions to the wage gap were discussed by South African society in various forums and section 27 of the EEA was ultimately drafted.[37] The

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[33] ERA negotiations occurred in the 1990s.

[34] ILO Declaration concerning the aims and purposes of the International Labour Organisation (Declaration of Philadelphia) of 10 May 1944 (1944), Chapter III (d).

[35] Report of the Labour Market Commission (1996), par 473.

[36] Report of the Labour Market Commission (1996), par 473.

[37] For a discussion on the vertical effect of section 27 EEA addressing income differentials between the top and the bottom occupational levels see Helm (2015).

historical background that led to the drafting of section 27 will be set out herein below.

South Africa has been described as one of the 'most unequal societies'[38] in the world. In the context of income distribution, there are consistent inequalities by 'race'[39] and gender. The vertical wage gap was intensified through apartheid; greater resources were put into employing the privileged minority while the costs of employing the majority were reduced.[40] Therefore, a national approach was needed in order to 'flatten hierarchies'[41] and reduce wage inequalities between the occupational levels.

> 'Race continues to dominate every measure of labour market inequality, including relative wage levels. ... On its own, however, it will not change the reality that sees black wage earners (particularly women) clustered in the lowest paying sectors and occupations while their white, usually male counterparts continue to dominate the choice sectors and occupations.'[42]

In 1998, it was submitted by the Congress of South African Trade Unions (COSATU) that legislation addressing disproportionate income differentials in South Africa, should not only be confined to 'horizontal equity' in order to attain proportionate income differentials, but should address the

> 'huge 'vertical inequity' - between those at the bottom and those at the top'.[43]

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[38] Report of the Labour Market Commission (1996), par 2.1.1.

[39] 'Race' 'is a social and not a scientific concept' (Hepple, Bob Equality: The legal framework Bloomsbury Publishing (2014), 45.); for the avoidance of doubt the word 'race' is set into quotation marks.

[40] Green Paper: Employment and Occupational Equity, 01. July 1996, Notice 804 of 1996, Department of Labour, Ministry of Labour, Employment Equity: policy proposal (Green Paper) Chapter 2, par 2.4.5.

[41] Report of the Labour Market Commission (1996), par 504.

[42] Report of the Labour Market Commission (1996), par 18.

[43] COSATU Parliamentary Submission on the Employment Equity Bill, presented to the Portfolio Committee on Labour, 22 July 1998 (Cosatu Submission), Chapter: 'Core areas of concern - Closing the apartheid wage gap', no 8 and 11.

This was especially called for since discrimination had a great effect on income differentials.[44] Not only have the historically disadvantaged groups received disproportionately low wages, the whole structure of earnings was so disproportionate that it was 'unusually skew.'[45]

> 'The Commission believes that pay differentials between the highest and lowest paid in South Africa are extremely high both by developed and developing country standards.'[46]

The First Employment Equity Bill was introduced in 1997.[47] The Bill disapproved of the vertical wage gap.[48] The Bill included equity plans and other instruments for affirmative action,[49] but a legal instrument that could act against the vertical wage gap was not included. Instruments such as qualification, affirmative action and equity plans can be effective against horizontal inequality and, combined with education, against some forms of vertical inequality.

Following the introduction of the first bill the Minister called for broad discussion on the bill and effective measures to redress inequality.[50] In 1998 three further bills[51] followed; and a submission from COSATU contributed to the introduction of the third bill which included section 27 of the EEA to address the apartheid wage gap.[52] Parliament had to clarify and examine the issue on how to address the

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[44] Report of he Labour Market Commission (1996), par 431.

[45] Green Paper (1996), Chapter 2, par 2.4.6.

[46] Report of the Labour Market Commission (1996), par 226.

[47] Employment Equity Bill no 1840 of 1997.

[48] Employment Equity Bill no 1840 of 1997, Chapter: 'The legacy of discrimination', 6: 'The Labour Market Commission notes that our skewed income distribution is reflected in the fact that the bottom 20% of income earners capture a mere 1,5% of national income, while the wealthiest 10% of households receive fully50% of national income.' It is evident that the legislature acknowledged the existing vertical wage inequality.

[49] Employment Equity Bill no 1840 of 1997, s 12.

[50] Employment Equity Bill no 1840 of 1997, Chapter: 'A note from the Minister', 3.

[51] Employment Equity Bill no 60 of 1998; Employment Equity Bill no 60a of 1998; Employment Equity Bill no 60b of 1998.

[52] Employment Equity Bill (B 60a-89) of 1 September 1998, section 27.

vertical wage gap in detail. Parliament acknowledged the COSATU submission and accepted the proposed provisions with some adopted changes. The legislature added further subsections to the proposal of COSATU and drafted the final version of section 27 of the EEA.[53]

Legislative proposals were presented and the result was the provision in section 27 of the EEA.[54] The National Assembly agreed to amend the bill to include this section dealing with the vertical wage gap, in the affirmative action chapter.

This new provision in the Act introduced a proposal of 'Measures to promote the reduction of income differentials'.[55]

Excerpt from section 27 of the EEA (Income differentials; Act no. 55 of 1998):

(1) (...).

(2) Where disproportionate income differentials, are reflected (...) a designated employer must take measures to progressively reduce such differentials (...).

(3) The measures referred to in subsection (2) may include

(a) collective bargaining; (...)

(c) applying the norms and benchmarks set by the Employment Conditions Commission; (...)

(e) other measures that are appropriate in the circumstances.

(4) The Employment Conditions Commission must research and investigate norms and benchmarks for proportionate income differentials and advise the Minister on appropriate measures for reducing disproportional differentials. (...)[56]

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[53] Employment Equity Bill (B 60a-89) of 1 September 1998, section 27.

[54] Note that section 27 of the EEA was amended by the Employment Equity Amendment Act No. 47 of 2013, commenced on 16 January 2016. This amendment however leaves the initial objective of the provision unaffected.

[55] COSATU Submission (1998), 'Annexure A: Reducing the Apartheid Wage Gap', no 4.

[56] This provision has been introduced as a direct means to reduce the vertical wage gap (see section 27 (2) of the EEA in conjunction with the EEA 4 form, Regulations No. R. 1360 of 1999; Minutes of the Parliamentary Monitoring Group 27 July 1998, Chapters 11 AND 111: 'The apartheid wage gap').

Subsection (3) of the norm adopts collective bargaining[57] as one of the suggested measures an employer may take to reduce the vertical wage gap. In addition, the provision calls for the Employment Conditions Commission (ECC) to investigate norms and benchmarks for proportional income differentials.[58]

The final version of section 27 of the EEA addresses disproportionate vertical wage differentials and targets a long period of discrimination and selective privileging.[59] This provision was bold and broke new legislative ground in South Africa. The provision is fundamentally different from many norms in equality law. It directly challenges disproportionate income differentials.[60]

Credit must be given to section 27 of the EEA for providing a legal means of addressing pay differentials between the highest and the lowest occupational levels.[61] However without practical conceptualisation the objectives of section 27 of the EEA cannot be realised. The purpose of this thesis is to look at whether ERA can provide a starting point for the practical implementation of section 27 of the EEA. The discussion below will focus on the General Agreements on Pay Grades in the German metal and electrical industry.

The old designs of General Agreements on Pay Grades in the German metal and electrical industry were considered outmoded at the end of the 1980s.[62] Such agreements described the occupational levels and pay structures within an industry.[63] In the metal and electrical industry different wage systems for blue collar workers

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[57] Section 27 (3) no 1 of the EEA.

[58] Section 27 (4) of the EEA.

[59] Hepple, Bob 'Equality laws and economic efficiency. Address to the 10th Anniversary Labour Law Conference, Durban 10-12 July 1997' *Indus.LJ, 18*, 598-608. (1997), 602.

[60] Massie, Kaylan; Collier, Debbie & Crotty, Ann *Executive salaries in South Africa: Who Should Have a Say on Pay?* Jacana Media Johannesburg (2014), 180.

[61] Helm (2015), 63.

[62] Bahnmüller & Schmidt (2009), 82.

[63] Weiss, Manfred *European Employment and Industrial Relations Glossary: Germany* Sweet and Maxwell; Office for Official Publ. of the European Communities (1992), par 595.

(wage earners), commercial white collar workers (salary earners), technical white collar workers and master craftsmen existed in specific collective agreements shaped in the 1950s.[64]

In the recent past the German labour market largely differentiated between these groups of employees. A distinction has been made between wage-earners and salary-earners. Wage-earners 'perform work demanding predominantly physical effort'[65] (physical labour) and can be described as manual, shop-floor or blue collar workers. Salary-earners are employees 'who perform work demanding predominantly mental effort'[66] (intellectual tasks) and could be described as office or white collar staff. This original distinction, dating back to industrialisation, differentiated between intellectual and manual work. The differentiation was based on the requirements of the job.[67]

At the end of the 20th century the differentiation between the types of workers largely lost its justification. Between 1990 and 2010 judicial decisions[68] and legislation[69] largely abolished the distinction in Germany. The manual and intellectual re-

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[64] Bahnmüller, Reinhard & Schmidt, Werner 'Auf halbem Weg - Erste Befunde zur ERA-Umsetzung in Baden-Wuerttemberg' *WSI-Mitteilungen* (7) (2007), 358-364, 358.

[65] Weiss (1992), par 27.

[66] Weiss (1992), par 23.

[67] Bahnmüller & Schmidt (2007), 358.

[68] The German Constitutional Court (BVerfG) held in 1981 that the differentiation in years used for the calculation of notice periods between blue and white collar workers in terms of a collective agreement was unconstitutional (BVerfG of 16. Nov 1982, 1 BvL 16/75). The German Constitutional Court held in 1990 that the former different notice periods for blue and white collar workers in the German legislation was unconstitutional, (BVerfG of 30. Mai 1990, 1 BvL 2/83). Courts today therefore examine whether there is a justification for a differentiation beyond the mere differentiation on the basis of status. The German Federal Labour Court (BAG) held that a differentiation between blue and white collar workers in the voluntary payment of Christmas bonuses by an employer was unjustified (BAG of 12 Oct 2005, 10 AZR 640/04).

[69] The differentiation between blue and white collar workers in the German Works Council Act (BetrVG) has been dropped with the revision of this legislation in 2001 (Act of 25 September 2001, Federal Law Gazette (Bundesgesetzblatt), Part I, p. 2518).

quirements for employees converged progressively with technical development resulting in the distinction being unjust and misplaced.[70]

Up until the implementation of the ERA between 2000 and 2010, in the metal and electrical industry there were three core pay elements of the wage structure namely: (i) basic pay, (ii) performance related pay and (iii) payment for unfavourable working conditions and other stresses. The basic pay of white collar workers was generally higher than the basic pay of blue collar workers. The performance-related percentage of pay was much higher for blue collar workers than for white collar workers. In most cases for white collar workers around 10 percent of their salary was performance-related while for blue collar workers, doing piecework, 30 percent of their salary was performance-related.[71] Therefore, white collar workers had a more stable income, while the income of blue collar workers was dependent on their performance.

The pay allowance for unfavourable working conditions and stresses was only afforded to blue collar workers and differed markedly between pay categories of blue collar workers.[72] The most noticeable difference between the income of blue and white collar workers was that after three years of vocational training received by both blue and white collar workers, white collar workers still receive a higher income of up to 25 percent.[73]

The payment structure for blue and white collar workers was set out in separate collective agreements.[74] The different collective agreements reflected an occupa-

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[70] Südwestmetall, Erläuterungen zum Entgeltrahmen-Tarifvertrag, *ERA-Infobrief* no 1 (2004) (Südwestmetall) 2.

[71] Bahnmüller & Schmidt (2009), 92-93.

[72] Bahnmüller & Schmidt (2009), 92.

[73] Bahnmüller & Schmidt (2009), 92, footnote 23.

[74] Blue collar workers (Arbeiter) used to receive wages and white collar workers (Angestellte) salaries: In the metal industry in Baden-Wuerttemberg before ERA a general agreement on pay grades for North-Wuerttemberg-North-Baden from 19 June 2001 with different provisions for white collar and blue collar workers existed. This agreement regulated in section 6 the grading for blue collar workers and in s 7 the grading for white collar workers. In annex 4 were 12 wage groups for blue collar work-

tional structure which no longer existed. In many cases the work done by workers of different occupational categories had become increasingly similar. With the introduction of new technology such as computers a blue collar worker became able to carry out tasks previously performed by white collar workers. Workers could use computers to carry out tasks or the computers could perform the work for them. The work of white collar workers for example became devalued as the intellectual tasks they performed could be carried out by computers. This enabled blue collar workers to undertake part of the duties of white collar workers. To provide an example, computers were able to make calculations which were previously made by white collar workers since it required some degree of intellectual ability. Blue collar workers now perform more skilled tasks by using new technology such as, for example, computer software to determine the necessities of the workplace.

The different collective agreements setting out different occupational categories and occupational levels resulted in different wages for comparable work, comparable performance and comparable workload. This was misplaced since the original distinction between the categories of workers was no longer fitting. In addition, as discussed above, technological development changed job profiles and these profiles were either insufficiently included or not included at all.

The above-mentioned facts led to the existing ERA, for the metal and electrical industry, becoming outdated and of diminishing importance. Several companies reacted to this problem by developing new, additional elements to the pay structure which were not embodied in and were incongruent with the existing collective agreements.[75] This resulted in modifications in the pay structure of existing collec-

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ers (L1-L12). In annex 5 were 7 salary groups for commercial white collar workers (K1-K7) and seven separate groups for technical white collar workers (T1-T7).

[75] Bender, Gerd & Möll, Gerd *Kontroversen um die Arbeitsbewertung: Die ERA-Umsetzung zwischen Flächentarifvertrag und betrieblichen Handlungskonstellationen* edition sigma, Berlin (2009), 40.

tive agreements within companies which bypassed the objectives of the regulatory collective agreement parties.[76]

As a result of these modifications to the pay structure, the collective bargaining parties were gradually losing their constructive influence on the remuneration structure of the metal and electrical industry. The responsible regional committees of the IG Metall (the German metal workers trade union) and of Gesamtmetall (the employer umbrella organisation in the German metal and electrical industry) reached a compromise in the 1990s to negotiate revised general agreements on pay grades in different collective bargaining regions in order to retain their structural function.[77] The relevant regional employer organisation Südwestmetall (SWM)[78] (direct translation: South West Metal) sees it as its 'core competence to set out working conditions by collective agreements, to create a structure, and to support enterprises in putting collective agreements into practice.[79] This structuring function is a specific characteristic of several employer organisations in the metal and electrical industry, especially for the highly influential Südwestmetall.[80] The decision had to be made between either the loss of the significance of collective bargaining parties structuring working conditions in the industry or the development of a new concept for the pay structure.[81]

After more than a decade of negotiations,[82] the collective bargaining parties in the south-western German metal and electrical industry finally agreed in September 2003 on the new general agreement on pay grades, the 'Entgeltrahmenabkommen

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[76] Südwestmetall (2004), 1.

[77] Bahnmüller, Reinhard; Kuhlmann, Martin; Schmidt, Werner & Sperling, Hans Joachim 'Erosion, Erneuerung, Umnutzung: Arbeitgeberverbände und ihr Umgang mit dem flächentarifvertrag am Beispiel der ERA-Einführung in der Metall-und Elektroindustrie' *Industrielle Beziehungen/The German Journal of Industrial Relation* (2010) 241-260. 250.

[78] www.suedwestmetall.de

[79] Bahnmüller & Schmidt (2009), 57.

[80] Bahnmüller et al (2010), 250.

[81] Südwestmetall (2004).

[82] The negotiations ran from around 1989 to 2003.

(ERA agreement)' for the metal and electrical industry in the bargaining region Baden-Wuerttemberg.[83] In other regions the negotiations continued until 2006.[84] The implementation of the agreements in the establishments also took time. The ERA implementation phase lasted up until 2009.[85] This will be discussed in more detail in chapter 4 below.

A general agreement on pay grades delineates norms and benchmarks for determining the income of different occupational levels.[86] These norms and benchmarks are the long-term foundations of the remuneration structure contained in a collective agreement. The normal annual negotiations on the level of remuneration in a branch are usually conducted on the basis of a general agreement on pay grades.

With the implementation of the ERA agreements the unfair differentiation between different groups of workers performing work of equal value was reduced. Norms and benchmarks were developed to classify occupational levels in one standardised system for all employees in a bargaining region in the metal and electrical industry. This includes norms and benchmarks for proportionate income differentials. In this thesis it is suggested that an assessment of the norms and benchmarks for proportionate income differentials established through the ERA agreements in Germany may assist in the determination of norms and benchmarks for proportionate income differentials in South Africa.

1.2. Research question

In South Africa section 27 (4) of the EEA requires the development of *norms and benchmarks for proportionate income differentials*.[87] This includes the development

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[83] ERA - general agreement on pay grades for the metal and electrical industry in Baden-Wuerttemberg of 16 Sep 2003.

[84] In the bargaining area Bavaria the parties agreed on ERA at the end of 2005.

[85] This is the figure for Baden-Wuerttemberg. In Bavaria due to the later agreement the implementation took up until 2011.

[86] Weiss (1992), par 595.

[87] Section 27 of the EEA.

of benchmarks as well as norms for the determination of proportionality of incomes between the different occupational levels.[88] Section 27 (4) of the EEA places the responsibility to conduct research on an identified party: 'The Employment Conditions Commission must research norms and benchmarks for proportionate income differentials'.[89] The work by the Employment Conditions Commission has not yet been carried out. While there may be justification for this, the legislature`s requirement for research to find applicable measures for the eradication of unjust pay differentials remains unmet.

Research on norms and benchmarks for proportional income differentials is long overdue as section 27(4) of the EEA has been in force since 1999[90] and should be put into practice. Research on measures of proportionality is especially important in order to give practical effect to section 27 (2) of the EEA by means of, for instance, collective agreement.

The ERA Agreements have been successfully implemented in the German metal and electrical industry through a diligent time-consuming process. In the negotiations on these agreements, norms and benchmarks for proportionate wage structures have been developed as a means of eliminating unjustified income differentials. In the same manner section 27 of the EEA also aims to eliminate unjustified income differentials. Section 27 of the EEA and the ERA agreements for the different bargaining regions in Germany share the common desire or aim to establish proportionate income differentials. The motivation behind both section 27 of the EEA and the ERA agreements is the elimination of inequalities inherited from the past. As a result of the common aims discussed above, it is helpful to ascertain the lesson that can be derived from the German experience with the ERA agreements and their applicability for the implementation of section 27 of the EEA.

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[88] Section 27 (2) and (4) of the EEA.

[89] Section 27 (4) of the EEA.

[90] Section 27 of the EEA was adopted on 19 October 1998 and came into force on 1 December 1999.

Section 27 of the EEA sets out that employees with different workplace requirements, should enjoy proportionate incomes.[91] The consequence of this demand is that differences in income for comparable work and the extent thereof need to be justified. Norms and benchmarks to ensure proportionality between the incomes of employees with comparable or differing workplace requirements need to be established.[92] The ERA agreements encompass norms and benchmarks for a proportionate wage structure and, in doing so ensure the eventual elimination of disproportionate income differentials.

The ERA agreements were realized through collective bargaining. Section 27 of the EEA lists collective bargaining as an instrument to be used.[93]

Gender pay inequality is an additional area of research which was focussed on during the realization of the ERA agreements. The inclusion of the discussion on the undervaluation of 'female jobs'[94] can thus attach additional value to the implementation of section 27 of the EEA and, even more specifically, aid in creating proportionate income differentials. Aside from the core motive of the ERA agreements namely, overcoming disproportionate income differentials between wage and salary earners, the overriding concern was the creation of a non-discriminatory income structure in all respects. During the implementation of the ERA in the industry, research revealed that the ERA assisted in reducing the gender pay gap, although this was not its core aim. In the same manner, the implementation of section 27 may aid in the elimination of gender wage discrimination in South Africa and lessons may be derived from the implementation of the ERA and its effects on the gender wage gap in the German metal and electrical industry.

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[91] Section 27 (2) of the EEA.

[92] Section 27 (4) of the EEA.

[93] Section 27 (3) no 1 of the EEA.

[94] Oelz, Martin; Olney, Shauna & Tomei, Manuela *Equal pay: An introductory guide* International Labour Organization (2013), 17.

The overriding question of this thesis is whether the ERA experience can add value to the prospective implementation of section 27 of the EEA? This entails an enquiry into the following -

- Which factors affected the successful negotiations and implementation of the ERA agreements?
- Which institutions were involved?
- What were the difficulties faced?
- What can be derived from this experience for the implementation of section 27 of the EEA?

1.3. Methodology

The methodology of this thesis is a documentary analysis with a comparative approach. Desk-based research on the demands in the German metal and electrical industry for proportional income differentials was conducted. In the ERA agreements the bargaining parties in the German metal and electrical industry have agreed on norms and benchmarks aimed at proportional income differentials,[95] this is, in effect, what section 27(4) of the EEA calls for. A documentary analysis of the German wage structure from a legal, sociological and economic perspective will be considered in this thesis. It will look at the outcome of the negotiations on the ERA agreements in Germany in order to draw conclusions and make deductions on how the issues discussed can play a role in the realization of section 27 of the EEA in South Africa.

The thesis will consider the context of the ERA collective agreements, the framework of the pay grades in these agreements, the categorisation of the pay structure, and the responsible structures and actors for the implementation of the collective agreements. Opinions raised by authors who have discussed, researched and analysed the ERA will be considered,[96] as well as the views and opinions of authors who

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[95] Huber & Schild (2004), 102.

[96] Bahnmüller, Reinhard (2015; 2014; 2011; 2009; 2007); Schmidt, Werner (2010; 2009;2007); Kuhlmann, Martin (2010; 2009); Niewerth, Claudia (2015; 2011; 2008); Sperling, Hans Joachim

have analyzed the effect of the ERA on the reduction of disproportionate income differentials. In the assessment of how ERA can aid in the implementation of section 27 of the EEA, advice provided by writers for the improvement of ERA shall be taken into account.

As ERA is relatively new and the history of section 27 of the EEA is recent this study will refer to modern sources such as online resources, specialists' articles and recent research studies. These sources include a look at the outcome of the ERA agreements, in particular, the agreement in the bargaining region Baden-Wuerttemberg and its implementation.

1.4. Structure of the thesis

The thesis consists of five parts. In the first introductory section, the presentation of the problem is set out. The second part of the thesis deals with the historical background and theoretical framework of the wage inequalities in South Africa. The third part of the thesis sets out the South African legal framework.

In the fourth part of the thesis, the ERA agreement is introduced and the relevant content is explored. In this part of the study, the agreed result with particular attention to the characteristics for the wage formation in Baden-Wuerttemberg will be considered, and some differences in other bargaining areas will be introduced. Generally, applicable principles will be extracted and presented. Secondly, aspects of the genesis of the ERA agreement will be described and the surrounding circumstances that led to its ultimate success will be analysed.

In the fifth part of the thesis, recommendations are provided. Possible recommendations for the prospective implementation of section 27 of the EEA and the development of norms and benchmarks for proportionate income differentials will be

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(2010; 2009); Jochmann-Döll, Andrea (2010); Ranftl, Edeltraud (2010); Bender, Gerd (2009); Möll, Gerd (2009); Brandl, Sebastian (2011); Wagner, Hilde (2011); Kratzer, Nick (2009); Nies, Sahra (2009); Schmierl, Klaus (2009).

derived through looking at the ERA agreements. The sixth part consists of concluding remarks.

1.5. Conclusion

The implementation of section 27 of the EEA presents a number of challenges. The section calls for the eradication of disproportionate income differentials between the occupational levels,[97] but no prototype exists in international legislation. However, the ERA agreements may add value to the prospective implementation of section 27 of the EEA. General experience with Germanys 'biggest wage reform project of the post-war history'[98] and the complete redesign of a remuneration model of an industry may provide indications of how this can be successful. Ultimately, the intention in drafting the ERA agreement was to overcome an outdated unfair system to find a just wage for all employees.[99]

The structures of norms and benchmarks created for the ERA are detailed and have been developed to reduce unjustifiable wage inequalities between different categories of workers.[100] In section 27 (4) of the EEA the legislature calls for research on norms and benchmarks to reduce wage inequality in a comparable way.[101] Although as the contexts in Germany and South Africa are, the questions to be answered are comparable.

> 'When ... are wage differentials justified between different categories of workers, what is the legitimate extent of these differentials, and what are the best methods for identifying and rectifying inequitable differentials?'[102]

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[97] Section 27 of the EEA.

[98] Huber & Schild (2004), 102.

[99] Ibid.

[100] Beraus, Walter 'Neues regeln - Bewährtes erhalten - Beteiligungsrechte starken: Der Entgeltrahmentarifvertrag in Baden-Wuerttemberg' *WSI Mitteilungen* 57(2) (2004A), 112-114.

[101] Section 27 of EEA.

[102] Report of the Labour Market Commission (1996), par 473.

This justifies a more in-depth analysis of the problem in South Africa and the wage structure in Germany.

2. Income inequality in South Africa: a legislative history and the global context

2.1. The genesis of income inequality

The First Employment Equity Bill was introduced on 1 December 1997 and 'to enrich' the Bill the minister called for comments on The Bill.[103] The Bill was the point of departure for discussions on inequality in the workplace. In the Explanatory memorandum of The Bill confirms the prolonged disproportionate development of the South African wage system and invites both South African workers and employers to take part in discussions about the elimination of all forms of discrimination within the workplace.[104] The commentary on The Bill is of particular importance for this discussion as such deliberations highlighted the genesis of the extensive wage gap in South Africa.[105]

The Employment Equity Bill condemned the vertical wage gap but there was no provision in the Bill that addressed the unequal wage gap. Under the headline 'INTRODUCTION', the explanatory memorandum provides that:

> 'Apartheid has left behind a legacy of inequality. In the labour market the disparity in the ... incomes reveals the effects of discrimination (...). These disparities are reinforced by social practices which perpetuate discrimination in employment against these disadvantaged groups, as well as by factors outside the labour market, such as the lack of education, housing, medical care and transport.'[106]

As is evident from the quote above, the inequalities present in the wage structure of South Africa today have been greatly affected by the country's apartheid history.

> 'From the time of Union, (white) artisans earned much higher wages in South Africa than in Britain. Although the cost of living for (white) working-class South Africans

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[103] Employment Equity Bill no 1840 of 1997, Chapter: 'A note from the Minister', 3.

[104] Employment Equity Bill no 1840 of 1997, Chapter: 'The legacy of discrimination', 6-8.

[105] Employment Equity Bill no 1840 of 1997, Chapter: 'The legacy of discrimination', 6-8.

[106] Employment Equity Bill no 1840 of 1997, Chapter: 'Introduction', 5.

> was much higher, in part because expenses such as a domestic worker and a large house were necessities in South Africa but luxuries in Britain (and Australia), skilled (white) workers' wages were high while unskilled (African) workers' wages were low in comparison to their counterparts in Britain and Australia. In London or Melbourne, a bricklayer was paid, at most, one-third more than a labourer in construction, but on the Witwatersrand (around Johannesburg), bricklayers were paid almost more than five times the wages paid to African labourers. (...) African labour was considered 'cheap' in South Africa because the state acted to suppress their wages so far below the inflated wages paid to white citizens.'[107]

Although wage inequalities date back further than apartheid, the apartheid era was influential in the perpetuation of wage inequalities in South Africa.[108] T.T. Mboweni, the first Minister of Labour[109] of a democratic South Africa, confirmed that disproportionate income differentials were worsened by the discriminatory apartheid era through protracted legal discrimination.[110] During apartheid the preferential treatment of the white minority and the discrimination against the larger black majority had the effect of solidifying and prolonging discriminatory pay practices.

A divided social system like apartheid pushes out the high and low income levels with the effect of thinning out the middle. The ILO *Wage Report 2014/2015* not only pronounces South Africa as one of the most imbalanced countries (D9/D1-ratio), but also as a nation with the greatest middle-class inequality (D7/D3-ratio).[111] This means that in South Africa the middle class income is highly imbalanced.

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[107] Seekings, Jeremy ˙State-building, market regulation and citizenship in South Africa' *European Journal of Social Theory* (2015) 1-19, 8-9.

[108] Discriminatory laws date back to colonial times, Matshikwe, Lungile Easter *An analysis of the policy-making process in the department of labour with specific reference to the employment equity act, act 55 of 1998* Master Thesis at Port Elizabeth Technikon (2004), 69.

[109] Mboweni, Tito Titus was Minister of Labour from May 1994 to July 1998.

[110] Employment Equity Bill no 1840 of 1997, Chapter: ˙A note from the Minister', 3.

[111] ILO *Global Wage Report 2014 / 15 - Wages and income inequality* International Labour Organization (2015), 25.

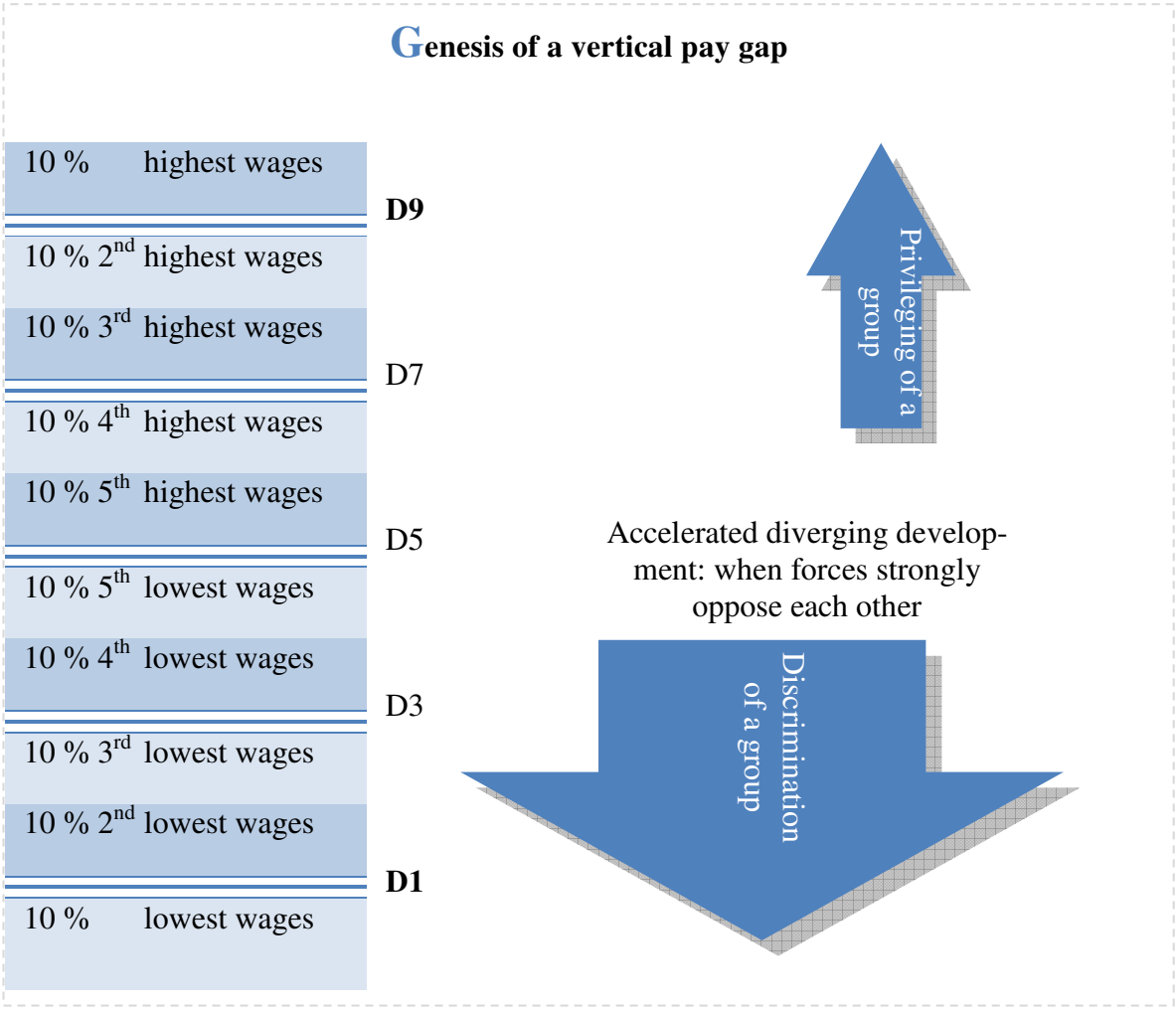

Figure 1:Genesis of a vertical pay gap

The result of the discrimination of one group, combined with the favouring of another group over a protracted period of time creates a divergent development within a pay system. The strict division and differential treatment of groups (which can be more than two) has the resultant effect of heightening inequality.

Mboweni's description of the effects of historical discrimination in South Africa from 1997 offers supplementary backing for the conclusions of the ILO *Wage Report* 2014/2015.

> 'Pressed both by white employers and white workers, who shared an interest in the tight control of black labour, successive governments enacted a web of laws and regulations designed to guarantee and enshrine the superior economic status of

> whites and to perpetuate a master-servant relationship between the races at all levels of society.'[112]
>
> 'Some expected reshuffling occurred, as skilled black Africans moved up the ladder and low-skilled whites moved down. But despite significant investment in education and a government vocally committed to fighting inequality, whites continue to earn more than blacks, and income became more concentrated in the top 10th.'[113]

The legal framework of apartheid and its regulations enabled the successful division of the South African nation and had the effect of preserving and prolonging the 'master-servant' relationship between the 'races'.[114] The apartheid system would not have been successful if the privileged minority received the same payment for work as the disadvantaged majority. The Employment Equity Bill of 1997 makes reference to the Green Paper on Employment and Occupational Equity (1996) confirming that the legal framework of apartheid had the effect of disproportionately reducing the costs of the majority work force and increasing the costs of employing a favoured minority.[115] As a result, employers paid more for skilled workers in managerial posts and very little for unskilled workers.[116] The repealed legislation that reinforced the vertical wage gap will be detailed below.

2.2. Legal measures underpinning racial discrimination

For a better understanding of the current inequalities in South Africa one has to trace back their origins. A look at the colonial and historical legislation can contribute to an understanding of inequality as inherited from the past.[117] It will be demonstrated

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[112] Matshikwe (2004), 69.

[113] Hvistendahl, Mara 'While emerging economies boom, equality goes bust' *Science,* vol 344 Issue 6186, 23 May 2015, 832-835, 834.

[114] Matshikwe (2004), 69.

[115] Green Paper (1996) Chapter 2, par 2.4.5.

[116] Ibid.

[117] Wilson, Francis 'Historical Roots of Inequality in South Africa' *Economic History of Developing Regions* vol 26 (1) (2011) 1-15, 1.

below how past discriminatory views and attitudes were strengthened and perpetuated by legislation.

The apartheid laws enabled unequal land distribution, the exclusion of blacks from the evolution of urbanization through the concept of migrant labour, the physical separation of the black workforce from the white workforce especially during the period of industrialisation in the mining industry, separate access to educational opportunities and the distinction of rights between black and whites in the workplace and beyond.[118]

With the arrival of the first Europeans land and water formed the basis of wealth accumulation.[119] For 200 years, up until the end of the 19th century, the ownership of land placed these resources mostly into the hands of predominantly white groups or individuals. This enabled whites to accumulate capital and invest in the education of their children. The state itself was also controlled by white people and accumulated investment.[120]

At the end of the 19th century, the period of land ownership as the basis of wealth accumulation was followed by the discovery of valuable natural resources.[121] The wealth gained through the exploitation of minerals was distributed to mostly whites. Diamonds and other minerals provided the foundation of the industrial revolution in South Africa.[122] Even though diamonds were not located in areas classified as white-owned, whites reaped the economic benefits of the extraction of such diamonds. Any claims to diamonds from miners of colour were disregarded by the Government of the Cape, aided by the colonial power. The natural resources of South Africa were thus monopolized by whites and the profits derived from diamond mines went to this group. All the big players of the value chain, such as the De Beers Con-

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[118] Ibid.

[119] Ibid, 5.

[120] Ibid.

[121] Ibid.

[122] Ibid 5.

solidated Mines Ltd, were white-owned and supported by a white government and colonial power. De Beers Consolidated Mines Ltd, established in Kimberly, ran a monopoly at Colesberg Kopje, later, the Big Hole, at the end of the 1880s.[123] Even skilled blacks with land qualifications were not powerful enough to counteract these racist developments.[124]

Cecil Rhodes was prime minister of the Cape from 1890 to 1896 when these foundations on the accumulation of wealth from the country's minerals were laid. He strengthened the British control on the accumulation of wealth from natural resources by building the railway from Cape Town to the valuable diamond areas.[125]

In instances where minerals were found on private property, the landowner could sell the right to dig for gold to a mining company. However, the extraction process was controlled by the state which influenced the process through legislation.[126] Land owners in areas where gold was found, in The Transvaal and The Free State, were white, in white-controlled political environments, and the capital to invest and extract the mineral resources belonged to whites.[127] The mining industry recruited large numbers of male workers, mostly blacks and mostly from rural areas, also from other countries in Southern Africa.[128] These migrant workers were separated from their families and lived in poor conditions around the workplace, and supported their relatives who they were unable to live with. In contrast, white miners, through massive strikes, achieved working conditions which ensured their betterment. Their working conditions were superior and these workers never had to live in poorly equipped employer-owned settlements like the compounds, which housed

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[123] Van der Merwe, A E; Morris, D; Steyn, M & Maat, G J R 'The history and health of a nineteenth-century migrant mine-worker population from Kimberley, South Africa' *The South African Archaeological Bulletin* (2010) 185-195, 185.

[124] Wilson (2011), 5.

[125] Ibid.

[126] Ibid, 6.

[127] Ibid.

[128] Van der Merwe et al (2010), 185.

black workers.[129] Compounds were dwellings where the mining companies accommodated recruited black workers. This maximized the control of the white-owned mining companies on black workers. Black workers fulfilled the demands of industry as a form of cheap labour.[130]

> In ʻmost mines, the power of the state intersected with that of the compound manager-ʻthe supreme dictatorʼ (...). Workers could not leave without a pass which ʻset forth the full names of the holder, his number, place of employment [and] period of absence allowed thereby' (...). Within the compounds, the regime of control rested on a bedrock of force and threat.'[131]

This form of accommodation gave the employer tight control over most of the activities of black workers and separated them from the society in their area. It was not possible to live as a family in a compound. This separated the black workers from their families indefinitely, and no option of later moving their relatives to live with them existed. This manifestation of separation deepened their migrant status and was one of the barriers they faced to becoming an urban resident.[132]

In addition there were differences between black and white people with regard to access to education. The state did not provide education for black children. There were however, private, political, social and religious movements which acted together in providing schools that offered non-racial education. Prior to apartheid such institutions had already provided non-racial education and had been doing so since around 1850. Nonetheless, the majority of black children remained uneducated. The predominant social and political practice was that education, if offered to black children, was of a lower quality than the education offered to white children. Black education was focused on enabling them to perform simple jobs. The quality of edu-

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[129] Wilson (2011), 6.

[130] Ibid, 11 footnote 8.

[131] Crush, Jonathan ʻScripting the compound: Power and space in the South African mining industry' *Environment and Planning D: Society and Space* vol 12 (1994) 301-324, 303.

[132] Ibid, 304.

cation offered to black scholars in subjects like mathematics was by far lower than the quality for the white youth.[133] There was also a lack of public investment in the education of educators of black schools and in the schools themselves.[134] For more than a century, the focus was on the education and promotion of the dominant white group. To provide an example in the Orange Free State, compulsory education was introduced for white children in the 1890s, while for black children it was introduced more than a century later in 1994.[135] In 1993, twenty percent of all South Africans over the age of 18 completed 12 years of school. While sixty one percent of the students who completed their schooling were white only eleven percent of the pupils were black.

This discriminatory legislative framework largely affected the accumulation of wealth by blacks and whites in South Africa, since the arrivals of the first Europeans until the period of industrialisation in South Africa.[136]

These social practices found their expression in legislation in isolated cases from 1841.[137] The so-called 'Master and Servant' Act of 1926[138] and the tax law from around 1900 are early examples of this kind of law.[139] The Master and Servant Act was enacted in Natal and the Cape Province before the Union of 1910 and remained in force and was developed after the Union of South Africa.[140] Authors have expressed the view that the racially discriminatory laws were passed with the intent of preserving jobs for the white minority.[141] It has been said that discrimination was

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[133] Wilson (2011), 8.

[134] Ibid.

[135] Ibid, 9.

[136] Matshikwe (2004), 69.

[137] Ibid.

[138] Masters and Servants Law (Transvaal and Natal) Amendment Act, Act 26 of 1926.

[139] Bundy, Colin 'The emergence and decline of a South African peasantry' African Affairs vol 71 No 285 (1972), 369-388, 385.

[140] Scully, Pamela 'Criminality and conflict in rural Stellenbosch, South Africa, 1870-1900' *The Journal of African History* vol 30 No 02 (1989), 289-300, 293.

[141] Ibid.

institutionalized since colonial times because blacks were not equated with white people.[142] Apartheid, however, grew as an independent political system after the change-over to an industrial economy.

The system was designed to preserve the master-servant relationship by giving the white minority greater economic status while systematically discriminating against the black majority.[143] The apartheid government enacted a succession of laws designed to achieve its aims.[144] Pre-apartheid and apartheid legislation that systematically discriminated against black people includes the legislation discussed below.

The landownership of whites was protected by the Native Land Act of 1913.[145] Blacks were only allowed to own land in seven percent of the country.[146] In addition, the buying of or leasing of property owned by a white person was prohibited for blacks.[147] This was a hurdle for black business development. This legislation largely hindered the right of the majority of South Africans to own land. The legislation was amended several times and certain areas designated for blacks only were declared independent from South Africa.[148] However, in 1991, this legislation was repealed and the legal exclusion of the majority of South Africans from the right to own land finally ended.[149] This legislation ensured that the majority of South Africans lived on a small portion of the land, while the minority lived on the bulk of the conquered land. The buying and renting rights of the majority were largely restricted.

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[142] Ibid.

[143] Ibid.

[144] Ibid, 69-72.

[145] Native Land Act, Act 3 of 1913.

[146] Feinberg, Harvey M. 'The 1913 natives land act in south Africa: Politics, race, and segregation in the early 20th century' *The International Journal of African Historical Studies,* Issue 26 vol 1 (1993) 65-109, 70.

[147] Ibid 109.

[148] E.g. Status of the Transkei Act No 100 of 1976; Status of Bophuthatswana Act No 89 of 1976; 1979. Status of the Ciskei Act No 100 of 1976.

[149] Roberts, Margaret 'The Ending of Apartheid: Shifting Inequalities in South Africa' *Geography* vol 79 No 1 (1994) 53-64, 56.

The differentiation between skilled and unskilled workers according to the colour of their skin was ensured by workplace legislation.[150]

> The Mines and Works Act of 1911 introduced 'the first legal colour bar, protecting white workers (...) before the outbreak of the South African War, while a systematic list of jobs to be reserved for whites was negotiated by the skilled (all-white) trade unions as a condition of agreeing to the importation of Chinese labour to work in the mines in the aftermath of the war when the cutting of black wages had resulted in a major shortage of black labour (...). ... Job reservation on the mines, 'civilised labour' policy on the railways, pass law restrictions on mobility and a myriad of other laws and customs prevented black South Africans from gaining experience and higher incomes in an expanding industrial economy in the way that their white compatriots were able to do through the century.'[151]

Amendments such as the Mines and Works Amendment Act of 1926[152] and the Mines and Works Amendment Act no 51 of 1959 'reinforced the colour bar in the mining industry'.[153] This legislation was later repealed.

The Apprenticeship Act of 1922[154] proscribed people of colour, blacks in particular, from undertaking apprenticeships and becoming eligible and sufficiently qualified to undertake skilled or semi-skilled work.[155]

The Factories, Machinery and Building Works Act of 1941[156] and the Industrial Conciliation Act of 1956[157] which has been reinforced by its amendment in

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[150] Doxey, G V *The Industrial Colour Bar in South Africa* Oxford University Press Cape Town (1961), 158-178.

[151] Wilson (2011), S. 11.

[152] Mines and Workers Amendment Act, Act 25 of 1926.

[153] Mariotti, Martine & van Zyl-Hermann, Danelle 'Policy, practice and perception: Reconsidering the efficacy and meaning of statutory job reservation in South Africa 1956–1979' *Economic History of Developing Regions*, vol 29 No 2 (2014) 197-233, 202.

[154] Apprenticeship Act, Act 22 of 1922.

[155] Wedekind, Volker 'Rearranging the furniture? Shifting discourses on skills development and apprenticeship in South Africa' in Akoojee, Salim; Gonon, Philipp; Hauschild, Ursel & Hofmann, Christine (eds) *Apprenticeship in a globalised world: Premises, promises and pitfalls* International Labour Organisation (2013), 37-46, 40.

1959[158] empowered the Minister to make determinations in respect of the role 'race' could play in numerous areas of commercial life.

> 'As regards the 'principle of separate spheres of work for White and non-White employees', Mr. Strydom[159] explained that the Industrial Conciliation Amendment Act of 1959 was designed to stop Whites and Blacks from working together.'[160]

The Act explicitly earmarked particular industrial jobs for specifically identified racial groups.[161] The Act was repealed in 1995.[162]

As previously discussed, the Green Paper on Employment and Occupational Equity (1996) provides that, in the past, occupational discrimination was evident within South African workplaces.[163] The Green Paper notes that '[u]nder the apartheid system, a series of laws built discrimination into the political and social order of the day, entrenching it in all spheres of life, including the workplace.'[164] During the apartheid era the South African government of the time created a discriminatory legal framework. Numerous workplace laws were put into place to ensure that the privileged white minority reaped economic and social benefits in the South African Labour market.[165]

Outside the labour market numerous crucial factors further perpetuated and strengthened inequality, such as, the inferior education and training received by the

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[156] Factories, Machinery and Building Work Act, Act 22 of 1941.

[157] Industrial Conciliation Act, Act 28 of 1956.

[158] Industrial Conciliation Amendment Act, Act 41 of 1959.

[159] Johannes G Strydom, Prime Minister of South Africa from 30 Nov 1954 – 24 Aug 1958.

[160] Alexander, Ray & Simons, H J *Job Reservation and the Trade Unions* Enterprise Cape Town (1959) 13.

[161] Johnstone, Frederick A 'White Prosperity and White Supremacy in South Africa Today' *African Affairs,* vol 69 No 275 (1970) 124-140, 129.

[162] Labour Relations Act (LRA), Act 66 of 1995: Schedule 6 Laws repealed by s 212 of the LRA.

[163] Green Paper (1996) Summery, par 2.1.3.

[164] Green Paper (1996) Chapter 1, par 1.1.3.

[165] Matshikwe (2004) 68-72.

black majority, inequalities in the possession of assets, the imbalanced division of domestic labour.[166]

The exclusion of the majority from the urbanization process was, in addition to labour legislation, ensured through pass laws and the right of residence. The Native (Urban Areas) Consolidation Act of 1945[167] prescribed that only a restricted number of blacks were permitted in urban areas, this restriction was limited to the number required for working purposes.[168] The Group Areas Act of 1966[169] restricted particular 'race' groups to particular areas. 'Race' groups were confined to prescribed areas and could only own and occupy land within the beaconed areas. The law additionally 'resulted in people being removed by force'.[170]

In the 1980s the Orange Free State introduced compulsory schooling for white children while the compulsory schooling for black children followed in 1994.[171] The Bantu Education Act of 1953,[172] as aforementioned, legalized the separation of the quality and class of education received by whites and non-whites. The Act ensured the legal entrenchment of inferior education for blacks. Blacks received inferior education that would only prepare them for the jobs deemed applicable for black persons. State subsidies for denominational schools were done away with and such educational institutions were closed down.[173] The Extension of University Education Act of 1959[174] proscribed the attendance of black persons at white universi-

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[166] Employment Equity Bill no 1840 of 1997, Chapter: 'The legacy of discrimination', 6.

[167] Natives (Urban Areas) Consolidation Act, Act 25 of 1945.

[168] Truth and Reconciliation Commission Report of South Africa vol 1 *Chronology of Apartheid Legislation*, presented to President Nelson Mandela on 29 October 1998 (Truth S A) 450.

[169] Group Areas Act, Act 36 of 1966.

[170] Kotze, N J & Donaldson, S E 'Residential desegregation in two South African cities: A comparative study of Bloemfontein and Pietersburg' *Urban Studies,* vol 35 No 3 (1998), 467-477, 467.

[171] Wilson (2011), 9.

[172] Bantu Education Act of 47 of 1953.

[173] De Wet, Corne & Wolhuter, Charl 'A transitiological study of some South African educational issues' *South African Journal of Education,* vol 29 No 3 (2009), 359-376, 365.

[174] Extension of University Education Act, Act No. 45 of 1959.

ties, a few exceptions to this proscription, however, existed. Separate educational institutions were also established, through the act, for blacks, Indians and coloureds.[175]

The Constitution of the Republic of South Africa of 1983[176] created the tricameral parliament from which blacks were excluded. Indians, coloureds and white people were represented in parliament while black persons had no such representation.[177] Public policy was framed based on race and the white minority made decisions and dictated to the other races.[178] The white minority held the political and economic power enabling them to reap the benefits of the South African labour market.[179]

> 'The subordination and exploitation of African subjects were achieved through their exclusion, not only from political citizenship, but also from most dimensions of social, economic and industrial citizenship. For white South Africans, but not the African population, citizenship entailed a wide range of rights (as in the democracies of north-west Europe) rather than the highly discretionary privileges awarded by some Latin American states.'[180,181]

It is evident from the discussion above that the wage inequalities present in the South African labour market today stem from long-standing historical discrimination that was further perpetuated and systematically institutionalized by apartheid laws. Though repealed, this legislation has greatly influenced the wage inequalities currently visible in the country's labour market.

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[175] Smout, Michael & Stephenson, Sandra 'Quality Assurance in South African Higher Education: A new beginning' *Quality in Higher Education,* vol 8 No 2 (2002), 197-206, 198.

[176] Constitution of the Republic of South Africa, Act 110 of 1983.

[177] Section 52 of the Constitution of the Republic of South Africa, Act 110 of 1983.

[178] Naicker, Inbanthan *Imbalances and Inequities in South African Education: A Historical-Educational Survey and Appraisal* Master Thesis at the University of South Africa (1996) 7.

[179] Matshikwe (2004), 4.

[180] Seekings (2015), 5.

[181] Black South African's were excluded from all spheres of public life and their private lives were affected, while white South Africans were given preferential treatment and had the freedom to partake in all areas of public and private life. The significant difference between South Africa and South America is the marginalization of one group at the expense of another.

Additional elements underpinning the vertical wage gap in South Africa are the views and attitudes of society. The views and attitudes of employers still largely affect the manner in which their staff is remunerated. The influential role of views and attitudes as a source of the pay gap will be detailed below.

2.3 Views and attitudes as a source of a pay gap

Section 27 of the EEA was viewed by the government, headed by Nelson Mandela, as the solution to reducing the vertical pay gap, 'but its efficiency will depend on both the extent to which employees, and society, can mobilise around its provisions.'[182] This statement underlines the connection between the legislation and social views and attitudes. As the legislative material indicates, the post-apartheid government was well aware that the discriminatory legislation of the past played a huge role in the perpetuation of the vertical pay gap.

Can it be assumed that with the advent of democracy the views and attitudes which caused the vertical pay gap are outdated and no longer held by society? In my view such an assumption would be misplaced. The broad majority of South Africans were in agreement that apartheid was unjust and wrong, but this does not mean that prejudicial views and attitudes were completely eliminated upon the advent of democracy. The vertical pay gap that exists today was largely caused by past legislation along with the views and attitudes of the past, which caused the undervaluation of 'typical black jobs.' Looking at the figures of the ILO and World Bank it is clear that the distance between the top and the bottom incomes in South Africa are extensive. In the post-apartheid South Africa today one gets the impression that the wage gap is still growing and that no real progress towards its eradication has taken place.

> 'It is irresponsible and wrong to suggest that there is a 'wage gap' between the lowest and highest pay levels in an enterprise. (...) Pay has to be aligned with the work done or contribution of each employee. It is unreasonable to expect enterprises to

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[182] Massie, Kaylan; Collier, Debbie & Crotty, Ann *Executive salaries: Who should have a say on pay?* Jacana Media (2014) 171.

> 'reward' employees for 'inputs' that do not add extra value. Unless a qualification or long service adds additional value, or there is a shortage of those skills in the market, there is no point in paying 'premium' wages to employees. This is the value exchange equation.'[183]

This above opinion of Graham Giles is that the amount of pay is dictated by the market (market-related). This view cannot be accepted. It is accepted that worldwide unskilled employees receive the lowest wages, and the author is right to hold that additional skills have to result in higher remuneration. However in South Africa the gap between the top and the bottom income earners is three times as high as in Brazil, the country with the second most disproportionate income levels. In light of the above quote, the author's opinion suggests that there is much to be said about the views on income disparities within South Africa. Education, skills and expertise alone cannot be the sole criteria in assessing wages. Proportionality needs to be judged by looking comparative at the complete pay range within an establishment. Employers need to have a mindset in terms of which they acknowledge that wage disparities are not solely market-related and cannot merely be justified by employees` lack of formal education, skills and expertise. Proportionality remains essential. All over the world the lowest income levels apply to the unskilled. Market-related views do not refer to dignity, proportionality or individual contribution to value creation. In such a line of arguments exploitative low incomes can be dictated by the market. Because according to this view the only relevant perspective is, what entrepreneurs may be willing to pay.

> 'Any premium paid must be earned by offering premium value. It is unfair and unreasonable to suppose that consumers will pay for the cost of unnecessary premium wages, or to assume that entrepreneurs will cut their return on investment.'[184]

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[183] Giles, Graham 'Pay differential: proportionality without a wage gap' by *GilesFiles* June 16, 2015 http://www.gilesfiles.co.za/philosophy-politics-economics/pay-differential-proportionality-without-a-wage-gap/.

[184] Ibid.

The statement suggests that the current pay differentials are justified by the market and not caused by discriminatory practices inherited from the past. To pay the unskilled as little as they are paid today, and not more, is justified by the market and not an outcome of undervaluation that stems from the past. This view however cannot be accepted when one fully takes into account the vastly disproportionate income differentials within South Africa. The vertical pay needs firstly to be acknowledged and then it needs to be addressed.

> 'Section 27 of the Employment Equity Act obliges employers to eliminate all disproportionate pay differentials. Using the term 'wage gap' only confuses readers and has the danger of prolonging the stigma of outlawed past practices.'[185]

One of the barriers to the implementation of section 27 of the EEA is the lack of consensus in acknowledging the existence of the vertical pay gap and accepting that the pay structure in place today has been adopted from the apartheid era and is an outcome of discriminatory practices. Views and attitudes of employers have largely caused unequal pay for work of equal value and led to the undervaluation of black jobs. During the legislative process the legislators pointed out that the income distribution in South Africa shaped by the apartheid era is 'unusually skew'.[186]

Different social views and attitudes are a barrier to the implementation of pay scales, like those introduced by the German ERA, in South African companies. The implementation of the ERA took place after social views and attitudes on the differentiation of blue and white collar workers had changed in Germany. In South Africa, however, section 27 of the EEA has been introduced where social views affecting the vertical wage gap still largely persist and can hinder any progressive steps taken towards proportional income differentials.[187] The collective agreements in Germany changed in response to a change in social views and attitudes. Social and legal conditions have shaped the vertical pay gap in South Africa and social and legal norms are

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[185] Ibid.

[186] Green Paper (1996) Chapter 2, 2.4.6.

[187] Berthold Huber, footnote 13.

the tool to reduce and ultimately remove the vertical pay gap. The differentiation between blue collar and white collar workers was an outdated concept in the German labour market. Differentiations based on race and education, however, still affect the South African labour market and this may play a influential role in preventing the effective implementation of collective agreements such as ERA in South Africa.

There is reason to fear that a broad implementation of pay scales similar to the ERA in South Africa may be influenced by outdated views. In some cases during the implementation of the ERA in Germany the negative impact of outdated views on its implementation was observed. To prevent this from occurring, the insights of the research done on the inefficiency of the ERA agreements in the reduction of the gender pay gap should be taken into account in implementing similar agreements in South Africa. If the parties involved are unaware that their prejudicial views and attitudes can seep in during the implementation process of such agreements this can create barriers to the effective implementation of such agreements. In order to ensure any measure of success in erasing long-standing disproportionate income differentials the complete South African pay structure will require revision.

In addition to this, developments in the global context add a further layer of complexity, it is thus important to take a more detailed look at the vertical pay gap in South Africa in global perspective.

2.4. South Africa in global context

As mentioned in Chapter 1, discriminatory social and legal norms lie at the heart of the wage gap between the bottom and the top levels of workers. Piketty states that income inequality between the highest and lowest income earners in South Africa, was and is, at least during periods where the data allow an analysis, at a level comparable to or somewhat greater than the highest income inequality levels observed at specific times in wealthy countries in Europe and in the United States.

> ‘Where the data allow, as in South Africa for certain sub periods, one finds that the highest observed levels for the top decile are on the order of 50–55 percent of national income — a level comparable to or slightly higher than the highest levels of

> inequality observed in the wealthy countries, in Europe in 1900–1910 and in the United States in 2000–2010.'[188]

The ILO Global Wage Report 2014/2015 shows that the gap between the top and the bottom work levels in South Africa is one of the highest in the world.[189] The ILO measures 'top to bottom' income disparity by measuring the gap between the top and bottom deciles of income allocation using the so-called D9/D1 ratio and middle class inequality using the so-called D7/D3-ratio which measures the statistics of forty per-cent of incomes in the middle of the income groups.[190] This method identifies ten income groups each indicative of the income of 10 per cent of the workers, starting with the uppermost 10 per cent of income recipients.

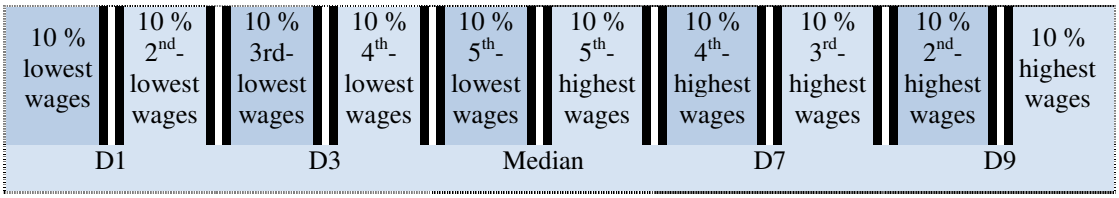

Figure 2: Evaluating disparity[191]

The D9/D1-ratio determines how the ratio of the highest income of the lowest decile fits in the lowest income of the highest decile. The D9/D1-ratio for South Africa, in around 2012, was found to be 26.9[192] meaning that if the highest income of the lowest 10 percent is R 1 000,00 the lowest income of the highest 10 percent is R 26 900,00. This is double the figures measured in the second worst country, being India, for which the figure is 12.2 and triple the figure for Brazil which is 8.4.[193]

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[188] Piketty, Thomas *Capital in the Twenty-First Century* Harvard University Press (2014), 328.

[189] ILO *Global Wage Report 2014/2015* (2015) 25, figure 22a.

[190] ILO *Global Wage Report 2014/2015* (2015) 23.

[191] ILO *Global Wage Report 2014/2015* (2015) 23, figure 20.

[192] ILO *Global Wage Report 2014/2015* (2015) 25, figure 22a.

[193] ILO *Global Wage Report 2014/2015* (2015) 25 figure 22a.

The Global Wage Report 2014/2015 also showed that within the group of emerging countries 'inequality increased … in South Africa, from a very high level inherited from the apartheid era.'[194]

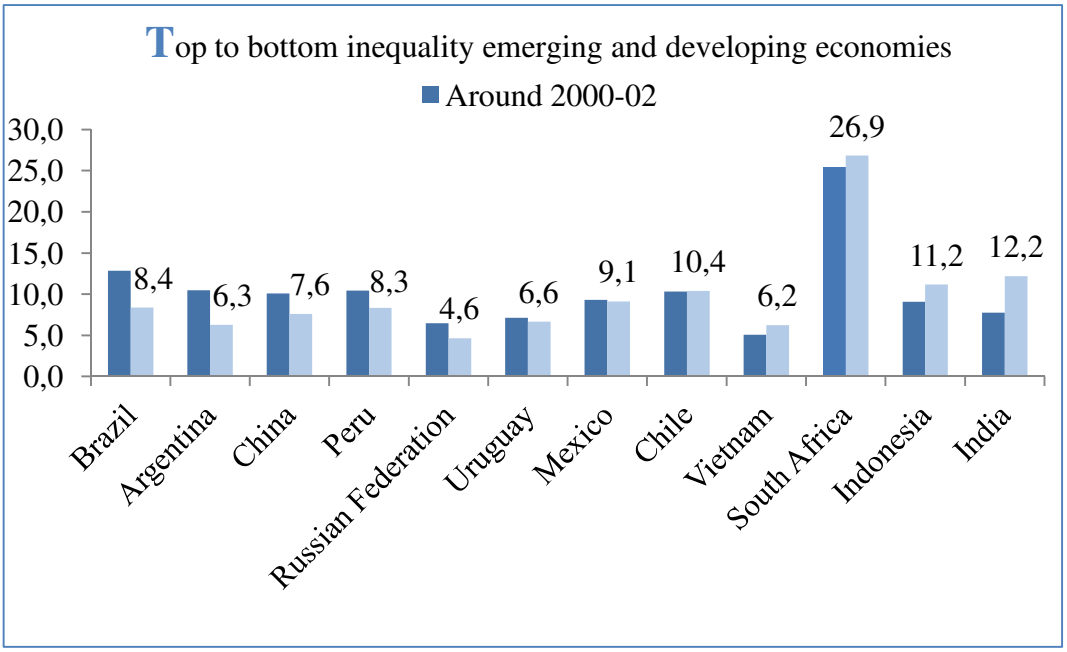

Figure 3: Top to bottom inequality (D9/D1-ratio) ILO Global Wage Report 2014/2015[195]

Middle-class inequality in South Africa at a D7/D3-ratio of 3.7, around 2010–12, is greater than the top–bottom inequality in Iceland, Slovakia or the Czech Republic around the same time frame with a D9/D1-ratio of 3.6.[196] This means that the fraction between the highest and the bottommost income in the Czech Republic is as high as the difference in South Africa, solely within the middle class. The table below indicates the unique large scale inequality within the middle class in South Africa; this differs markedly from the middle class in other countries, where inequality is not as vast.

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[194] ILO *Global Wage Report 2014/2015* (2015) 26.

[195] ILO *Global Wage Report 2014/2015* (2015) 25 figure 22a.

[196] ILO *Global Wage Report 2014/2015* (2015) 25, figure 22a and 22b.

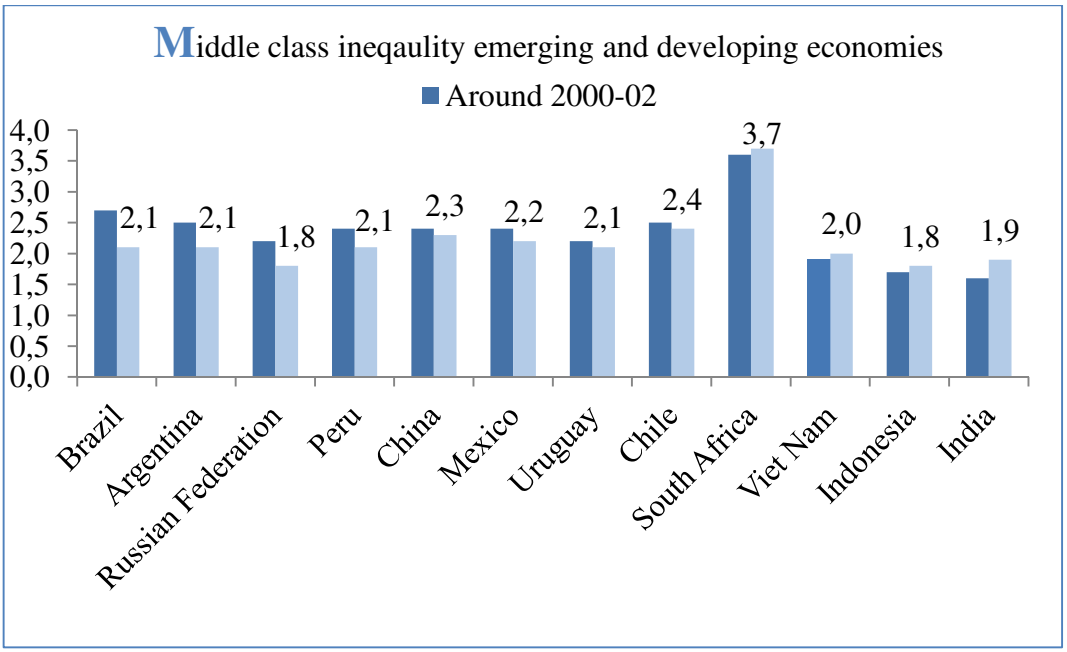

Figure 4: Middle class inequality (D7/D3-ratio) ILO Global Wage Report 2014/2015[197]

The observed growth of the South African wage gap in the recent past is confirmed by the figures of the World Wealth and Income Database (WID).[198] This data shows that the income share held by the top 5 percent of earners was around 30 percent in 1990 to 1993, before the first democratic elections, and rose to around 40 percent in 2008 to 2011.[199]

[197] ILO *Global Wage Report 2014/2015* (2015) 25 fig 22 b.

[198] Alvaredo, Facundo; Atkinson, Tony; Piketty, Thomas; Saez, Emmanuel & Zucman, Gabriel *WID-The World Wealth and Income Database*: http://www.w2id.org/, accessed 15 Dec 2015.

[199] Ibid.

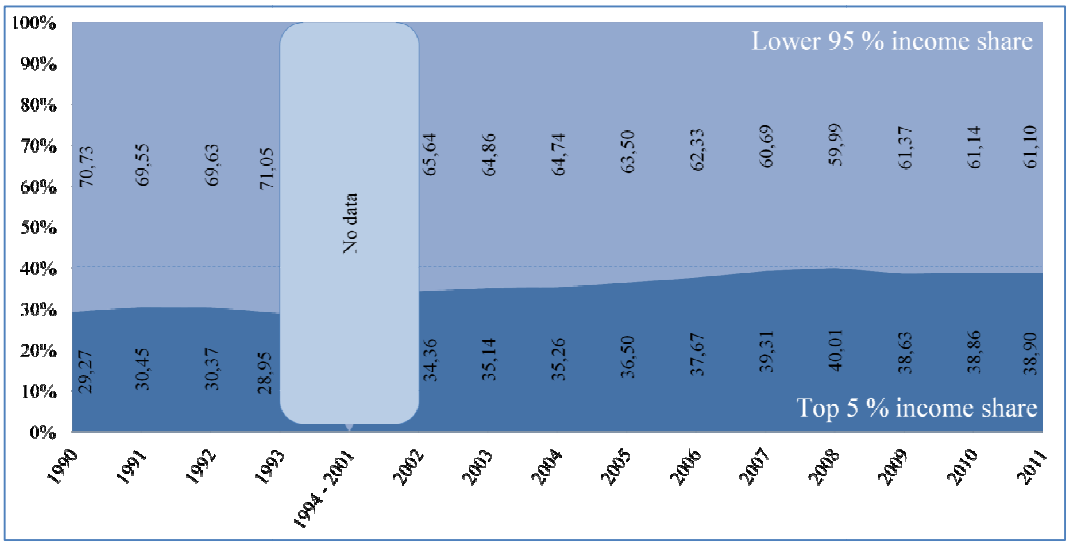

Figure 5: Income share held by the top 5 percent[200]

Compared to the bottom share this means that the income share of the lower 95 percent declined from 70 percent in the first time period to 60 percent in the second.

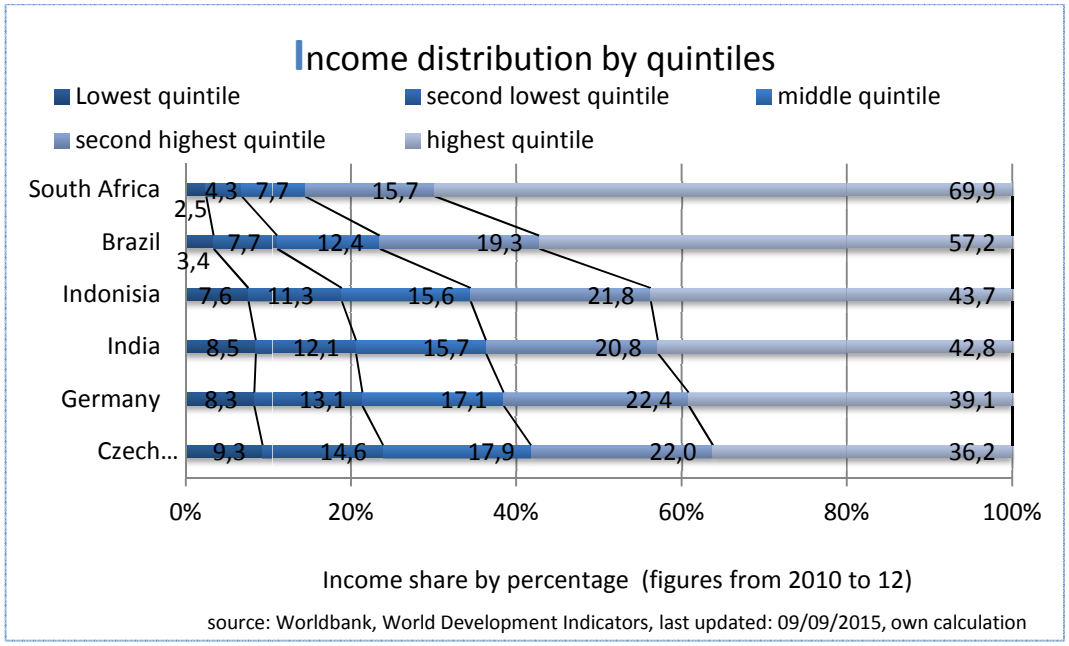

Figure 6: Income distribution by quintiles

[200] Ibid.

The income figures of the World Bank for the income share held by lowest 10 percent show the difference between South African and other emerging countries.[201] In this category Brazil is, however, marginally worse than South Africa. The income share held by the lowest 10 percent is 1.0 percent in Brazil and 1.1 percent in South Africa.[202]

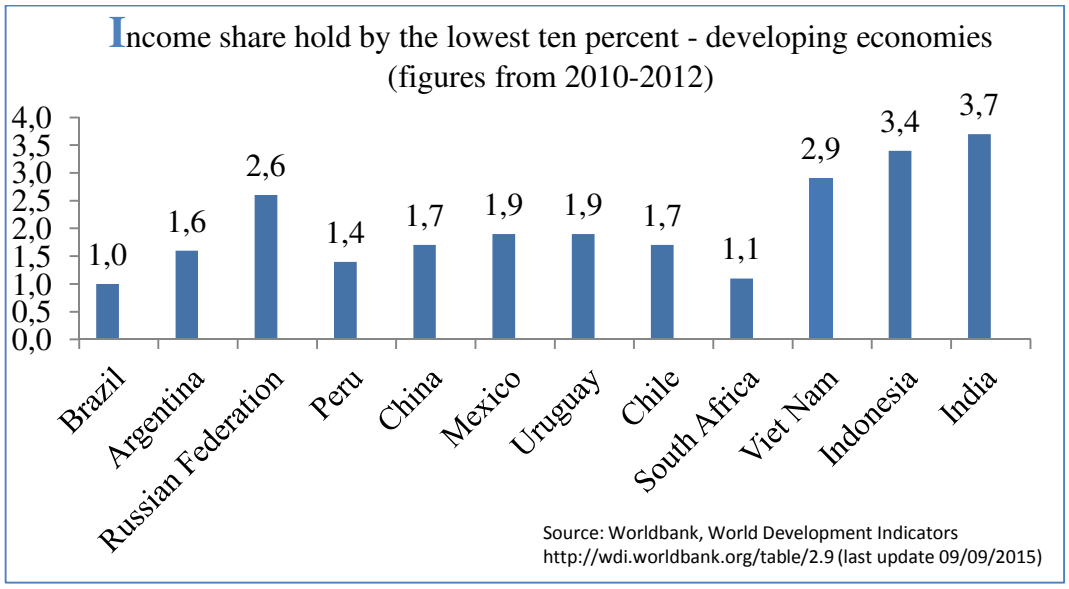

Figure 7: Income share hold by the lowest ten percent - developing economies

This statistics of the income share of the lowest decile may give one the impression that the wage disparities in South Africa are not as great as the disparities in other countries such as Brazil for example, however, the opposite can be said to be the case, as the ILO has shown with the D9/D1-ratio,

> ‘[by] contrast [to other emerging and developing economies], in South Africa, the share of wages rises sharply among the three higher income groups, with social

[201] Ibid.

[202] In annex 2, the figures of the Word Bank for South Africa, measuring the income share of the income held by the lowest 10 percent presented in the global context are found.

transfers representing the largest share of income to those in the entire lower half of the distribution.'[203]

If one looks at the statistics in greater detail, by observing the income portion held by the lower 60 percent of South Africans the real far-reaching extent of income disparities in the country become more visible.[204]

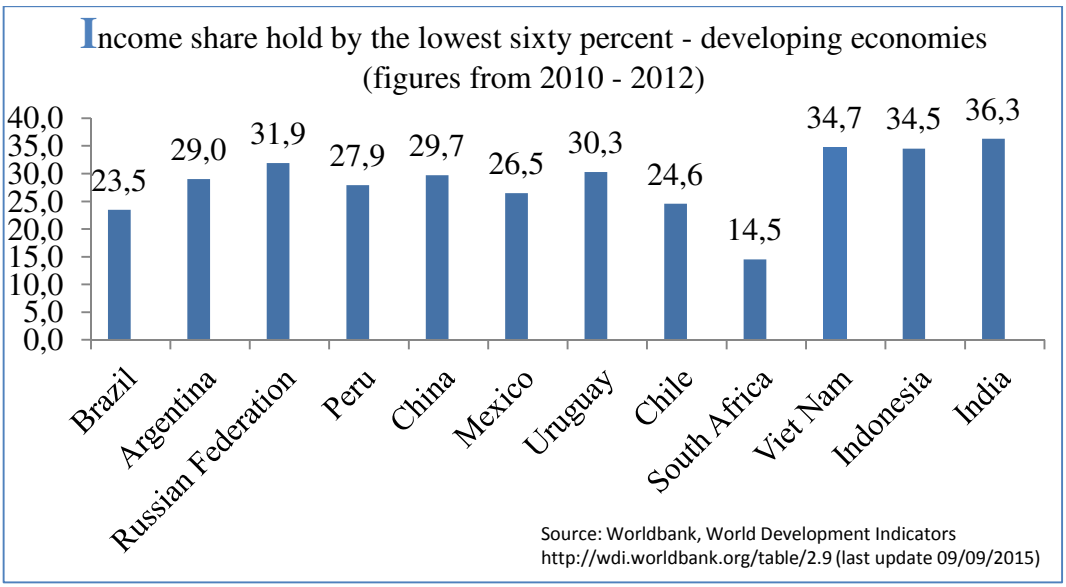

Figure 8: Income share hold by the lowest sixty percent - developing economies

When the income share of the lower income groups up to the lower 80 percent is in the global context extremely low[205] the income share for the highest 10 percent is higher than somewhere else. In South Africa the national income concentrates stronger on the highest 10 percent than in nearly any other country in the world.

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[203] ILO *Global Wage Report 2014/2015* (2015), 40.

[204] In annex 3, the figures of the Word Bank for South Africa, measuring the income share of the income held by the lowest 60 percent presented in the global context are found.

[205] In annex 4, the figures of the Word Bank for South Africa, measuring the income share of the income held by the lowest 80 percent presented in the global context are found.

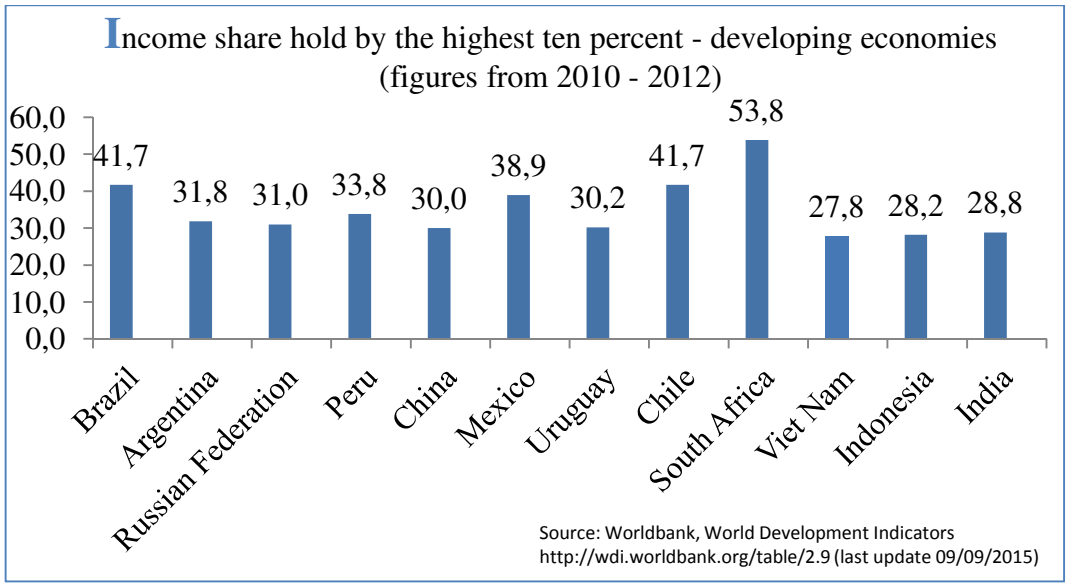

Figure 9: Income share hold by the highest ten percent - developing economies

The gini coefficient is a method internationally used by the World Bank.

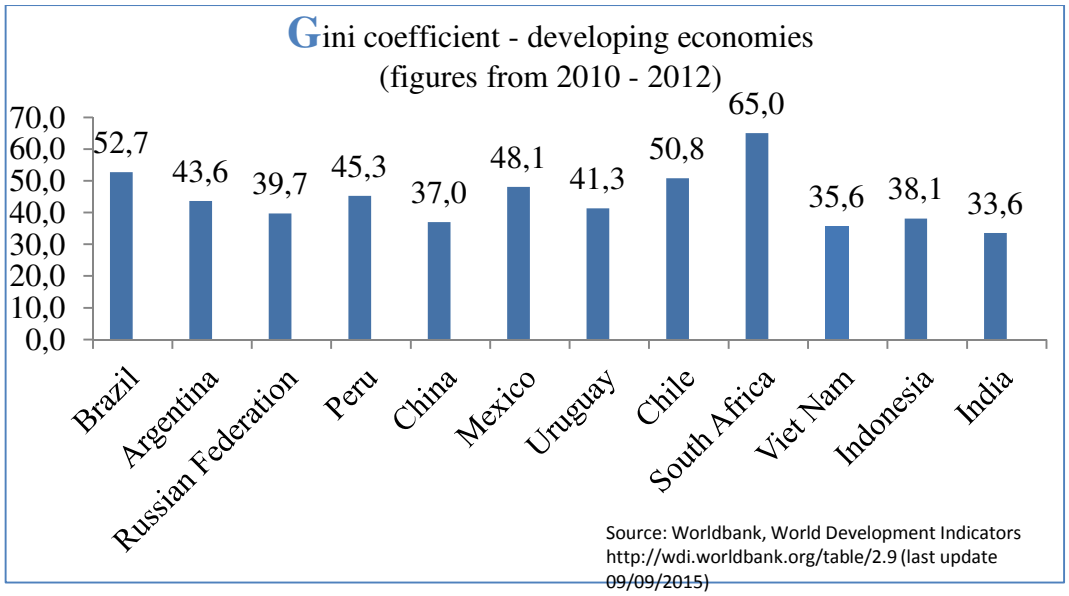

Figure 10: Gini coefficient - developing economies

A gini coefficient of 0 percentage (or 0.00) states that all members of a society share in the wealth and a gini coefficient of 100 percent (or 1.00) shows that the wealth is

only distributed to one person.[206] In South Africa the gini coefficient is 65 percent which reveals a high level of disparity in wealth and income distribution. The gini coefficient in South Africa is remarkably higher than in all other regions of the world.[207]

The ILO and WID data show the growth of the wage gap while the World Bank data shows the distribution of wages amongst South African income earners. Wage structures inherited from the apartheid era continue to persist.[208] Research figures of the WID reveal that the end of apartheid did not result in a reduction of the vertical pay gap.[209] The income share of the top 5 percent of income holders has even increased from 29.27 percent in 1990 to 38.90 percent in 2011.[210] There may be various reasons for this increase; one such reason being that with the end of apartheid came the lifting of the trade ban on South Africa which resulted in great economic advantages for business and tourism. The additional value may not have reached the lower income groups. Wittenberg comments that

> 'Earnings have improved rapidly for high incomes, while they have been stagnant at the median, leading to a growing gap between the top and the middle of the income distribution. Nevertheless, South Africa is also different given the fact that there were strong expectations of more redistributive outcomes following the collapse of Apartheid in 1994. Unlike many other countries the policy stance was not hostile to unions.'[211]

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[206] Chin, Gilbert & Culotta, Elizabeth 'The Science of Inequality - What the numbers tell us' *Science* vol 344 No 6186 (23 May 2014) 818-821, 821.

[207] In annex 1, the figures of the Word Bank for South Africa, measuring the gini coefficient presented in the global context is found.

[208] Alvaredo et al: The figures of the World Wealth and Income Database show that the income differentials have in fact even increased since the end of apartheid (between 1990 and 2011).

[209] Ibid.

[210] Ibid.

[211] Wittenberg, Martin *Analysis of employment, real wage, and productivity trends in South Africa since 1994* International Labour Organization, Conditions of Work and Employment Series No 45 (2014) 1.

In global comparison it is clear that wage disparities in South Africa are quite extensive. Where legal measurers to address the vertical pay gap already exist, they have to be given effect through practical implementation. The current legal framework in South Africa dealing with wage inequalities will be explored and analyzed more expansively underneath.

3. Analysis of the current legal framework in South Africa

3.1. Legal methodologies to address inequality

The South African legal framework addressing workplace inequality is quite extensively regulated by means of legislation. Such legislation includes the EEA and the PEPUDA which facilitates the constitutional right to equality.[212]

The remaining issue is, however, that while such an extensive legislative framework for workplace equality does exist, there is a lack of implementation. Furthermore, the effectiveness of legislative provisions is largely dependent on the nature of a provision and its approach to addressing inequality. This is evident when one assesses reactive and proactive provisions.[213] The provisions of the EEA can be differentiated as reactive and proactive measures.

A reactive provision provides an individual with the right to claim based on infringement. Such a provision, for example, provides an employee with the right to defend him/herself in the instance of an unfair dismissal. Fredman remarks that

> Such 'procedures are in principle limited: they leave the initiative to the individual victim, and only address discrimination where there is an identifiable perpetrator who can be proved to have breached the law.'[214]

Such provisions have been described as complaints-led models.[215]

Reactive provisions work in the following way: the provision defines who may take legal action against discrimination and sets out what needs to be proven for a successful claim against unfair discrimination. Reactive provisions are thus largely reliant on individual action being taken against unfair discrimination. The provision

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[212] Preamble of the EEA; preamble of the PEPUDA.

[213] Schiek, Dagmar & Busch, Sebastian *Proaktiver Schutz vor (rassistischer) Diskriminierung im Arbeitsrecht - lernen von Südafrika?* Hans-Böckler-Stiftung, Arbeitspapier 84 (2004) 11.

[214] Fredman, Sandra 'Making equality effective: The Role of Proactive Measures' *University of Oxford Legal Research Paper Series* Paper 53/2010, 11.

[215] Ibid.

gives the individual the right to take legal action against unfair discrimination. Reactive provisions addresses unfair discrimination in retrospect.[216]

Reactive provisions can prove highly effective in instances where an action reliant on such a provision is instituted against the state or a large public company, as it can result in a widespread change in practices.

The possibility of such a positive effect is largely dependent on the circumstances of each case. This is indicative from the case law discussed below.

Cases like *Hoffmann v South African Airways*[217] or *Independent Municipal and Allied Trade Union and Another v City of Cape Town*[218] have been successfully based on individual rights to equality. Hoffmann filed a successful claim of discrimination against South African Airways' based on their former practice not to employ people living with HIV as cabin attendants.[219] Due to South African Airways being a publicly-owned, internationally-known company it was more strongly compelled by a Constitutional Court ruling to change its general practices on the employment of people living with HIV.

In the case of *Independent Municipal and Allied Trade Union and Another v City of Cape Town the Independent Municipal and Allied Trade Union* successfully appealed together with Mr Murdoch against the practice of the City of Cape Town of not employing insulin dependent diabetics as fire fighters.[220] In the cases discussed above two elements came together; the ruling on a violation of equality resulted in

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[216] Schiek/Busch (2004), 12.

[217] *Hoffmann v South African Airways* (CCT17/00) [2000] ZACC 17; 2001 (1) SA 1; 2000 (11) BCLR 1235 ; [2000] 12 BLLR 1365 (CC) (28 September 2000).

[218] *Independent Municipal and Allied Trade Union and Another v City of Cape Town* (case 521/2003) (LC) (CA 13/2013) [2015] ZALAC 9 (23 April 2015).

[219] Du Toit in du Toit, Darcy; Godfrey, Shane; Cooper, Carole; Giles, Graham; Cohen, Tamara; Conradie, Bradly and Steenkamp, Anton (eds) *Labour relations law: A comprehensive guide* 6th edition Lexis Nexis (2015), 694.

[220] *Independent Municipal and Allied Trade Union and Another v City of Cape Town* (case 521/2003) (LC) (CA 13/2013) [2015] ZALAC 9 (23 April 2015), par 5.

remedying the predicament for the individual, and it also set a precedent for future equality violations of this sort.

These individual actions had widespread appeal because they were instituted against public institutions. A public institution or well-known company will not, or at the very least is less likely to repeat an discriminatory practice. Reactive provisions can thus prove highly successful in such circumstances. There are, however, circumstances in which such provisions may prove to be less successful. In instances involving private companies and smaller institutions such provisions may have less of a deterrent effect.

Furthermore, it is important to note that reactive provisions always require that individuals become actively involved in abolishing discriminatory practices. In order for such provisions to provide results an individual claimant has to come forward, allege unfair discrimination and take legal action against such discrimination. This may prove daunting for some individuals who may not want to be active in fighting against discriminatory practices and in many instances may have good reasons for not wanting to do so. Such reasons may include, but are not limited to, the costliness of legal proceedings, the fact that they are time consuming and that it may be intimidating for an individual to take on a corporation. Many individuals have also come to accept that discrimination in the workplace exists. They may be unaware and/or unsure of their legal rights and how to address unfair workplace discrimination. The individualistic nature of reactive provisions can, in fact, largely hinder the usefulness and success of such provisions. In contrast, proactive measures move away from an individualistic approach and may, therefore, prove more effective.

Proactive measures are legislative provisions that systematically redress inequalities. These provisions call for proactive means of eliminating disparities. Proactive provisions are centred on the complete removal of discriminatory practices and aim at improving the situation for all. These provisions are not individualised in nature but have a more general wider-reaching effect. Proactive equality legislation needs a defined objective and guiding principles to follow.

An example of a proactive measure is a quota law which provides for greater representation of women. The effect such a law is applicable to all corporations and must be implemented accordingly. Where such a legislation is established, companies are obliged to fulfil the quota whether or not they have previously been responsible for or contributed to the under representation of women within their sectors. Such provisions are not centred on the infringement of an individual right and the discrimination need not be individually litigated against to ensure its eradication. Proactive provisions are a reactional development to discrimination as a whole within society. [221]

In many instances the effective implementation of such provisions is not being carried out, or the correct and proper implementation of such provisions is ineffectively monitored. Section 27 of the EEA is a prime example of a well-drafted proactive measure, with great potential for the widespread removal of vertical wage disparities. In the discussion below section 27 and its potential for eradicating income disproportionality will be evaluated in greater detail.

3.2. Section 27 of the EEA

Section 27 of the EEA was implemented to address disproportionate vertical income differentials.[222] The requirements of section 27 of the EEA are aimed at reducing disproportionate income differentials between occupational categories and levels.[223] The provision, if correctly implemented and monitored, can have the positive effect of decreasing unfair income differentials between occupational levels.

The provision calls for every designated employer to submit a statement on the ‘remuneration and benefits received in each occupational level of that employer's

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[221] Waas, Bernd. *Geschlechterquoten für die Besetzung der Leitungsgremien von Unternehmen - Bewertung der aktuellen Entwürfe aus unionsrechtlicher und rechtsvergleichender Sicht*, HSI - Schriftenreihe Band 3 (2012), D.III.1.d).

[222] Helm (2015).

[223] Van Niekerk, André; Christianson, Marylin; McGregor, Marié; Smit, Nicola, & van Eck, Stefan *Law@ work*, 2nd edition Lexisnexis Durban (2012), 166.

workforce'.[224] This provision provides that *if* and *when* income differentials are proportionate it needs to be carefully examined by analysing the difference in income of the top and the bottom levels of the workforce. Where income differentials are disproportionate or unfair discrimination exists in the form of a difference in terms and conditions of employment, a designated employer must take measures to progressively reduce such differentials.

The provision is aimed at eradicating vertical inequality, unlike with horizontal equality; the elimination of vertical income discrimination does not lead to equal wages for all employees**.** It merely means that proportionate wage differentials should result in fair pay gaps between different occupational levels. This provision thus holds out the prospect of creating a more proportionate wage-earning system for all wage earners in South Africa. The EEA made the progressive elimination of vertical income discrimination within the workplace an affirmative action measure.[225] Section 27 of the EEA is, therefore, not individualistic in nature but is aimed at eradicating vertical wage inequalities for all wage earners in South Africa; the provision is proactive in nature.

The provision involves numerous role players, calling for them to become actively involved in abolishing vertical wage discrimination in South Africa. The provision provides that the minister may give guidance to employers on measures to progressively reduce income differentials. The powers 'exercised by the Minister in this regard are of a socio-economic nature and should be exercised with great circumspection, taking into account not merely the interests of so-called disadvantaged groups, but also the effect on economic growth and the interests of the employer'.[226] Whether the Minister provides guidance in terms of section 27 of the EEA, or not employers have to fulfil their duty to reduce wage differentials. Section 27(4) proac-

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[224] Section 27 (1) of the EEA.

[225] Chapter III of the EEA.

[226] Niekerk et al (2012), 166.

tively calls for the ECC to 'research and investigate norms and benchmarks for proportionate income differentials'.[227]

The provision also envisages collective bargaining and provides for the proactive involvement of bargaining parties. The exact extent of proportionality in terms of section 27 (4) of the EEA can be set by the ECC or through collective bargaining or by the bargaining partners. Bargaining partners do not have to wait for the ECC and have the right to draft their own criteria.[228] Trade unions and employer organizations have the right to structure labour relationships by collective agreement, once norms and benchmarks have been set by such a collective agreement.[229] Through providing for collective bargaining, the provision envisages that the steps towards the eradication of disproportionate income differentials must be designed with a sense of proportion in mind.

Section 27 (2) of the EEA has the potential to be an effective instrument in the reduction of disproportionate income differentials. The provision has the potential to result in the creation of norms and benchmarks to achieve proportionate income differentials. In theory, it is a well constructed proactive measure, as proactive legislation needs reference values or a reference framework, in other words 'norms and benchmarks,'[230] to become effective.

While section 27 of the EEA provides a useful framework for the proactive realization of proportionate income differentials, norms and benchmarks for proportionate wage differentials have not been established since the enactment of the EEA in 1998. Measures to reduce disproportionate wage differentials are required and cannot be postponed until the ECC eventually creates norms and benchmarks for the reduction of wage differentials or until the Minister provides guidance in this respect.

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[227] Section 27 (4) of the EEA.

[228] Section 27 of the EEA.

[229] Ibid.

[230] Section 27 (4) of the EEA.

Without effective implementation section 27 of the EEA, although proactive in nature, cannot achieve its practical aims and will remain functional only in theory.

The above discussion of reactive and proactive legislative provisions in our workplace law makes it evident that, while there are legislative means for addressing workplace inequality, their effectiveness is still largely dependent on implementation, monitoring, and the nature of a provision, namely its effectiveness in the given circumstances.

In order to realize the eradication of wage proportionalities in South Africa section 27 of the EEA has to be successfully implemented. The great difficulty in realizing this legislative provision, therefore, lies in finding the best means of effective implementation. The discussion to follow assesses the German approach to reducing wage inequalities and how this may provide a useful model for the implementation of section 27 of the EEA.

In a similar manner to how income differentiations based on 'race' caused the vertical wage gap in South Africa, the differentiation of blue and white collar workers in Germany resulted in wage inequalities, this resulted in the implementation of the ERA.[231] The ERA was introduced as a measure of reducing wage inequalities in the metal and electrical industry in Germany. The genesis of the ERA and its context and development will be evaluated and detailed in chapter 4.

3.3 Proportionality

Proportionality has become a foundational element of global constitutionalism.[232] Proportionality takes into account that limitations and intrusions must not be arbitrary, but proportional.[233] The concept of proportionality looks at reasonableness, ra-

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[231] It should be noted that the extent of income differentials in South Africa and Germany cannot be compared. The income differentials in South Africa are far more extensive.

[232] Rautenbach, I M 'Proportionality and the limitation clauses of the South African bill of rights' *PER: Potchefstroomse Elektroniese Regsblad,* vol 17 No 6 (2014) 2229-2267, 2229.

[233] Schlink, Bernhard 'Proportionality in constitutional law: Why everywhere but here' *Duke Journal of Comparative & International Law,* vol 22 (2012) 291-302, 297.

tionality, fairness and public interest.[234] Rautenbach defines proportionality as follows:

> ''proportion'' is ''due relation of one thing to another or between parts of a thing' and (in a mathematical sense) the 'equality of ratios between two pairs of quantities'; 'proportionality' means 'in due proportion, corresponding in degree or amount'.'[235]
>
> 'Proportionality becomes a tool to enhance accountability and justification for governmental action' [236]

Globally, the tests of proportionality take different forms, but ultimately the differing tests are aimed at achieving the same purpose.

> Klatt and Meister describe the four-prong structure of proportionality in Germany as follows: 'the first stage examines whether the act pursues a legitimate aim, suitability, whether the act is capable of achieving its aim, necessity, whether the act impairs the right as little as possible, the balancing stage, whether the act represents a net gain, when the reduction on enjoyment of rights is weighed against the level of realization of the aim.'[237]

The Canadian test for proportionality takes into account; the relationship between the measure adopted and the aim it serves to achieve, the measure must be rationally connected to the justifiable objective, the measure must be the least harmful and there must be a relation between the harm caused and the importance of the objective of the measure.[238]

In South Africa proportionality entails assessing whether the measure is aimed at achieving a legitimate purpose, whether the measure is rationally connected to its purpose, whether less restrictive means for achieving the same purpose exist

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[234] Rautenbach (2014), Summery.

[235] Ibid 2231.

[236] Ibid 2233.

[237] Ibid 2233-2234.

[238] Alon-Shenker, Pnina & Davidov, Guy 'Applying the principle of proportionality in employment and labour law contexts' *McGill Law Journal* vol 59 No 2 (2013) 375-423, 423.

and whether the measure is proportional taking into account the nature of the measure, the breadth of the limitation and the social good it achieves (a balancing of interests).[239] Section 36 of the Constitution states 'that a right in the bill of rights', like section 9 of the Constitution, 'may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account all relevant factors, including'[240] specifically named factors in the provision.

In the case of *S v Makwanyane* the court in assessing whether the limitation of a fundamental right was fair and justifiable held as follows:

> 'The limitation of constitutional rights for a purpose that is reasonable and necessary – involves the weighing up of competing values and ultimately an assessment of proportionality.'[241]

The court held that the elements of proportionality namely; reasonableness, justifiableness, fairness and necessity are considerations that need to be taken into account in the balancing process.[242]

The concept of proportionality has a vital role to play in the context of section 27 of the EEA. The wording of section 27 of the EEA makes it clear that norms and benchmarks need to be set for income differentials between occupational levels that are aimed at achieving proportionality.[243] In order to determine how such norms and benchmarks should look, it is important to understand proportionality as applicable to section 27 of the EEA. The constitutional test for proportionality discussed above, when applied in the context of section 27 of the EEA will require taking into account the following; the nature of the norms and benchmarks set, the importance of the

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[239] De Vos et al (2014), 367.

[240] Section 35 of the Constitution.

[241] *S v Makwanyane and Another* (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 (6 June 1995), para 104.

[242] Ibid.

[243] S 27 of the Employment Equity Act.

purpose of such norms and benchmarks, the nature and extent to which such norms and benchmarks limits the rights or interests of role players, the relationship between the norms and benchmarks and their purpose (namely proportionate income differentials) and lastly whether its purposes could be achieved through the use of less restrictive means. Below we will explore some of these elements in greater detail.

The rationality test of proportionality can be applied to section 27 of the EEA in the following manner: the employer's justifiable objective is to achieve proportional income differentials. To ensure rationality it is important that the workplace standard is reasonably necessary to accomplish the employer's purpose, a connection between the standard and purpose must exist.[244] This test concerns the relationship between the measure and its aims.[245] The employer will aim to assign the highest income to the most competent and experienced employees and for this purpose the employee develops workplace standards (norms and benchmarks) for wage determinations.[246] The norms and benchmarks set for proportionality in terms of section 27 must be driven by the legitimate aim of assigning income in accordance with experience, education, responsibility, skill, competence and expertise. The norms and benchmarks for achieving this aim should be related to their aim, for example, the norms and benchmarks can classify employees into income groups according to their years of experience, degree of education, level of skill, competency in performing their tasks and expertise in the field. The norms and benchmarks determining the income groups cannot be completely unrelated to the aim of proportional income differentials. To ensure rationality the income for an occupational level needs to be connected to the work performed.

The norms and benchmarks set, must be confined to the core aim / target of such norms and benchmarks. These standards must be capable of achieving the aim

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[244] Alon-Shenker & Davidov (2013), 398.

[245] The rational connection test derived from *S v Makwanyane*, which requires that the measure be rationally connected to its aim.

[246] Alon-Shenker & Davidov (2013), 397.

for which they have been designed. This has to be done without placing an undue burden on the employees to whom they apply to assess whether the burden placed on the employees can be considered undue less restrictive means need to be explored.[247]

To achieve proportionality, less restrictive measures for achieving the same purpose have to be investigated and the 'least intrusive means' should be applied. In light of norms and benchmarks for achieving proportional income differentials it is important that the employer/commission/bargaining body investigates alternative standards or approaches, such as for example more individually sensitive standards.[248]If alternative standards are investigated and found to be capable of achieving the same aim as the decided norms and benchmarks it is important for the role players of section 27 to provide sufficient explanation for why they were not implemented.[249] Assessing whether it's necessary to have all employees within an occupational level meet the same standard or whether standards that are reflective of individuals or of particular groups of individuals is an important aspect of exploring less restrictive means.

In the case of *S v Makanwanye,* the court held that an open society based on freedom and equality, means that there is no absolute standard which can be laid down for determining reasonableness and necessity. Principles can be established, but the application of those principles to particular circumstances needs to be done on a case by case basis.[250]

Based on the above it is clear that in order for norms and benchmarks in the context of section 27 of the EEA to achieve proportionality, such norms and benchmarks should be capable of being applied on a case by case basis. The norms and benchmarks for determining proportional income differentials need to be guiding principles that can be applied to specific circumstances. Such norms and benchmarks

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[247] Ibid, 398.

[248] Ibid.

[249] Ibid.

[250] *S v Makwanyane*, para 104.

need to be capable of being evaluated and applied in a manner that fully takes into account the individual circumstances of each employee accounting for their level of education, skill, years of experience and any other elements that should rightly affect their income.[251] Rigid standards that overlook the individual circumstances of an employee cannot attain proportionality. The standards need to be adaptable to employees who are suitably qualified. An employee may, for example, lack formal education but have years of experience, expertise and practical skills. These aspects cannot be overlooked as a result of rigid, inflexible norms and benchmarks being set.

In addition, it is important to note that norms and benchmarks for income differentials that are capable of realizing proportionality will still differentiate between occupational levels. It is therefore not required for proportionality that there be no differentiation whatsoever. It is merely of importance that such a differentiation does not amount to unfair discrimination and that the differentiation is rationally connected to its purpose. It is inevitable that there will be a difference in income between occupational levels; this is because the occupational levels perform different work and the employees falling within the different occupational categories have different levels of skill, education, expertise and experience. Nonetheless, the income differentiation between the occupational categories, supported by the norms and benchmarks to be set in accordance with section 27 of the EEA must not be arbitrary, but must be rationally connected to their aim of attaining proportionality. In taking into account the constitutional understanding of proportionality this would entail that such norms and benchmarks must be reasonable, fair, justifiable and necessary and they need to balance the interests of the employer and employee as well as that of the employee and other workers. The norms and benchmarks set need to weigh up competing values of all the role players involved to achieve proportionality.

Ultimately, in order for the norms and benchmarks to achieve proportionality, they should take into account the balancing of competing rights and values. Alterna-

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[251] Alon-Shenker & Davidov (2013), 397.

tives and various ways in which individual capabilities may be assessed should be looked at. The skills, capabilities and potential contributions of the individual claimant and others like him must be respected. Balancing the interests and rights of the employee and employer, as well as taking into account the interests of the employee in relation to those of other workers.[252] Proportionality ultimately comes down to rationality, fairness, reasonableness, justifiableness and necessity.

3.4 When are vertical income differentials proportionate?

The legislative process has shown that section 27 of the EEA was implemented to address disproportionate vertical income differentials.[253] Norms and benchmarks for proportionate wage differentials have, however, not been established since the enactment of the EEA in 1998. Unlike with horizontal equality, the elimination of vertical income discrimination does not lead to equal wages for all employees**.** It merely means that proportionate wage differentials should result in fair pay gaps between different occupational levels. In recognition of this, section 27 (4) of the EEA states, that the ECC 'must research and investigate norms and benchmarks for proportionate income differentials'.[254] The EEA made the progressive elimination of vertical income discrimination an affirmative action measure.[255]

It is stated that the requirements of section 27 of the EEA 'are controversial', since their 'aim is to reduce disproportionate income differentials between occupational categories and levels'.[256]

There is no longer any legal justification in allowing the injustices of apartheid to persist, both national and international equality law prohibit it. Allowing the unjust income differentiations of the past would violate section 1 (a), (b) and (c), as

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[252] Ibid.

[253] COSATU Submission (1998).

[254] Section 27 (4) of the EEA.

[255] Title of Chapter III of the EEA: 'Affirmative Action'.

[256] Niekerk et al (2012), 166.

well as section 9 and section 23 (1) of the Constitution. Section 1 of the Constitution states in subsections (a) and (b) that, South Africa is built on the values of human dignity, the achievement of equality and non-racialism and non-sexism. The inherited vertical wage gap is an outcome of racist views and attitudes. In section 1 (c) the Constitution emphasised that South Africa is built on the values of the supremacy of the constitution and the rule of law. In s 9 of the Constitution it guarantees substantial equality and in section 23 (1) the right to fair labour practices. Not to reduce the vertical wage gap would prolong this apartheid injustice and breach the principle of the achievement of equality, non-racialism, substantial equality and fair labour practices. Discriminatory practices cannot be classified as non-racist, substantially equal or fair. Not to implement section 27 EEA is a violation of the principle of the rule of law.

3.5 The potential of section 27 EEA

Section 27 (2) of the EEA has the potential to be an effective instrument in the reduction of disproportionate income differentials.

> 'The section was extremely controversial when introduced into the Act. One can see why; its potential for impacting on wage rates is considerable.'[257]

The provision has the potential to result in the creation of norms and benchmarks to achieve proportionate income differentials.

This view on the potential of section 27 of the EEA is backed by the 'Recommendations on Policy and Implementation of the National Minimum Wage Panel'. In November 2016 the National Minimum Wage Panel stated in their report that 'more consideration should be given to Section 27 of the Employment Equity Act (EEA), which would regulate the observed ratio between the top 5% and bottom 5% of earners in all companies and institutions.' Voluntary steps might not be

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[257] Godfrey, Shane, Maree, Johann, Du Toit, Darcy & Theron, Jan: *Collective Bargaining in South Africa*. Cape Town: Juta (2010), 170.

enough and ʻa regulated system could be considered that creates effective wage ceilings to reduce wage inequality.ʼ[258]

The EEA 4 form is the form for the statement in terms of section 27 (1) of the EEA. The legal imperative of section 27 of the EEA is most clearly demonstrated in the 1999 EEA 4 A form.[259] The employer was, in section D of the form, only required to report the five highest and the five lowest incomes of his employees. The information was in essence reduced.

Section 27 (1) of the EEA requires that the EEA 4 form is regularly submitted to show any progress in addressing the vertical wage gap. In 1999 an EEA 4 form for enterprises with 150 workers or more was introduced, the form had four sections to be answered, namely:

A: Employer details

B: Income differentials per occupational category

C: Income differentials per occupational level

D: Total income differentials[260] (between top and bottom levels).

Smaller companies had to fill out the form limited to chapter A and D. Chapter D was the same in the forms for both smaller and larger companies and is a clear indication of the intention of the legislature.

Income Differential Statement 1999[261]

EEA 4 and EEA 4A form

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[258] Recommendations on Policy and Implementation National Minimum Wage Panel Report To The Deputy President, November 2016, 103-104.

[259] Helm (2015), 52.

[260] Commission for Employment Equity Report 1999 – 2001, Department of Labour, 14.

[261] Section D, Regulations Employment Equity Act 1999, EEA 4A and EEA 4A form 1999.

Section D: Total income differentials

	Income Levels	
All occupations and levels	1.	R
	2.	R

Figure 11: The original EEA 4 and EEA 4A form[262]

The document requires the employer to supply the five highest incomes within a company and the five lowest.

> 'In completing the Income Levels, the first income level (1) represents the average equivalent yearly remuneration and benefits of the five highest-paid employees. The second income level (2) represents the average equivalent yearly remuneration and benefits of the five lowest-paid employees.'[263]

Since 2006 changes to the EEA 4 form have been introduced. In other respects these changes may have a positive impact. In respect of section 27 of the EEA, however, these changes have complicated the implementation process. When one looks at the original EEA 4 form its purpose is quite clear. In companies with up to 150 employees nothing more than the income differentials of the average of the five highest and the five lowest earnings was required; this is the gap between the top and the bottom.

The original EEA 4 form was highly focussed on the vertical wage gap. The EEA 4 form has the potential to aid identifying income differentials in companies which affect the very least starting point. Perhaps the introduction of two forms may promote the implementation of section 27 of the EEA. The current EEA 4 form could be divided into two forms. One form may comply with the original EEA 4 form; the second may include the further particulars which have been added to the original EEA 4 form. This may help to pay closer attention to the main objective of section

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[262] Ibid.

[263] Instructions, Regulations Employment Equity Act 1999, EEA 4A and EEA 4A form 1999.

27 of the EEA, namely the overcoming of disproportionate vertical income differentials.

3.6 The Louw case: The need for criteria for job evaluation.

In *Louw vs Golden Arrow*[264] the Labour Court discussed disproportionate income differentials between different occupational levels as a discriminatory practice.[265] The case arose before the introduction of section 27 into the Employment Equity Act. Mr Louw's claim was a claim for discrimination on the grounds of 'race' colour or ethnic origin, he claimed that as a result of these grounds Golden Arrow paid him less than a white comparator who performs work of equal value, alternatively he alleged that the difference in their salaries was disproportionate in the difference of the value of their jobs.[266] Golden Arrow acknowledged the wage differentials between the salaries of the two men, but held that it was justified in that the work performed was not of equal value. Golden Arrow held that the wage between the two employees was based on a number of reasons, none of which were discriminatory.[267] The court calculated the income of Mr Louw as 58, 9 percent of the salary of his co-worker.[268]

Mr Louw's case was unsuccessful on the grounds that he could not prove that he and his co-worker performed work of equal value. The court set the burden of proof and standard of evidence too high for Louw to fulfil. The court placed the duty on him to prove causation between the differentials in pay and the discriminatory

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[264] *Louw v Golden Arrow Bus Service* (Pty) Ltd (C 37/97) [1999] ZALC 166 (23 November 1999), para 1.

[265] The number of cases that involve race in the context of equal pay show the relevance of the topic. These are for instance the cases *Transport and General Workers Union and Another v Bayete Security Holding* (J2512/98) [1998] ZALC 147 (9 December 1998); *Ntai and Others v South African Breweries Limited* (J4476/99) [2000] ZALC 134 (16 November 2000) and *Mangena and Others v Fila South Africa (Pty) Ltd and Others* (JS 343/05) [2009] ZALC 81; (2010) 31 ILJ 662 (LC) ; [2009] 12 BLLR 1224 (LC) (28 August 2009).

[266] *Louw v Golden Arrow Bus Service* (Pty) Ltd (C 37/97) [1999] ZALC 166 (23 November 1999), para 2.

[267] Ibid, para 7.

[268] Ibid, para 116.

grounds he relied on, by requiring him to prove that 'his salary is less than Mr Beneke's salary because of his race.'[269]

Louw further alleged that the disproportional income between him and his co-worker amounted to unfair labour practice. The court found that disproportionality in the incomes ascribed to the two men was not proven. Nevertheless, the court agreed that disproportionate pay differentials can be discriminatory. In 2009 in the decision of *Mangena v Fila* the Labour Court confirmed that the formulation taken in *Louw v Golden Arrow* places a significant burden on an applicant in a claim for equal pay.[270]

This case clearly points out how essential it is that there be objective criteria in place to determine work of equal value. It also emphasises how important it is to establish criteria for determining proportional income between occupational levels. Setting such criteria ensures that an undue burden is not placed on an individual claiming equal pay or a proportionate share of income. The Louw case did not have the benefit of section 27 of the EEA, the Regulations on the EEA (hereinafter: the Regulations), the Code of the Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices[271] (hereinafter: the HR Code) the Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value[272] (hereinafter: the EP Code) having begun prior to their introduction. Thus the decision emphasises the important role that these legislative tools hold in eliminating horizontal and vertical income differentials in South Africa and these tools will be discussed below.

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[269] Ibid, para 26.

[270] *Mangena and Others v Fila South Africa (Pty) Ltd and Others* (JS 343/05) [2009] ZALC 81; (2010) 31 ILJ 662 (LC) ; [2009] 12 BLLR 1224 (LC) (28 August 2009) para 7

[271] Code of the Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices (HR Code), Government Gazette vol 482 No 27866, 4 Aug 2005 (HR Code).

[272] Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value (EP Code), Government Gazette vol 448 No 38837, 1 Jun 2015 (EP Code).

3.7 The EP Code, the HR Code and the Regulations.

The EP Code is a progressive recent legislative step taken in eliminating disproportionate income differentials within South Africa. It should be noted, that as its title suggests the sole function of the EP Code is to promote equal pay for work of equal value. The EP Code offers a strong tool to eradicate income differentials within an occupational level and does not go so far as to assist in the elimination of wage disparities between occupational levels. Although the EP Code acknowledges the undervaluation of work, it leaves the crucial element of income proportionality between occupational levels, untouched.

> 'The objective of this [EP] Code is to provide practical guidance to employers and employees on how to apply the principle of equal pay/remuneration for work of equal value in their workplaces.'[273]

Vertical income proportionality is the sole purpose of section 27 of the EEA. The provision's objective is to reduce discriminatory wage differentials by creating proportional income differentials between occupational levels. Section 3.8 of the EP Code mentions section 27 of the EEA by providing that:

> 'Section 27 of the Act requires designated employers to report on the pay / remuneration and benefits received by employees in each occupational level of their workforce, and where there are disproportionate income differentials or unfair discrimination by virtue of a difference in terms and conditions of employment, employers must take steps to progressively reduce these differentials. Guidance in this regard is provided for in the Code of Good Practice on the Integration of Employment Equity into Human Resources Policies, Practices and Procedures (HR Code).'[274]

In so far as guidance in reducing vertical income differentials between occupational levels, section 3.8 of the EP Code points us in the direction of the HR Code. The HR

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[273] Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value (EP Code) section 1.1.

[274] Ibid, section 3.8.

Code is a useful aid for employers in reducing discriminatory wage disparities between occupational levels, and a much needed starting point for the implementation of section 27 of the EEA.

Section 6 of the HR Code is of significant importance to this discussion. The provision provides for job analysis and job descriptions and states that a job description consists of two components; a description of the outputs of the job and a description of the inputs of the job. These two components will be detailed below. Section 6.1.1.2 provides

> A 'description of the outputs of the job (what the job proposes to do). This description should provide an accurate and current picture of what functions make up a job, and should not include unrelated tasks,. This should outline the job's location, purpose, responsibilities, authority levels, supervisory levels and interrelationships between the job and others in the same area.'[275]
>
> A 'description of the inputs of the job (i.e. what the person doing the job is required to do). This description should provide details about the knowledge, experience, qualifications, skills and attributes required to perform the job effectively.'[276]

The above provisions can be used as tools in creating proportional income differentials between occupational levels. The provisions ensure that jobs are categorised by not only taking fully the responsibilities but also considering the relation to other occupational categories within the same industry. In addition this aids in ensuring that jobs are ascribed an income according to the skill, education, expertise and experience required. This places jobs within a hierarchy and enables one to assess fully the income differentials between occupational categories within an industry and helps one assess to which extent such differentials are justifiable.

An additional element of significance of Section 6 of the HR Code is that the provision places responsibility on employers to conduct a job analysis when develop-

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[275] Code of the Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices (HR Code), section 6.1.1.1.

[276] Ibid, section 6.1.1.2.

ing a job description. Employers are required to fully assess the job, looking at it in its entirety by assessing the specific tasks, functions, processes, operations, elements of the job and using clear language[277] to avoid misinterpretation. In this way jobs are less likely to be undervalued.

The EP Code describes four criteria that are up to date and relevant for the evaluation of jobs. These criteria are (1) the responsibility demanded of the work, including responsibility for people finances and material,[278] (2) skills qualifications including prior learning whether formal or informal[279], (3) physical, mental and emotional effort required in performing the work[280] and (4) physical environment, psychological conditions, time 'when' and geographic location 'where' the work is performed[281]. These criteria are useful objective aids that enable one to assess jobs in relation to comparable jobs or jobs with a comparable work load, and to determine to what extent income differentials between workers within an occupational level are justifiable.

The Geneva Evaluation System from 1950[282]		
	Skills	Stress
1. Intellectual Requirements	X	X
2. Physical requirements	X	X
3. Responsibility		X
4. Environmental factors		X

[277] Ibid, section 6.3.1.2.

[278] ER Code, section 5.4.1.

[279] ER Code, section 5.4.2.

[280] ER Code, section 5.4.3.

[281] ER Code, section 5.4.4.

[282] REFA *Methodenlehre der Betriebsorganisation, Anforderungsermittlung (Arbeitsbewertung)* Fachbuchverlag Leipzig (1991), 43.

Figure 12: The Geneva Evaluation System from 1950

The four criteria of 5.4 of the EP Code reflects those of the Geneva Evaluation System which were introduced in 1950.

The criteria are also in line with article 3 of the ILO Equal Remuneration Convention, 1951 (no 100) which calls for the elimination of disproportionate income differentials between men and women. It is interesting to note that the ILO Convention no 100 was published by the ILO, based in Geneva, just one year subsequent to the introduction of the Geneva Evaluation System in 1950. The EP Code also, in fact, refers to the ILO Convention no 100.[283]

The Employment Equity Regulations provide the necessary tools to collect data on the income structure in particular with the EEA 4 form. These data allow an in-depth view on the current pay structure of an enterprise as well as its development throughout the recent past.

The HR and the ER Code provide the theoretical foundation for the development of a non discriminatory proportionate target pay structure. The Regulations provide for the collection of data through which a comparison between the current pay structure and the target pay structure can be achieved. However, while these three provisions can be a starting point for the practical implementation on enterprise level, more detailed objective criteria needs to be developed in order to address disproportionate income differentials. In this regard the answer for employers and employees alike may still lie in collective bargaining. Collective bargaining is after all a tool expressly mentioned by the legislature in section 27 of the EEA, and collective agreements may greatly assist through providing even more detailed objective criteria for job valuations.

An example of collective agreements objective criteria for the evaluation of the various jobs in a industry are the ERA agreements which were introduced in the

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[283] EP Code, section 3.3

different regions of German metal and electrical industry between 2003 and 2009. The founding principles of the ERA collective agreements are based on the Geneva Evaluation System of 1950 and its continued scientific development. The detailed nature of ERA, describing pay grades, pay categories and pay elements has made inroads towards the eradication of disproportionate income differentials between white and blue collar workers. A closer look at ERA and in particular at the ERA collective agreement in Baden-Wurttemberg may provide useful guidance in the implementation of section 27 of the EEA and will be discussed in detail below.

3.8 The link to ERA

Similar to the fact that income differentiations based on 'race' caused the vertical wage gap in South Africa, the differentiation of blue and white collar workers in Germany resulted in wage inequalities, as mentioned above. This resulted in the implementation of ERA.[284] The genesis of ERA will be set out and discussed below.

[284] It should be noted that the extent of income differentials in South Africa and Germany cannot be compared. The income differentials in South Africa are far more extensive.

4. The ERA Agreement: context and development

4.1 The genesis of the ERA Agreement

In the German metal and electrical industry there was traditionally a distinct income differentiation between blue and white collar workers. As the lines between blue and white collar work became blurred, a measure had to be introduced for proportionate income differentials which led to the introduction of ERA.

One can trace back the privileged treatment of commercial white collar workers to the late 1800's; this preferential treatment has been described as discriminatory. White collar workers received greater remuneration and enjoyed better employment and working conditions than blue collar workers. Commercial white collar workers were referred to as the officials of the employer.[285] This was so because they were not remunerated according to their work performance, instead their loyalty to the employer was the prime consideration in determining their wages. Around the 1970s the role of white collar workers changed, and the preceding small amount of white collar workers grew.[286] White collar workers changed from being 'the officials of the employer', to employees with qualified responsibilities. With the advent of technical developments discussed above[287] and new forms of work the profile of blue collar workers changed. Blue collar workers began more increasingly performing work with qualified responsibilities. This development resulted in the continued differentiation between the types of workers becoming growingly outdated.[288]

In order to remedy the outdated pay system ERA new General Agreements on Pay Grades for the German metal industry were agreed on. ERA was the result of many years of negotiation. In 2003 the first bargaining district agreed on new non-

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[285] Berthold Huber, footnote 13.

[286] Schroeder, Wolfgang 'Soziale Demokratie und Gewerkschaften' *Online Akademie Friedrich Ebert Stiftung*, www.fes-online-akademie (Dec 2007), 8.

[287] See 1.1. of this theses.

[288] Huber & Schild (2004), 102.

discriminatory, contemporary characteristics for wage formation in a general agreement on pay grades.[289] The other regions successively adopted the pilot agreement, with regional specifications and adaptations.[290] This was the 'biggest post-war collective agreement reform'[291] and was faced with strong resistance. The ERA agreement ensured greater fairness for all employees through norms and benchmarks for proportionate income differentials between occupational levels.

The first attempts to implement a unified wage system dates back to the 1970s. In 1979 the first collective negotiations in the metal industry took place in the bargaining area Nordrhein-Westfalen.[292] The key demands and negotiations that ultimately led to the revised pay structure in the form of ERA will be briefly discussed beneath.

4.1.1 The key-demands

There were a number of key demands that led to the formation of ERA. These key demands were that wage-earners and salary-earners should enjoy the same income opportunities for comparable work and working conditions.[293] It was a demand that continuous education and dynamic pay structures should be implemented, collectively agreed minimum working conditions should be introduced and a new understanding of performance should be established, which is as the former head of the IG Metall Franz Steinkühler 1981 stated 'holistically oriented on humans and not detached from men guided by the dictates of the stopwatch.'[294]

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[289] Bahnmüller et al (2010), 245.

[290] Niewerth, Kerstin *Ein Jahrhundertwerk auf der Zielgeraden - Die Prägekraft tarifvertraglicher Regelungen auf die Förderung moderner Formen von Arbeitsorganisation* PhD Dissertation, TU Dortmund University (July 2015), 35.

[291] Brandl in Bahnmüller & Schmidt (2009), 9.

[292] Bahnmüller & Schmidt (2009), 77.

[293] Ibid.

[294] Ibid.

Given growing unemployment, the controversies over reduced working time became more intense. To negotiate both topics simultaneously seemed to be impossible. Reduction in working hours, developed as a predominant topic.[295] Under these framework conditions, negotiations on a new wage structure had to be put aside. The first negotiations on a new framework pay agreement were abandoned.[296] However, the remaining scope for negotiations have been used to introduce the first elements of a new job evaluation structure in the metal and electrical industry, for example, in the bargaining area Baden-Wuerttemberg.[297]

With the conclusion of a collective agreement to progressively implement the 35-hour work week the block on negotiations was dissolved.[298] Around 1990 IG Metall and Gesamtmetall agreed on the need for a renewed pay structure. The first resumption of the talks took place in 1989 in Baden-Wuerttemberg. But it took another 14 years to come to an agreement.[299] Due to crises in the industry and tough negotiations the negotiations were broken off in 1996. However, after the IG Metall threatened to take industrial action in order to come to an agreement, the employer organisations returned to the negotiation table.[300] The motivation for the resumption of the talks, it seems, was caused by the threat of taking industrial action.

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[295] Ibid, 78.

[296] Ibid.

[297] Ibid, 77, fn 9.

[298] Ibid, 78.

[299] Ibid.

[300] Ibid, 83.

4.1.2 The perception of management and works councils

A growing number of works councils and managers agreed on the view that the previous system of salary formation was not well-tailored for the present future.[301] The parties of the collective pay agreement seemed to lose their structure-creating function for the metal and electrical industry. On company level some works councils developed complementary solutions dependent on the local strength to negotiate.[302] The previous system did not seem to have yet begun to fray, but it became evident what would happen if the negotiations failed. It seemed to become realistic that in the long term a growing number of local agreements could delegitimize the collective pay structure set by the collective bargaining parties.[303]

Future viability of the operational remuneration systems according to the judgement of manager and works councils of the metal industry in 1998 (figures in per cent)[304]						
Are the procedures used in your operation for wage formation fit for the future?						
	for classification purposes (basic pay)		performance-based pay		bonuses	
	Manager	works council	manager	works council	manager	works council
perfectly suitable	29	33	30	22	29	13
partially suitable	43	33	43	38	32	42
outdated	19	31	23	28	26	28
still unclear	0	6	5	13	14	17

Figure 13: The future viability of the operational remuneration systems before ERA

[301] Ibid, 82.

[302] Huber & Schild (2004), 104.

[303] Peters, Jürgen 'ERA-Umsetzung – ein gewerkschaftliches Kernprojekt' in Brunkhorst, Christian; Burkhard, Oliver & Scherbaum, Manfred (ed) *Eine neue AERA - Tarifverträge für die Zukunft* VSA-Verlag, Hamburg (2006), 26.

[304] Bahnmüller & Schmidt (2009), 82.

Company actors recognised the reform of the collective pay agreement system as increasingly desirable. This is shown in the figures of the 1998 survey - from the F.A.K.T. institute[305] of the University of Tubingen showing the perception of the role players within companies.

There were intellectual speculations in large corporations about what would happen if the negotiations failed, but there was no serious alternative if a breakdown in the negotiations occurred.[306] To continue with the previous model would have led to a progressive loss of legitimacy of the structuring role of the collective agreement. What is the value of a collective pay agreement which does not reflect the present company reality? It would, however, be an exaggeration to state that the previous collective agreements no longer applied, but it was apparent that they would lose their relevance without a progressive reform.

Nevertheless, opinions and assessments from the company protagonists varied widely. Having different requirements of members is a challenge in successful negotiations in a trade union as a membership organisation. The crucial impulse for the change was set by the administrative structure. The IG Metall and the metal employers' organisations agreed that there was no alternative but to create a new concept for a collective pay agreement.[307]

A most important requirement was that wage- and salary-earners with comparable working conditions enjoy the same income opportunities.[308] It is with this background that ERA was implemented; the content of ERA will be discussed in greater detail below.

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[305] http://www.fatk.uni-tuebingen.de/.

[306] Ibid.

[307] Peters in Brunkhorst, Burkhard & Scherbaum (ed) (2006), 20.

[308] Huber, Berotld 'ERA - Wir setzen es um' Brunkhorst, Christian; Burkhard, Oliver & Scherbaum, Manfred (ed) *Eine neue AERA. Tarifverträge für die Zukunft* VSA-Verlag Hamburg (2006), 9-17, 9.

The acronym ERA stands for 'Entgeltrahmenabkommen' which means the collectively agreed 'general agreement on pay grades.'[309] In the German metal industry, ERA replaced the former system of General Agreements on Pay Grades by introducing a new unified payment system for blue and white collar workers from 23 June 2003 in the first bargaining region in the German metal and electrical industry.[310]

The ERA Agreement has been negotiated in line with the German legal framework for collective bargaining in the private sector.[311] The German model for collective bargaining on which the ERA Agreement is based guarantees independent negotiations for trade unions, employers and their organisations.[312]

The ERA Agreements in the German metal and electrical industry introduced a new model of basic income for the eleven different German bargaining regions in the metal and electrical industry between 2003 and 2005.[313] This model moved away from a long-lasting tradition of entering into collective agreements to regulate wage structures in the metal and electrical industries.[314] Traditionally, wage agreements reflected a differentiation mostly between three groups of workers namely, blue collar workers, and white collar technical staff and commercial staff.[315]

4.2 The collective labour law profile in the German private sector

Three aspects of German collective law in the private economy namely, the constitutionally guaranteed bargaining autonomy,[316] the possibility of using the Works

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[309] Weiss (1992), 262.

[310] Niewerth (2015), 36.

[311] Bispinck & Dribbusch (2011), 31.

[312] Weiss, Manfred & Schmidt, Marlene *Labour Law and Industrial Relations in Germany* Kluwer Law International 4th edition, Den Haag (2008), 180.

[313] Niewerth (2015), 35.

[314] Huber & Schild (2004), 102.

[315] Südwestmetall (2004), 2.

[316] Art 9 (3) German Basic Law (GG).

Council Act to give effect to collective agreements[317] and the ability of trade unionists in advisory boards to directly communicate with capital[318] make it possible to efficiently implement collective agreements.

4.2.1 The Constitution or German Basic Law (GG)

The legislation known in Germany as 'Grundgesetz (GG)' the ('Basic Law')[319] has been adopted in practice as the German constitution.[320] Section 9 (3) of the German Basic Law (GG) forms the foundation for the German collective bargaining law and guarantees collective bargaining autonomy;[321]

> 'The right to form associations to safeguard and improve working and economic conditions shall be guaranteed to every individual and to every occupation or profession. Agreements that restrict or seek to impair this right shall be null and void; measures directed to this end shall be unlawful.'[322]

The German collective labour laws, firstly, regulate the legal relationship between the employees' coalitions, the trade unions on the one hand and the employers and its associations on the other.[323] In addition to Article 9 (3) of the German Basic Law (GG) the German Collective Agreement Act (TVG) provides supplementary provisions on the practical application of Article 9 (3) of the German Basic Law (GG) in respect of collective agreements.[324] The provisions of the Collective Agreement Act

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[317] Section 80 (1) no 1 and s 99 of the German Works Constitution Act (BetrVG).

[318] Weiss & Schmidt (2008), 248-260.

[319] Basic Law for the Federal Republic of Germany (Deutsches Grundgesetz), Act of 23 May 1949 last amended 23 Dec 2014.

[320] According to article 146 of the German Basic Law, the 'Basic Law, which since the achievement of the unity and freedom of Germany applies to the entire German people, shall cease to apply on the day on which a constitution freely adopted by the German people takes effect.'; Weiss (1992), 102 para 393.

[321] German Basic Law.

[322] Section 9 (3) Sentences one and two of the German Basic Law, translated by the German Federal Ministry of Justice and Consumer Protection (Bundesministerium der Justiz und für Verbraucherschutz, BMJV). http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0050.

[323] Weiss & Schmidt (2008), 180, para 428.

[324] Ibid, 182, para 435.

(TVG) favour collective agreements and create legal certainty. Normative provisions of a collective agreement 'have direct and mandatory effect on all employment relationships bound by the collective agreement.'[325]

4.2.2. The Works Constitution Act (BetrVG)

Secondly, the German collective labour law arranges a system of workers representation on the operational, company and group level in the Works Constitution Act (BetrVG).[326] On the operational level workers representatives have a general duty according to section 80 of the Works Constitution Act (BetrVG) 'to see that effect is given to … collective agreements … for the benefit of the employees'.[327] This right does not extend to enabling a works council to sue an employer to fulfil a duty under a collective agreement in respect of an individual worker.

However, even without this right, the works council can act as an oversight body in that it exercises a measure of control in the workplace by ensuring that collective agreements are fulfilled. This is especially so, in the metal and electrical industry, where works councils view the practical implementation and efficiency of collective agreements as one of their crucial duties.

Historically, this was not the initial purpose of the Works Council Act in 1920 but this has developed as the core function of such councils.[328] Up to the current time there is no legislative text prescribing this as the core function of a works council. Due to the fact that members of a works council are often affiliated with trade unions they regard the practical implementation of collective agreements to be essential. The above deduction may not be as applicable to smaller establishments as observations show that the works council act is less effective when applied to such

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[325] Ibid, 186, para 445.

[326] German Works Constitution Act (BetrVG), Act of 25 September 2001.

[327] Section 80 (1) No 1 of the German Works Constitution Act (BetrVG).

[328] Blanke, Thomas '75 Jahre Betriebsverfassung: Der Siegeszug eines historischen Kompromisses' Kritische Justiz vol 28 No 1 (1995), 12-25.

establishments. However, in an industry with larger establishments, such as the metal and electrical industry, the Works Council Act has proved more effective.

One can imagine that it is easier to find people to run for the works council in larger establishments, as in smaller ones. Additionally, trade unions also play a greater role in larger establishments than in smaller establishments. Therefore, the act can introduce people into works councils who take care of, collective agreements and give them better effect.[329] Members of such councils thus enjoy a greater measure of protection to act free of any hindrances.

4.2.3 The Co-Determination Act (MitbG)

Thirdly, German Collective Labour Law includes a system of corporate co-determination by elected employee representatives in the supervisory board of larger companies for instance in the Co-Determination Act (MitbG).[330].There is a lot to be said for co-determination however for the purpose of this thesis one particular aspect of co-determination is of relevance. In bigger companies, a section of the members of the supervisory board are elected by the employees. In companies with 2000 employees and upwards elected members of supervisory bodies need not be employees of the company.[331] The outcome is that often employees belonging to trade unions also become elected members of supervisory boards. In huge groups this is standard. The effect of this practice is that in the advisory board professional trade unionists can take care of the implementation of collective agreements.

These three aspects of German collective law may each, in their own way, have contributed to the ability to negotiate a revised version of the wage structure. The works councils can ensure at the company level, that a collective agreement is not only produced on paper but of practical relevance. The advisory boards ensure

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[329] Section 80 (1) No 1 of the German Works Constitution Act (BetrVG).

[330] German Co-Determination Act (MitbG), Act of 4 May 1976.

[331] Section 1 (1) of the Co-Determination Act (MitbG); Helm, Ruediger & Goepfert, Burkardt *Top Issues of German Labour Law* C.H.Beck Munich (2016), 211.

that the relevant parties dealing with collective agreements come together. Lastly, Article 9 (3) of the German Basic Law (GG) guarantees that trade unions and employers or their organizations, are able to set the law on working and economic conditions through, for example, entering into a collective agreement.

4.3 Collective bargaining in ERA in the German metal and electrical industries

In Germany, members of a trade union are automatically covered by any collective bargaining agreement entered into by their trade union.[332]

4.3.1 Decentralized regional bargaining structure

In the German collective bargaining system the collective bargaining parties usually distinguish between bargaining areas for regional sectoral agreements.[333] In the German metal and electrical industry several bargaining areas exist. One region is Baden-Wuerttemberg. These collective agreements in the different regions are usually not the same but comparable. The employers` association for the metal industry is Gesamtmetall[334]. Gesamtmetall consists of regional organisations. In Baden-Wuerttemberg the regional organisation is Südwestmetall[335]. The trade union for the metal industry is the IG Metall and is made up of numerous regional bodies. The trade union party for the bargaining area Baden-Wuerttemberg is the IG Metall Baden-Wuerttemberg.[336]

4.3.2 Types of German employer organisations

German employer organisations in the metal and electrical industry can be categorised into three types.

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[332] Section 4 (1) of the German Collective Agreement Act (TVG).

[333] In Germany the structure of trade unions and employer organisations are decentralised and they conduct collective agreements negotiations in various regions.

[334] www.gesamtmetall.de.

[335] www.suedwestmetall.de.

[336] www.bw.igm.de.

4.3.2.1 Employers` organisations only providing services

The first type of organisation can be said to be merely a service provider holding no particular view on collective agreements.[337] This type of organization reacts to the concerns of its members without any input of its own. It provides the services of litigation on behalf of its members, lobbying for its industry and provides advice to its members. This first type of organisation is indifferent to collective agreements. During the 1990's such employer organisations introduced a 'without collective agreement'-membership.[338]

These types of employer organisations actively campaigned for 'without collective agreement'-membership.[339] This was because for them the number of members played a more pivotal role than active involvement in collective bargaining. These kinds of employer organisations have no ambition to configure and change working and economic conditions for their members.[340]

During the years preceding ERA several regional employer organisations in the metal and electrical industry confined themselves to this first model of employer organisation no longer viewing collective bargaining as an essential part of their functions as before.[341] An example of this type of organisation in the past was the employer organisation for the bargaining region Bavaria named 'BayMe'.[342]

In 2009, in the collective bargaining region Bavaria, 75 percent of the members of 'BayMe' who employed 27.6 percent of the workers in the region chose the 'without collective agreement'-membership.[343] This was the highest percentage of all

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[337] Bahnmüller et al (2010), 257.

[338] Haipeter, Thomas & Schilling, Gabi *Arbeitgeberverbände in der Metall-und Elektroindustrie: Tarifbindung, Organisationsentwicklung und Strategiebildung* VSA Hamburg (2006), 54.

[339] Bahnmüller et al (2010), 248.

[340] Bahnmüller & Schmidt (2009), 26.

[341] Bahnmüller et al (2010), 258.

[342] Haipeter & Schilling (2006), 59.

[343] Behrens, Martin *Das Paradox der Arbeitgeberverbände: Von der Schwierigkeit, durchsetzungsstarke Unternehmensinteressen kollektiv zu vertreten* edition sigma, Berlin (2011), 149.

the regions. In the collective bargaining region of Saarland 28.1 percent of the members of the member organisation of Gesamtmetall employing eight percent of the workers in the region chose this model.[344]

This is indicative of two factors. The first being that the 'without collective agreement'-membership is more attractive to smaller companies who may refer to the collective agreement by employment contract without being bound to it. Secondly, this also shows the significance of how an employer organisation views and understands its role. These types of employer organisations undermine collective bargaining.

4.3.2.2 Employers` organisations providing services and collective bargaining on behalf of their members as a service

The second type of employer organisation can be described as employers´ organisations providing services and collective bargaining on behalf of their members as a service.[345] These types of organisations view collective bargaining as their sole business but the role they play in collective bargaining takes the form of more passive involvement. They partake in collective bargaining as a service to their members but play no active role in the restructuring of employment and working conditions. They bargain collectively on behalf of their members to avoid their members having to individually bear the costs of individual collective bargaining.

These types of organisations hold no structuring vision for the improvement in working and economic conditions.[346] The employer organisation for the bargaining region Lower Saxony named 'Niedersachsenmetall' can be seen as this second type of employer organisation.[347]

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[344] Behrens (2011), 149.

[345] Bahnmüller et al (2010), 258.

[346] Bahnmüller et al (2010), 258.

[347] Bahnmüller & Schmidt (2009), 26.

4.3.2.3 The proactive regulators

The third type can be described as proactive regulators.[348] This type of employers` organisations actively engage in improving working and economic conditions.[349] They play a role in the framing and structuring of collective agreements to achieve this aim. In order to achieve this aim they are not only active in setting out the legal framework through collective agreements but actively partake in the development and implementation of these agreements.[350]

These organisations offer service as well. In addition they are visionaries in the regulation of employment and pay structure of the industry not only on paper but also in practice (proactive regulators). An example is the employer organisation for the bargaining region Baden-Wuerttemberg named 'Südwestmetall'.[351] After the agreement on ERA this employers` organisation employed thirty employees to provide advice on the implementation of the agreement to its members and to enforce it.[352] This was done despite some members expressing discontent with the changes that were introduced through ERA.[353]

'Niedersachsenmetall' and 'Südwestmetall' both referred to themselves as 'men of conviction' in respect of collective bargaining agreements.[354] All employer organizations within the metal and electrical industry at the time had the 'without collective agreement' membership as part of their organisation profile. 'Niedersachsenmetall'[355] and 'Südwestmetall' did not, however, actively campaign for members to join under such membership. They did not support this model of employer organi-

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[348] Bahnmüller et al (2010), 258.

[349] Bahnmüller & Schmidt (2007), 360-361.

[350] Bahnmüller et al (2010), 247-248.

[351] Bahnmüller & Schmidt (2009), 26.

[352] Ibid, 135.

[353] Bahnmüller et al (2010), 248.

[354] Ibid.

[355] Ibid.

zation membership unlike, for instance, 'BayMe' who campaigned for this model of membership in the Bavarian metal and electrical industry.[356] However, unlike 'Niedersachsenmetall', 'Südwestmetall' acted much more ambitiously in restructuring and developing a new wage system for the metal and electrical industry.[357] During the bargaining process 'Südwestmetall' said: 'That the employer himself calls for the collective agreement, and aims at enforcing its protection is a position that is relatively new. This had thus far been a measure utilised by employees.'[358] The fact that Südwestmetall were proactive regulators had a huge impact on the success of the collective bargaining process. A complementary factor was the progressive views and attitudes of the regional IG Metall. This will be discussed in greater detail below.

4.3.4 The role of decentralisation for the success of ERA

At the beginning of the negotiations it was neither evident nor clear that Baden-Wuerttemberg would be the pilot region for the negotiations on ERA. However, in the years preceding the agreements it became clear that Baden-Wuerttemberg was the pilot area.[359] Thus the decentralized structure proved to be an effective measure in finding the pilot region for successful negotiations on ERA. It enabled the negotiating parties to find out where negotiations worked best as well as why they worked best in this region.[360]

Although differences exist between the regions, the region Baden-Wuerttemberg provided the first model from which to work. While the agreement

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[356] Haipeter & Schilling (2006), 59-61.

[357] Bahnmüller et al (2010), 250.

[358] Bahnmüller et al (2010), 248.

[359] Bahnmüller & Schmidt (2009), 85.

[360] The ERA Agreement in Baden-Wuerttemberg was not the first agreement signed. A few months earlier the agreement in North Rhine-Westphalia was signed. The agreement in Baden-Wuerttemberg was probably the most thought through agreement and more detailed negotiations and research on the ERA agreements were conducted in this region. Baden-Wuerttemberg was therefore the pilot region. Nation-wide difficulties during the regional negotiations were firstly discussed in Baden-Wuerttemberg; the outcome and resolutions found there were then used as the role model for the other regions.

reached within this region only applies to it, there was coordination between trade unionists in the different regions and between the employer organisations within the different areas and with their umbrella organisation 'Gesamtmetall'. This was the positive role the decentralization of negotiations played in the negotiation on ERA.

4.3.5 Scientific research

The practical experts discussed in 2.2 also relied on scientific support. They worked together with scientific researchers.[361] The research created a rational footing for these collective agreements. During the negotiations on ERA both sides could bring substance to their arguments through scientific evidence, for example, by presenting research on possible methods on the evaluation of work.[362] In the end, although decisions were politically driven, scientific research bridged the gap between the respective bargaining parties enabling them to reach an agreement.

4.3.6 Well-embedded in their environment

A key factor contributing to the success of ERA was that the active role players were well established and well-embedded in their environment. This enabled them to handle any difficulties faced due to discontent of their members with change. As one can imagine, and we will see the restructured wage system was not happily accepted by everyone nor viewed as beneficial by all. The changes in the wage systems thus brought unrest into companies and disappointment to some union members. Therefore trade unions and employer organisations needed to be well established in order to exude strength and needed to have the ability to cope with any unrest amongst

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[361] The F.A.K.T institute at the University Tubingen and other University institutes in Germany and the union-linked Hans-Böckler Foundation provide independent research which supports collective bargaining and co-determination through highly educated scientists. They conduct studies such as analytic, sociologic and empiric research on workplaces, collective bargaining and co-determination. The research supported the development of the pay-grade framework and the agreed interrelationship between the different occupational levels.

[362] Bahnmüller & Schmidt (2009), 67.

their members. Additionally these organisations needed to have the vision to see the long term advantages of the changes brought about by a modernised wage structure.

The IG Metall and the employer organisations of the German metal and electrical industry have a high number of members, both can be seen as being very well-embedded in their environment and in this regard were well prepared for the renewal of the wage structure in the German metal and electrical industry.[363] The IG Metall has a good percentage of members and is the biggest trade union in Germany.[364] The employer organisations and the IG Metall in the German metal and electrical industry are well organized. Both bargaining parties can speak for their respective branch and have a strong negotiation and bargaining power due to their high percentages of members.[365] They are knowledgeable and are able to highlight what is beneficial to themselves as well as what is acceptable for the other side.[366] This facilitated the success of ERA.

4.4. The ERA Agreement in Baden-Wuerttemberg – its norms and benchmarks for wage finding

Prior to ERA, each bargaining region had numerous collective pay agreements. These collective pay agreements differentiated between wage-earners and salary-earners, and further differentiated between commercial and technical salary earners.[367] Each collective pay agreement regulated its own category of worker and consisted of an individualised pay structure. Particular work tasks were defined in each agreement and a specific wage was allocated to a defined task. Over a period of several decades each agreement developed independently as the demands of the working

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[363] Bahnmüller & Schmidt (2009), 56.

[364] The numbers of members of the IG Metall in 2015 was 2.273.743. These are 37.3 % of all trade union members in Germany (http://www.dgb.de/uber-uns/dgb-heute/mitgliederzahlen/2010).

[365] Bahnmüller & Schmidt (2009), 59, 62.

[366] Ibid.

[367] Südwestmetall (2004), 2.

world changed. Technological developments[368] had a sizeable, autonomous influence on the categorization of occupational levels in the metal industry and played a varied influential role on each of the collective agreements relating to the different types of workers.

The focus of this discussion will be on the norms and benchmarks for wage finding set in the pilot ERA bargaining region Baden-Wuerttemberg. Although there were different negotiation outcomes in each bargaining region; these differences will only be highlighted where it may be of interest and relevance in discussing the practical implementation of section 27 of the EEA. The number of pay categories in terms of the collective agreement for example may differ amongst regions.[369] This is not crucial for understanding the wage finding structure in the ERA agreements, and this discussion will focus on exploring the norms and benchmarks for wage finding set in Baden-Wuerttemberg. There are important general aspects that need to be detailed in order for a clear understanding of ERA. These aspects will be addressed herein under.

4.4.1 The term 'general agreement' on pay grades

In order to understand the reformed wage structure it is vital that one understands the meaning of a general agreement on pay grades. An ERA agreement is a collective agreement on pay grades.[370] Such an arrangement explains and regulates grading systems. In Germany wage and salary grading systems are usually regulated by general collective arrangements; they typically explain the number of wage grades for all workers under the higher management structure of establishments.[371] The wage grades stipulate the characteristics of work tasks that fall within a specific wage

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[368] See 1.1 of this thesis.

[369] Bahnmüller & Schmidt (2009), 65.

[370] The German translation is: Entgeltrahmentarifvertrag or Rahmentarifvertrag.

[371] Weiss (1992), 262 para 595.

grade.[372] Arrangements on pay grades are generally concluded to cover long time frames as the issues they regulate do not call for their regular modification.[373] The fixing of pay levels on the other hand requires regular adjustment. Such collective agreements, therefore, usually cover shorter time periods of for example one year.[374]

4.4.2 The principle of cost neutrality of ERA

It is important to know that during the negotiations on ERA, it was agreed upon that the implementation of ERA would be cost neutral and that no person ought to run at a monetary loss in execution of the new wage system.[375] The attainment of the cost neutral implementation of ERA proved technically challenging. In the old wage system unjustifiable income differentials of around 400 Euro were reported.[376] Solutions eradicating such wage extreme differentials had to be found. In order to remedy unjustifiable wage differences amongst employees in a cost neutral manner it was inevitable that adjustments had to be made which would benefit some employees while others would suffer a loss. During the implementation phase they called people whose income was reduced 'Überschreiter'[377] (over-exceeders) and those who receive a raise in income 'Unterschreiter'[378] (under-exceeders).

4.4.2.1 No nominal income losses for the employees

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[372] Ibid.

[373] Ibid.

[374] Küster, Horst *Social partnership: Basic aspects of labour relations in Germany* Friedrich-Ebert-Stiftung, Bonn (2007), 132.

[375] Section 27 (2) of the EEA does not require pay cost increase. It calls for a progressive reduction of the pay gap, which may be cost neutral. Cost neutrality would always be in the interest of the employer. On this basis it is conceivable that South African employers will call for cost neutrality in the implementation of section 27 in the same manner as German employers did during the ERA negotiations.

[376] Bahnmüller & Schmidt (2009), 92.

[377] Operators exceeding the ERA pay levels.

[378] Operators under exceeding the ERA pay levels.

To enable the cost neutral implementation of ERA, measures had to be introduced to reduce the wages of those employees exceeding the wage limits in ERA for their occupation and to increase the wages of those who fell under the minimum wage levels set by ERA for their occupation.

In order to realise no nominal income losses for employees, the collective agreement partners in all bargaining areas agreed on a number of transformative measures.[379] These measures will be set out underneath. Firstly, the collective agreement parties decided that wage transformation from the old wage system to ERA would be carried out over a period of five years. They agreed that, for people whose incomes were below the ERA pay levels for their occupation, pay should progressively increase during this transformation phase and reach the acceptable ERA-level over a 60 month period (five years).[380] In this manner their income is not instantaneously raised, but increased over time ensuring that the new wage system is progressively implemented.

The principle that no one should lose nominal income also played an important role in the reduction of the salaries of employees who were above the ERA earning threshold for their occupation. [381] In respect of these persons whose income levels exceeded the ERA limits, the maximum income risk (the maximum percentage of income under the old wage system they could lose) was set at ten percent of their former pay under the old wage system. This 10 percent was progressively subtracted from their annual pay increase under the new wage system. In this manner they were not at a loss of nominal income but there was a reduction in their pay increase received until the entire 10 percent is deducted over the five year period.[382] The remaining percentage is viewed as an extra sum and has been transformed into an addi-

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[379] Manthey, Martina & Meine, Hartmut 'Der Entgeltrahmentarifvertrag in der niedersächsischen Metallindustrie' *WSI Mitteilungen,* vol 57 No 2 (2004), 108-109, 109.

[380] Bahnmüller & Schmidt (2007), 363.

[381] Bahnmüller & Schmidt (2009), 112.

[382] Ibid.

tional dynamic income element. This extra sum increases with the development of the new collectively agreed wage system.[383]

The progressive growth and progressive reduction of incomes under the old wage system were carried out in order to ensure that the new wage system could successfully be implemented with considerations of fairness and social justice.

4.4.2.2 Cost neutrality security

The collective bargaining parties agreed on what can be termed 'cost neutrality security'. This refers to an agreement by the parties that the wage sum of an establishment may rise during the five-year implementation of ERA by no more than 2.79.[384] In a way this agreed percentage by which the wage sum of an establishment could rise may be viewed as transformation costs. During the beginning of the phase of implementing ERA, the agreed 2.79 percent was used in its totality for the payment of wages, and the unused difference had to be paid into a fund by the establishment, to be used at such a time when the 2.79 percent became needed for it to pay the total wage costs.[385] The money placed into the fund acted as a safety net for employers to fall back on at a later stage when the 2.79 percent may not have be sufficient to cover its total wage costs.[386]

It was agreed that during the five year implementation phase, the total wage costs of an establishment was to stay within the 'extra costs corridor' of between zero and 2.79 percent. If over the five year period the 2.79 percent on average was not enough to cover the total wage development of an establishment, there was a mechanism for the adjustment of annual special payments. This mechanism was put in place in order to ensure that an establishment would not have to incur costs exceeding the 2.79 percent. An example of such a mechanism used where the 2.79 per-

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[383] Ibid.

[384] Bender & Möll (2009), 58.

[385] Bahnmüller & Schmidt (2009), 103.

[386] Ibid.

cent on average proved insufficient, is the reduction of the year-end bonuses of employees of the establishment. It is imperative to point out that there are no cases indicating that such mechanisms for the reduction of annual special payments had to be used.

This five-year transformation period, discussed above, was part of a longer ERA implementation process.[387] The longer process included the execution of other ERA concepts such as the determination of pay categories; this determination preceded the five year transformation period. A discussion on the determination of pay categories during the negotiations on ERA will follow.

4.4.3 The core elements of ERA in Baden-Wuerttemberg

This discussion on the determination of pay categories during the negotiations on ERA will focus on such determinations in the region of Baden-Wuerttemberg. As in other regions, ERA in Baden-Wuerttemberg describes the elements of pay, the pay categories, performance related payment, allowances for stress the wage structure, work valuation methods, conflict resolution mechanisms, the transformation process and the implementation phase.[388]

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[387] Bahnmüller & Schmidt (2007), 363.

[388] Bahnmüller & Schmidt (2009), 104-113.

4.4.3.1 Three elements of pay

The ERA pay can be divided into three elements.

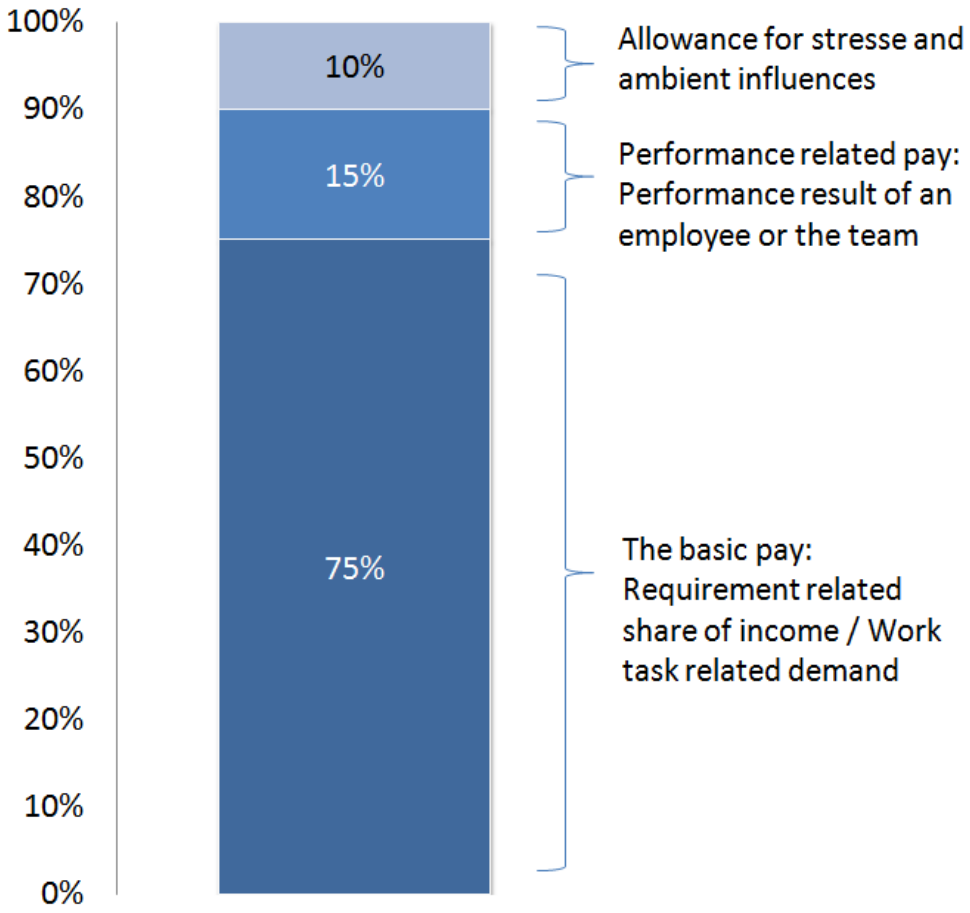

Figure 14: The ERA elements of pay

The first component is basic pay. Such payment is related to the requirements of the task assigned.[389] The second component is performance-related pay.[390] ERA offers a novel, different means of evaluating performance-related pay. ERA provides that on average the performance-related-pay payable within an establishment cannot exceed

[389] Ibid, 105.

[390] Ibid.

15 percent of the total wage costs for all employees.[391] The third component is the allowance for stress and ambient influences.[392] Such payment is equivalent to what is payable for pay category seven of ERA.[393]Each of the above elements of pay will be further detailed.

4.4.3.2 The basic pay – 17 pay categories

The model for basic pay under ERA consists of 17 pay categories.

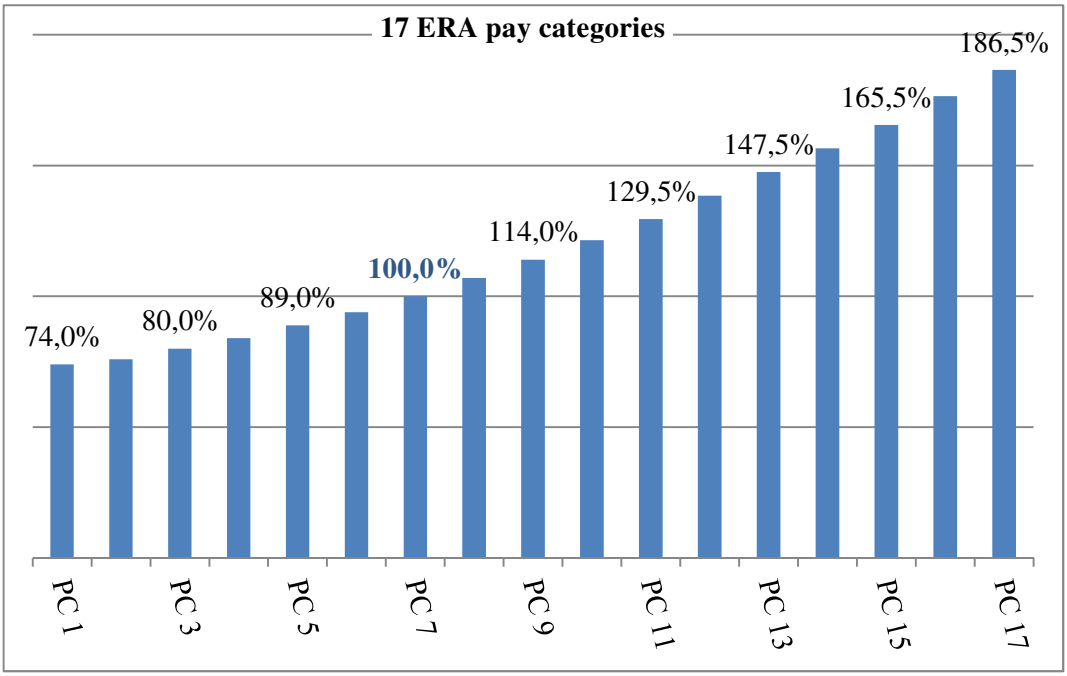

Figure 15: The 17 ERA pay categories

These categories do not differentiate between blue collar and white collar workers, but are applicable to all employees ranging from unskilled to highly skilled workers.[394]

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[391] Ibid.

[392] Ibid.

[393] The amount calculated out of pay category seven sets the frame for this allowance. For example when the 10 percent from pay category 7 in one year is 100 Euro, this is the maximum height for the allowance for all occupational levels in this year. Bahnmüller/Schmidt (2009), 109.

[394] Bahnmüller & Schmidt (2009), 107.

The idea behind a pay category model is to develop a measure of proportionality between different categories of workers. Pay increases do not affect this structure; the regular negotiations on pay increases are still applicable to this pay scale. Therefore one can say that the proportionality between the categories of work the parties have agreed on provide at least midterm stability. This is advantageous, at the very least for the time being, as ERA is indicative of how time consuming reaching an agreement on payment structures can be.[395] Occupational scientific research models like the effort-reward imbalance model shows how important it is for productiveness that employees feel as though they are being treated fairly.[396] This model shows that where employees perceive that they are unfairly treated, it affects their quality of work. Unfair treatment is a stressor which has the potential to affect employees' health and ability to work.[397]

The median of the pay category model above, is pay category seven.[398] This can be seen as the benchmark category against which fair payment for all other pay categories is measured. Pay category seven dictates the lowest amount of pay a skilled worker may receive. This category was used as a measure from which to determine a proportional salary for the lower categories of unskilled and semi-skilled workers.[399] Looking at this category enabled parties, especially the trade unions, to take care in ensuring that the difference in the payment received for a category seven worker and a worker in the lower categories is proportionate.[400]

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[395] The first ERA agreement has been reached in Baden-Wuerttemberg in 2003. First discussions between the parties of the collective agreement can be traced back to the 1970's.

[396] Siegerist, Johannes 'Effort-Reward Imbalance at Work and Cardiovascular Diseases' *International Journal of Occupational Medicine and Environmental Health* vol 23 No 3 (2010) 279-285.

[397] Ibid.

[398] Bahnmüller & Schmidt (2009), 105.

[399] Bahnmüller, Reinhard 'Neubewertung von (Einfach-)Arbeit durch ERA in der Metall-und Elektroindustrie Baden-Wuerttembergs' *Arbeit* vol 20 No 3 (2011), 206-223., 219.

[400] Bahnmüller, Reinhard *Wage Structures and Wage Structure Reform Policy in the German Metal and Electrical Industry* presentation Cape Town 7th Sep 2015, slide 9.

Category seven was also used to measure the proportionality of the payment received by highly-skilled and experienced workers up to pay category seventeen and above (higher management).[401] The difference between payment for pay category seven workers and the payment for highly-skilled workers in higher pay categories was compared to ensure proportionality. The parties agreed that the lowest basic pay for unskilled workers is 75 percent of pay category seven and the highest basic pay for the highly skilled worker is 180 percent of pay category seven.[402]

The use of norms and benchmarks to determine the pay of an employee is a general feature used in collective agreements.[403] This reflects the collective bargaining parties` understanding of fairness, although they are driven by different motives. The employer on the one hand does not want to have unmotivated staff who feel under-valued, while trade unions address aspects of dignity, solidarity and appreciation of employees.

An increase in pay is frequently negotiated in a separate collective wage agreement while, as described above, a framework wage agreement is at least stable from a mid-term perspective.[404]

ERA provides for analytical job evaluation in the form of a point system for the finding of the correct pay category for basic pay which applies to all pay categories.[405] Points are awarded for the following: (1) Knowledge and capabilities,[406] (2) Thinking,[407] (3) Room for manoeuvre and responsibility,[408] (4) Communication[409]

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[401] Beraus (2004A), 112-114.

[402] Bahnmüller (2015), slide 7.

[403] Weiss (1997), 262 para 595.

[404] Ibid.

[405] Beraus (2004A), 112.

[406] In German: 'Wissen und Können.'

[407] In German: 'Denken.'

[408] In German: 'Handlungsspielraum / Verantwortung.'

[409] In German: 'Kommunikation.'

and (5) leadership role of employees.[410, 411] The highest amount of points is awardable in the first category, the lowest in the last.[412] This will be explained, by way of example, but it is comprehensible when one understands that in order to have a leadership role one should possess a higher degree of knowledge and greater capabilities. A leadership position will also require points in all of the other above mentioned categories in this point system.

Characteristics	Number of levels	Maximum score	Percentage of total amount
Knowledge and capabilities			
– Training and exercise	5		
– Education	6	39	42 %
– Experience	5		
Thinking	7	20	22 %
Room for manoeuvre and responsibility	8	17	18 %
Communication	6	13	14 %
Leadership role of employees	5	7	8 %

Figure 16: Characteristics and number of levels or the basic pay

[410] In German: 'Mitarbeiterführung.'

[411] Ibid.

[412] Bahnmüller & Schmidt (2009), 106.

The total number of points one can be awarded is 96 points.[413] Within the different categories one gains points according to an evaluation structure. Each category consists of a number of levels and for each level a number of points can be awarded.[414]

The levels within a category, therefore, add weight to the number of points awardable for the pay category. In the first category the maximum amount of points you can be awarded is 39 points.[415] This category is the only category consisting of three sub-categories namely: (a) training and practice (b) education and (c) experience.[416]

Pay categories` value numbers																	
Pay categories	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Number from		7	9	12	15	19	23	27	31	35	39	43	47	51	55	59	64
to	6	8	11	14	18	22	26	30	34	38	42	46	50	54	58	63	96

Table 17: ERA pay categories` value numbers

The number of points received under the five categories discussed above resulted in seventeen pay categories.[417] If for example, you are rewarded 6 points after the assessment above you fall within pay category one, if you are awarded between 7 and 8 points for example you fall within category two. In this manner the points you are awarded dictate the pay category you fall within.

The ERA-value-numeral-grading-procedure for evaluation and grading of the different work tasks in the industry is described in detail in the collective agreement.[418]

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[413] Bahnmüller (2011), 210.

[414] Ibid.

[415] Bahnmüller & Schmidt (2009), 107.

[416] Ibid.

[417] Beraus (2004A), 112.

[418] As annexure 5 I have added my translation of the ERA-value-numeral-grading-procedure for evaluation and grading of the different work tasks in the industry. Grading examples are added as annexure 6, 7, 8 and 9. The example in annexure 8 and9 show that the grading system allows to compare

ERA-Value-numeral-grading-procedure[419]

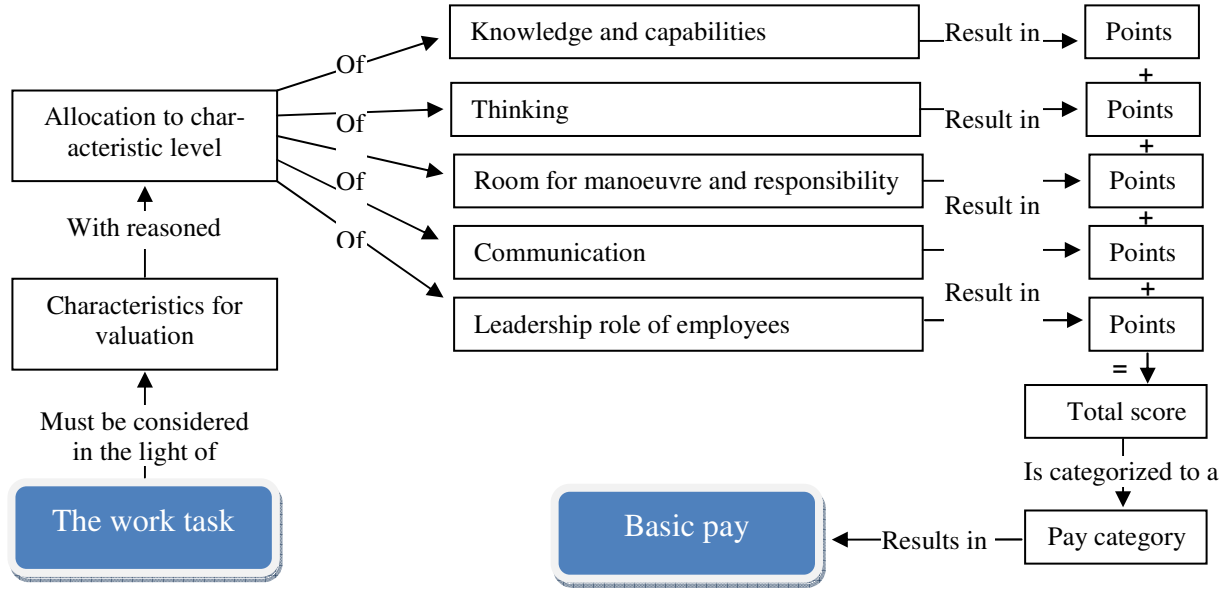

Figure 18: The ERA-Value-numeral-grading-procedure

The collective bargaining parties also provided a system of level descriptors and 122 pay category examples.[420] These are also part of a mid-term collective agreement and may be used in establishments to assign employees to a pay category. In respect of work which is not specifically named these examples can still help to compare or differentiate such work from named examples. The collective agreement provides establishments with two alternative methods for the valuation of work; they can simply follow the point system set out in the agreement or they can develop additional pay category examples for their establishment and compare such examples with those in the agreement.[421]

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different tasks like an office help and a storekeeper (both are in pay category 2). Annexure 6 shows that the work of an auditor can be evaluated as well s the work of a project manager product development (annexure 7).

[419] IGM ERA-Wissen: value-numeral-grading-procedure, 2.2, http://www2.igmetall.de/homepages/era-wissen/file_uploads/wkg-2.2_knappgefasst.pdf

[420] Beraus (2004A), 113.

[421] Bahnmüller & Schmidt (2009), 107 footnote 36.

The different categories and levels within ERA should be used to analyse the work in respect of its characteristics and not based on its title.[422] This element plays an important role in reducing unfair differentiation between white and blue collar workers. In many collective agreements prior to ERA, work done by blue collar workers was evaluated based on the job title and not the requirements of the job. This is indicative of the effect unfavourable views and attitudes had on blue collar workers. For example tailoring work done by a blue collar worker would more likely be undervalued by being labelled as simple sewing work.[423] The work done by white collar workers on the other hand was viewed taking into account the responsibilities and characteristics of the work.[424]

The grading system agreed to in ERA, focuses on the responsibilities and the characteristics of the work in calculating an employee's remuneration. This plays an important role in minimising unjust income differentials between blue and white collar workers in the German metal and electrical industry. If one looks at the work of a lifeguard for example one can see how important this aspect is for the valuation of work. A lifeguard spends the most part of his work day sitting in the sun and watching the sea, the true characteristic of such a job is, however, to save lives when it becomes needed. Evaluating the work done by life guard, by looking at what is predominantly done, would lead to a skewed and unfair result. This manner in which ERA evaluates work is thus an important step taken in ensuring that unfair differentiation in the valuation of work is eradicated.

To further ensure that the work carried out by an employee is fairly evaluated, ERA introduced a mechanism for the valuation of work, and resolving conflicts on the valuation of work. This mechanism is explained below.

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[422] Huber & Schild (2004), 104.

[423] Krell, Gertraude & Winter, Regine 'Anforderungsabhängige Entgeltdifferenzierung: Orientierungshilfe auf dem Weg zur diskriminierungsfreien Entgeltbewertung' in Krell, Gertraude; Ortlieb, Renate & Sieben, Barbara *Chancengleichheit durch Personalpolitik* Springer Wiesbaden (2011) 343-260, 350.

[424] Bahnmüller & Schmidt (2009), 108.

4.4.3.3 The conflict resolution mechanism

A conflict resolution mechanism was built into ERA to ensure that all work was fairly evaluated in accordance with ERA. A commission consisting of equal numbers of representatives from the workforce and the employer had the job of evaluating the work done within an establishment.[425] This commission was referred to as the 'Paritätische Kommission' (PaKo).[426] If the members of PaKo do not agree on the valuation of work the extended PaKo will try to reach an agreement on the specific valuation. The extended PaKo refers to external members of the trade union and the employer's organisation who join the PaKo. When the extended PaKo cannot find a solution an arbitration board tries to resolve the conflict on the valuation of work. The arbitration board consists of the extended PaKo and an independent chairman, most often a judge from the labour court. If no agreement is reached by the arbitration board a decision is taken based on the majority vote of the members of the board.[427]

This mechanism provides a measure by which parties to the collective agreement take responsibility for the correct categorisation of the workforce.[428] Where there is a change in the job requirements the parties to the collective agreement have the responsibility to exercise their control.[429] Through this conflict resolution mechanism they ensure that despite any changes in the job requirements, the job is still correctly categorised in accordance with the characteristics of the work done. This measure ensures that the collective bargaining parties take responsibility in putting collective agreements into practice in establishments. In addition, through this mechanism, they make it their responsibility to ensure that work is correctly evaluated.

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[425] Ibid.

[426] Ibid, 109.

[427] Ibid, 108.

[428] Huber & Schild (2004), 105.

[429] Beraus (2004A), 114.

4.4.3.4 Performance-related pay

There has been a long standing tradition of awarding different performance-related payment for white and blue collar workers.[430] In the past between ten to thirty percent of an employee's wages was performance related, depending on the applicable collective agreement.[431] Performance-related pay was determined through piecework systems, bonus models and target agreement systems, all concepts and criteria set in the existing collective agreements.[432]

The development of a general model for performance-related pay was a huge topic of discussion in order to reach a unified concept on such pay.[433] The parties to ERA agreed on three methods for determining performance-related pay namely judging the performance of the employee, comparing figures (for example comparing production figures of employees and rewarding those with higher production figures), and target agreements (setting targets, by agreement which an employee has to reach in order for the employee to receive monetary reward).

The parties to the ERA collective agreement contracted that performance-related pay within an establishment on average cannot exceed 15 percent of the total wage costs of that establishment. This does not mean that an individual receives 15 percent; an individual may receive between zero and 30 percent of the basic pay depending on performance, but within an establishment this pay element may not exceed 15 percent of its total wage costs.[434] The collective agreement parties set criteria by which the performance of an employee can be measured. These criteria look at what is to be measured, while the methods look at how performance is measured. The different criteria can be combined but the parties have advised that no more than two criteria be used in conjunction.

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[430] Manthey & Meine (2004), 108.

[431] Bahnmüller & Schmidt (2007), 358.

[432] Bahnmüller & Schmidt (2004), 100.

[433] Ibid, 100-102.

[434] Bahnmüller (2015), 11.

These criteria are:

> Processes (when you measure work based on processes, based on sums, time and usage)
> Clients (when you measure performance based on client satisfaction and client complaints)
> Products (when performance is determined based on ability to solve problems and idea development)
> Employee (when the employees performance is determined based on his or her initiative and dedication)
> Finance (when costs and stock act as a measure of performance)[435]

The parties to the collective agreement expressly agreed that performance-related pay cannot be connected to the success of the company or be influenced by any sick leave taken by an employee.[436] The criteria discussed above are the standards by which performance-related pay may be measured. An establishment is not restricted to this standard and can develop additional criteria.[437] Any such additional criteria must be related specifically to the work to be done and must be transparent. In addition the employee has to be able to influence the criteria and the criteria must be related to the job.[438]

In conclusion, one can say that performance-related pay is possibly one of the most flexible parts of the ERA agreement. The structured nature of the criteria makes them a more objective tool in reducing discriminatory practices. A singular system for both blue and white collar workers now exists under ERA.[439]

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[435] Bahnmüller & Schmidt (2009), 111.

[436] Beraus (2004A), 113.

[437] Bahnmüller & Schmidt (2009), 111.

[438] Beraus (2004A), 113.

[439] Bahnmüller & Schmidt (2007), 360.

4.4.3.5 Allowance for stress and ambient influences

Payment for stress and ambient influences was much higher in the past and only applicable to blue collar workers.[440] The maximum pay allowance for stress and ambient influences was also related to the pay categories of blue collar workers. Therefore there were different allowances amongst the pay categories for the same kinds of stressors.[441] In the ERA collective agreement, average stress factors are already reflected in the basic pay structure.[442] Therefore, they reduced this pay element to ten percent of the total pay of pay category seven.[443]

This ten percent of pay category seven is applicable to all employees regardless of their pay category. ERA has equalised the position and eradicated any form of differentiation in payment received for stress and ambient influences. In the past people could 'earn' more than double their salary for working in unhealthy or under stressful conditions.[444] The parties to the ERA collective agreement have developed four work load levels, these work load levels are differentiated by four kinds of burdens, namely: burden on muscles, burden caused by under-stimulation, burden caused by noise and burden caused by other external factors have been included as a general load level.[445]

In each work load level one can receive two points.[446] As mentioned above no points can be received for average stressors because such stressors are reflected in the pay group. In the case of a burden greater than an average stressor one can receive one point while two points reflect a high burden.[447] Therefore, in total, it is

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[440] Bahnmüller & Schmidt (2009), 92.

[441] Bahnmüller & Schmidt (2007), 259, footnote 2.

[442] Beraus (2004A), 113.

[443] Bahnmüller & Schmidt (2009), 109.

[444] Ibid.

[445] Beraus (2004A), 114.

[446] Bahnmüller & Schmidt (2009), 110.

[447] Ibid.

possible to receive eight points, but the maximum allowance is already reached with four points.[448] If one receives between four and eight points you receive the full percentage of the allowance for stress and ambient influences, namely ten percent of pay category seven.[449]

The pay for stress or work load is unconnected to a pay category. This may in fact reduce the pay gap between pay category seven and the lower pay categories since unskilled and semi-skilled employees falling into the lower pay categories more often work in harsher working environments.

4.4.3.6 Role and number of pay category examples

In the past, while pay category examples existed, they had no binding function.[450] Within establishments trade union members of works councils successfully and influentially played a role in pushing employees into the highest pay categories possible. It was important for the IG Metall that there be decision room within establishments to provide the IG Metall's operational functionaries with scope in respect of pay category determination. Their functionaries successfully used this scope for the benefit of employees. In the past employers organisations also found it important to provide their members with wide-ranging scope in the decision making process.[451] Therefore at the beginning of the negotiations, the parties placed focus on the role and number of pay category examples.

Remarkably, it was Südwestmetall that made a fundamental turn-around. They focused on the structural role of collective agreements and pleaded for a stronger position for the framework wage agreement and its pay category examples.[452] This placed the IG Metall in an unusual position since it is usually the trade

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[448] Ibid.

[449] Ibid.

[450] Ibid, 96.

[451] Ibid (2009), 97.

[452] Bahnmüller et al (2010), 248.

union that emphases the importance of the structural role of collective agreements.[453] According to the participants of the negotiation process, Südwestmetall's line of arguments was a large contributory factor in resolving the debates turning on whether pay category examples should be binding or not.[454] Südwestmetall argued that the collective agreement parties do not only have the authority to set legal norms and benchmarks, but have the power to implement any such norms and benchmarks.[455]

Decisions of the German Federal Labour Court reflect what the collective agreement parties settled on. The trade union cannot leave it to the establishments to decide whether or not to follow the policies set by the collective agreement. If this occurs, the structural function it has in the industry will be lost. This line of argument was convincing. The two sides to the collective agreement both agreed on having 122 binding pay category examples.[456]

The agreement focuses mainly on the structuring role of a general agreement on pay grades for the metal and electrical industry by Südwestmetall and IG Metall Baden-Wuerttemberg; in essence this is the most distinctive feature of the bargaining processes for ERA in Baden-Wuerttemberg.[457] This made the processes in the pilot region unlike other bargaining areas of this industry and may, retrospectively explain why, in this region, the agreement was not only possible, but also, was so well thought out.

4.4.3.7 Conflict on the performance related pay

As previously mentioned, the ERA collective agreement parties agreed that fifteen percent of the total wage costs of an establishment would be performance-related

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[453] Bahnmüller & Schmidt (2009), 98.

[454] Bahnmüller et al (2010), 248.

[455] Bahnmüller & Schmidt (2009), 98.

[456] Ibid, 99.

[457] Bahnmüller (2011), 207.

pay.[458] However, instances may arise where the performance on average within an establishment is above 15 percent and the budget for performance related pay proves insufficient. It was thus important to determine whether the agreed fifteen percent set the minimum for performance-related pay or whether it set the ceiling for such pay and was binding.[459] The IG Metall was in favour of the fifteen percent setting the minimum of what should be paid out to employees for performance.[460] Südwestmetall agreed that no one should receive less than the fifteen percent even if employees perform better than expected.[461] Südwestmetall, however, did not want to raise the agreed budget for performance-related pay.[462] To address this difference in opinion the parties agreed to a small percentage by which the budget may be exceeded or by which parties can fall short of the budget. However, if the performance-related pay is lower than fourteen percent or higher than sixteen percent the parties of the collective agreement have to be consulted.[463]

4.4.3.8 Conflict on cost neutrality

Cost neutrality, was of utmost importance for the employer since the initial outset of negotiations.[464] The parties could not agree on cost neutrality until the 1990's.[465] In 1995 IG Metall had no choice but to agree to cost neutrality in the implemention of ERA as Südwestmetall threatened to withdraw from negotiations.[466]

Both parties to the collective agreement knew that the implementation of ERA would not factually be cost free, especially since they agreed to upgrade the

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[458] Südwestmetall, ERA-Infobrief no 1 (2004), 2.

[459] Bahnmüller & Schmidt (2009), 100-102.

[460] Ibid, 101.

[461] Ibid, footnote 34.

[462] Ibid, 101.

[463] Ibid.

[464] Ibid, 103.

[465] Ibid.

[466] Ibid.

payment of highly skilled workers.[467] The solution was to implement the new wage model progressively over a time frame.[468] The parties calculated the costs for the implementation of ERA on 2.79 period of the total wage costs of an establishment.[469]

The parties agreed that the usual annual pay raises should not be paid out in full for a period of five years. Instead a percentage of the usual annual pay raise should be paid into a fund; this fund should be used for the wage costs of an establishment if the formal wage costs were insufficient.

It was agreed that the normal annual raise of an establishment should be paid by the establishment while ERA costs should be paid by the fund. If the fund was not used for its intended purpose a mechanism was put in place for the fund to be paid out to the employees.[470]

In North Rhine-Westphalia, for example, the bargaining parties agreed on the implementation of ERA on the 18th December 2013, not long after it was agreed on in Baden-Wuerttemberg.[471] They started with the ERA-fund in June 2002.[472]

In May 2002 they had, however, already agreed on the division of the annual pay raise into two components. One component was paid out as an actual pay increase; the other component of the increase was paid into the ERA-fund. By 1 March 2005, the ERA-fund had sufficient resources.[473]

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[467] Ibid.

[468] Bender & Möll (2009), 57.

[469] Bahnmüller & Schmidt (2009), 103.

[470] Beraus & Dick (2004), 5-10.

[471] Niewerth (2015), 36.

[472] Bender & Möll (2009), 61.

[473] Niewerth (2015), 122.

Date of pay rise	Annual pay rise	Percentage received by employee	ERA fund instalment
1 Jun 2002	4.0 %	3.1 %	0.9 %
1 Jun 2003	3.1 %	2.6 %	0.5 %
1 Mar 2004	2.2 %	1.5 %	0.7 %
1 Mar 2005	2.7 %	2.0 %	0.7 %
ERA instalments		**2.8 %**	
Expected costs of implementation		**2.79 %**	

Figure 19: ERA-fund in the ERA bargaining region North Rhine-Westphalia[474]

There are three instances described in the collective agreement in the bargaining area North Rhine-Westphalia that can arise in respect of the fund.[475] Firstly, it may be that the annual raise is under 2.79 and insufficient. Secondly, it may be that the raise is an amount between 0 and 2.79 percent and a portion of the fund thus goes unused. Lastly, it may be the case that the annual pay raise paid into the fund is more than 2.79 percent.[476] Agreed solutions were developed for all the scenarios.

If the first instance arose and the money paid into the fund was insufficient and fell below 2.79 percent, then the employer was allowed, in terms of the collective agreement, to reduce other expressly-named pay elements to meet this insufficiency, for example the annual bonus could be reduced.[477] In the second instance where the fund was not completely needed, the unused part should be paid out to the employees as a one-off payment.[478] The part between zero and 2.79 that is unused is

[474] Bender & Möll (2009), 61.

[475] Ibid, 63.

[476] Ibid, 63-64.

[477] Ibid, 63.

[478] Ibid.

paid out in full to the employees.[479] If the last instance were to arise and it was clear from the beginning that the fund wouldn't be needed it was agreed that it should be paid out to the employees in two parts during the implementation phase. If more money was saved than what was necessary for the fund the overflow would result in a raise of the annual payment.[480]

In conclusion, through this mechanism the parties of ERA were able to solve the conflict on cost neutrality and could continue the negotiations after 1995.[481] Cost neutrality was possibly the most difficult conflict that arose in the ERA negotiations but led to a visibly creative solution.

4.4.4 The implementation of ERA

The negotiation phase of ERA was dominated by the trade unions and employer organisations. Unlike the implementation phase it was not a process carried out at company level. The concept of ERA was driven by the trade unions and employer organisations and the implementation had to be carried out by workplace actors supported by these organisations.

4.4.4.1 The role of the organisations

Traditionally, trade unions were more active in implementing collective agreements.[482] The majority of employer organisations viewed themselves more as advisors and became active at the demand of their members.[483] Südwestmetall acted dif-

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[479] Ibid.

[480] Ibid, 64.

[481] Bahnmüller & Schmidt (2009), 103.

[482] Bahnmüller, Reinhard & Sperling, Hans Joachim 'Differente Verbandsstrategie der Arbeitgeber und Politik der IG Metall - Baden-Wuerttemberg und Niedersachsen im Vergleich' in Brandl, Sebastian & Wagner, Hilde *Ein 'Meilenstein der Tarifpolitik' wird besichtigt - Die Entgeltrahmentarifverträge in der Metall- und Elektroindustrie: Erfahrungen - Resultate - Auseinandersetzungen* edition sigma Berlin (2011), 27-50, 27.

[483] Ibid.

ferently in the negotiation and implementation phase, as described above, they took on a more active role from the outset.[484]

The implementation of ERA was high on the agenda as the most important point of discussion for both IG Metall and Südwestmetall at the time.[485] The IG Metall employed three additional lecturers for their training centre and invested a great deal of their time and resources in educating their staff and trade union-orientated members of works councils on the ERA agreement.[486] Südwestmetall employed for the region of Baden-Wuerttemberg only, thirty ERA advisors on a limited time contract.[487] In using this advisory pool the organisation could organise or create a visible active presence within establishments which did not previously exist.[488] As previously described, in the past, companies were restricted in developing the existing wage structure, very little room for development existed. Under ERA, however, they were urged by Südwestmetall to develop the wage structure set out by the ERA agreements.[489]

The IG Metall was never a demand-oriented service provider like most employer organisations, for them ERA was a top-level issue from the outset.[490] The bargaining parties both wanted to guide the implementation by themselves. Südwestmetall and IG Metall both accepted only exceptional external advisors. They demanded a strong role throughout for the bargaining parties.[491]

A representative of Südwestmetall explained the necessity for this procedure: If the bargaining parties do not become active, most of the companies would choose

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[484] Bahnmüller et al. (2010), 258.

[485] Bahnmüller & Schmidt (2009), 115.

[486] Bahnmüller & Schmidt (2009), 135.

[487] Bahnmüller et al. (2010), 250.

[488] Bahnmüller & Schmidt (2009), 116.

[489] Bahnmüller & Sperling (2011), 36.

[490] Bahnmüller & Schmidt (2009), 117.

[491] Ibid, 115-118.

the easiest way out and would look at the new pay scale based on wages. The implementation process would be bypassed and the focus would be on ensuring as little change as possible. Human Resources would not have to be the bearer of bad news to employees whose wages would be diminished in the long term. Conflicts would be avoided and the 'reset of the pay structure' would not be achieved. Although this 'very tempting' opportunity may have been attractive to companies its effect would undermine the aims of ERA and thus needed to be avoided. Companies would never discover the advantages of ERA if this approach were to be followed.[492] IG Metall and Südwestmetall both saw the absolute necessity of playing a proactive role during the implementation phase and possibly placed the implementation phase on an even higher footing than the negotiation phase.[493] They were certain that only this means would ensure that the years of work put into the negotiations of ERA and the insights gained would be worthwhile.[494] They understood that, in order to achieve a change in a long-standing familiar pay structure, the management and monitoring of change was essential.

4.4.4.2 The structure and process of the transformation

IG Metall and Südwestmetall prepared themselves early for the implementation of ERA. They both had an implementation concept of their own,[495] which will be set out below.

IG Metall appointed their ERA-consultants; the ideal was to have consultants within establishments, in every local office of the IG Metall and co coordinating ERA consultants on the regional level. The second element of IG Metall`s implementation concept was to have project groups of different types of enterprises made up of

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[492] Ibid, 118-119, footnote 40.

[493] Bahnmüller et al. (2010), 250.

[494] Bahnmüller & Schmidt (2009), 117.

[495] Ibid, 130.

trade union representatives of the relevant enterprises. The third element was education and qualification. The fourth element was instruction manuals.[496]

There were some difficulties with the IG Metall's implementation concept. On the regional level difficulties arose because only a few persons were responsible for the coordination of ERA's implementation but these persons had numerous other duties to attend to.[497] Another difficulty was that some of the project groups didn't work as effectively as others which was problematic because the project groups were aimed at addressing general questions on ERA for its specific industry.[498] A further problem that arose was that seminars held as part of an education and qualification system were focused on understanding ERA and in the beginning neglected the development of skills for the implementation of ERA.[499] The fact that instruction materials on the implementation of ERA were only ready a half a year after the start of its implementation was also problematic.[500] Possibly the biggest difficulty in practice was that within establishments there were some areas where there were no active ERA consultants from the trade union side. Aside from these issues it should be noted that from the outset the IG Metall was very well prepared for the implementation of ERA.[501]

Südwestmetall followed a very proactive concept for the implementation of ERA. They employed, as described earlier in this thesis, a pool of 30 ERA consultants. They played an active role in the implementation of ERA which was not a known role for employer organizations.[502] Their active involvement was challenging

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[496] Ibid, 130-134.

[497] Ibid, 133.

[498] Ibid.

[499] Ibid, 134.

[500] Ibid.

[501] Ibid, 132.

[502] Bahnmüller et al. (2010), 248.

for both the IG Metall and the works councils.[503] The ERA consultants and employer organisation representatives talked to the management of most establishments and explained the advantages of ERA. They very actively imposed their opinion that only little space for interpretation of the pay categories existed for establishments.[504] According to them there were only a few cases in which establishments could determine additional pay category examples. In their view 75 percent of the jobs within an establishment had been described by the 122 pay category examples. 20 percent of the jobs were similar to these 122 pay category examples and only 5 percent of the work in an establishment may have required pay category determination. They were very active in setting this 75/20/5 rule in relation to pay categories within companies.[505]

Südwestmetall had its own education system and instruction models on the implementation of ERA.[506] Südwestmetall urged employers not to make any decisions without consulting with them.[507] ERA consultants of the employer organization also became active in establishments together with the management. A retrospective view reveals that Südwestmetall was, for an employer organization, unusually focused on the practical aspects of the implementation of ERA. As a result of their active role in the implementation phase, it seems that in the beginning of the implementation phase Südwestmetall brought the employers into a better strategic position.[508] It is reported that Südwestmetall was never before or after the implementation of ERA so visibly active within establishments as it was during the implementation phase.[509]

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[503] Bahnmüller & Schmidt (2009), 138-139.

[504] Bahnmüller & Schmidt (2007), 360.

[505] Südwestmetall (2005), 4.

[506] Bahnmüller & Schmidt (2009), 135.

[507] Südwestmetall (2004a), 1.

[508] Bahnmüller & Schmidt (2009), 135.

[509] Ibid, 135-140.

4.4.5 The implementation in the establishments

4.4.5.1 The time frame

It was agreed that ERA should be implemented between the 1 March 2005 and the 29 February 2008 in Baden-Wuerttemberg.[510] The collective bargaining parties thus agreed on a three year period for the implementation of ERA.[511] In some establishments the time frame for the implementation of ERA may have differed as there were numerous factors affecting it.

The possibility of saving costs and loosing costs affected the time frame for the implementation within establishments.[512] However, the relationship, between the different relevant actors within an establishment, affected the time it took for the implementation within said establishment more. This can be assumed because more then two thirds of establishments entered into an agreement with the works council or the IG Metall on the implementation date for ERA and the process by which to implement ERA.[513] In these agreements the parties agreed on *when* within the timeframe they wanted to implement ERA and *how* they wanted to implement it. This shows that the parties were, in most cases, well aware that the implementation of ERA was a process that was dependent on the establishment's circumstances and challenges.[514]

The majority of establishments agreed on a procedure for the implementation of ERA. The date chosen by an establishment to implement ERA was most likely in most instances more strongly influenced by occupational circumstances and the work plan of the participants and not by the chance to save costs.[515] However, as we will

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[510] Ibid, 140.

[511] Südwestmetall (2004a), 3-4.

[512] Bahnmüller & Schmidt (2009), 140.

[513] Ibid, 143.

[514] Ibid, 142.

[515] Ibid.

see, there were cases where the potential for saving costs influenced the time frame for the implementation of ERA. This is so because the staff structures in the different kinds of establishments in the metal and electrical industry differ.

Südwestmetall wanted to guide the establishments in the implementation of ERA. The companies, however, acted more self-confidently and wanted to follow their own measures for the implementation of ERA. Südwestmetall was centred on their own political and economic circumstances within the establishments and this drove *how* and *when* they wanted establishments to enter into the ERA implementation process.

There were three groups of implementers. The relatively small group of 'first movers' may have had the hope of reducing costs with ERA. The second group wasn`t focussed on cost effects of ERA and looked more at the political process. The 'late movers' implemented ERA between 2007 and the beginning of 2008 and asked for a possible exception for their late implementation.[516]

4.4.5.2 The steps of implementation

When we look at the steps of implementation we can see a pre-phase and the steps of implementation from an employee's perspective (The preliminary step, the main step and the appeal step). In establishments with up to five hundred employees (300 if it's an establishment of a group) the employer had the choice to prepare the categorization in conjunction with the PaKo[517] or alone. In these smaller kinds of establishments the pre-involvement of the PaKo was not prerequisite.[518] In establishments where the employer decided alone on the first pay grading of employees conflicts became visible in the proceeding phases. In larger establishments, where the grading was handled by the PaKo, conflicts also occurred. However, in these cases the conflicts became visible at an earlier stage. It was reported that in around a third of the

[516] Ibid, 144.

[517] See 4.4.3.3., the PaKo is the commission for the conflict resolution introduced above.

[518] Ibid, 190.

establishments where the employer acted alone in grading employees huge problems resulted.[519]

The second step, the main step, can be described as the step in which the most conflicts in respect of the grading of employees arose. During this step it was revealed that many people lost their status within the structure of their establishment and felt downgraded.[520] Thirty-two percent of the works councils reported that the reaction to ERA was negative. Forty one percent reported that the reaction to ERA was likely to be negative. Eleven percent reported that the reaction to ERA was positive and seventeen percent reported that the reaction to ERA was likely positive.[521]

Smaller conflicts have been reported in companies where management and the works councils had a good relationship and there was a greater sensitivity to the effects of the changes on employees[522] In instances where there was a high number of employees within an establishment whose incomes exceed the ERA levels a good relationship between the works council and the management of the establishment was no aid against tough conflicts.[523] However the employees opinion on the outcome of ERA was about twice as often more negative in establishments with poor cooperation between works councils and management than in establishments with a cooperative collaboration between these parties.[524]

It has been held that the reasons for downgrading employees are confusing when one considered that employees do not actually receive a reduced income. The employees receive the same income under ERA because structures have been put in place through ERA to ensure this. The downgrading of employees is thus confusing in light of this since it resulted in them feeling devalued and dissatisfied while having

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[519] Ibid, 193, footnote 92.

[520] Ibid, 196.

[521] Ibid, 195.

[522] Ibid, table A 15, 413.

[523] Ibid, 195.

[524] Ibid.

no impact on their income. The downgrading of pay levels is understandable from the establishments' perspective, but it reminds one a little of the pay level corrections made by companies in the past to rectify situations deemed unfair by their staff.

The third phase, is the phase in which discrepancies in the pay levels could be raised by the works council and the worker. In only ten percent of the companies, there were no complaints reported.[525] However, tough conflicts surrounding grading during the implementation of ERA were reported in the other 90 percent of establishments. Around 22 to 24 percent of the grading was appealed during the implementation phase.[526] The percentage of appeals can be explained by the open questions on grading and by the changes in the new wage system with a shifted focus.

Südwestmetall wanted to avoid deviations developing at a company level and some companies hoped to actively save money, while others were just afraid that their wage budget would rise. This is also another possible explanation for the conflicts that arose during the implementation phase. The relevant actors both wanted to implement a new wage system in a proper manner but the sides held different views on the evaluation process and its outcomes resulting in a conflict over the details amongst the relevant actors.[527] A suggested measure of how ERA can work without conflicts is through the cooperative collaboration and active discussion between all the actors involved. In establishments with poor cooperation the conflicts in the implementation of ERA spiralled more quickly.[528]

The implementation of ERA worked best in companies which intensively involved the works council in the grading phase. In these companies fewer conflicts arose in the second and third phases, and where conflicts arose the conflicts were not

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[525] Ibid, 197.

[526] Ibid.

[527] Ibid, 200-201.

[528] Ibid, 200.

that hard to handle.[529] However, it is important to note that, as previously mentioned, this was only the case in the smaller number of companies.[530]

In view of the discussion above it can be said there was a temporal differentiation between the preliminary step, the main step and the appeal step. The different types of implementation can also further be differentiated from each other. The types of implementation will be discussed below.[531]

4.4.5.3 A typology of the different implementation models at the establishment level

The three phases described can also be further divided based on the types of establishment and the way they implemented the ERA.

(a) The one-sided implementation

The first type of implementation can be described as 'one-sided implementation'[532] this was favoured by Südwestmetall. This type of implementation, however, often resulted in conflicts in the second and third phase of implementation because of the lack of dialogue between the employer and other relevant entities such as the works councils.[533] In some companies fights on each pay grading were reported.[534] In other companies where the employer chose to no longer act unilaterally, the process would be stopped and the grading process would be recommenced in dialogue and in conjunction with the relevant entities such as the works councils.[535] Instances where this occurred may be described as 'failed unilateral adoption'.[536]

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[529] Ibid, 203-212.

[530] Ibid, 212.

[531] Ibid, 201.

[532] Ibid.

[533] Ibid, 201-203.

[534] Ibid, 202.

[535] Ibid.

[536] Ibid, 203.

(b) The integrated norms oriented implementation of the ERA

The second type of implementation may be described as 'integrated norms orientated implementation'.[537] This differs largely from the first type in that all the shareholders were involved in the process. There were not many types of implementation which worked so effectively. However, this type led to widespread acceptance of the new wage structure in companies as it was done in conjunction with and through intensive dialogue with the trade union oriented works councils.[538]

(c) The integrated modifying adoption of the ERA

The third type of implementation was the 'integrated modifying adoption of the ERA'[539]. These types of establishments tried to behave proactively in respect of the employees who would lose nominal income and agreed with the works council on the progressive reduction measures to avoid such losses.[540] They agreed with works councils that no one should lose nominal income with the implementation of ERA. Within some establishments this 10 percent was reduced to 7 percent and in other companies to 4 percent.[541] Within other establishments the 10 percent agreed on was not changed, but employees whose income would be reduced by 10 percent with ERA were paid a once-off extra payment out of the unused money in the ERA-fund.[542] In companies that made this decision there were still many conflicts raised because of the disappointment of employees caused by their degrading and the resulting feeling of devaluation.[543]

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[537] Ibid, 202.

[538] Ibid, 203-207.

[539] Ibid, 207.

[540] Ibid.

[541] Ibid, 208.

[542] Ibid, 209.

[543] Ibid, 207-212.

It can be assumed that within this group there were the companies where the works council and the management were well aware that ERA would result in numerous changes within establishments which may cause disappointment for the employees. In the process they thus tried to reduce the disappointment of employees, this may have helped but was not sufficient to avoid all conflicts.[544]

(d) The distributive-pay, regulation-modifying adoption of ERA

The fourth type can be called the 'distributive-pay, regulation-modifying adoption'[545] type. A central part of the discussion for companies following this type of implementation was the concern of saving money and reduction of the total wage volume. In these types of establishments ERA has been viewed as critical since its inception and the concern to reduce pay costs dominated the implementation process for such establishments.[546] It has been found that when the whole process became flooded with conflicts a change to a cooperative process was not effective.[547]

It can be said, that for the entire implementation the social interaction between the actors, respect and understanding especially for labour could have the effect of either reducing conflicts or the lack thereof of a conflict raising affect.[548] The implementation worked best where processes were transparent, the collaboration was cooperative and the company was not trying to use ERA as an instrument for the reduction of its wage bill.

The significant amount of companies who saved money with ERA can possibly be explained in part by the pay structure set out in ERA, but can also explain why so many conflicts arose. The research especially on the second form of implementation has shown that conflicts arose half as often in the view of employees when co-

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[544] Ibid, 210.

[545] Ibid, 212.

[546] Ibid.

[547] Ibid, 212-218.

[548] Ibid, 217.

operation and collaboration existed in the implementation of ERA.[549] This does not in fact mean that there were less difficulties. It only shows that where conflicts have been dealt with through mutual respect and on equal footing (in the practical operations) between the works council and IG Metall on the one side and management and Südwestmetall on the other, the conflict management was deemed to have been handled better and was more positively perceived by employees.[550] This explains the different responses by employees to the question of how great the conflicts around the ERA implementation were. As one knows there are always different ways of dealing with disagreements. It is significant that in companies where there was cooperation and collaboration by respecting the different roles and opinions of the actors the same proceedings have been perceived as half as conflicted as under opposite circumstances.[551]

4.4.6 The outcome of ERA - a stabilization of collective agreements?

ERA eradicated the differences between white collar and blue collar workers in the German metal and electrical industry.

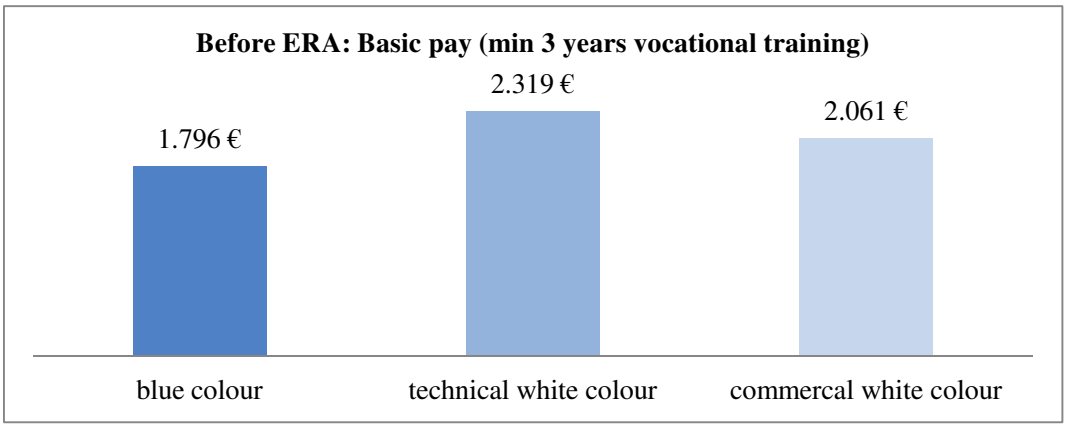

Table 20: Before ERA: Basic pay (min 3 years vocational training)[552]

[549] Bahnmüller & Schmidt (2007), 362.

[550] Bahnmüller & Schmidt (2009), 195.

[551] Bahnmüller et al. (2010), 256.

[552] Bahnmüller (2015), foile 3.

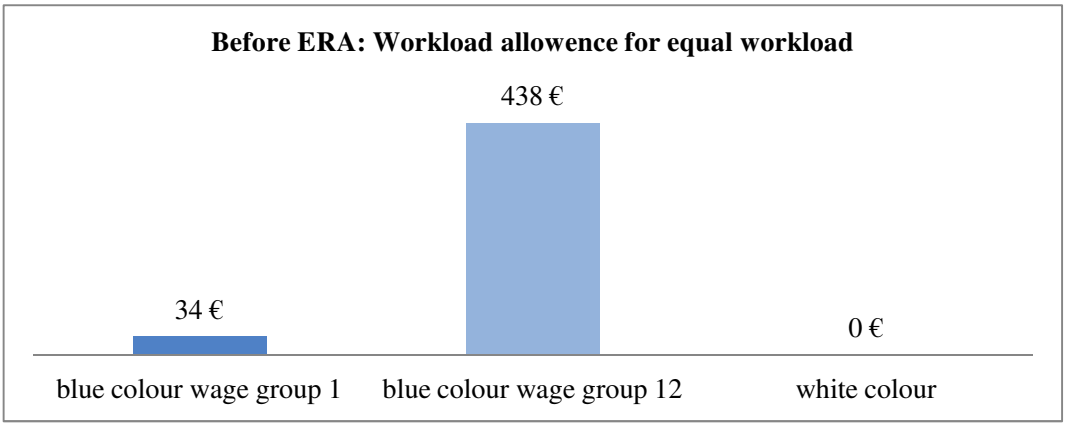

Table 21: Before ERA: Workload allowance for equal workload[553]

This was a huge step taken in eliminating wage inequalities especially when one looks, for example, at the differences of the wages for skilled workers and unskilled workers after a three-year period of vocational training.

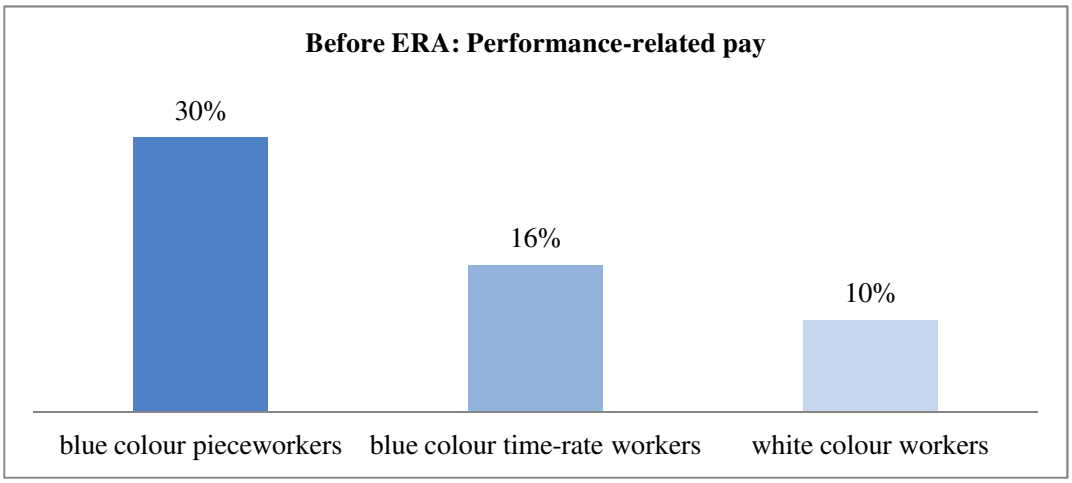

Table 22: Before ERA: Performance-related pay[554]

However, it can also be said that the alternative would have meant a progressive loss of the important structuring role of collective agreements in the metal and electrical

[553] Bahnmüller (2015), foile 3.

[554] Bahnmüller (2015), foile 3.

branch. The number of trade union members did not decline through the implementation of ERA, nor did the number of members of employer organisations decline.[555]

It is without doubt that in such a long term process there are things which could have been done better or could have gone worse. However, if one asks the question of whether high wage levels in the industry (not only in some companies of the industry) could have continued, the answer would probably be, not without ERA.

It is evident from the discussions above that numerous difficulties arose during the implementation of ERA, in dealing with these conflicts the actors may have been under too much pressure to pay sufficient attention to gender pay inequalities. This, however, does not mean that ERA does not offer tools to address the gender pay gap. This issue will be discussed in more detail below.

4.5 The implementation of ERA from the gender pay gap perspective

The historical marginalisation of females in German society resulted in the gender pay gap in Germany.

In a similar way the apartheid wage gap was caused by the marginalisation of the black majority and the preferential treatment of the white minority. The discrimination on these grounds is based on visible characteristics of an individual. In the same manner that one cannot hide one`s gender one`s colour is also clearly visible.

As a result the lessons learnt from the implementation of ERA on the reduction of the gender pay gap can be of equal applicability for the reduction of the apartheid wage gap through section 27 of the EEA. The experiences on the gender pay gap during the drafting and implementation of ERA will be discussed more extensively below.

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[555] Bahnmüller et al. (2010), 256.

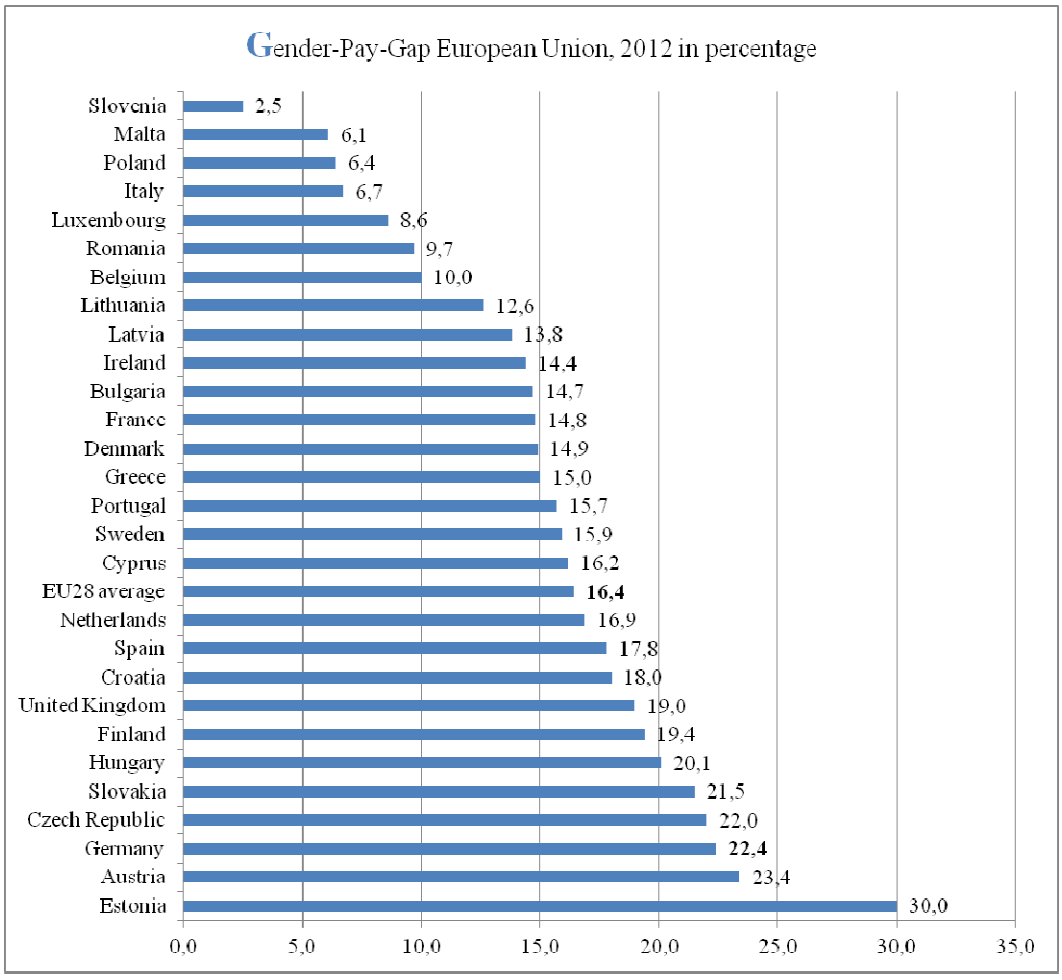

Figure 23: Gender Pay Gap in the European Union, figures 2012[556]

An extensive gender pay gap is still evident in Germany today. This pay gap is between 22 and 23 percent while the European average is around 16 percent.[557]

4.5.1 What the figures on the gender pay gap reveal

In the metal and electrical industry researchers have found that the gender pay gap, depending on the industry and company, ranges between 16 percent (for the vehicle

[556] http://ec.europa.eu/justice/gender-equality/gender-pay-gap/situation-europe/index_en.htm

[557] Jochmann-Döll, Andrea & Ranftl, Edeltraud *Impulse für die Entgeltgerechtigkeit: Die ERA und ihre betriebliche Umsetzung auf dem gleichstellungspolitischen Prüfstand* edition sigma Berlin (2010), 17.

construction sector) and 31 percent (for sectors dealing with the production of office machines, data processing machines, electrical engineering, precision mechanics and optics).[558] These figures are from 2008 and deal with industries that are partly covered by ERA but can also partly be regulated by collective agreements for other industries. As a result this public data cannot present an exact picture on the effects of the implementation of ERA on the reduction of the gender pay gap.[559] These figures are from the time of the implementation of ERA and also reflect the period right after the implementation of ERA. This was reason enough to look at the possible effects of ERA on the existing gender pay gap.

4.5.2 Observations on the implementation phase

Scientific research indicates that although the formal drafting and wording of ERA was a fundamental step in eradicating workplace gender discrimination, traditional views and attitudes to gender roles within the workplace still had influence during the implementation phase.[560] The traditional views and attitudes that were influential in the implementation phase will be discussed below.

How, in practice do traditional views and attitudes affect job valuation? As described earlier in this thesis, in order for a job to fetch the right number of points for the worker to receive the correct basic pay of said job, a job description is necessary. It is reported that, especially in enterprises with no strong works council, the job description is determined by the supervisors of the establishment.[561]

The focus of the establishments and works councils was more to ensure that blue collar and white collar workers were no longer unjustly differentiated between. The aim was to eliminate the undervaluation of blue collar workers and the over-

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[558] Ibid, 18.

[559] Ibid, 17.

[560] Jochmann-Döll & Ranftl (2010), 155.

[561] Ibid, 167.

valuation of white collar workers.[562] This is how traditional views and attitudes ended up affecting the valuation of work. Placing the focus mainly on the undervaluation of 'blue collar workers' and overvaluation of 'white collar' resulted in the parties losing sight of the eradication of gender wage inequalities.

In practice supervisors often provided a more general description of the work done by females leading to the undervaluation of such work. The work of secretaries, for example, has often been described more generally. In cases where the specifics of the work of a secretary were not reflected in great detail, such work indirectly became undervalued because the true extent of the work done by a secretary was not actually reflected in the point system and the job description.[563] Such work should be valued by comparing the work done by a secretary to work done by other employees within the establishment. Instead the views and attitudes of the supervisor affects the way a job is viewed and described which, in turn, affects the valuation of the job.

In some areas one will find more females working than males, for example, office bound work such as the work of a secretary is more often carried out by females than males. In practice it appears that although ERA was drafted with the eradication of gender wage gaps in mind, female jobs were not as highly valued as male jobs within establishments.

In environments where the well-established works councils placed a greater focus on and acted strictly in correcting gender pay inequalities together with the IG Metall these works councils were able to correct and avoid the undervaluation of typical 'female work'.[564] Here one can see, that the job description phase does not have to automatically result in the persistence of the unjust gender wage gap, but it

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[562] Bahnmüller & Schmidt (2009), 88-94.

[563] Jochmann-Döll & Ranftl (2010), 167.

[564] Benner, Christiane & Scheytt, Stefan (2012). 'Equal Pay kostet Geld' (Christiane Benner, zweite Vorsitzende der IG Metall, erklärt ihre Equal-Pay-Strategie für die Betriebe; Christiane Benner second president of the IG Metall explains her equal-pay-strategy for the workplace), *Magazin Mitbestimmung*, 05/2012.

can be influential where outdated views and attitudes result in inaccurate job descriptions leading to the undervaluation of work.[565]

Where a works council or human resources department of an establishment is male dominated, it is more likely that the actors are not aware of the risks of gender discrimination. Thus, although objective criteria for the valuation of work are set out in ERA; the risk of gender discrimination will not be clearly visible during the transformation stage. This is problematic in that works councils and human resources departments mistakenly believe that they are acting objectively in drafting job descriptions since the criteria of ERA are meant to be objective.

4.5.3 Observations during the appeal phase

The employees and the works councils have the right to appeal against a job evaluation.[566] The evaluation of a job relates to what is required by the specific kind of work carried out by the individual, in this manner the appeal phase becomes an individualised process. It has been observed that during the appeal phase a remarkably lower percentage of complaints against the job valuation occurred in areas with a high percentage of women.[567]

This is the case even though figures reveal that the wage gap in Germany still persists and there are generally a greater percentage of female workers whose work is being undervalued. Despite this being evident more male workers have appealed their job valuation. The appeal proceedings are, as follows: after the work of an individual has been valued according to the point system the employee can appeal against the valuation and introduce their point of view on said valuation of their job.[568] There may be numerous reasons behind why fewer females than males in all

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[565] ILO Committee of Experts (2007). International Labour Conference, 96th Session, 2007: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (1A)-2007, 271 par 2.

[566] Section 10.1 ERA-Agreement Baden-Wuerttemberg.

[567] Jochmann-Döll/ & Ranftl (2010), p 168-169.

[568] Bahnmüller & Schmidt (2009), 197-198.

areas of work have appealed their job valuations. These statistics cannot be analyzed or explained in their totality.

However, one explanation is that women may not see the sense in appealing an unjust work valuation in a male dominated environment. People, including woman are so accustomed to the traditional way in which 'typical female' jobs have been valued that it goes unseen when such work is undervalued despite the objective criteria for the characterization of work.

The individualised appeal process even as a last resort cannot result in remedying general gender wage inequalities. Guy Ryder, the Director General of the ILO correctly questioned:

> 'Why after decades of legislation, decades of advocacy for equal pay and against gender discrimination, the gender pay gap worldwide is still around 20 percent and shows no signs of closing and why women's participation rights in our labour forces are about 25 percentage points below those of men? What do we need to do, more of the same or something different?[569]

Systematic inequality calls for the use of systematic instruments for eradication. The issue of gender inequality in the wage structure cannot be satisfactorily addressed individually. It can only be systematically remedied. If the views and attitudes causing the gender pay gap are not acknowledged and accounted for during the job valuation process, individual appeals cannot change the general discriminatory evaluation results.

4.5.4 Sensitivity on the potential for discrimination in job evaluation procedures

Research conducted on the effect of ERA on the gender pay gap revealed that within establishments people were not aware of the risk of gender discrimination.[570] In order to implement ERA the trade union and the employer organisations organised a num-

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[569] Guy Ryder: 'It`s time to unite against inequality', 4th Uni World Indaba (2014) video: *www.uniglobalcongress.com*, from 9:49 to 10:35.

[570] Brandl (2011), 18.

ber of seminars. Members of works councils, trade unions and human resources managers of different establishments were elevated to the role of ERA experts and educated accordingly. Some of these ERA experts became members of the PaKo and sought to implement ERA by evaluating work according to the levels in the ERA pay system and classified jobs accordingly.

Research studies on ERA show that there was broad understanding that ERA is abstract and neutral and therefore free of the risk of gender discrimination.[571] Although a number of materials on the gender issue and the risk of discrimination were created it seemed that, in most cases, such material was not considered in the implementation of ERA.[572]

In addition, the practical implementation of ERA was mostly been carried out by men. Research revealed that because ERA is a neutral system, people believed there was no risk of gender discrimination.[573] This lack of sensitivity resulted in the gender issue being overlooked in the implementation of ERA. The parties implementing ERA were convinced that they acted in a gender neutral fashion, while in fact they may have acted under the existing underlying views and attitudes when evaluating and classifying jobs.

4.5.5 Suggested measures to improve gender equality

Experience, derived from instances where the implementation of ERA worked better, reveal that it should be the primary goal to reach equal pay for work of equal value.[574] It is suggested that sensitivity should be created through analysing the pay

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[571] Ibid, 170-173.

[572] Beraus, Walter 'Auf dem Weg zur Überwindung der mittelbaren Diskriminierung in den Tarifverträgen der Metall- und Elektroindustrie in Baden-Wuerttemberg' part 6.2 in *IGM ERA-Wissen* 2004/08 (2004B), 249-257.

[573] Jochmann-Döll & Ranftl (2010), 179.

[574] Ibid, 184.

data of the enterprise, analysing the job variation data, and looking at the relevant members of the PaKo and the decision makers in the valuation process.[575]

It is also suggested that there should be more women who perform the function of evaluating work.[576] It is recommended that external professional support be brought in to address the risks of traditional views and attitudes on gender roles that cause discrimination.[577]

Due to the point discussed above, it is necessary that measures to improve the actual implementation of ERA be established. It is one thing to have a well-drafted solution to gender wage inequality on paper, but to actually practically implement such a solution is an important factor all of its own. Thus this thesis proposes that when searching for a process to remove the effects of vertical pay discrimination inherited from the past, ERA can provide insights as to how this can be achieved bringing section 27 of the EEA to fruition.

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[575] Jochmann-Döll & Ranftl (2010), 184.

[576] Ibid, 185.

[577] Ibid.

5. Recommendations derived from ERA

ERA can provide guidance on both the development of a pay structure and the implementation of section 27 of the EEA. The purpose of this chapter is to establish recommendations drawn from the ERA implementation process.

In this thesis the figures and in-depth discussions show that the South African pay gap is vast and is inherited from past apartheid practices. The Employment Condition Commission has not yet met its mandate in terms of section 27 (4) of the EEA to provide norms and benchmarks on proportionate pay differentials. The provision requires that its implementation include the creation of criteria for proportionate income differentials. This - the legal framework - is the starting point for how the German experience can add value to the implementation of collective agreements or policies to eliminate the apartheid wage gap. In addition, the chapter considers aspects of the ERA process and the content of the agreement that can inform the implementation of section 27 of the EEA.

This includes the ERA experience on the development of a neutral point system for the evaluation of the different work tasks as well as the awareness on the implementation phase. A objective and systematic pay structure is also what section 27 of the EEA, the HR and the EP Code call for.

5.1 The legal framework

The German legislation offered a legal framework for the implementation of ERA which ensured that important actors played an active role in collective bargaining and in implementing ERA within companies. The German legal framework is, in some respects, similar to existing South African legislation. A key difference, however, is the system of co-determination. There is no representation of elected trade unionists on the boards of larger companies and groups of companies in South Africa. Without a well-established system of co-determination difficulties may arise in implementing section 27 of the EEA by means of collective agreement in South Africa. Efforts to encourage co-determination such as the workplace forums have also not taken hold in South Africa.

The South African Constitution and the LRA guarantee the freedom of bargaining.[578] Trade unions and employer organisations are legislatively enabled to agree on binding collective agreements regarding the progressive reduction of the pay gap as section 27 of the EEA provides.

5.2 The decentralisation (from decentralisation to generalisation)

The decentralisation of negotiations and the implementation of ERA was one element in the successful implementation of ERA. After the general agreement with the employer organisations was agreed on in the pilot region, Baden-Wuerttemberg, the agreement was adopted in other regions with regional modifications. This technique can be transferred to the South African case. It may be crucial to find a pilot model which may become a role model for other areas and which will aid in attaining initial experience. Such a pilot model should fulfil the qualifications Südwestmetall and IG Metall provided. It should be an environment where the will exists to eliminate the apartheid wage gap. This can be an establishment and does not have to be a region. However, the common understanding should be that the negotiations on the company level should be done in a way that the result can be used as a general role model for the specific industry and beyond.

5.3 Proactive Regulators

Proactive framers who respect their negotiation partner were important for the success of ERA. Südwestmetall and the IG Metall Baden-Wuerttemberg were backed by their national organisations but had to conduct negotiations by themselves. Their respective views and attitudes on the negotiation process and the importance of collective bargaining thus largely affected the success of the negotiations on ERA. The presence and absence of proactive framers in Germany played a crucial role in choosing the correct pilot region where negotiations would more likely prove most successful. The proactive framers largely influenced the success of ERA itself. In

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[578] Du Toit in Du Toit et al (2015), 277.

implementing section 27 of the EEA it can be derived from the German experience that there is a need for the involvement of proactive framers. Such proactive framers must be drawn from both the employees and employers representatives. Both capital and labour have to agree on the elimination of the apartheid wage gap and must be prepared to negotiate over an extended period, if necessary.

This element is more important than the industry or the region selected for collective bargaining. It may be advisable not only to look at employer organisations but also to look at companies that may be interested in being the first to address the prolonged vertical pay discrimination. It is crucial that trade unions want to become active in the implementation of section 27 of the EEA. The democratic structure of trade unions and employer organisations is important.

5.4 The democratic structure of trade unions and employer organisations

These actors reflect the views and insights of the workers and the employers. Both the employer organisation and the trade union have to be well established in the environment and needs structures for reflection during the negotiations. The bargaining structure of the trade union should include employees of the establishment to ensure democratic legitimacy as a means of knowing and understanding the employees perspective.

5.5 Institutions, well-embedded in their environment

In the German case the IG Metall and Südwestmetall were well-established in their environment and were able to propose radical changes to their members. However, democratic structures in South Africa are relatively young. The nature of collective bargaining in South Africa is more adversarial than in the German metal and electrical industry. The nature of collective bargaining in German can also differs between the various industries and from one bargaining region to another. The nature of collective bargaining in Germany is more cooperative if the following conditions are given: highly unionised self-confident workforce, a strong self-confident trade union, a pro-active trade union oriented works council with substantial regulatory authority

and a management under the control of the supervisory board which is willing to enter into collective bargaining as a means to influencing working conditions.

In South Africa, trade unions are well-grounded politically and played an important role in ending apartheid. It would be advisable to firstly implement the provision on a pilot project, and then the outcome as a general model. A criteria for choosing such a trial should be:

1) the size of trade union membership and
2) the management experience with collective bargaining and their view of it as a means of shaping working conditions.

5.6 The content of the ERA agreements

The practical know-how of the ERA experience combined with the support of scientific research in a pilot model could do much to eliminate discrimination in pay structures.

5.6.1 Eliminating discrimination from the pay structure

ERA structures on the criteria for pay levels refer to the work required by the job, the stress which show up in a workplace and also include an element for performance-related pay. It is a system which is permeable and when tasks change or single employees perform additional tasks they can be shifted into a different pay level (which may be a higher pay level). The pay-level criteria take into account the skills of an employee but the core concept is the demands of the job.

The criteria for the grading are neutral; they do not discriminate on the basis of gender nor do they differentiate between workers carrying out manual labour and those conducting intellectual tasks. ERA has shown that it is important to focus, during the implementation phase on the purpose of the agreement. The lack of performance in eradicating the gender pay gap has shown that views and attitudes which caused discriminatory structures do not disappear by drafting a discrimination neutral model. The focus and aims of a discrimination neutral model have to be practically implemented.

5.6.2 Pay categories organised by a neutral point system

In the past employees were often remunerated on the basis of education and the title of a position. Job contents can, however, change. The opportunity which the point system offers job valuation is more neutral. Discriminatory elements cannot easily influence job valuations where a neutral point system for the evaluation of jobs exists. However, as we can see from experience with ERA, discriminatory views and attitudes may still affect job valuations. Although this may be the case it is advisable to develop criteria similar to the ERA-System for one establishment and to derive from the creation of such criteria in the particular establishment which work should be valued equally and to what extent differentiation between jobs is justified.

5.6.3 Pay scales

The pay scale in chapter 4.4.3.2 showed in percentage the differences between the wages in the German metal and electrical industry. The vertical pay differentials are much less than in South Africa. Since section 27 of the EEA calls for proportionate income differentials similar system may be developed which describes something like a mid-term aim. After a valuation of the jobs according to an 'ERA-company-model' the extent of pay differentials may be analysed. A model for the implementation of section 27 of the EEA could then be developed which may reduce nominal wage losses to an acceptable minimum.

5.6.4 The implementation time line

As experience with ERA shows, implementation works best and is most effective when progressively realised over a period of time. The implementation of ERA over a period of several years enabled nominal wage losses to be avoided which would be a positive for South Africa. In addition the implementation of section 27 of the EEA over a protracted period of time would correspond with subsection 27 (2) of the EEA which calls for progressive steps.

5.6.5 Cost neutrality

Wage cost neutrality could be adapted in a similar way as it was in the ERA agreement. It would mean that the regular pay raise and negotiations on pay would continue. The tools used for cost neutrality in the implementation of ERA could be effectively used in South Africa in implementing section 27. The timeline, the varying wage increases and the clearing were also helpful in realising the new system under ERA and may prove as effective in the realisation of section 27 of the EEA.

5.6.6 Conflict resolution mechanisms

The resolution of conflicts during the ERA negotiations was not always easy and in practice conflicts arose during the implementation phase of the ERA. However, conflict resolution mechanisms were provided involving all the bargaining parties and providing a system of appeal which enabled people to express their grievances and lodge their complaints. It should be noted that at no time did the number of members of either IG Metall or the employer organisations decline.

Without providing a conflict mechanism where everybody had the opportunity to be heard and be taken seriously this may have been different. To minimize and in some case avoid conflicts over ERA, it was important that the collective bargaining parties worked in conjunction with one another and those parties with grievances were heard. It is undoubtedly clear that in order to reduce the vertical wage gap in South Africa section 27 of the EEA needs to be implemented. This is the purpose of legislation. There may be people who are disappointed during the implementation phase, however, to avoid severe discontent the ERA conflict resolution mechanisms should be followed in the implementation of section 27 of the EEA.

5.6.7 Scientific support

The support by researchers in the development of models and creation of possible solutions might help to realise the implementation of norms. Section 27 (4) of the EEA in fact calls for research to be conducted. The successful drafting and implementation of ERA was possible due to the large scale input of scientific research. This involvement of research on practical solutions would also be advisable in a South African pilot project.

5.7. ERA and section 27 of the EEA: a summary of findings

ERA has shown that an environment which guarantees the freedom of bargaining can create a solution for a non discriminatory pay structure between the occupational levels. In summary, this was achieved by:

1) developing different pay elements in regard to demands and stresses of a job;
2) developing criteria for the valuation of work and
3) developing a pay scale which includes a concept for the proportionality between the occupational levels.

In the German case the following elements contributed to the success of ERA:

1) a legal framework which guarantees the freedom of collective bargaining in a similar way to that in South Africa
2) a decentralised bargaining structure creating a model which could be used to generate a nationwide solution
3) an employer organisation and trade union structure well-embedded in their environment
4) the democratic involvement of the relevant actors

Furthermore, ERA has shown that:

3) the implementation phase requires as much attention as the drafting phase;
4) discrimination-neutral criteria do not protect against the influence of views an attitudes of actors during the implementation phase;
5) a clear focus on the elimination of discriminatory practices during the implementation phase may result in the avoidance of discriminatory views and attitudes being largely influential.

For the implementation of section 27 of the EEA this experience may be taken into account by:

1) developing implementation measures with experienced trade unionists who are aware of the vertical pay gap and support the development of a model for its elimination;

2) choosing an establishment in which to conduct the initial negotiations on implementation of section 27 can be seen as decentralising the negotiation on the implementation of section 27 while creating a role model for more generalized negotiations;
3) ensuring that an employer takes on the role of a proactive framer;
4) establishing support through research and
5) using the pay models set out in ERA as a role model for framing a model within the chosen establishment to be used as a general model later.

6. Conclusions – The way forward

It was an element of the success with ERA to carefully choose a pilot region which was Baden-Wuerttemberg. For the South African case a pilot model could be developed in a company or an institution. As in the ERA case this establishment should fulfil at least two criteria. An understanding has to exist that the vertical pay gap is a result of unacceptable discriminatory practices of the past which are to be addressed by section 27 of the EEA. There also should be an understanding of the tool which is to be used for its implementation. According to section 27 (3) of the EEA the primary instrument would be a collective agreement which would be ideal since the views of the workers and the employers would be integrated. If an institution such as a foundation, school or university is chosen for the pilot project, a guideline for this institution could be a tool which would be in line with section 27 (3) no 4 of the EEA. However, if there are several options, the collective agreement should be chosen because of its legal strength.

Much can be gained from the insights provided by ERA when considering how best to fulfil section 27 of the EEA drafting on an agreement and its implementation. As with the ERA, two phases need to be distinguished.

In the drafting phase IG Metall and Südwestmetall did what section 27 (4) of the EEA calls for. Norms and benchmarks for discrimination-neutral criteria for a pay structure were created. In following the process with regard to section 27 of the EEA the drafting phase could be divided into three steps. The first step could be the description of the pay elements. Remuneration could include, as in ERA, for instance basic pay as the core element and in addition an allowance for stress and performance-related pay. The percentage of each of these elements of the total remuneration should also be calculated. In the second step the criteria for each pay element could be defined. The basic pay, as the central element, could refer to criteria which describe tasks within jobs and evaluate them. This step will have a central role but if one establishment were to be chosen an ‘ERA-light’ solution could be developed due to the fact that there are many more and varied tasks in an industry as in a single institution.

The valuation should be work-related and the question to be asked during the development of criteria should relate to aspects which justify a differentiation and if so, to which extent. The differentiation between the various criteria within the ERA-Agreements[579] may provide not only a role model for a structure but also for the degree of differentiation.

The third step is the development of a system of wage groups and the connection between valuation of the work and the position within the wage groups. It is advisable to limit the number of pay categories. To avoid discrimination, the differentiation needs a justification not, the other way around.

The second phase is the implementation phase. The actors for the implementation of ERA in some cases partly changed and also many conflicts arose. This could be avoided in the South African case by choosing an establishment for a pilot project. The implementation could be done by the same actors who negotiated the model. As described earlier, in some establishments, during the implementation phase of ERA, the gender pay gap was not in focus. For the South African case, discriminatory practices are the focus of section 27 of the EEA which is, the progressive reduction of disproportionate vertical income differentials. ERA was focussed on the equity between blue and white collar workers. The gender pay gap was not the main consideration and since the criteria were neutral not every actor seemed to be aware of the risk that views and attitudes can also influence acts during the valuation of work by overlooking elements of jobs.

The implementation of ERA shows, in addition, how a cost-neutral implementation of section 27 of the EEA can be designed. After developing a concept for proportionate income differentials the existing pay structure can be evaluated.

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[579] (1) Knowledge and capabilities, (2) Thinking, (3) Room for manoeuvre and responsibility, (4) communication and (5) leadership of employees.

An example from practice for first steps to more proportionate income differentials is that of Pretoria Portland Cement ltd. (PPC) a leading supplier of cement.[580] Ketso Gordhan, CEO of PPC at the time, found out that he earns 120 times more than the lowest full time worker in the company. He agreed to reduce his income by 1 million rand and convinced 60 executives to agree to a reduction of their wages to contribute to the payment of lower earning employees. The wages of the lowest more or less 1000 income earners could be raised 10.000 Rand a year and the pay gap in that establishment was reduced to 1:40.[581] Gordhan stated in an interview by Hilton that;

> "We live in a country where income inequality is pretty high. We've got a Gini coefficient that's amongst the worst in the world. But, more importantly, when I was appointed CEO, I went to the shop floor, spent some quality time talking to small groups of workers and understood from their point of view that the salary was too tight to live on. I made my own independent assessment and understood that we needed to do something about it. Everybody clearly wants more salary. That's never a debate. The question is, is it a fair request or requirement or demand? And in my view I said that it was. And I felt that a 1:120 ratio between me and the lowest-paid person in PPC was wrong, and by this October we've reduced it to 1:40. The only way you can achieve that is by cutting at the top and increasing at the bottom (...). So the 60 top executives at PPC joined me in this initiative and did so happily and voluntarily. When we invested a significant amount of cash in the bottom 1 000 workers in PPC, each of them got roughly R 10 000 a year more. So if you do the simple maths, my giving up R 1 m was equal to 100 families getting R 10 000 each more. If you look at it, it's a compelling story. Was my quality of life fundamentally

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[580] http://www.ppc.co.za.

[581] Coleman, Neil: A national minimum wage for SOUTH AFRICA - Input on behalf of Organised Labour- COSATU NACTU and FEDUSA 24 June 2015 Parliamentary Portfolio Committee on Labour (2015), slide 63.

> affected by that? Definitely not. Was their quality of life affected by that? Definitely yes."[582]

Gordhan's actions make it evident that in order to bring about change to wage inequalities in South Africa, role players need to be actively involved. However, to make changes sustainable and durable collective agreements may be the best instrument to stabilise a development towards more proportional income. In order to achieve long term positive results changes need to be developed on a broader scale, actions taken by individuals such as Gordhan will not have long-term implications. Such individuals in favour of change may leave establishments for various reasons and any progress made may regress. Experiences derived from the implementation of ERA have shown how collective agreements can play a vital role in the reduction of wage inequalities and ensures that steps taken towards equality remain ongoing.

Section 27 of the EEA provides a sufficient legal framework for the eradication of discriminatory vertical pay inequalities inherited from the past in South Africa. The legislative provision has been thoughtfully constructed and is a remarkable legislative tool to address the apartheid wage gap. The persisting issue is, however, the failure to implement the provision. This thesis questions why such a distinctive legislative provision, with the potential to bring about change has yet to be implemented.

As such a significant legislative tool for the eradication of disproportionate vertical income differentials exists, why not use it? The thesis proposes a method, bases on the ERA, for doing so.

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[582] Hilton, Tarrant & Gordhan, Ketso *Why PPC CEO and 60 execs took a pay cut: Ketso Gordhan - CEO, PPC Moneyweb Power Hour, PPC's radical pay redistribution (Inter-view 20 May 2014 19:02)*, Moneyweb, www.moneyweb.co.za/archive/why-ppc-ceo-and-60-execs-took-...1.

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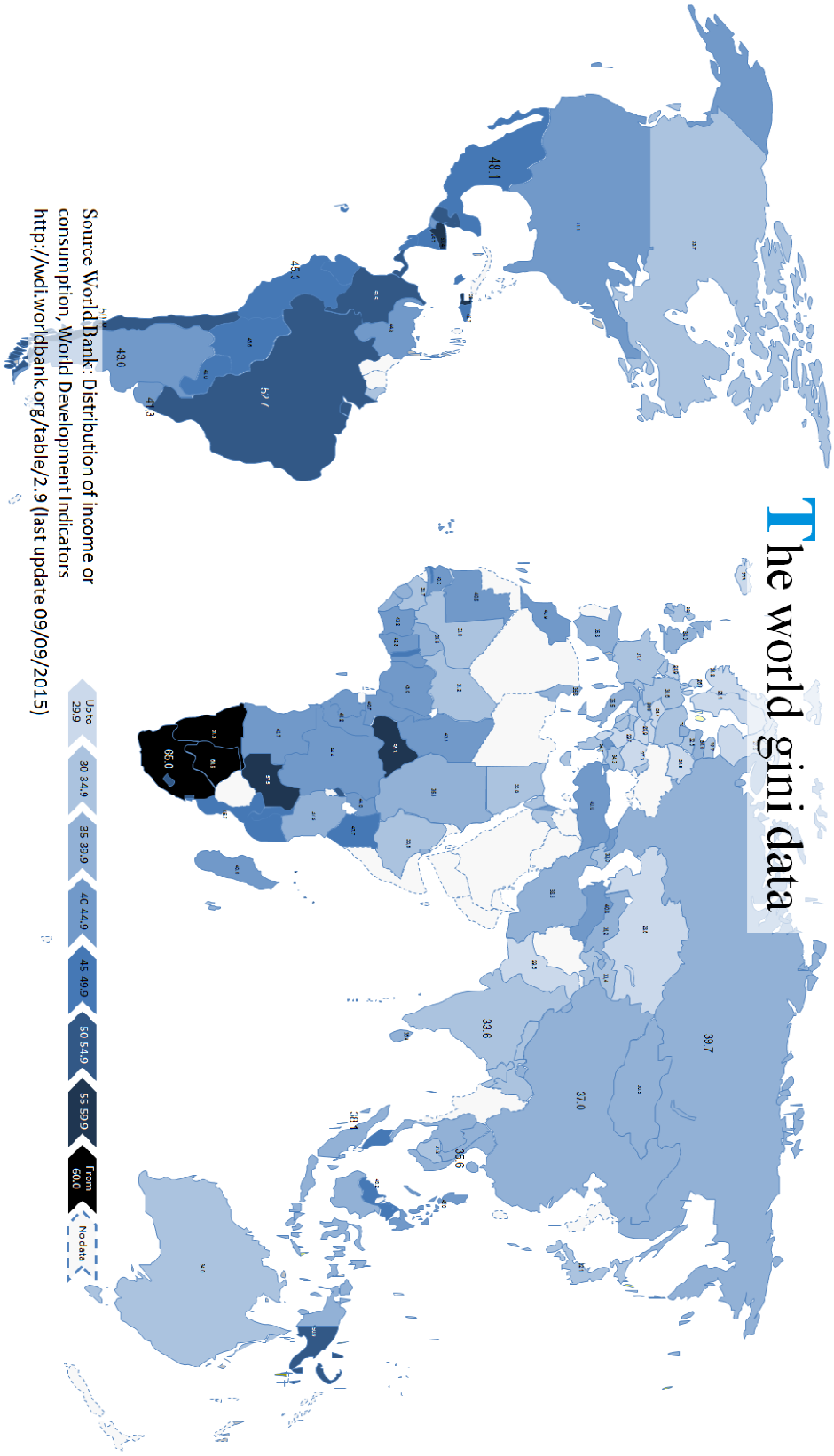
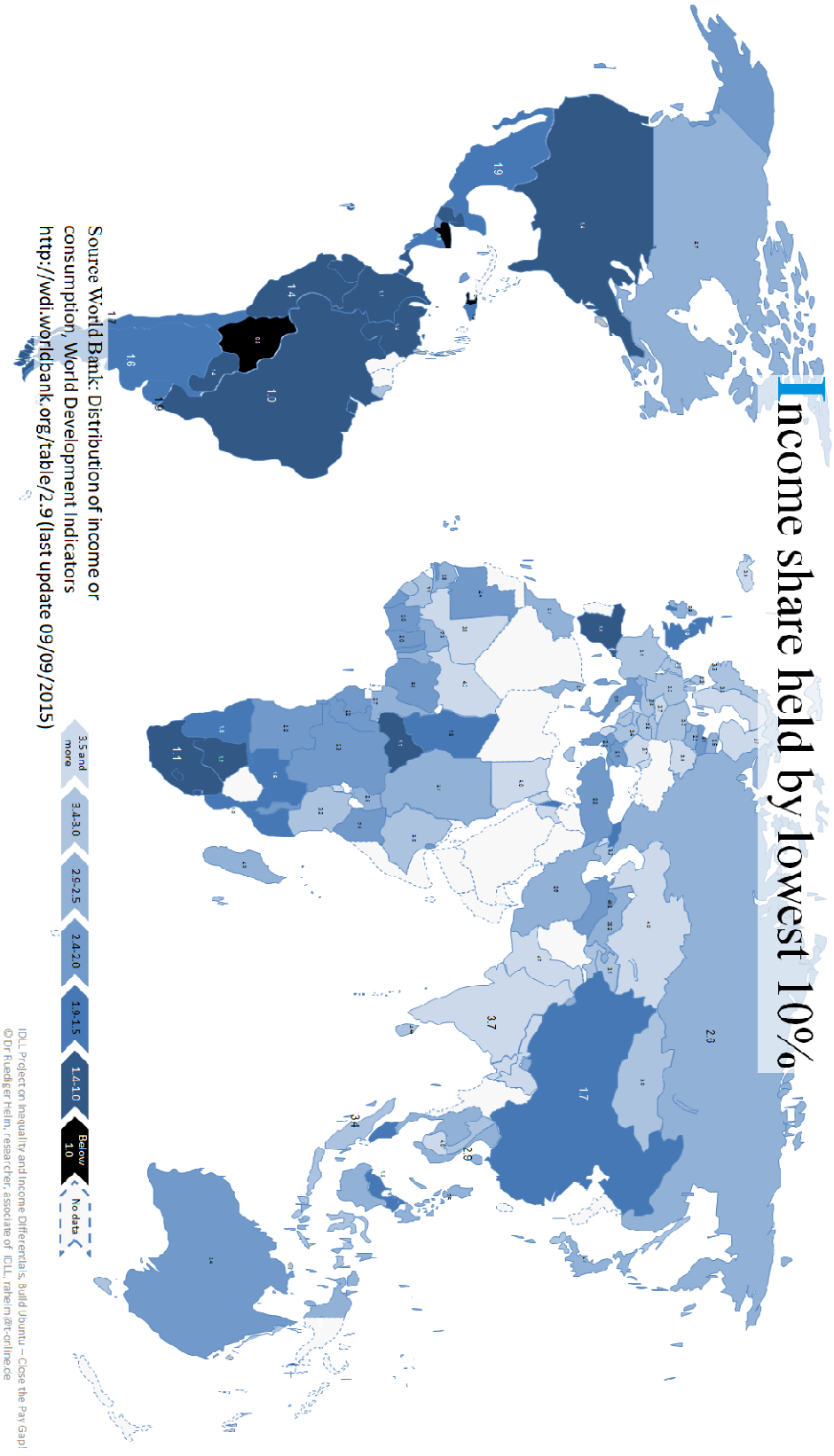
Figures

Annex

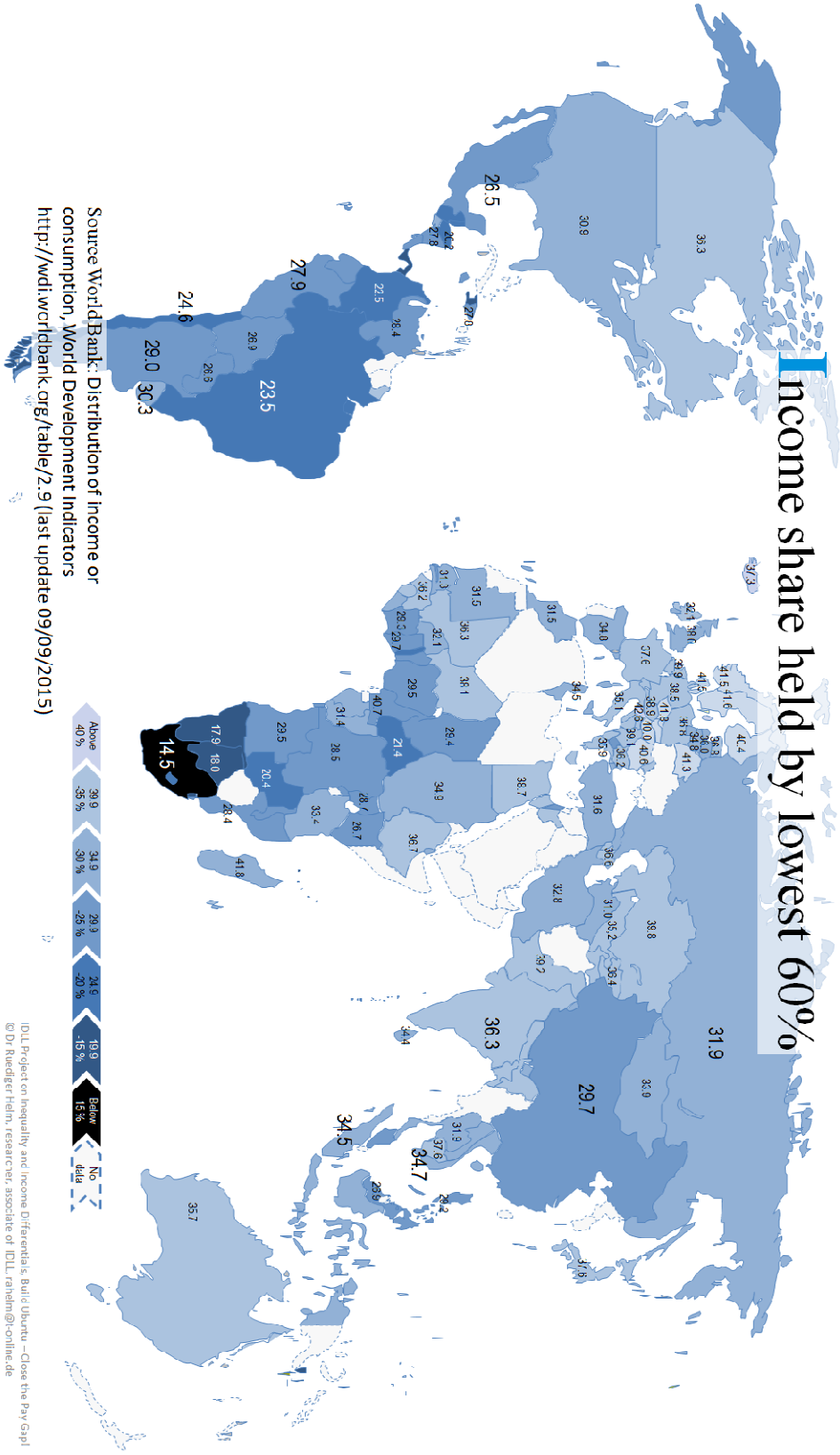
Annex 1: the world gini data in percentage



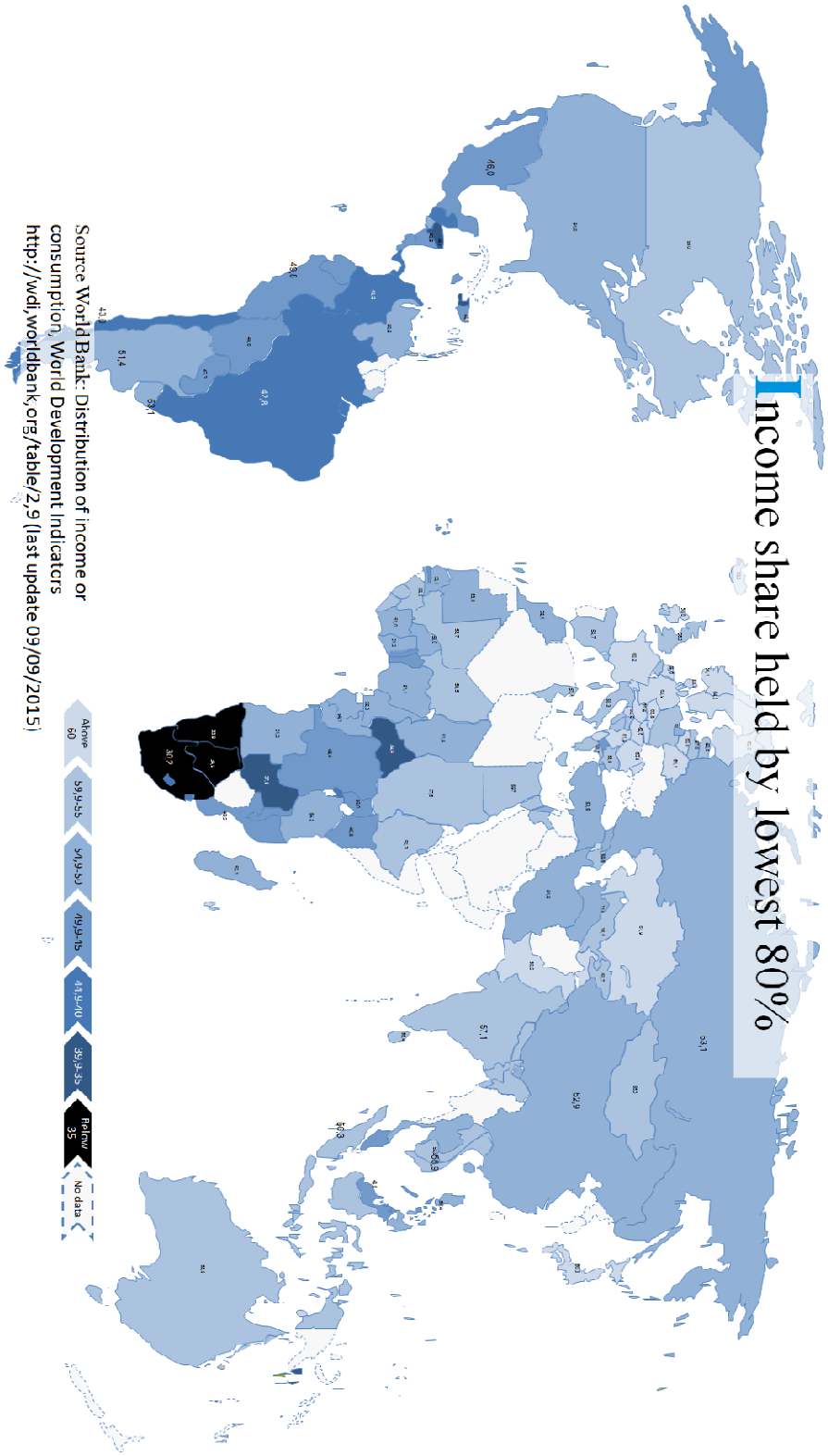
Annex 2: Income share held by the lowest 10 percent by countries.



Annex 3: Income share held by the lowest 60 percent by countries



Annex 4: Income share held by the lowest 80 percent by countries.



Annex 5: ERA-Value-numeral-grading-procedure for evaluation and grading work tasks

1. Knowledge and capabilities

Knowledge and capabilities include the knowledge and physical knowhow respectively skills which are required to perform the job assignment. Knowledge and physical knowhow respectively skills are acquired by instruction and exercise, systematic training, school education / vocational training / university education and experience. In considering the necessary duration for instruction, exercise, systematic training, education and experience, has the appropriate execution (fulfilment) of the work task according to the collectively agreed reference performance (s 3 of the ERA Agreement) be taken as a basis.

Knowledge includes knowledge basis and the ability of its use (mental flexibility) which are required for the performance of the work task.

Professional requirements of a work task inherent the necessary knowledge/experience to fulfill the work task on:

- the work environment

- the workflow

- conflict resolution, moderation and presentation technique.

Physical knowhow respectively skills include requirements on senses as well as the physical and sensory abilities. The physical knowhow respectively skills which are needed to fulfil the work task are considered. For purposes of valuation the necessary responsiveness and dexterity, that is the reliability, accuracy and the degree of freedom of movement of the body and single limbs has to be taken into account.

For the valuation of knowledge and physical knowhow respectively skills it is not relevant wherever and however these are acquired.

All necessary knowledge and physical knowhow respectively skills will be taken into account irrespectively of how often or how long these are made use of as long as they characterize the work task and its significance.

The level of the requirement depends on the variety and specialised depth of the necessary knowledge. Point of reference is the knowledge shared through a lower secon-

dary education which can unusually be assumed from average employees.

School degrees which are required for the entry of a specific education are not additionally evaluated. The shared knowledge of the required school education is covered by the valuation of the education.

1.1 Training

This part characteristic covers knowledge and physical knowhow respectively skills which can be targeted gained in a corresponding time period by instruction or systematic training. The evaluation takes the training time into account which is necessary in addition to the initial level to perform the work task without relevant previous knowledge.

1.1.1 Instruction is the communication of information on the simple tasks, this means tasks or procedures to perform simple work. It can be done with or without methodical distribution. These tasks can be performed after corresponding exercise without previous working knowledge. Exercise is the repetition of a task.

1.1.2 Systematic training is the systematic communication of knowledge and physical knowhow respectively skills by systematically instruction, training as well as experience by performance.

1.2 Education and experience

1.2.1 Education

This part characteristic covers knowledge and physical knowhow respectively skills which are imparted by norm school education, vocational training[583] as laid down in the German Vocational Training Act (BBiG) or other official recognized training or study. Education includes the necessary task-specific advanced education respectively vocational training. Insofar as no comparable equivalent official recognized education of the before mentioned kind exists this will be assigned to a characteristic-level according to its significance.

The valuation of the necessary education has taken all training periods and education

[583] Helm & Göpfert (2015), 39.

contents into account insofar as it exceeds the lower secondary education. This also applies to entry requirements like internships and periods of work experience.

In the steps B 1 and B 2 is a vocational training based on a lower secondary education assumed. Other types of vocational training with higher entry requirements will be assigned to a characteristic-level according to its significance. In each case the current content of the vocational training or academic and occupational education which is needed to perform the work task will be valued.

1.2.2 This part characteristic includes knowledge and physical knowhow respectively skills which are additionally needed after the completion of an education to perform a work task and which acquired by performing the work task. The necessary period of experience to perform the work task will be valued.

Protocol note: in the course of this, the actual length of exercise is irrelevant.

1. Knowledge and Capabilities		
1.1 Training and exercise		
Level	Description	Points
A 1	Knowledge, physical knowhow respective skills which require a one-time instruction and short exercise.	3
A 2	Knowledge, physical knowhow respective skills which require a instruction and longer exercise.	4
A 3	Knowledge, physical knowhow respective skills which require instruction and exercise of several weeks.	5
A 4	Knowledge, physical knowhow respective skills which require instruction and exercise over a longer period then A 3 which may include systematic training and theoretical knowledge sharing.	7
A 5	Knowledge, physical knowhow respective skills which require comprehensive, systematic instruction over half a year	9

	or more.	
1.2.1 Education		
B 1	Completed normal two-year vocational training as laid down in the German Vocational Training Act (BBiG)	10
B 2	Completed normal three- or three and a half-year vocational training as laid down in the German Vocational Training Act (BBiG)	13
B 3	Completed vocational training as laid down in the German Vocational Training Act (BBiG) and a follow-up normal one-year full time professional education (e.g. master craftsman education of the Chamber of Industry and Commerce, IHK).	16
B 4	Completed vocational training as laid down in the German Vocational Training Act (BBiG) and a follow-up normal two-year full time professional education (e.g. Certified technician)	19
B 5	Completed study at a technical college (FH)	24
B 6	Completed study at an university	29
1.2.1 Experience		
E 1	Up to one year	1
E 2	More than one year up to two years	3
E 3	More than two years up to three years	5

E 4	More than three years up to five years	8
E 5	More than five years	10

2. Thinking

Thinking denotes the reception and processing of information, as well as the use of solution models and if necessary the development of solutions.

Solution models are intellectually or in writing existing structures to find solution out of which within the context of the work task suitable solutions can be chosen.

Thinking is also necessary for work tasks which do not require specific knowledge/experience.

Valued are difficulties and complexity:

- of the task and problems,

- of the use and development of model solutions,

- of the reception and processing of information (e.g. concentration of testing tasks, tensed readiness for essential intervention and action by surveillance activities).

The necessity for the conscious elimination distracting/disturbing stimuli will be taken into consideration the difficulty and complexity of the thinking.

2. Thinking		
Level	Description	Points
D 1	Basic tasks which require easy-to-grasp reception, perception and processing of information.	1
D 2	Tasks which require more difficult reception, perception of information or tasks which require the use of standardised solutions.	3

D 3	Tasks which require difficult reception, perception of information or tasks which require selecting and adopting suitable solutions out of familiar solution models	5
D 4	Comprehensive tasks which require the combination of familiar suitable solutions.	8
D 5	Specific needs which require further development of familiar solutions.	12
D 6	New type of needs which require the development of new solutions.	16
D 7	New types of complex needs which require innovative thinking and long-term development trends have to be taken into account.	20

3. Room for manoeuvre and responsibility

The room for manoeuvre comprises the degree of freedom and responsibility for the:

- scope for the activity,

- scope for scheduling and

- margin of decision-making.

Valued are the degree of freedom and responsibility of:

- the performance of the work task,

- the selection of the necessary means or

- the decision to be taken.

The valuation has to take into account if and how far work organization, workflow, technical protection measures and type of control limit the room for manoeuvre / the responsibility.

3. Room for manoeuvre and responsibility

Level	Description	Points
H 1	Carrying out work according to instruction	1
H 2	Carrying out work under instruction with little room for manoeuvre in individual operations (individual work steps within a subtask).	3
H 3	Carrying out work under instruction with room for manoeuvre in subtasks (part of an overall work task or a workflow).	5
H 4	Carrying out work under instruction with room for manoeuvre within a work task.	7
H 5	Carrying out work under general instruction with room for manoeuvre within the work task. Alternative course of action or options are given.	9
H 6	Carrying out work on the basis of targets with room for manoeuvre for an area of responsibility. For the task execution the independent use of available methods and aids is necessary.	11
H 7	Carrying out work on the basis of targets with extended room for manoeuvre for a complex area of responsibility.	14
H 8	Carrying out work with a wide margin of manoeuvre for a broad area of responsibility.	17
H 7	Carrying out work on the basis of targets for an enlarged room for manoeuvre for a complex area of responsibility.	14

4. Communication

Communication in the sense of the work task includes:

- the exchange of information

- the necessary cooperation

- the necessary harmonization and coordination

- the representation of interests towards other bodies within and/or beyond a work group respectively a work area.

This does not imply the communication which is needed for the employee management (see characteristic 5).

The degree of the communication needs to perform the work task will be valued.

4. Communication		
K 1	Information gathering and transfer in order to perform the work task (e.g. take an order and deregister, report occurring deviations).	1
K 2	Coordination in single issues in direct context with the work task (e.g. discussing occurring deviations and coordinate).	3
K 3	Coordination in routine individual beyond single routine issues in frequent differing conditions in direct context of the work task (e.g. clarifying occurring deviations).	5
K 4	Cooperation and coordination within the delegated complex of tasks. Different interests arise.	7
K 5	Representation of interests for the delegated complex of tasks to third parties, with varying purposes (e.g. conversation buyers with suppliers).	10
K 6	Negotiations of cross functional importance with third parties, with varying purposes.	13

5. Employee management

Employee management includes the personal and simultaneous professional authority on employees allocated to him or her, possibly by inclusion of employees from other areas; a disciplinary allocation is not a mandatory prerequisite.

The necessary communication processes in the specific management situation for the

leadership – such as support, supervision and assessment - are taken into account by considering the general conditions.

General conditions are factors which influence the management circumstances, such as e.g. business processes, resources, staff structure (inter alia number, qualification), human resources development, occupational safety.

Valued are by tasks with employee management

- the necessary form of communication,

- the requirements on the design of the management process under different framework conditions.

Unlike the above definition is pronounced professional authority valued with the level F 1 without the need for simultaneous personnel authority.

Tasks without employee management are valued without this characteristic.

5. Employee management		
F 1	Giving instructions under constant and manageable basic conditions and targets.	2
F 2	Explaining targets and clarifying tasks by consulting employees. Changing conditions and its consequences according to their nature and extend manageable.	3
F 3	Reaching a shared perception on tasks for target achievement, even in cases of partly differing interests. Changing conditions and its effects can be estimated.	4
F 4	Joint development of task- and sector-based as well as individual targets in partly differing interests. Changing conditions and its effects are more likely difficult to estimate.	5
F 5	Joint, on personal conviction of the employees focussed development and design of task- and sector-based as well as individual targets in frequently differing interests, with own/or others personnel. Changing conditions and its effects are difficult to estimate, cross-functional and cross-sectoral.	7

Annex 6: Grading example Auditor no 1 pay category 6

Job description	Knowledge and Capabilities	Experience	Thinking	Room for manoeuvre and Responsibility	Communication	Employee management	Points	Pay category
Auditor no 1[584, 585] Pre-allocation of bills/audit	**B1**	**E1**	**D2**	**H2**	**K2**	**F0**	**20**	**PC6**

1. Knowledge and Capabilities		
1.2.1 Education		
B 1	Completed normal two-year vocational training as laid down in the German Vocational Training Act (BBiG)	10
1.2.1 Experience		
E 1	Up to one year	1

2. Thinking		
D 2	Tasks which require more difficult reception, perception of information or tasks which require the use of standardised solutions.	3

3. Room for manoeuvre and responsibility		
H 2	Carrying out work under instruction with little room for ma-	3

[584] ERA pay category example no 01.02.02.05 (auditor 1), http://www2.igmetall.de/homepages/era-wissen/material/tarifbeispiel.html.

[585] Different types of auditors are known in ERA. E g it exists also an auditor 2 (pay category example 01.02.02.10). The auditor 2 is in pay category 8 since he audits the supplier invoices, http://www2.igmetall.de/homepages/era-wissen/material/tarifbeispiel.html.

	noeuvre in individual operations (individual work steps within a subtask).	

4. Communication		
K 2	Coordination in single issues in direct context with the work task (e.g. discussing occurring deviations and coordinate).	3

5. Employee management	
F 0	no

Annex 7: Grading example project manager product development pay category 16

Job description	Knowledge and Capabilities	Experience	Thinking	Room for manoeuvre and Responsibility	Communication	Employee management	Points	Pay category
Project manager product development[586] Management of product-related hardware and software projects	**B5**	**E4**	**D5**	**H5**	**K4**	**F1**	**62**	**PC16**

1. Knowledge and Capabilities		
1.2.1 Education		
B 5	Completed study at a technical college (FH)	24
1.2.1 Experience		
E 3	More than two years up to three years	5

2. Thinking		
D 5	Specific needs which require further development of familiar solutions.	12

3. Room for manoeuvre and responsibility		
H 5	Carrying out work under general instruction with room for manoeuvre within the work task. Alternative course of action or options are given.	9

[586] ERA pay category example no 06.02.03.25 (project manager product development), http://www2.igmetall.de/homepages/era-wissen/material/tarifbeispiel.html.

4. Communication		
K 4	Cooperation and coordination within the delegated complex of tasks. Different interests arise.	7

5. Employee management		
F 1	Giving instructions under constant and manageable basic conditions and targets.	2

Annex 8: Grading example office help pay category 2

Job description	Knowledge and Capabilities	Experience	Thinking	Room for manoeuvre and Responsibility	Communication	Employee management	Points	Pay category
Office help[587] Performing of simple administration tasks	**A2**	**E0**	**D1**	**H1**	**K1**	**F0**	**7**	**PC2**

1. Knowledge and Capabilities		
1.2.1 Education		
A 2	Knowledge, physical knowhow respective skills which require a instruction and longer exercise.	4
1.2.1 Experience		
E 0	no	

2. Thinking		
D 1	Basic tasks which require easy-to-grasp reception, perception and processing of information.	1

3. Room for manoeuvre and responsibility		
H 1	Carrying out work according to instruction	1

[587] ERA pay category example no 05.01.01.05 (office help), http://www2.igmetall.de/homepages/era-wissen/material/tarifbeispiel.html.

4. Communication		
K 1	Information gathering and transfer in order to perform the work task (e.g. take an order and deregister, report occurring deviations).	1

5. Employee management	
F 0	no

Annex 9: Grading example storekeeper pay category 2

Job description	Knowledge and Capabilities	Experience	Thinking	Room for manoeuvre and Responsibility	Communication	Employee management	Points	Pay category
Storekeeper[588] Carrying out of storage activities	**A3**	**E0**	**D1**	**H1**	**K1**	**F0**	**8**	**PC2**

1. Knowledge and Capabilities		
1.2.1 Education		
A 3	Knowledge, physical knowhow respective skills which require instruction and exercise of several weeks.	5
1.2.1 Experience		
E 0	no	

2. Thinking		
D 1	Basic tasks which require easy-to-grasp reception, perception and processing of information.	1

3. Room for manoeuvre and responsibility		
H 1	Carrying out work according to instruction	1

[588] ERA pay category example no 02.03.01.05 (storekeeper), http://www2.igmetall.de/homepages/era-wissen/material/tarifbeispiel.html.

4. Communication		
K 1	Information gathering and transfer in order to perform the work task (e.g. take an order and deregister, report occurring deviations).	1

5. Employee management	
F 0	no