

THE CONCEPT OF DECENT WORK IN A SOUTH AFRICAN CONTEXT

By

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**In memory of Keziah (Cucu) and Mary
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PLAGIARISM DECLARATION

I, Agnes Ndung'u, Student No. 205009310, hereby declare that the treatise Submitted in Partial fulfilment of the degree LLM(Labour Law) to be awarded is my own work and that it has not previously been submitted for assessment or completion of any postgraduate qualification to another University or for another qualification.

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TABLE OF CONTENTS	PAGE
Plagiarism Declaration	iii
Contents Page	iv
Acknowledgements	vi
Abbreviations and acronyms	vii
Abstract	viii
 Chapter One	
1.1 Introduction and Background to the Study	1
1.2 Objectives of the study	5
1.3 Methodology	5
1.4 Significance of the study	5
1.5 Outline of the study	6
 Chapter Two	
2.1 South Africa's Social and Economic Context	7
 Chapter Three	
3.1 The ILO and its Objectives	11
3.2 The Impact of Globalisation on the ILO's work	14
3.3 The Declaration of Fundamental Principles and Rights at Work	16
3.4 The Work of the ILO in South Africa	17
3.5 Decent Work: Definition and Content	18
3.6 Four Strategic Objectives of Decent Work	20
3.6.1 Employment Opportunities	20
3.6.2 Rights of Workers	22
3.6.3 Social Dialogue and Representation	25
3.6.4 Social Security	27
 Chapter Four	
4.1 Dimensions of Decent Work and Decent Work Deficits in South Africa	30
4.1.1 Employment Opportunities	33
4.1.2 Productive Work	35
4.1.3 Work in Conditions of Freedom	37
4.1.4 Equity at work	38
4.1.5 Dignity at work	39
4.1.6 Security at work	39

Chapter Five

5.1 Legal Framework for Decent Work in South Africa	41
5.1.1 The Constitution and Bill of Rights	42
5.1.2 Regulation of Labour Relations	43
5.1.3 Basic Conditions of Employment	43
5.1.4 Employment Equity	44
5.1.5 Skills Development and Training	45
5.1.6 Unemployment Protection	45
5.1.7 Health and Safety and Compensation for Occupational Diseases	46
5.1.8 Social Protection	47
5.2 The Role of International Labour Standards	48

Chapter Six

6.1 Realising the Decent Work Agenda	50
6.1.1 ILO Solutions: South Africa's Decent Work Country Programme	50
6.1.2 Decent Work as a National Development Objective: The New Growth Path	55
6.1.3 Other Suggestions and Recommendations	56
6.1.4 The Informal Sector	58

Chapter Seven

7.1 Conclusions	59
Bibliography	62
Appendix	70

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ABBREVIATIONS AND ACRONYMS

ANC	African National Congress
BUSA	Business Unity South Africa
BCEA	Basic Conditions of Employment Act
COIDA	Compensation for Occupational Injuries and Diseases Act
COSATU	Congress of African Trade Unions
DWCP	Decent Work Country Programme
GJP	Global Jobs Pact
ILC	International Labour Conference
IILS	International Institute for Labour Studies
ILO	International Labour Organisation
LRA	Labour Relations Act
OECD	Organisation for Economic Co-operation and Development
OHSA	Occupational Health and Safety Act
COSATU	Congress of South African Trade Unions
UIF	Unemployment Insurance Fund
WIEGO	Women in Informal Employment Globalizing and Organizing

ABSTRACT

Work is a key component of people's lives and most people aspire to have work that is sufficient to provide a living wage so as to lift them out of poverty and social exclusion and also that is secure enough to guarantee a decent livelihood. The Decent Work Agenda has gained much popularity in recent years and proposes an approach to development that emphasizes fair and sustainable working opportunities that include principles of rights at work, social protection and social dialogue.

Various issues have been raised in this study. Firstly, the decent work concept needs to be understood comprehensively as there is misconception about what the concept implies and what it can achieve. Secondly, it is acknowledged that there are huge decent work deficits in South Africa especially in the informal sector which impede on the advancement of people's conditions of living, cause people to live lives of poverty as well as deprive people of a life of dignity. This is despite decent work having a solid basis in labour legislation and also South Africa being bound by international law and principles concerning decent work. The study observes that reform in labour legislation is recommended to help overcome the decent work deficits.

The ILO has proposed the Decent Work Country Programmes to help countries align their economic development goals with the international goal of the achievement of Decent Work for all. South Africa also has its own solutions such as the New Growth Path as well as other policies. The main issue however is how these policies can be implemented effectively and how decent work can be achieved against a backdrop of the socio – economic challenges that South Africa faces.

Chapter One

1.1 Introduction and Background to the Study

“..Whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled.”¹

“It is time to build a new era of social justice based on a foundation of decent work.”²

The phrase Decent Work has gained much popularity in recent years and is used in different contexts, policy documents and even in labour legislation. Decent Work was initiated by the International Labour Organisation (ILO) which has traditionally been concerned with the decent treatment working people and is generally seen as an initiative that responds to the changes in the global economy that were brought about by globalisation in the 90's. Globalisation caused various challenges and vulnerabilities.³

Introducing decent work in 1999, the then ILO Director-General, Juan Somavia noted that after fundamental human rights, access to employment is probably the most widely shared aspiration of people everywhere and hence it must be prioritised because employment is the first step to escape from poverty and social exclusion.⁴ Somavia further observes that people generally judge society on the basis of the quality of work they have and hence to determine whether the economy and the polity is working for them, people will look at whether they have a job or not, the quality of life that that job permits and finally what happens when they have no work or cannot work.⁵ In this sense, decent work defines the quality of society.⁶

¹ See Preamble to the Constitution of the International Labour Organisation of 1919

Available at <http://www.ilo.org/ilolex/english/constq.htm> (accessed on 7.6.10)

² Somavia *Time for a new era of social justice based on decent work* Address on World Day for Social Justice 2011 http://www.ilo.org/global/about-the-ilo/press-and-media-centre/statements-and-speeches/WCMS_151708/lang--en/index.htm (accessed 8.10.2011)

³ See Somavia *Decent Work* Address by the Secretary-General of the International Labour Conference 1 June 1999
<http://www.ilo.org/public/english/standards/relm/ilc/ilc87/a-somavi.htm> (accessed 10.10.2011)

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

In addition to Decent Work being a necessary intervention for the globalising world, it also gave the ILO an opportunity to reaffirm its role in promoting social justice and dignity at work and also deal with the social repercussions of globalisation. The Decent Work agenda has continued to be at the forefront of the ILO's work since 1999 and the way it is put into practice is through the implementation of the four strategic objectives which are: fundamental principles and rights at work, creation of employment, social protection and tripartism and social dialogue.⁷ Furthermore, changes such as the recent global financial crisis of 2008 – 2009 have necessitated changes in labour and socio – economic policy in order to reduce poverty and improve the quality of life of people in many developing countries and decent work has become a relevant and sought after goal in all regions across the world as one of the solutions to these challenges. It is one of the key elements in poverty reduction efforts and achieving equitable, inclusive, and sustainable development.⁸

Brand observes that from the use of the term 'Decent Work' in different contexts, it is clear that the term is interpreted differently by various people and groups.⁹ In South Africa as in most developing countries, it is a concept that offers a ray of light especially when it is linked to the promise of creation of thousands of jobs for some people and improving work conditions for others. This is especially so as poverty looms both among the employed and the unemployed and work continues to promise a basic escape route from poverty and a means by which people can provide for their basic human needs such as food, shelter, clothing, healthcare among others. The concept of Decent Work also offers hope especially when it is offered as a solution to the problem of eliminating labour brokers and precarious work conditions in South Africa because for most people, finding employment becomes the first step in escaping poverty and social exclusion.

The government's commitment to Decent Work was first mentioned by President Jacob Zuma during his inaugural speech in June 2009 when he indicated that "The creation of decent work will be at the centre of our economic policies and will influence our investment attraction and job creation policies".¹⁰ The president emphasised the same commitment in

⁷ International Labour Office *Decent Work* (87TH Session of the International Labour Conference (1999)) 3-4.

<http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm> (accessed on 19.10.11)

⁸ See <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>

⁹ Brand "Decent Work has a solid basis in law but lacks application" *BusinessDay* (2011-05-09) <http://www.businessday.co.za/articles/Content.aspx?id=142112> 9.5.2011 (accessed on 10.5.2011)

¹⁰ President Jacob Zuma *State of the Nation Address on 3.6.2009* <http://www.info.gov.za/speeches/2009/09060310551001.htm> (accessed 8.10.11)

his 2010 State of the Nation Address highlighting decent work as one of the five key areas that the government is committed to.¹¹ The same commitment was reiterated in the 2011 State of the Nation Address which emphasises the importance of decent work for South Africa.

Trade union Movement Cosatu also continues to 'demand' for Decent Work from the present government.¹² On 29TH September 2010 South Africa's Decent Work Country Programme was launched as a driver to promote decent work. The programme, a NEDLAC project facilitated by the International Labour Organisation and the social partners – government, labour and business has the objective of enabling South Africa to make progress towards achieving Decent Work goals and also measuring the country's compliance with the ILO's decent work standards as well as promote Decent Work as a key component of national development strategies.¹³

South Africa's New Growth Path document¹⁴ which contains, among others objectives for restructuring the economy so as to create more jobs and improve labour absorption also has the creation of Decent Work at its core. The report notes that, "creating decent work, reducing inequality and defeating poverty can only happen through a new growth path founded on a restructuring of the South African economy to improve its performance in terms of labour absorption as well as the composition and rate of growth"¹⁵. According to Natrass¹⁶ "it is as if someone edited the document inserting '*and create decent work*' at every point where the writing might imply that relatively low – paying, unskilled employment is on the cards".

¹¹ President Jacob Zuma *State of the Nation Address on 11.2.2010*

<http://www.info.gov.za/speeches/2010/10021119051001.htm> (accessed 8.10.11).

¹² Vavi *Cosatu General - Secretary message of solidarity to the SACP* presented at the rally to celebrate the SACP 90th anniversary on 13.06.11

<http://www.cosatu.org.za/show.php?ID=5253> (accessed on 19.10.11)

¹³ ILO observes that Decent Work Country Programmes (DWCPs) have two basic objectives. Firstly they define the priorities and the targets within national development frameworks and secondly aim to tackle major Decent Work deficits through efficient programmes that embrace each of the strategic objectives. See <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang-en/index.htm> (accessed on 8.8.11)

¹⁴ RSA *The New Growth Path: The Framework* (2011)

<http://www.info.gov.za/view/DownloadFileAction?id=135748> (accessed on 6.6.11)

¹⁵ At 1.

¹⁶ Natrass "The new growth path: Game changing vision or cop-out?" (2011) SAJS 3/4 107

Decent Work is also mentioned in the proposed Labour Relations Amendment Bill¹⁷ which generally aims at aligning employment laws to ensure the achievement of Decent Work. The Bill was proposed “in order to avoid exploitation of workers and ensure decent work for all workers as well as to protect the employment relationship, introduce laws to regulate contract work, subcontracting and outsourcing, address the problem of labour broking and prohibit certain abusive practices”.¹⁸

The importance of decent work is clear from its mention in all of the above contexts. However, decent work is influenced to a large extent by the labour market. The labour market in South Africa has many dimensions and continues to bear the characteristics of ‘two economies’ (formal and informal) as termed by former President Mbeki in his 2003 State of the Nation Address. What has generally been agreed is that in addition to the country’s persistent problem of unemployment, there exist a large percentage of workers who are in insecure ‘bad jobs’. Questions that arise then are whether in deed decent work is finally the answer that has been waited upon and if so how the goal of decent work can be achieved so as to reduce decent work deficits and also create sustainable decent jobs.

Brand¹⁹ observes that decent work has a well-established and conventional meaning in international Labour Law and Labour Relations but lacks application. It is against this backdrop that a proper understanding of the concept of Decent Work is needed as this research endeavours to do. It is important to not only define what Decent Work means for South Africa and most importantly for the state, employers and workers but also to establish how ILO policies with regards to Decent Work have been translated in order to bring this vision of Decent Work into reality in the country.

¹⁷ RSA *Department of Labour Proposed Amendment Bills* 17.12.2010

<http://www.info.gov.za/view/DownloadFileAction?id=137361> (accessed on 6.6.2011)

¹⁸ Ibid.

¹⁹ Brand *BusinessDay* (9.5.2011)

1.2 Objectives of the study

This exploratory study will focus on an in-depth understanding of the meaning and content of Decent Work as envisaged by the ILO and how this is translated in a South African context. The study attempts to analyse decent work and highlight decent work deficits in light of an extremely difficult and challenging socio-economic context. The study also explores the legal framework and also finally policy implications of decent work in South Africa.

The underlying theme for this study is that the Decent Work Agenda is a goal for all people and has the potential to change the labour market and create sustainable solutions to the socio – economic problems that the country is facing including reducing unemployment, reducing poverty and improving the lives of the people. This theme has been extensively pursued at the International Labour Conferences and is key to all of the ILO's work in South Africa.²⁰

1.3 Methodology

The research will be a socio – legal study and will utilise both social and legal concepts, theories and policies in order to understand the concept of Decent Work in a South African context. The research comprises an extensive literature review to augment the study in order to understand Decent Work in its entirety including various text books, ILO reports, research reports, existing data bases, policy documents, legislation, internet searches and other publications such as conference papers that contain information relevant to decent work in general and also from a South African perspective.

1.4 Significance of the study

The research will endeavour to present a comprehensive understanding of the Decent Work concept in the South African context and also an analysis of decent work deficits. Such a study is important and necessary as there is a misconception about what Decent Work is and how it can be realised. Decent Work has many policy implications and therefore equally necessary is the need to understand whether decent work can provide solutions to many of the issues that South Africa is facing. Such a study will provide an insight as to whether decent work can deliver many of the promises it is associated with such as providing access to new employment opportunities, reinforcing employment policies to cope with the problem of precarious work conditions and labour brokers and protecting workers beyond the contract of employment.

²⁰ See <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>

1.5 Outline of the study

The study firstly looks at the main social and economic challenges that South Africa faces that impact on the achievement of decent work by forcing people to take up inadequate employment opportunities. Secondly, the study looks at the background to the ILO's concept of decent work in light of the ILO's broader objectives of promoting social justice for workers everywhere. Thirdly, an analysis of decent work and decent work deficits in South Africa is presented. Fourthly, the legal framework for decent work is considered together with policy implications and other factors that impact the realisation of decent work and finally conclusions.

Chapter Two

2.1 South Africa's Social and Economic Context

“The life of an animal is misery and slavery: that is the plain truth.

‘But is this simply part of the order of nature? Is it because this land of ours is so poor that it cannot afford a decent life to those who dwell upon it? No, comrades, a thousand times no!’²¹

While the above is an exaggerated sense of the conditions of living in the Animal Farm where ‘some animals were more equal than others’, the truth is in South Africa is an unequal society where a majority of people have conditions of living that are precarious and social justice is rhetoric rather than reality for many. An accurate summary of the situation is expressed by the ILO “majority of working women and men, families, households, and small enterprises in the world, are anxious about their future and even angry because they see that their needs and aspirations are not really a priority. Symbols of this state of affairs are the unacceptably high levels of youth unemployment accompanied by indecent levels of income and wealth concentration”.²²

According to the ILO, work is the main escape route out of poverty.²³ This indicates the vital link between finding work, especially decent work and poverty reduction. A farm worker in Mpumalanga - Jeanette²⁴ is poor, earns R275 per month and pays R50 per month to girls, aged between six and nine years old (who also ought to be in school but are not due to poverty) to mind her child so that she can work on the farm. She is a representative of many men and women who live in dire conditions. Poverty is one of the biggest problems that South Africa faces and creates a vicious cycle as Jeanette’s example illustrates. The

²¹ Orwell *Animal Farm* 1945 2

²² International Labour Office *A New Era of Social Justice* (100TH Session of the International Labour Conference (2011)) para 9.

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/-relconf/documents/meetingdocument/wcms_155656.pdf (accessed on 8.10.11)

²³ International Labour Office *Working Out of Poverty* (91ST Session of the International Labour Conference (2003)) 7.

www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-i-a.pdf (accessed on 8.10.11)

²⁴ See Media report on

http://www.afrol.com/News2001/sa026_childlabour_raid.htm (accessed 20.10.11)

problem of poverty is also quite complex because it is a multidimensional phenomenon for which there isn't one single solution.²⁵

The World Bank²⁶ defines poverty as an experience of 'multiple deprivations' that arises when people lack key capabilities resulting to inadequate income or education, or poor health, or insecurity, or low self-confidence, or a sense of powerlessness, or the absence of rights such as freedom of speech.²⁷

The OECD²⁸ indicates that poverty and lack of employment opportunities is a major setback in trying to achieve the goal of poverty reduction and also hinders the progress towards achieving the Millennium Development Goals. Of the world's poor people, most have jobs but can confirm that merely securing a job does not mean that a person has escaped poverty. Fighting poverty is therefore not just a matter of creating many employment opportunities but ensuring that these jobs are of a quality that can lead to poverty reduction.²⁹

South Africa's problem of poverty runs deep due to the country's Apartheid history which resulted to the marginalisation and deprivation of opportunities for a large percentage of the population. Despite the dawn of the democratic era in 1996 and the unveiling of the Constitution which guarantees various rights for 'everyone', the country's problem of poverty is deep rooted and the gap between the rich and the poor is very wide. Interestingly, research shows that the levels of inequality between races has decreased but is still large and that inequality between races has increased; furthermore, income poverty has decreased particularly among the poorest but the situation is still dire.³⁰

²⁵ World Bank World Development Report 2000/2001 *Attacking Poverty* (2000) 1- 2.
<http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/overview.pdf> (accessed on 10.10.11)

²⁶ At 1-2.

²⁷ At 1-2.

²⁸ OECD "Promoting Pro Poor Growth: Employment and Social Protection" (2009) 17-18 *OECD*
<http://www.oecd.org/dataoecd/63/8/43514582.pdf> (accessed on 10.10.11)

²⁹ ILO *Decent Work* 4.

³⁰ See Leibbrandt, Woolard, Fynn & Argent M *Trends in South African Income Distribution and Poverty since the Fall of Apartheid* Social, Employment and Migration Working Papers No. 101 (2010). http://www.oecd-ilibrary.org/social-issues-migration-health/trends-in-south-african-income-distribution-and-poverty-since-the-fall-of-apartheid_5kmms0t7p1ms-en (accessed 6.6.11)

Poverty in South Africa is exacerbated by the persistently high levels of unemployment and further intensified by the HIV/AIDS pandemic which has caused one of the biggest dilemma's in the 21ST Century. According to Statistics South Africa the official unemployment rate stands at about 25.7 per cent.³¹ The 2010 OECD economic survey shows the figure as 30 per cent - a figure that includes those who are too discouraged to find work. Despite economic growth, figures in the report show only a slight decline in poverty rates between the years 2002 to 2007.³² The overall poverty rate has been above 20% since the late 90's.³³ The report notes that "few, if any, countries have seen such sustained high levels of open unemployment".³⁴

Unemployment presents the biggest development challenge not only in South Africa but in the African continent. At the ILO's Eleventh African Regional meeting held in Addis Ababa in 2007, the importance of adding a work dimension to poverty eradication was emphasised.³⁵ It was concluded amongst other things that one of the biggest challenges for the continent is to ensure that:

"Africa's most valuable resource, the honest and hard work of its women and men, is fully utilised and fairly rewarded" and further that,

"...if the Millennium Development Goal of halving extreme poverty is to be halved by 2015, an employment-centered growth strategy is required and one of the policies that is being embraced worldwide is the goal of full and productive employment and decent work as a logical means to reduce poverty and inequality".³⁶

The recent Global Economic crisis has also made worse the problem of unemployment worldwide. The ILO observes that there have been four consecutive years of decreases in the global unemployment rate and estimated that by the end of 2009, some 34 million additional people would be unemployed relative to 2007 meaning that global unemployment levels reached 212 million – the highest record ever due to the crisis.³⁷

³¹ Statistics South Africa *Key Indicators 2ND Quarter 2011*

<http://www.statssa.gov.za/keyindicators/keyindicators.asp> (accessed 18.10.11)

³² OECD *Economic Surveys: South Africa 2010* 93.

http://www.treasury.gov.za/comm_media/press/2010/2010071901.pdf (accessed 12.07.11)

³³ At 93.

³⁴ At 93.

³⁵ ILO *Decent Work Agenda in Africa: 2007 - 2015* (Report by the Director-General for Eleventh African Regional Meeting Addis Ababa (2007)) 7.

³⁶ At 7.

³⁷ International Labour Office *Global Employment Trends* (2010) 9.

As alluded earlier, the HIV/Aids pandemic has its share of blame in the unemployment crisis. In South Africa, an estimated 16.0 per cent of the total population are living with the virus. A majority of those infected are between the ages of 15-49.³⁸ The infection rate is higher in older people and also higher in females than males.³⁹ This is a significantly large segment of the working population which shows the negative impact of HIV/AIDS in the work place and the economy. The main implications of this for decent work is that most families are losing their sole bread winners or the main income earners in families are forced to stay at home to care for relatives who are ill with AIDS, most of those caring for others are themselves infected and need care. Perhaps even worse is that most children instead of going to school and getting the opportunity to shape their future more differently than that of their predecessors are being forced to stay at home and take care of ailing adults and siblings and thus creating a vicious cycle.

Worldwide statistics on HIV/AIDS are mind blowing. It is estimated that close to 40 million people in the world were living with HIV/AIDS as at 2009, a vast majority of them in sub-Saharan Africa.⁴⁰ Although statistics show that the number of HIV infections has been declining since the 90's and the number of HIV related deaths is decreasing, the situation is still dire because the number of people living with the virus has increased.⁴¹

The ILO acknowledges that HIV/AIDS is a serious issue in the world of work and a threat to Decent Work. One of the ways it has intervened is to establish guidelines and standards for a comprehensive work place policy on HIV/AIDS - the 'Code of Practice on HIV/AIDS and the world of work'.⁴² The code contains fundamental principles for policy development and practical guidelines from which concrete responses can be developed at enterprise, community, and national levels in the key areas prevention of HIV/AIDS, management and mitigation of the impact of HIV/AIDS on the world of work. It covers the following main areas:

- Prevention of HIV
- Management and mitigation of the impact of AIDS in the workplace

³⁸ See The South African *National HIV Survey* (2008).

<http://www.avert.org/safricastats.htm> (accessed 12.10.11)

³⁹ At 9.

⁴⁰ UNAIDS *Report on The Global AIDS epidemic* 2010 Annexes 16

http://www.unaids.org/documents/20101123_GlobalReport_Annexes1_em.pdf (accessed 10.10.11)

⁴¹ Ibid.

⁴² International Labour Office *An ILO code of practice on HIV/AIDS and the World of Work* 2001 1

http://www.ilo.org/public/libdoc/ilo/2001/101B09_133_engl.pdf (accessed 13.10.11)

- Care and support of workers infected and affected by HIV/AIDS
- Elimination of stigma and discrimination on the basis of real or perceived HIV status.⁴³

⁴³ Ibid.

Chapter Three – The International Labour Organisation, Decent Work for All and its definition

3.1 The ILO and its Objectives

The aims and objectives of the ILO were set forth in the preamble to its Constitution⁴⁴ which was drawn up in 1919 when the organisation came into effect. The Constitution laid out the rationale for the organisation. The preamble declares that “universal and lasting peace can be established only if it is based on social justice”⁴⁵ and hence the objectives of the organisation is to help improve social conditions throughout the world. The ILO’s main focus is in improving conditions of labour and with these regard, it was indicated in the preamble that certain concrete measures are “urgently required”. Specifically the Preamble mentions measures in the following aspects: regulation of hours of work including the establishment of a maximum working day and week; regulation of the supply of labour; prevention of unemployment; provision of an adequate living wage; protection of the worker against sickness, disease, and injury arising out of his or her employment; protection of children, young persons, and women; provision for old age and injury; protection of the interests of workers when employed in countries other than their own; recognition of the principle of equal remuneration for work of equal value; and recognition of the principle of freedom of association.

In 1944, at the 26TH session of the International Labour Conference meeting in Philadelphia, a declaration was adopted which reaffirmed and broadened the aims and purposes of the ILO and the principles which should inspire the policy of its members. This declaration known as The Declaration of Philadelphia⁴⁶ was later incorporated into the Constitution. Five main principles can be distinguished from these initial texts and they can be said to sum up the purpose of all of the ILO’s work.⁴⁷ They are:

- i. lasting peace can be established only if it is based upon social justice;
- ii. labour is not a commodity or a mere object of commerce;

⁴⁴ Constitution of the International Labour Organisation
<http://www.ilo.org/ilolex/english/constq.htm> (accessed 16.7.10)

⁴⁵ Ibid.

⁴⁶ ILO Declaration of Philadelphia of 1944 which was later incorporated into the ILO Constitution
<http://www.ilo.org/public/english/support/lib/century/sources/sources1944.htm> (accessed 7.7.10)

⁴⁷ Rogers Decent work as a goal for the global economy (2002) 7 Unpublished paper
http://www.world-governance.org/IMG/pdf_Rodgers_-_Decent_Work_as_a_Goal-2.pdf (accessed 10.10.11)

- iii. freedom of expression and of association is important for workers and employers;
- iv. these principles apply to all human beings regardless of race, creed or sex;
- v. poverty anywhere constitutes to poverty everywhere and hence should be a matter of international and national concern.

The above moral and political principles continue to guide the action of the ILO and provide a model and framework for all of the organisation's work and efforts.⁴⁸

The ILO's key policy areas are stated in Part (iii) of the Declaration which recognises "the solemn obligation of the ILO to further among the nations of the world programs that will achieve:

- (a) full employment and the raising of standards of living;
- (b) the employment of workers in the occupations in which they have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;
- (c) the provision as a means to the attainment of this end and under adequate guarantees for all concerned of, facilities for training and the transfer of labour, including migration for employment and settlement;
- (d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a minimum living wage to all employed and in need of such protection;
- (e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the generation and application of social and economic measures;
- (f) extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;
- (g) adequate protection for the life and health of workers in all occupations;
- (h) provision for child welfare and maternity protection;
- (i) the provision of adequate nutrition, housing, and facilities for recreation and culture;
- (j) the assurance of equality of educational and vocational opportunity".⁴⁹

⁴⁸ At 7.

⁴⁹ Declaration of Philadelphia Part III

Although the Decent Work Agenda was only initiated in 1999, it seems that it encompasses all of the ILO's priority areas above. What is new with the Decent Work approach is that it offers an approach that combines all the ILO's policy focus areas and thus emphasising their mutuality; helps to identify policy areas that complement each other and those that have to be traded – off; it makes it easier to apply the universal principles such as equality and freedom to different national and international contexts; and finally, it makes both traditional concerns and emerging challenges approachable.⁵⁰

The ILO has a tripartite structure which brings together representatives of governments, employers and workers from member countries to jointly shape policies and programmes.⁵¹ According to Article 7 of the Constitution, of the 56 members of the governing body 28 represent governments, 14 employers and 14 employees.

The ILO achieves its objectives of improving social conditions around the world through building a system of international labour standards expressed in the form of Conventions and Recommendations.⁵² Employer, worker and state representatives adopt conventions at the annual International Labour Conference, which then may be ratified by member countries. Countries that ratify the conventions become subject to international law obligations and the ILO's reporting structures.⁵³ As at the time of writing the ILO has 183 members.⁵⁴ Non-binding recommendations adopted at the annual Conference provide countries with more details on registration and policy and often supplement the minimum standards set out in the conventions by specifying general or technical guidelines.⁵⁵ Countries cannot go back to conventions that they have already ratified.⁵⁶ The ILO also comprises of an inspection system which monitors the implementation of ratified conventions.⁵⁷

⁵⁰ International Institute for Labour Studies *Pedagogical Materials on Decent Work* 2006 16
<http://www.ilo.org/public/english/bureau/inst/education/pedmat.pdf> (accessed 5.6.10)

⁵¹ Constitution of the ILO Article 7

⁵² See www.ilo.org/public/english/decent.htm

⁵³ At 7.

⁵⁴ At 7.

⁵⁵ Kulke "The present and future of ILO Standards in realising the right to Social Security" (2007) 60
International Social Security Review 119 126

⁵⁶ At 126.

⁵⁷ At 131-132.

3.2 The Impact of Globalisation on the ILO's work and the background to Decent Work

Over time the ILO's programmes and activities have developed in order to be able to respond adequately to social and economic changes in the world.⁵⁸ The 1998 Declaration on Fundamental Rights and Principles at work is an example of the ILO adjusting to respond to changes brought about by globalisation. The ILO's next major initiative after the Declaration came with the introduction of the Decent Work concept in 1999 under the leadership of its then Director-General, Juan Somavia.

The Decent Work Concept has today become the new goal of the ILO. Launching Decent Work, Somavia proposed that the ILO's primary goal – “to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity”.⁵⁹

This need to change the ILO's policy and work was influenced by the challenges that arose due to globalisation which called for the need for better governance of the effects of globalisation which were both prosperity as well as inequalities.⁶⁰ The Decent Work concept has been embedded in the ILO's third major statement of principles and policies the ILO Declaration on Social Justice for a Fair Globalization adopted on 10 June 2008.⁶¹

A report released by the World Commission on the Social Dimension on Globalisation,⁶² a commission that looked at the various aspects of globalisation and its implications on people and social and economic progress observed various issues about globalisation. It was observed that there was an ethical vacuum where the attitude was one of ‘winners take it all’, which had weakened the social fabric of many societies.⁶³ Due to this there was an interest in the role that labour standards could play in the global economy. The ILO was particularly concerned that the distribution of the gains of globalisation was highly unequal between and within countries, and that globalisation had the potential to exacerbate some of the problems that were already being faced by workers such as poverty, the lack of decent work and the

⁵⁸ ILO *Decent Work* 1.

⁵⁹ At 1.

⁶⁰ At 1.

⁶¹ ILO *Declaration on Social Justice for a Fair Globalization* (97TH Session of the International Labour Conference (2008))¹⁰

http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_099766.pdf (accessed 17.10.11)

⁶² See International Labour Office *A Fair Globalization: Creating Opportunities for All* (2004)

⁶³ At 7

denial of human rights.⁶⁴ The impact on workers was that the aspirations of workers were not being met and they had little or no voice in the process and hence could be easily exploited.⁶⁵ The Commission called for a fair process of globalisation which puts people first, respects human dignity and the equal worth of every human being.⁶⁶ In that sense the Commission concluded that:

“We seek a more inclusive process which is fair and brings benefit and real opportunities to more people and more countries; and one which is more democratically governed. We seek a globalization with a social dimension which sustains human values and enhances the well-being of people, in terms of their freedom, prosperity and security”.⁶⁷

At the UN Millennium Summit in 2005, the following was concluded further cementing the importance of the ILO’s Decent Work agenda and the importance of placing employment at the centre of economic and social policy-making: “We strongly support fair globalization and resolve to make the goals of full and productive employment and decent work for all, including for women and young people, a central objective of our relevant national and international policies as well as our national development strategies, including poverty reduction strategies, as part of our efforts to achieve the Millennium Development Goals. We also resolve to ensure full respect for the fundamental principles and rights at work”.⁶⁸

The new thinking in the advancement of the ILO’s vision and work is that beyond basic rights, there is a broader concern that globalization must also serve other key social goals such as employment, security and representation.⁶⁹ Decent Work is “an attempt to capture, in everyday language, this integration of social and economic goals”.⁷⁰ The definition, content and meaning of decent work will be discussed in more detail below.

⁶⁴ At 2 - 3

⁶⁵ At 4 - 5

⁶⁶ At 5

⁶⁷ At 5

⁶⁸ UN General Assembly *World Summit Outcome 2005* para 47.

<http://www.who.int/hiv/universalaccess2010/worldsummit.pdf> (accessed 8.10.11)

⁶⁹ Rogers *Decent Work as A Goal for the Global Economy* 14.

⁷⁰ Ibid.

3.3 The Declaration of Fundamental Principles and Rights at work

In this section I focus mainly on the Declaration of Fundamental Principles and Rights at work formulated at the 1998 International Labour Conference. The Declaration endorsed a number of important statements of principle which are important in the achievement of Decent Work. Firstly, it indicates that in choosing to join the ILO, members “have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia and have undertaken to work towards attaining the overall objectives of the organisation to the best of their resources, and fully in line with their specific circumstances”⁷¹ and also that all member states have an obligation to respect and promote the principles concerning the fundamental rights of labour, even if they have not ratified the related conventions.⁷² Furthermore, it introduced a follow up mechanism that targets individual countries and places new reporting obligations on member states⁷³. The purpose of the follow – up is to encourage members to promote the core labour standards and also to monitor progress on non – ratified conventions.⁷⁴

The 1998 Declaration of Fundamental Principles and Rights at Work⁷⁵ codified four sets of Core Labour Standards with reference to eight specific Conventions as follows:

(i) Freedom of association and the right to collective bargaining

- ILO Convention No. 87 – Freedom of Association and Protection of the Right to Organize (1948)
- ILO Convention No. 98 – Right to Organize and Collective Bargaining (1949)

(ii) Abolition of Forced Labour

- ILO Convention No. 29 – Forced labour (1930)
- ILO Convention No. 105 – Abolition of Forced Labour (1957)

(iii) Elimination of Discrimination

- ILO Convention No. 100 – Equal Remuneration (1951)
- ILO Convention No. 111 – Discrimination (Employment and Occupation) (1958)

⁷¹ ILO *Declaration on Fundamental Principles and Rights at Work* (86TH Session of International Labour Conference (1998)) para 1
http://www.ilocarib.org.tt/projects/cariblex/pdfs/ILO_Declaration_Work.pdf (accessed on 16.07.11)

⁷² para 2

⁷³ para 2

⁷⁴ para 2

⁷⁵ See ILO <http://www.ilo.org/declaration/thedeclaration/lang--en/index.htm>

(iv) Abolition of Child Labour

- ILO Convention No. 138 – Minimum Age Convention (1973)
- ILO Convention No. 182 – Worst Forms of Child Labour (1999)

These core labour standards will be looked at in more detail in another section.

3.4 The work of the ILO in South Africa

Before getting in a more detailed analysis of Decent Work, it is important to mention the implications of all of the ILO's work on South Africa.

The ILO has played a major role in shaping South Africa's labour environment. As a member state of the ILO having re-joined in the wake of the democratic era, South Africa has at the time of writing ratified a total of 20 current conventions including all eight core conventions and therefore national law must comply with these conventions.⁷⁶ The Labour Relations Act⁷⁷ (the LRA) states that one of its purposes is "to give effect to obligations incurred by South Africa as a member state of the ILO". This is also in the opening sections of the Employment Equity Act and the Basic Conditions of Employment Act. The country furthermore continues to carry through its mandate in terms implementation of labour standards, social protection and employment promotion that is consistent with international standards.⁷⁸

The ILO plays a vital role in terms of South Africa's Labour Legislation formulation and application, in particular in areas of labour relations and dispute resolution; basic conditions of employment; social dialogue and tripartism in the form of the National Development and Labour Council (NEDLAC).⁷⁹ The promotion of social dialogue is important for South Africa, and helps to give workers a voice in order to solidify achievements in terms of democracy, core labour rights, labour standards, social protection and socio-economic justice. The preamble to the Constitution of the Republic of South Africa⁸⁰ recognises the need to establish a society based on human dignity, equality and freedom and contains fundamental rights that ensure these rights bearing the same principles contained in the Constitution of the ILO.

⁷⁶ See ILO http://www.ilo.org/dyn/natlex/country_profiles.ratifications?p_lang=en&p_country=ZAF

⁷⁷ Labour Relations Act 66 of 1995

⁷⁸ O'Brien, Pursey, Prugl, Langille, Smith & Horton "A South African View of the ILO's Effectiveness"
2 Global Social Policy 2002 5 16

<http://gsp.sagepub.com/content/2/1/19.full.pdf+html> (accessed 17.08.10)

⁷⁹ Ibid.

⁸⁰ Constitution of the Republic of South Africa, 1996

The ILO's strategic priorities for South Africa also include a contribution to the clarification of employment promotion through the integration of micro and macro factors, and job creation strategies involving various spheres of government including trade unions, the private sectors, and the Departments of Labour and Trade and Industry.⁸¹

3.5 Decent Work: Definition and Content

As noted earlier, Decent Work⁸² is an attempt to add a social dimension to globalisation and was launched in 1999 during the 87th session of the International Labour Conference - one year after the Declaration of Fundamental Principles and Rights at Work as the ILO's second soft law initiative. Decent Work is therefore very much in line with the ILO's objectives of promoting social justice and humane work conditions. Introducing Decent Work, the ILO Director – General noted that it articulates the need to “devise social and economic systems which ensure both basic security and employment while remaining capable of adaptation to rapidly changing circumstances in a highly competitive global market”.⁸³

Decent Work was envisaged as a means of reducing poverty, unemployment and social exclusion so as to create sustainable development that improves people's lives.⁸⁴

Four strategic objectives are identified as necessary to promote Decent Work summed as follows:

“Decent work means productive work in which rights are protected, which generates an adequate income, with adequate social protection. It also means sufficient work, in the sense that all should have full access to income-earning opportunities. It marks the high road to economic and social development, a road in which employment, income and social protection can be achieved without compromising workers' rights and social standards”.⁸⁵ It is therefore a way to appropriate adequately this integration between social and economic goals by bringing together employment rights, security and representation.⁸⁶ Social dialogue and representation becomes the means through which all the other goals are pursued.⁸⁷ In other words, decent work combines rights at work, employment and social protection into one vision pursued through social dialogue. A more detailed discussion of these objectives

⁸¹ O' Brien et al (2002) *Global Social Policy* 5 17

⁸² ILO *Decent Work* 1.

⁸³ At 1.

⁸⁴ At 13.

⁸⁵ At 13.

⁸⁶ Rogers *Decent Work as A Goal for the Global Economy* 14.

⁸⁷ At 14.

follows below. The unification of all of the ILO's major work that is brought about by the decent work concept also reflects continuity and innovation in ILO thinking on work-related issues as the organization re-invents itself.⁸⁸

The ILO is concerned with all workers⁸⁹ - the unregulated wage workers, the self-employed and home workers. Since work is a vital component of people's lives because it provides a means of people gaining income in order to be able to meet basic needs for food, shelter, clothing, housing, healthcare among others. Decent work endeavours to protect workers beyond the formal labour market because for most of those who are unemployed, decent and productive work is the only escape route out of poverty as most people depend on a job to generate the income necessary to live.⁹⁰ The Decent Work concept is important in poverty reduction efforts especially because in most countries informal employment makes up a large per cent of the labour market and thus cannot be ignored. This is the case in South Africa.

One of the simpler ways to define the concept in layman's terms is to simply define the English words 'decent' and 'work' separately.⁹¹ The Oxford Dictionary defines 'decent' as an attributive word meaning "of an acceptable standard" and 'work' as an activity is defined as "a means of earning income; employment".⁹² The choice of the word 'work' by the ILO is deliberate and is used to include all forms of employment embracing all forms of economic activities in the informal economy.⁹³ For example, in the rural African context there are many economic activities that people do on a day to day basis that may not be thought of as employment and yet constitute to their source of livelihood. Decent Work promotes rights and protection for these workers. The word 'decent' is used to capture both the notion of sufficiency and of desirability.⁹⁴ A decent job is thus "one that meets individual's expectations

⁸⁸ Ghai "Decent Work: Universality and Diversity" in Ghai (ed) *Decent Work Objectives and Strategies* (2006) 3.

Available at <http://www.ilo.org/public/english/bureau/inst/download/decentghai.pdf>

⁸⁹ ILO *Decent Work* 3-4.

⁹⁰ At 3-4.

⁹¹ O' Brien et al (2002) *Global Social Policy* 5 17.

⁹² <http://www.oxforddictionaries.com>

⁹³ International Labour Organisation 'Reducing the Decent Work Deficit: A Global Challenge' Report by the Director-General for the International Labour Office, 89TH Session (2001) 5

Available at <http://www.ilo.org/public/english/standards/reim/ilc/ilc89/rep-i-a.htm> (accessed 13.10.11)

⁹⁴ At 5.

and those of the community, but is not exaggerated - it falls within the reasonable aspirations of reasonable people".⁹⁵

The definition of decent work therefore encompasses;

- adequate work opportunities;
- productive work in which the rights of workers are protected
- work that is sufficient for one to be able to provide a 'living wage' and which generates an adequate income
- work that has adequate social protection; and
- where workers views are heard.

The decent work concept is applicable to all country contexts and economic structures. Ghai⁹⁶ explains the universality of decent work and its relevance to all people in all societies despite a country's wealth noting that all workers have the same aspiration of obtaining decent work regardless of whether they are in developing or developing countries.⁹⁷

In order to translate the Decent Work concept into the working programme of the ILO, Decent Work is reorganized into four strategic objectives - the promotion of rights at work; employment; social protection; and social dialogue. Introducing Decent Work, the ILO Director – General asserted that these objectives would guide the ILO's future.⁹⁸ The decent work agenda has also been incorporated into most of the ILO's work since 1999 and also the ILO's most recent ILO Declaration, on Social Justice for a Fair Globalization which I have already alluded to.

3.6 The four strategic objectives of Decent Work

This section contains a more detailed account of the four objectives of decent work.

3.6.1 Employment opportunities

This dimension of decent work has two aspects; firstly, the availability of employment opportunities for all those who are available for and seeking to work and secondly, that such

⁹⁵ Ibid.

⁹⁶ Ghai "Decent Work: Universality and Diversity" in Ghai (ed) *Decent Work Objectives and Strategies* (2006) 2 7.

⁹⁷ ILLS *Pedagogical Materials on Decent Work* 20.

⁹⁸ ILO *Decent Work* 3.

work should be freely chosen and performed in conditions of freedom.⁹⁹ In order for employment to comply with the principle of Decent Work, there should be no discrimination against workers on the basis of gender, race, migrants, minorities or any other quality.¹⁰⁰ In addition, workers should be protected against accidents, unhealthy and dangerous working conditions, and excessively long hours of work.¹⁰¹ Decent employment should also be able to provide a living wage for those who work in order to ensure a decent living standard without having to work excessive hours and also ensure continued provision of sufficient income¹⁰². Workers should also have access to basic social security and also the right to form and join trade unions.¹⁰³ The emphasis given by the ILO to this objective is based on the key role that work plays as a source of livelihood, social integration and also that poverty reduction can only be achieved through more and better jobs.

The employment dimension is also concerned about the living conditions of workers beyond the workplace and “argues for making interventions in enabling dimensions of living that affect the circumstances in which a working person, given her labour and personal characteristics, starts out to achieve a decent life”.¹⁰⁴ The achievement of decent work should reaffirm the contribution that stable and quality jobs makes to the provision of decent living standards, social and economic development and personal fulfillment which without employment would be just an illusion.¹⁰⁵ In order to achieve the goal of ‘full employment’, the ILO focuses on three main areas macroeconomic policy: the transformation of production systems and enterprise strategy; the equality of access to employment; and finally, the labour market.¹⁰⁶ When looking at statistics on employment, account should be taken of those who enjoy decent employment, those who do not enjoy decent employment and also those who work but may not count as employed and about whose conditions of work are not completely known.¹⁰⁷

⁹⁹ International Labour Organisation *Pedagogical Materials on Decent Work* 2006 24.

¹⁰⁰ Ghai “Decent Work: Universality and Diversity” in *Decent Work Objectives and Strategies* 7.

¹⁰¹ At 7.

¹⁰² At 7.

¹⁰³ At 7.

¹⁰⁴ Majid *Economic Growth, Social Policy and Decent Work ILO Employment Paper* 2001/19 1

http://www.ilo.org/wcmsp5/groups/public/@ed_emp/documents/publication/wcms_142345.pdf

(accessed 18.07.11)

¹⁰⁵ ILO Decent Work 21.

¹⁰⁶ At 22.

¹⁰⁷ Majid *Economic Growth, Social Policy and Decent Work* 13.

Majid¹⁰⁸ writing on the link between quality of employment and economic growth gives the following observations: “formal jobs are a good indicator of good quality employment and is employment for a good reason as most formal jobs have some degree of protection associated with them and also have wages that are set above the poverty line”¹⁰⁹ ; “informal employment on the other hand is unstructured but may also comprise of self-employed people who are not necessarily poor especially in developed countries”.¹¹⁰ This means that the informal employment may also and does to a large extent to contribute to the economic development of a country and thus the goal of decent work should permeate both the informal and formal sectors in order to be effective.

The thinking behind the Decent Work concept from the employment perspective is that creating employment opportunities is not just the provision of work for the sake of work as faced by some workers in precarious working conditions but goes further to give people a voice in their community and their working environment, and the dignity, satisfaction and fulfilment that comes from respect of their rights at work.¹¹¹

3.6.2 Rights of workers

Rights are concepts of entitlement and empowerment that are derived principles such as the principles that are set out in the ILO Constitution - social justice, freedom of association and the principle of equal remuneration for work of equal value.¹¹²

Rights are classified as either moral rights or legal rights with legal rights being rights that are protected by the rules of legal justice and cannot just be done away with without altering the law.¹¹³ Moral rights on the other hand are based on people’s judgments of what is considered fair and just.¹¹⁴ Various ethics of what is considered universally good or just are outlined by the International Community in various documents such as the UN Declaration of Human Rights, the International Covenants on Civil and Political Rights (ICCPR), and on Economic, Social and Cultural Rights (ICESCR), and also in the Conventions and Recommendations of the ILO.¹¹⁵ Although the ultimate authority of creating and

¹⁰⁸ At 12.

¹⁰⁹ At 12.

¹¹⁰ At 13.

¹¹¹ ILS *Pedagogical Materials on Decent Work* 24.

¹¹² At 85.

¹¹³ At 83.

¹¹⁴ At 83.

¹¹⁵ At 83.

implementing rights at work is a matter of national concern, these social ethics shape to a large extent the approach and content of human rights and workers' rights worldwide.¹¹⁶

The ILO Conventions and recommendations derived from the principles set out in the ILO Constitution have had the most influence and form the basis of workers' rights.¹¹⁷ The ILO's work over the past 92 years has to date resulted to adoption of 189 Conventions and 201 recommendations.¹¹⁸ These conventions and recommendations cover various substantive and procedural issues relating to employment and also provide protection for vulnerable groups of workers such as migrants, women workers, indigenous people and children against hazardous occupations, exploitation and discrimination.¹¹⁹ They also set standards for specific industries as necessary, for instance transport, maritime, mining, agriculture, textiles, printing, telecommunications and home-based work.¹²⁰ The most recent recommendation and convention concerns domestic workers.

The ILO's core labour standards contained in the Declaration of Fundamental Rights and Principles at work adopted in 1998 as mentioned earlier guarantees non – negotiable rights for workers. They comprise freedom from discrimination; freedom from forced labour and compulsory labour; freedom from child labour in particular the most worst forms of child labour; and freedom of association and the right to collective bargaining.¹²¹ ILO standards are flexible and can be adapted according to country context by realizing the standards progressively; however countries must adhere to international minimum standards.¹²²

Freedom from discrimination looks at equality of opportunity in employment especially due to some distinguishing characteristic such as sex, race, and gender among others. Two Conventions support this fundamental right. Firstly, the Convention on Equal Remuneration Convention (No 111) of 1951 which is concerned with discrimination in pay and equal remuneration for work of equal value. It states that "Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the

¹¹⁶ Ghai "Decent Work: Universality and Diversity" in *Decent Work Objectives and Strategies* 5

¹¹⁷ At 5.

¹¹⁸ See <http://www.ilo.org/ilolex/english/index.htm>

¹¹⁹ Ghai "Decent Work: Universality and Diversity" in *Decent Work Objectives and Strategies* 5

¹²⁰ At 5.

¹²¹ See <http://www.ilo.org/declaration/thedeclaration/lang--en/index.htm>

¹²² ILS *Pedagogical Materials on Decent Work* 85

principle of equal remuneration for men and women workers for work of equal value”.¹²³ Secondly, the Convention on Discrimination (Employment and Occupation) (No. 111) of 1958 which calls on all governments to undertake to “declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”¹²⁴

With regards to freedom from forced Labour, the ILO obliges countries to eliminate all forms of forced labour.¹²⁵ The relevant Conventions are the Convention on Forced Labour (No. 29) of 1930 which aims to suppress forced labour in all its forms and the Convention on Abolition of Forced Labour (No. 105), 1997 which outlines measures to prevent compulsory or forced labour from developing into conditions analogous to slavery and provides for the complete abolition of debt bondage and serfdom.¹²⁶

The Fundamental right on the Freedom from child labour ensures that every child gets an opportunity to develop mentally and physically to his/her full potential. The relevant conventions are the Convention on Minimum Age (No. 5) 1919 which defines the minimum age for work at 14 years and prohibits the use of child labour in all industrial enterprises and The Minimum Age Convention (No. 138), 1973.¹²⁷ These Conventions support the notion that children enjoy the same human rights as all people.¹²⁸

Finally is the fundamental right on Freedom of association and the effective recognition of the right to collective bargaining. Two conventions, the Convention (No 87) of 1948 and Freedom of Association and Protection of the Right to Organise Convention (No 98) of 1948 support this right.¹²⁹ The ILO observes that freedom of association and the effective recognition of the right to collective bargaining are particularly important to the attainment of all ILO strategic objectives.¹³⁰

¹²³ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100> See Article 2 of the Convention

¹²⁴ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111> See Article 2 of the Convention

¹²⁵ <http://www.ilo.org/declaration/principles/eliminationofchildlabour/lang--en/index.htm>

¹²⁶ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105>

¹²⁷ <http://www.ilo.org/declaration/principles/abolitionofchildlabour/lang--en/index.htm>

¹²⁸ Ibid.

¹²⁹ <http://www.ilo.org/declaration/principles/freedomofassociation/lang--en/index.htm>

¹³⁰ Ibid.

3.6.3 Social Dialogue and representation

Social dialogue is important in the achievement of decent work and requires participation and freedom of association. To be effective it requires strong employers' and workers' organizations. Also necessary are strong labour ministries and modern labour administrations.¹³¹ Social dialogue plays many roles in democratic societies and is mainly the means through which rights are defended, employment promoted and work secured.¹³² It is also a means of ensuring conflict resolution, social equity and effective policy implementation at all levels, from the enterprise to society at large.¹³³ In that sense tripartism and social dialogue are both objectives in their own right, guaranteeing participation and democratic processes and are also a means of achieving all the other strategic objectives of the ILO.¹³⁴

The ILO defines social dialogue as to include:

“all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy”.¹³⁵

Social dialogue can take many forms but collective bargaining and policy concertation are the most common forms. Collective bargaining consists of negotiations between an employer, a group of employers or employers' representatives and workers' representatives to determine the issues related to wages and conditions of employment and results to collective bargaining agreements.¹³⁶ It includes consensus seeking processes such as negotiation, consultation or exchange of information between and among stakeholders. Furthermore these processes depend on structures and processes that create the potential

¹³¹ See Somavia “Decent Work” Address by the Secretary-General of the International Labour Conference 1 June 1999 *ILO*

Available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/a-somavi.htm> (accessed 10.10.2011)

¹³² *ILO Decent Work* 4

¹³³ At 4.

¹³⁴ *ILO Decent Work* 13

¹³⁵ Ishikawa *Key Features of National Social Dialogue: a Social Dialogue Resource Book* (2003) 3 <http://ilo.org/public/english/dialogue/ifpdial/downloads/papers/key.pdf> (accessed 20.10.11)

¹³⁶ At 3.

to resolve important economic and social issues, encourage good governance, advance social and industrial stability and boost economic progress.¹³⁷

Collective bargaining can exist as a bipartite relationship between employers and trade union organisations and this is commonly known as collective bargaining and is commonly used to negotiate wages and conditions of work.¹³⁸ A tripartite process involves concertation with government and the social partners mainly on matters of public policy.¹³⁹ Social dialogue's main goal is to promote consensus building and democratic involvement among the stakeholders in the world of work - representatives of governments, employers and workers.¹⁴⁰ Agreements may be concluded at international, regional and national levels. Collective agreements concluded at levels where workers are directly involved in the process, for example at workplace level or industry level have more immediate effects on changes in work conditions than agreements concluded at levels where employees are not directly involved. If it is effective the participants feel that their needs and aspirations have been represented and their voices heard which then achieves social justice.¹⁴¹

Social dialogue is essential in promoting the decent work agenda because through it the employment relationship and conditions of employment can be determined and improved which will impact on other dimensions of decent work as well. The ILO promotes national social dialogue mainly through International labour standards by involving social partners in standard setting activities.¹⁴² Secondly, social dialogue is enhanced through Technical cooperation whereby social partners meet at least every 5 years to review various projects. Social dialogue is also promoted through Technical assistance/policy advice either at national or regional level.¹⁴³

Social dialogue can provide an effective mechanism for people's voices to be heard and also for people to participate in decisions that affect them and this is essential for democratic governance. Social dialogue can also make an important contribution in the transition to

¹³⁷ ITUC *Decent Work, Decent Life for Women: Trade Unions Taking The Lead for Economic and Social Justice & Equality* Discussion Guide 1st Women's Conference held on 19-12/10/09 39

¹³⁸ At 39.

¹³⁹ At 39.

¹⁴⁰ At 39.

¹⁴¹ At 39.

¹⁴² Ishikawa *Key Features of National Social Dialogue: a Social Dialogue Resource Book* 7

¹⁴³ At 7.

democracy and also contribute both to improving economic performance and competitiveness and to making society more stable and more equitable.¹⁴⁴

For social dialogue to be effective there must be:

- strong, independent, and well-informed trade unions and employer's organizations;
- willingness and commitment by all relevant parties to engage in social dialogue;
- the right to freedom of association and to collective bargaining; and
- the necessary institutional supporting avenue for social dialogue".¹⁴⁵

3.6.4 Social security

With regards to social protection, the Decent Work Agenda seeks for workers protection "from the vulnerabilities and contingencies which take people out of work, whether these arise from unemployment, loss of livelihood, sickness or old age".¹⁴⁶ The ILO acknowledges that a large percent of the world's labour force lack access to adequate social protection.¹⁴⁷

The Resolution on Social Security¹⁴⁸ adopted by the International Labour Conference in 2001 concluded among other aspects that:

- Social Security is a human right and also a key ingredient of decent work and hence, there must be a link between employment policies and social protection policies.¹⁴⁹
- There is no single model for social security and each country should determine a national strategy for working towards social security for all although all social security systems should conform to some basic principles and should also be sustainable.¹⁵⁰
- There should be a focus on more vulnerable groups such as workers in the informal economy.¹⁵¹
- The HIV/AIDS pandemic has major implications for social security and it calls for a more rigorous approach to social security.¹⁵²

¹⁴⁴ At 9.

¹⁴⁵ ILS *Pedagogical Materials on Decent Work* 108

¹⁴⁶ ILO *Decent Work* 8

¹⁴⁷ ILO *Social Security: A New Consensus* 8

¹⁴⁸ ILO "Resolution and Conclusions Concerning Social Security (89TH Session of the International Labour Conference (2001))" in *Social Security: A New Consensus* (2001) 1

¹⁴⁹ para 2.

¹⁵⁰ para 4.

¹⁵¹ para 5.

¹⁵² para 12.

The Social Security (Minimum Standards) Convention, (No.102) of 1952 establishes nine classes of benefits: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit. The most important thing is how these benefits can be extended to all those in need of such protection and a decent work approach emphasizes extension of security to all workers.¹⁵³

The decent work strategy is to widen the focus of social protection and this is mainly done by linking social security and development and employment creation policies, addressing social exclusion and processes that result to deprivation and exclusion cycles and also having an all-inclusive development agenda.¹⁵⁴

There are many systems of social security in countries around the world some being state funded and others private. Traditionally, in many countries the state has always provided social security through taxation.¹⁵⁵ In recent years there is increase in the involvement of private sector and NGOs in delivering social protection and in these cases governments are left to play a monitoring and supervisory role.¹⁵⁶

In designing its social protection strategy three main interrelated dimensions must be taken into account: the coverage of social protection in terms of items and individuals; the organizational and institutional means of providing social protection; and arrangements for financing social support.¹⁵⁷ Because of different development contexts in different countries, it is impossible to have a common framework for addressing issues such as social security and what has been suggested is a universal "floor of rights" which is a set of minimum rights to which everyone is entitled to regardless of status in employment.¹⁵⁸

The ILO¹⁵⁹ is of the opinion that all countries should move towards ensuring a certain basic level of social protection for individuals and families which is a vital component of eradication

¹⁵³ See the Declaration of Philadelphia of 1944 which indicates that "the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve ... the *extension of social security* measures to provide a basic income to all in need of such protection and comprehensive medical care". (emphasis mine)

¹⁵⁴ ILS *Pedagogical Materials on Decent Work* 56.

¹⁵⁵ At 56.

¹⁵⁶ At 65,

¹⁵⁷ Ghai "Decent Work: Universality and Diversity" in *Decent Work Objectives and Strategies* 10

¹⁵⁸ Egger "Towards a Policy Framework for Decent Work" 2002 *ILR* 162 166.

¹⁵⁹ ILO *A Fair Globalisation: Creating Opportunities for All* 5.

of poverty and the attainment of the Millennium Development Goals (MDGs). It has been suggested that such “a global social security floor could consist of the following elements:

- Access to health care through pluralistic national systems (tax-financed as well as social, private and micro insurance).
- A system of family benefits that permits children to attend school.
- A system of self-targeting basic social assistance (cash-for-work programmes) that helps to overcome abject poverty for those able to work.
- Developing a system of basic universal pensions for old-age, disability and survivorship that in effect support whole families”.¹⁶⁰

¹⁶⁰ Cichon and Hagemeyer “Changing The Development Policy Paradigm: Investing in a Social Security Floor for All” 2007 *International Social Security Review* 169 183.

Chapter Four

4.1 Dimensions of Decent Work and Decent Work deficits in South Africa

Work is not only a means of sustaining life and meeting basic needs but also a means through which people reaffirm their identity.¹⁶¹ All people aspire to have decent work in a sustainable environment although at the same time the desperation for work can cause people to give up their rights, forfeit autonomy or dignity.¹⁶² Decent work is about opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity.¹⁶³ In South Africa, there is a gap between people's aspirations for decent work and the reality that exists to the extent that for a lot of people having a job regardless of whether it is decent or not becomes better than having no job at all.¹⁶⁴ The reality of South Africa is that most people have no jobs and out of those that have jobs, large percentages have insufficient employment opportunities, have inadequate social protection, have few if any rights at work and also experience shortcomings in social dialogue.

Decent work deficits have always existed in South Africa. Webster equates the historic struggle of black workers for the right work to a struggle for decent work.¹⁶⁵ Despite the progress that has been made in South Africa in fighting for workers' rights in terms of achieving equality and freedom – a key feature of the Apartheid system remains and that is the insecurity experienced by workers especially in the workplace and society.¹⁶⁶ Research commissioned by the Department of Labour, observes that workers in the informal sector experience decent work deficits in varying degrees. The authors note that there is a sort of 'informality continuum' with employees in the formal sector having well regulated jobs which have features of decent work while those at the bottom end of the informal sector experience huge decent work deficits.¹⁶⁷ The research is based on the notion that South Africa is divided into two economies, a concept that was first introduced by President Mbeki in his 2003 State

¹⁶¹ Webster, Benya, Dilata, Joynt, Ngoepe & Tsoeu *Making Visible the Invisible: Confronting South Africa's Decent Work Deficit* (2008) 5-6.

¹⁶² At 5-6 .

¹⁶³ ILO *Decent Work* 3.

¹⁶⁴ Webster "‘There shall be work and security’: utopian thinking or a necessary condition for development and social cohesion?" 2010 72/73 *Transformation: Critical Perspectives on Southern Africa* 225 230.

¹⁶⁵ Webster *Transformation: Critical Perspectives on Southern Africa* 225.

¹⁶⁶ At 225.

¹⁶⁷ Webster et al *Making Visible the Invisible: Confronting South Africa's Decent Work Deficit* 5-6.

of the Nation Address.¹⁶⁸ Mbeki observed that the first economy - the formal economy is one of modern establishments and decent work, and a second economy – the informal economy consisting of a range of precarious and vulnerable forms of work and survival activities.¹⁶⁹

The informal economy is according to the ILO a wider conceptualization of informal work and covers all work that is not covered by formal arrangements – self-employment, employment in the informal sector and employment in the formal sector that is not regulated or protected.¹⁷⁰ The ILO also observes that the workers and entrepreneurs in the informal economy also lack access to seven securities: labour market security; employment security; job security; work security; skill reproduction security; income security; and representation security.¹⁷¹

Chen offers a comprehensive classification of the informal economy as follows¹⁷²

- “(a) Self – employment in informal enterprises: workers in small unregistered or unincorporated enterprises which include employers, own account operators and unpaid family workers
- (b) Those in wage employment in informal jobs including workers without benefits or social protection who work for formal or informal firms, households and also those with no fixed employer including those who work for informal enterprises
- (c) Other informal wage workers such as casual day laborers, domestic workers, unregistered or undeclared workers and some temporary or part time workers
- (d) industrial workers or home workers.”

Another key aspect that is important to consider regarding decent work deficits in South Africa is the steady rise in precarious employment - work that is temporary, contract-based, overseen by labour brokers or jobs that are involuntarily part-time. Webster et al.¹⁷³ observe that this phenomenon is caused by informalisation of employment in the formal economy. These forms of work have continued to increase and the situation was made even worse by

¹⁶⁸ At 5-6.

¹⁶⁹ At 5-6.

¹⁷⁰ ILO *Decent Work and the Informal Economy* (90TH Session of the International Labour Conference (2002)) 3.

¹⁷¹ At 3-4.

¹⁷² Chen *Rethinking the Informal Economy: Linkages with the Formal Economy and the Formal Regulatory Environment* DESA Working Paper No. 46 2007 3-4.

http://www.un.org/esa/desa/papers/2007/wp46_2007.pdf (accessed 22.10.11)

¹⁷³ Webster et al *Making Visible the Invisible: Confronting South Africa's Decent Work Deficit* 8.

the global economic crisis. These jobs are characterised by lack of regular full – time contracts and hence may be excluded from the effect of labour legislation.¹⁷⁴

One explanation that has been made for the increase ‘bad jobs’ is that “labour rights have created a rigid labour market resulting in difficulty by firms in firing labour and hence they are more reluctant to hire”.¹⁷⁵ This is despite the new labour dispensation that was introduced in 1996 to guarantee workers’ rights to bargain collectively and also ensure basic conditions of service for workers. Employers have responded by either not complying with labour laws or by looking for ways to surmount legislation and because they must hire labour, they enter into contracts with labour brokers so as to reduce costs of hiring and firing.¹⁷⁶

Subcontracting and labour broking have brought a lot of debates among the state, labour and employers. Subcontracting is defined as “a shift away from the standard employment relationship where there is one employer and one employee, towards externalisation where there are many intermediaries and employees work in places that are not owned by their immediate employer”.¹⁷⁷ Webster et al. observe the following about labour broking citing Kenny, 2007; “labour brokers exist in order to absorb externalised risks and to enhance contract workers insecurity and ambiguous employee status”. In these sense externalisation of work ensures that work is externalised with all the risks that go with it.¹⁷⁸

COSATU¹⁷⁹ argues that subcontracting is a form of modern day slavery and should be completely abolished as the bulk of the money that is paid out by employers goes to labour brokers while the employees who do the work end up getting poor pay, have minimum benefits and no job security.

Business Unity South Africa is of the view that labour broking should not be banned as it contributes to the creation of employment opportunities.¹⁸⁰ Furthermore, an important factor

¹⁷⁴ At 9.

¹⁷⁵ Webster 2010 *Transformation: Critical Perspectives on Southern Africa* 225.

¹⁷⁶ At 226.

¹⁷⁷ Webster et al *Making Visible the Invisible: Confronting South Africa’s Decent Work Deficit* 15-16.

¹⁷⁸ At 15-16.

¹⁷⁹ COSATU *Submission on Labour Broking* to the Parliamentary Portfolio Committee on 26 August 2009. <http://www.cosatu.org.za/show.php?ID=2237> (accessed on 14.07.11)

¹⁸⁰ BUSA *Submission on Labour Broking* to the Parliamentary Portfolio Committee on 26 August 2009 2 (copy requested from BUSA)

to be taken into account should be how to improve conditions of decent work for employees employed by labour brokers rather than banning labour broking all together.¹⁸¹

The ANC seems to uphold the view held by Business Unity South Africa. It will be interesting to see where this debate will end but it is important to remember that labour brokers are only part of the equation. The bigger part of the equation is only part of the problem as this analysis will show. The approach to the assessment of decent work in South Africa taken here involves looking at six dimensions of decent work as identified by Anker et al. that is: opportunities for work; work in conditions of freedom; productive work; equity at work; dignity at work; and security at work.¹⁸² It is important to take into account that decent work deficits are interconnected and also linked to social and economic policies and institutions which affect people's working lives and the labour market.¹⁸³ In that sense the gaps in decent work overlap to a large degree.

4.1.1 Employment opportunities

This first dimension of decent work refers to the need for all persons who want to and are able to work being able to find work, since decent work is not possible without work. The state of employment in South Africa is dire as already highlighted – a large percentage of the population are unemployed mostly women and youth.¹⁸⁴ Another feature of the state of employment in South Africa is that despite economic growth, the employment rate has not increased significantly.¹⁸⁵ The OECD suggests that faster growth is required to meet people's aspirations.¹⁸⁶

Webster¹⁸⁷ identified three major segments within the South African workplace; the core workers – are workers in permanent employment; the casualised and externalized workers –

¹⁸¹ At 2.

¹⁸² Anker, Chernyshev, Egger, Mehran & Ritter *Measuring Decent Work with Statistical Indicators* (2003) Working Paper No. 2 Policy Integration Department Statistical Development and Analysis Group ILO Available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_079089.pdf (accessed 17.06.11)

¹⁸³ ILO *Reducing the Decent Work Deficit* 8.

¹⁸⁴ OECD "Economic Surveys: South Africa 2010" 17
http://www.treasury.gov.za/comm_media/press/2010/2010071901.pdf

¹⁸⁵ At 14.

¹⁸⁶ At 14.

¹⁸⁷ Webster "The current global crisis – what are the fundamental questions?" Public Lecture Presented at NMMU on 5.5.2009

are workers in non-permanent and unstable employment such as temporary, part-time and more vulnerable employment by intermediary firms such as subcontractors and labour brokers; and finally, periphery workers – are people “making a living” through informal work activities.

As observed earlier, precarious work is common in South Africa and statistics show that a large number of workers are in unprotected and unregulated jobs, some of these workers are self-employed. A large percentage of informal workers are in the agricultural sector while the rest are engaged in domestic work or elementary occupations.¹⁸⁸ Domestic work is mainly dominated by women while most men in informal employment are in craft and related trade.¹⁸⁹ One explanation that has been made for the present state of the labour market is lack of skills but Webster argues that work security should be created by taking workers as they are and then training them on the skills they need.¹⁹⁰

The government is committed to creating decent employment work.¹⁹¹ The government intends to achieve this through various means including identifying where employment creation is possible on a large scale taking in to account national and global circumstances and also developing appropriate policies that facilitate employment creation in those areas.¹⁹² A new growth path has been proposed which aims to create 5 million jobs by 2020 which is to be achieved through:

- a. “A comprehensive drive to enhance both social equity and competitiveness;
- b. Systemic changes to mobilize domestic investment around activities that can create sustainable employment; and
- c. Strong social dialogue to focus all stakeholders on encouraging growth in employment-creating activities”.¹⁹³

<http://www.nmmu.ac.za/documents/lectures/Edward%20Webster%20Public%20Lecture.pdf>

¹⁸⁸ Wills *South Africa's Informal Economy: A Statistical Profile* Women In Informal Employment: Globalizing and Organizing Urban Policies Research Report 2009 No. 7 20

http://www.inclusivecities.org/research/RR7_Wills.PDF (accessed on 23.10.11)

¹⁸⁹ At 20.

¹⁹⁰ Webster 2010 *Transformation: Critical Perspectives on Southern Africa* 228.

¹⁹¹ President Jacob Zuma *State of the Nation Address* 2009, 2010 and 2011.

¹⁹² RSA *The New Growth Path: The Framework* (2011)1.

<http://www.info.gov.za/view/DownloadFileAction?id=135748>

¹⁹³ At 1.

One of the ways the government has tried to provide jobs and also bridge the gap between the formal and informal economy is through the Expanded Public Works Programmes initiated in 2004 with a goal of creating economic growth and sustainable development by providing the unemployed with temporary productive jobs coupled with training, work experience and temporary income especially to women and youth.¹⁹⁴ Many work opportunities have been created through these programmes. However, these jobs have been criticized for not being sustainable jobs because what the country needs is a long-term structured employment-generation programme rather than relief and emergency jobs.¹⁹⁵ In addition they are criticised for their lack of security and for being ‘inferior’ – having the same qualities as jobs in the informal sector.¹⁹⁶

The global economic crisis has also had a huge impact on employment opportunities as well. Despite that unemployment was already too high; a large number of people fell into poverty between the years 2008 – 2010.¹⁹⁷ Another problem is underemployment which is a situation where people are in jobs that are insufficient and cannot to serve to lift them out of poverty despite desiring full – time employment and also having the skills and abilities to take up such employment.

4.1.2 Productive work

Most people cannot find productive work in South Africa and as observed earlier, are in jobs that cannot lift them out of poverty and do not earn a wage that is sufficient to live on. In other words, there are large percentages of people who work but are poor. Webster¹⁹⁸ gives an example of one worker who earns R 40 a day collecting garbage for eight hours a day. This illustration may seem like an extreme but the fact is there are many such jobs in South Africa where what people earn is not able to sustain them and their dependents let alone lift them out of poverty.

The South African Labour Force Survey defines ‘working poor’ as anyone who is employed (using the ILO official definition), working in the formal or informal economy and earning less

¹⁹⁴ Expanded works programmes were initially introduced in 2003 by the then President of South Africa, Thabo Mbeki during his 2003 State of the Nation Address.

See <http://www.epwp.gov.za/index.asp?c=Welcome>

¹⁹⁵ Samson “When public works programmes create ‘second economy’ conditions” 2007 37 *Africanus* 244 245.

¹⁹⁶ At 245.

¹⁹⁷ OECD *Economic Surveys: South Africa* 17

¹⁹⁸ Webster 2010 *Transformation: Critical Perspectives on Southern Africa* 230

than R2, 500 per month.¹⁹⁹ There is much evidence to show that a large percentage of the population are not even anywhere near that minimum wage.²⁰⁰ Studies in South Africa confirm that 65% of all working people earn less than this amount and also that about 39 percent of all working people earn less than R1, 000 per month.²⁰¹ Trade union Cosatu demands for a 'living wage' rather than 'minimum wage' for workers arguing that a minimum wage as determined by policy makers may not necessarily cover a sufficient quality of basic needs such as food, shelter, clothing and healthcare while a living wage ensures a wage that is sufficient to cover these basic needs.²⁰²

In addition to workers not earning a living wage there is also a large percentage of people especially young people who work for non – wage benefits mostly in family businesses. Confronting the Decent Work deficit cites examples of people working in family businesses for food, shelter and basic needs.²⁰³ Labour brokers are also known to deduct huge sums of money from employees and thus employees end up working for negligible pay and also do not have any of the minimum conditions of service as stipulated by the BCEA.²⁰⁴

Another deficit here is the irregular and long hours that workers in informal employment work in comparison to the returns on their work. Most employed workers work long hours while those who are self – self-employed in most cases work less hours than they would like to work, indicating unemployment.²⁰⁵

¹⁹⁹ Altman *What are the policy implications of the 'informal sector' becoming the 'informal economy'* (2007) Concept paper prepared for IZA/WB Conference on Employment & Development Germany, June 8 & 9 12.

http://www.hsrc.ac.za/research/output/outputDocuments/4742_Altman_Whatarethepolicyimplications.pdf (accessed 16.10.11).

²⁰⁰ At 12.

²⁰¹ At 12.

²⁰² COSATU *Towards a COSATU Living Wage Conference: A NALEDI Research Report* June 2011 9 http://www.cosatu.org.za/docs/reports/2011/naledi_research_paper.pdf (accessed 23.10.11)

²⁰³ Webster et al *Making Visible the Invisible: Confronting South Africa's Decent Work Deficit* 81

²⁰⁴ At 80.

²⁰⁵ Wills *South Africa's Informal Economy: A Statistical Profile* 20.

4.1.3 Work in conditions of freedom

This dimension of Decent Work emphasizes that work should be performed in conditions of freedom, should be freely chosen and not forced on individuals and also identifies that there are forms of work that are unacceptable.²⁰⁶

Most people are not protected by Legislation and even the Fundamental Rights and Principles are more of rhetoric than reality to them. Some examples include farm workers, child labourers, domestic workers and migrants who in their quest to earn a living are forced to take up work in slave like conditions. Farm workers are among the most vulnerable workers in South Africa earning a basic minimum wage whilst working in some of the worst conditions and exploitation and a consistent unfair paternalistic relationship with their employers a problem that has further been compounded by the existence of labour brokers in the sector.²⁰⁷

There is also much documented evidence of child labour despite South Africa having ratified all Core Conventions including the ILO's Worst Forms of Child Labour Convention, 1999 (No. 182). Some children are even engaged in the worst forms of child labour mostly in the agricultural and domestic sectors.²⁰⁸ Also highlighted is children's work in taverns, liquor stores and shebeens, in prostitution and also children forced by adults to commit crime.²⁰⁹

One characteristic of the informal sector in South Africa is the presence of immigrant workers most of whom are undocumented. These immigrant workers further increase the competition for jobs especially in some sectors of the economy, for instance mining and thus making worse the Labour Market insecurity.²¹⁰ Most of these workers are willing to work for less pay and with no rights.²¹¹ Labour brokers also hire these illegal foreigners because they are not able to assert their rights. These workers do not have any rights and can be easily

²⁰⁶ Anker et al Measuring Decent Work with Statistical Indicators 2.

²⁰⁷ Centre for Rural Legal Studies *Going for Broke A Case Study of Labour Brokerage on Fruit Farms in Grabouw* (2009) 5.

²⁰⁸ United States Department of Labor Bureau for International Labor Affairs *Findings on the Worst Forms of Child Labor* (2011) 692.

<http://www.dol.gov/ilab/programs/ocft/PDF/2010TDA.pdf> (accessed 22.10.11).

²⁰⁹ At 692.

²¹⁰ Webster et al *Making Visible the Invisible: Confronting South Africa's Decent Work Deficit* 81. (citing Benya (2008)).

²¹¹ At 81.

dismissed and exploited and even deprived of wages which they have already worked for especially if the brokers know that the workers do not have legal status in the country.²¹²

4.1.4 Equity at work

One of the principles of equity at work is equal pay for equal work and also equality in employment opportunities. Despite South Africa's efforts to try and redress the inequalities of the past, there is still evidence that a lot of inequality exists in terms of access to employment opportunities. The Labor Force Survey shows that women are still marginalized in terms of gaining access to employment opportunities and that men form a large percentage of the Economically Active Population.²¹³ Whites still dominate the Top Management level while African and coloured females and people with disabilities are the most vulnerable groups amongst the economically active and the least benefactors of affirmative action.²¹⁴ White females are so far the biggest benefactors of affirmative action. In addition, there is disparity in remuneration on the basis of race and gender.²¹⁵

As an important dimension of Decent Work, equity at work represents workers' need to have fair and equitable treatment and opportunity in the workplace. "It encompasses absence of discrimination at work and in access to work and ability to balance work with family life".²¹⁶ According to the ILO²¹⁷ women tend to be over-represented in jobs with poor working conditions and pay, often in the informal economy, and also undertake much 'invisible' work in the home or family businesses that is undervalued in terms of its contribution to economic development. Statistics from the Labour Force Survey have shown that women are disproportionately represented in the informal economy, work longer hours than men, earn less.²¹⁸ The total number of unemployed women is generally higher than that of men and the rate is higher among rural women.²¹⁹ Women are more likely to take up low wage – insecure

²¹² At 22-23.

²¹³ RSA 11TH Annual Report of the Commission for Employment Equity 2010-2011 5.

²¹⁴ At 9.

²¹⁵ At 9.

²¹⁶ Anker et al Measuring Decent Work with Statistical Indicators 3.

²¹⁷ ILO *Gender Equality at the heart of Decent Work* (98TH Session of International Labour Conference (2009)) 3.

http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_105119.pdf (accessed 20.10.11).

²¹⁸ RSA *Quarterly Labour Force Survey* (2008) 7.

<http://www.statssa.gov.za/publications/P02111/P021112008.pdf> (accessed on 20.10.11).

²¹⁹ At 7.

jobs in addition to other economic activities that they do in the home so as to support their families.

4.1.5 Dignity at work

The dignity at work perspective of decent work represents the extent to which workers have a voice in the workplace. Collective bargaining in most cases only covers full-time employees and therefore most informal workers are not covered.²²⁰ The main mechanism for collective bargaining and regulating conditions of employment in South Africa is the establishment of bargaining councils in various sectors.²²¹ There is however immense difficulties in establishing bargaining councils in the informal sector, especially where there is little trade union activity or collective bargaining.²²² Collective bargaining is also nonexistent in most small firms who because of high cost of labour regulation are in favour of a more inflexible form of regulation and are in some cases ignorant of labour legislation altogether.²²³

Shortfalls in collective bargaining are not only in the informal sector, statistics show that only about 36 per cent of workers employed in the formal economy were members of trade unions in 2007 and only about 7 percent of those in informal businesses.²²⁴ Collective bargaining is ineffective without the presence of strong trade unions which are representative of all sectors of the economy. There is an attempt by Cosatu to organize workers in the informal economy such as domestic workers.²²⁵

4.1.6 Security at work

The last dimension of Decent Work is social protection. A lot of people in South Africa are excluded from the coverage of social protection because the definitions of social security despite protections and guarantee of the right to access to social security as provided in the Constitution. Exclusion is more prevalent among workers who are self – employed and those in the informal sector because social security provided by the state is on a contributory basis

²²⁰ Centre for Rural Legal Studies *Going for Broke A Case Study of Labour Brokerage on Fruit Farms in Grabouw* 19.

²²¹ Bargaining Councils are established under S27 of the LRA.

²²² Development Policy Research Unit Policy Brief Series The State of Collective Bargaining in South Africa: An Empirical and Conceptual Study of Collective Bargaining (2008) 3.

²²³ At 6.

²²⁴ International Labour Office *Industrial relations and collective bargaining: Trends and developments in South Africa* (2009) 13.

²²⁵ At 13.

and most of these workers who work for themselves do not make any contribution. The same goes for workers who do not have commercialized work contracts through labour brokers. The Committee of Inquiry into a Comprehensive System of Social Security²²⁶ acknowledging this social exclusion recommended a comprehensive framework for reform of all aspects of social security in South Africa.

²²⁶ RSA *Transforming the Present protecting the future* Consolidated Report of of the Taylor Committee into a social security system for South Africa (2002) 39.

Chapter Five

5.1 The Legal Framework Decent Work in South Africa

Somavia²²⁷ observes that under the decent work agenda the goal is not just the creation of jobs but the creation of jobs of acceptable quality. In order to achieve this there is a need for an integrated system that promotes decent work including intervening through legislation.²²⁸ This is line with the ILO's goals of protecting work rights and improving the lives of workers and their families.

There are three major categories of Labour protection in South Africa: The Constitution, Statutory Labour rights and International labour standards.²²⁹ These rights should ideally be able to adequately protect employees and also promote the decent work agenda, thus ensuring that there are sufficient jobs of acceptable quality for all.

Benjamin²³⁰ identifies 9 subcategories of labour protection that are covered by the current framework in south Africa: minimum conditions of employment; collective bargaining and worker participation; institutions of governance for regulating the labour market; dispute resolution and adjudication; equality in the work place; skills development and training; and provision of employment linked to social security.

This section will examine the protections contained in labour legislation as well as the different categories of laws and how they are implemented in order to promote the Decent Work agenda.

²²⁷ ILO *Decent Work* 9

²²⁸ ILO *Reducing the Decent Work Deficit* 38.

²²⁹ Benjamin *Informal Workers and Labour Rights in South Africa* Paper presented at a conference on The Regulatory Environment and its Impact on the Nature and Level of Economic Growth and Development in South Africa in 2008 3-5
http://www.dpru.uct.ac.za/Conference2008/Conference2008_Papers/Paul_Benjamin_INFORMAL%20WORK%20AND%20LABOUR%20RIGHTS%20IN%20SOUTH%20AFRICA.pdf

²³⁰ Benjamin *Labour Market Regulation: International and South African Perspectives* (2005) 3-4

5.1.1 The Constitution

The Constitution²³¹ which came into effect in 1996 at the dawn of the democratic era is the foundation of various rights and protections for workers in South Africa. The Constitution promotes the principles of human dignity, equality, advancement of human rights and freedoms.²³² With regards to Decent Work, the Constitution entrenches in the Bill of Rights many fundamental rights and principles that are in line with the ILO Core Labour Standards including protection against servitude, forced labour and discrimination, the right to pursue a livelihood, and protection for children against exploitative labour practices and work that is hazardous to workers health and wellbeing.²³³ These fundamental rights are furthermore codified into various specific statutes and collective bargaining agreements.

Section 23 of the Constitution is in particularly important from the perspective of achieving decent work for all because it specifically concerns labour relations.

Section 23(1) states that:

“(1) Everyone has the right to fair labour practices.

(2) Every worker has the right-

(a) to form and join a trade union;

(b) to participate in the activities and programmes of a trade union;

(c) to strike.”

The Constitution also states that people have the freedom to choose a trade, occupation, or profession.²³⁴

These labour rights covered in section 22 and section 23 which provide a basis for the right to decent work and are concrete manifestations of components of the concept of decent work and are implemented through various national statutes and collective agreements in order to give effect to the obligations conferred on the country as a member state of the ILO. The main statutes are discussed below from the point of view of how they support decent work.

²³¹ Constitution of the Republic of South Africa ,1996

²³² S(1) of the Constitution

²³³ See Chapter 2 of the Constitution

²³⁴ S(22) of the Constitution

5.1.2 Regulation of Labour Relations

The Labour Relations Act²³⁵ came into being to give effect to and regulate the fundamental rights to fair labour practices conferred by section 23 of the Constitution. Other objectives of the Labour Relations Act include giving effect to the obligations incurred by South Africa as a member state of the International Labour Organization (ILO), to provide a framework for collective bargaining and formulating industrial policy and to promote collective bargaining and effective dispute resolution.²³⁶ According to Basson et al “although the primary focus of the LRA is to regulate the collective relationship between trade unions and employers, it does contain important provisions aimed at job security such as protection against dismissal and unfair labour practices”.²³⁷ Section 186 (2) of the LRA defines extensively conducts that constitute to unfair labour practices.

An important aspect of the LRA is freedom of association. Section 18 of the Constitution grants everyone a right to freedom of association. South Africa has ratified International Labor Organization Convention C87 concerning Freedom of Association and Protection of the Right to Organise and Convention C98 concerning the Right to Organize and Collective Bargaining. Both of these Conventions are fundamental in ensuring that workers have a right to form and join trade unions. This is important for decent work because through strong unions workers are able to bargain for their conditions of work in a more viable way.

5.1.3 Basic Conditions of Employment (BCEA)

The purpose of the BCEA is to “advance economic development and social justice by fulfilling the primary objects of the Act”.²³⁸ The two main objects of the Act are to “give effect to and regulate the right to fair labour practices contained in Section 23 of the Constitution and to give effect to the ILO Conventions which have already been ratified.”²³⁹ The BCEA sets certain minimum standards of employment including standards of work, hours of overtime work, rates of pay for overtime work and on Sundays and public holidays, minimum annual leave, sick leave and maternity leave provisions, minimum notice periods in case of termination of a contract of employment and the way in which wages should be paid.

²³⁵ 66 of 1995.

²³⁶ See Preamble of the LRA

²³⁷ Basson, Christianson, Garbers, Le Roux, Mischke, Strydom *Essential Labour Law* (2005) 9

²³⁸ Du Toit, Bosch, Woolfrey, Godfrey, Cooper, Giles, Bosch and Rossouw *Labour Relations Law: A Comprehensive Guide* 5 ed (2006) 511

²³⁹ Ibid

Ensuring a minimum floor of work conditions for workers is important in promoting the decent work agenda as it ensures workers are protected from exploitation and inhumane working conditions.

With regards to minimum wages, the Act does not prescribe a minimum wage and instead provides for the possibility of the Minister of Labour making sectoral determinations. These sectoral determinations include minimum wages for employees in particular sectors in which workers are not likely to have sufficient protection and in which employees and employers are not sufficiently organized to engage in collective bargaining and reach agreement on minimum wages themselves.²⁴⁰

5.1.4 Employment Equity

The right to equality is an important aspect of employment. The Constitution states that "Everyone is equal before the law and has the right to equal protection and benefit of the law".²⁴¹ "Equality includes the full and equal enjoyment of all rights and freedoms". The Constitution and further provides several criteria which one may not be discriminated on the basis of. These grounds are also found in the EEA which like the constitution acknowledges that not all discrimination is unfair and that there may be legitimate grounds for differentiation, namely, to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination.²⁴²

The EEA provides protections against unfair discrimination in employment and also provides guidelines for affirmative action with the overall aim of reducing disparities in employment, occupation and income within the national labour market.²⁴³ The scope of the Employment Equity Act is confined to employees while Independent contractors and other persons not covered by labour law are protected against discrimination by Promotion of Equality and Prohibition of Unfair Discrimination Act (PEPUDA).²⁴⁴ Employers employing more than 50 employees are required to implement Affirmative Action measures. The Act also requires that employers prepare and implement an employment Equity plan by consulting with trade

²⁴⁰ Section 51 of the BCEA

²⁴¹ Section 9(1) of the Constitution

²⁴² Section 9(2) of the Constitution

²⁴³ See Preamble of the EEA Act of 1998

²⁴⁴ Benjamin *Labour Market Regulation: International and South African Perspectives* 2005 34

unions and employees.²⁴⁵ Monitoring of the aspects covered by the Act is also important and Section 34 of the Act provides that any employee or trade union organization may bring an allegation regarding the contravention of the Act.

5.1.5 Skills Development and Training

The OECD acknowledges that one of the reasons for the high unemployment and underemployment is lack of skills.²⁴⁶ According to Du Toit et al²⁴⁷ “great emphasis has been placed on establishing a legislative financial and administrative framework aimed at providing skills and qualifications. This framework derives primarily from the Skills Development Act, 97 of 1998 and the Skills Development Levies Act, 9 of 1999”. Du Toit et al further note that the Skills Development Levies Act provides the statutory basis for the funding of skills development in South Africa. Employers are obliged to pay a training levy equal to 1 percent of the total wage bill which goes into a fund to be used for training and also for other projects that may be identified as stated in Chapter 28 of the Act.

The institutional infrastructure of the SDA consists of the National Skills Authority, Sectoral Education and Training Authorities (SETAs), the National Skills Fund and the Skills Development Planning Unit and labour centers within the Department of Labour.²⁴⁸

The Act encourages learnerships which is a structured learning component and practical work experience for skills development that leads to an occupationally related occupation recognized by the South African Qualifications Authority.²⁴⁹

5.1.6 Unemployment Protection

The Unemployment Insurance Act of 2001 (UIF) regulates unemployment insurance and maternity benefits. The purpose of the Act is outlined in Chapter 2 of the Act. The purpose is “to establish an unemployment insurance fund to which employers and employees contribute and from which employees who become unemployed or their beneficiaries, as the case may be, are entitled to benefits and in so doing to alleviate the harmful economic and social effects of unemployment”. The Act provides for the establishment of the Unemployment Insurance Fund into which the monies which are deducted from the employers and

²⁴⁵ At 34.

²⁴⁶ OECD *Economic Survey* 33

²⁴⁷ Basson et al *Essential Labour Law* 371.

²⁴⁸ Benjamin *Informal Workers and Labour Rights in South Africa* 18

²⁴⁹ At 18

employees and also any other monies collected in terms of the fund are put into.²⁵⁰ The Act also provides a support function such for example in the establishment of the Unemployment Insurance Board, the functions of the Board and the appointment of the Unemployment Insurance Commissioner.²⁵¹

The UIF does not cover employees who have resigned voluntarily.²⁵² The coverage of the UIF has been criticized for various reasons. Firstly, because it only provides protection for those people with a record of formal employment, it does not cover the unemployed and contains no measures to integrate the unemployed into the work force, and that it does not include a safety net that offers the unemployed an opportunity to return to the labour market through for instance improvement of skills.²⁵³

5.1.7 Health and Safety and Compensation for Occupational Diseases

Two Acts Compensation for Occupational Diseases Act 130 of 1993 (COIDA) and Mines Health Safety Act 29 of 1996 are the two statutory systems for the payment of compensation for work related deaths, injuries and diseases.

COIDA came into effect in 1994 and provides a system of no-fault compensation for employees who are injured out of accidents that arise out of and in the course of their employment or who contract occupational diseases. It also covers employees from death that may occur due to such injuries or diseases. The scope of application of the Act is limited to employees as defined in Section 1 of the Act. The definition of employees is broad but excludes domestic workers, independent contractors and the self-employed.²⁵⁴ Also excluded are members of the South African National Defense Force and members of the South African Police Force.²⁵⁵

COIDA establishes a compensation fund which clearly stipulates who contributes to the fund which includes all employers except those excluded in the Act. The Act provides for payments to be made to those employees who suffer temporary disablement, those who become permanently disabled and compensation to the dependents of those workers who

²⁵⁰ See Chapter 2 of the Act

²⁵¹ See Chapter 6 of the Act

²⁵² Benjamin *Informal Workers and Labour Rights in South Africa* 19

²⁵³ At 19

²⁵⁴ See Chapter 1 of COIDA

²⁵⁵ See Chapter 1 of COIDA

die as result of the injuries sustained in accidents at work or as a result of an occupational disease.²⁵⁶ The Act also lists the most common occupational disease and leaves the onus to the employee to prove that a disease that is not listed is related to his work in order to receive compensation.²⁵⁷

Workers in the mines are covered by the Mines Health and Safety Act, 1996.

5.1.8 Social Protection

In South Africa, the Constitution makes provision for social assistance for people without any income. Section 27(1) (c) grants everyone to access social security and appropriate social assistance if they are unable to support themselves and their dependents. In SA there are also various statutes that regulate various forms of social security. The main ones are contributory benefits such as Unemployment Insurance; non-contributory cash benefits such as Old Age grants; and social assistance which comprises of means tested benefits and also tax benefits.²⁵⁸

Overall there are two forms of social security in South Africa that is, social insurance and social assistance. Social assistance is a state-funded system, also referred to as social grants in South Africa, which is non-contributory and financed entirely from government revenue.²⁵⁹ This scheme is means-tested and the onus is upon individuals to prove that they are destitute and is provided to individuals in cash or in-kind to enable them to meet their basic needs.²⁶⁰ Grants available in South Africa to various designated groups namely persons with disabilities, older persons and children.

Social insurance on the other hand includes Unemployment Insurance, Road Accident Fund and Compensation for Occupational Injuries and Diseases.²⁶¹ The contributions for Unemployment Insurance come from both the employer and the employee. Social insurance covers contingencies such as pensions or provident funds, medical benefits, maternity

²⁵⁶ Chapter 2 of COIDA

²⁵⁷ Section (65) of COIDA

²⁵⁸ Triegaardt *Transformation of social security in South Africa: Accomplishments and challenges for partnerships in development* 2007 2 Available at <http://www.dbsa.org/Research/Documents/Accomplishments%20and%20challenges%20for%20partnerships%20in%20development%20in%20the%20transformation%20of%20social%20security%20in%20South%20Africa.pdf>

²⁵⁹ Triegaardt *Transformation of social security in South Africa* 6

²⁶⁰ At 6.

²⁶¹ At 6

benefits, illness, disability, unemployment, employment injury benefits, family benefits and survivor's benefits.²⁶²

The coverage of social protection in South Africa is considered to be limited because its definitions exclude the reality of the context of poverty and social exclusion.²⁶³

5.2 The Role of International Labour Standards

International Labour standards such as those set by the ILO through its normative approach contained in the various ILO conventions, recommendations and policies especially in areas such as freedom of association and non-discrimination have a direct impact on the regulation of South Africa's labour environment.²⁶⁴ As alluded to earlier, a matter of international law and in order to comply with its obligations as a member state of the International Labour Organisation, South Africa has ratified all core labour standards. In total, 21 Conventions have been ratified.²⁶⁵

International Law also plays major roles in the courts in South Africa. Some of the purposes that these laws have served are to strengthen a decision based on domestic law, as a guide for interpreting domestic law, and also establish a jurisprudential principle based on international law.²⁶⁶

This would further emphasize the need to understand the concept of decent work holistically and also its implications as respect for international law is core to the attainment of decent work for all and also human rights. For matters concerning the interpretation of the Bill of Rights, the Constitution requires in Section 39(1) that:

"When the courts are deciding a case on the Bill of Rights, they must promote the values of an open and democratic society based on freedom and equality. They must look at

²⁶² At 6

²⁶³ RSA *Transforming the Present Protecting the Future* 39

²⁶⁴ ILO *Decent Work Agenda in Africa* 2007 12

²⁶⁵ See Annexure for detailed list of ratified Conventions

²⁶⁶ Use of International Law by Domestic Courts: Compendium of Court Decisions, ILO 2006.11-16
Accessed online at

http://training.ilo.org/ils/ils_judges/training_materials/english/ENG_Legal%20Research_Final_July2006.pdf The authors refer to *Hoffman v SAA* 2001 SA 1 (CC) (1); *Numsa v Bader Bop* (2003) 2 BCLR 182 (CC); *Modise & Others v Steve's Spar Blackheath* (2000) 21 ILJ 519 (LAC) and also *South African National Defence Union v. Minister of Defence* (2007) 28 ILJ 1909 (CC)

international laws (such as the Universal Declaration on Human Rights) and at the way courts in other countries have decided similar cases”.²⁶⁷

Chapter Six

6.0 Realising the Decent Work Agenda

Achieving full employment and promotion of decent work is very important for South Africa as it is in all developing countries. In order to achieve Decent Work, the agenda needs to be incorporated into national development policies. The priority should not just be creation of employment but creating employment opportunities that have features of decent work, that is, work that includes principles of rights at work, social protection and social dialogue. As already emphasised decent work is fundamental in combating poverty and social exclusion. Its achievement also facilitates faster economic development.

As highlighted, achieving decent work for all in South Africa will not be an easy feat due to the various socio economic challenges that the country faces and also multiple decent work deficits that hinder the attainment of decent work. It also involves various national and international initiatives.

This section highlights some policy and action areas and efforts that have been put in place by the ILO and the government in order to facilitate the achievement of decent work. In addition, suggestions are given on what more various stakeholders can do in order to facilitate the attainment of decent work for all and ultimately sustainable poverty reduction.

6.1 ILO Solutions - South Africa's Decent Work Country Programme

In order to support member countries in their efforts to achieve decent work for all, the ILO introduced Decent Work Country Programmes. South Africa's DWCP a NEDLAC facilitated project reiterates as indicated by the Labour Minister that the creation of decent jobs is one of South Africa's most pressing policy challenges. The Minister during a speech to the Annual Labour Policy Conference observed that "The ability to contribute to job creation while at the same time striving for decent work will be the key tests of the department of labour's policies in the years ahead".²⁶⁸ The Department of Labour Minister notes that the department's strategic objectives for next five years are to contribute to employment creation; promote equity in the labour market; protect vulnerable workers; strengthen

²⁶⁸ Labour Minister, Midred Oliphant Address to the addressing the Annual Labour Policy Conference held in Pretoria, on Monday (24.01.2011). Speech Available at <http://www.labour.gov.za/media-desk/speeches/2011/speech-by-the-minister-of-labour-mildred-nelisiwe-oliphant-at-the-annual-labour-policy-conference>

multilateral and bilateral relations; strengthen social protection; promoting sound labour relations; strengthen the capacity of labour market institutions; and to strengthen the institutional capacity of the department.²⁶⁹

The DWCP launched in September 2010 to be carried out from 2010 – 2014 with the objective of promoting decent work as a key component of national development priorities.²⁷⁰

The programme has four main priorities and nine outcomes. The outcomes around which the Decent Work Country Programme is based fall within the ILO's area of competence and are in alignment with key national development priorities aimed at promoting decent work and employment, as well as poverty reduction.²⁷¹

The main priorities are explained below.

- (1) Strengthening Fundamental Principles and Rights at work – this includes a focus on the ILO core labour standards, the ratification and implementation of International Labour Standards; and improved labour administration.²⁷² This focus is important because South Africa has not ratified some key conventions that are crucial to the attainment of decent work. Some of these Conventions include, ILO Conventions 81 (Labour Inspection Convention, 1944), 122 (Employment Policy Convention, 1964), 129 (Labour Inspection, Agriculture, Convention), 150 (Labour Administration Convention), that relate to labour market governance and 102 (Social Security, Minimum Standards Convention).²⁷³
- (2) Promotion of Employment – this priority involves employment creation through an environment for job rich growth, sustainable enterprises, including formalization of the informal sector and skills development.²⁷⁴ One of the key objectives of the present government is to half poverty and unemployment by 2014 and to ensure a more equitable distribution of the benefits of economic growth.²⁷⁵ This priority is important as it ensures that jobs created are decent jobs.

²⁶⁹ Ibid

²⁷⁰ See Introduction to the RSA *Decent Work Country Programme* 2010

²⁷¹ RSA *Decent Work Country Programme* 16

²⁷² At 21

²⁷³ At 18

²⁷⁴ At 21

²⁷⁵ African National Congress Manifesto 2009 5

<http://www.anc.org.za/list.php?t=Manifesto> (accessed 19.10.11)

- (3) Strengthening and Broadening Social Protection Coverage – achieved through more equitable access to social security and health benefits, occupational safety and health, and improved workplace responses to the HIV/AIDS epidemic.²⁷⁶ The DWCP notes that although a lot has already been done to extend the coverage of social protection, there are still huge shortfalls in terms as a large percentage of people in the economic active population is not covered.²⁷⁷
- (4) Strengthening Tripartism and Social dialogue – especially through improved capacity of the tripartite plus social dialogue institution (and its constituent members), labour market institutions for effective social dialogue and sound industrial relations.²⁷⁸ Several challenges exist in the present collective bargaining environment such as decrease in the number of workers who are covered by bargaining councils, decline in union membership in some sectors and there is also a need to strengthen the capacity of workers and employers' organizations to engage in collective bargaining at all levels.²⁷⁹

One of the solutions to the problem of poverty in South Africa is to create employment opportunities that have the qualities of decent work. According to the ILO poverty is the result of a combination of factors and results from structural failures, ineffective economic and social systems, inadequate political responses, bankrupt policy imagination and insufficient international support.²⁸⁰ The Decent Work concept is a response to the problem of poverty by proposing an approach to economic growth that translates into fair and stable opportunities for the poor, particularly the working poor.²⁸¹ In theory at least, decent work provides a useful and flexible way of thinking about how to combine economic growth with social justice to ensure that development is sustainable and fair with the ultimate goal of reducing poverty taking into account the ILO's statement that "poverty anywhere constitutes a danger to prosperity everywhere" contained in the preamble of its Constitution. In these sense implementing the DWCP effectively will go a long way to contribute to poverty reduction efforts.

²⁷⁶ RSA *Decent Work County Programme* 21

²⁷⁷ At 9

²⁷⁸ At 21

²⁷⁹ At 16

²⁸⁰ ILO *Working out of Poverty* 1.

²⁸¹ At 33-35

The OECD maintains that employment creation and improving the coverage of social protection directly reduces poverty, stimulates the involvement of poor women and men in the economy and contributes to social cohesion and stability.²⁸² The OECD suggests various policies for improving productive employment in the informal economy including focusing on skills development, reducing risks for those working in the informal economy, reducing barriers and providing incentives for promoting and creating decent and formal jobs in the sector.²⁸³ Countries also need to promote small and medium sized enterprises and also enable a high growth rate of productive employment in the informal economy.²⁸⁴

Improving coverage of social protection also directly reduces poverty and helps to focus economic growth on poverty reduction, stimulates the involvement of poor people in society and protects the most vulnerable with an outcome of better social cohesion and stability.²⁸⁵ The OECD observes that by improving social protection coverage poverty is directly reduced through improved health outcomes, increased school attendance, hunger reduction and livelihoods promotion through provision essential support to vulnerable members of society who are unable to work.²⁸⁶

According to the DWCP, although the government does not have an employment policy and has not ratified the key ILO Convention on employment creation; it has put in place policies “geared towards addressing poverty, unemployment and broadening economic participation”.²⁸⁷ Some of the selected policies are discussed below.

(a) Skills Development

The government is focused on addressing the challenge of skills development in the country.²⁸⁸ The Skills Development Act and National Skills Development Strategy 2005-2010 provide a framework for strengthening skills of the South African workforce and the establishment of Sector Education and Training Authorities (Setas) in specific industries.²⁸⁹ The purpose of the Setas is to identify and address gaps in training.²⁹⁰

²⁸² OECD *Journal on Development* 22

²⁸³ At 22

²⁸⁴ At 22

²⁸⁵ At 11

²⁸⁶ At 12

²⁸⁷ RSA *Decent Work County Programme* 12

²⁸⁸ At 12.

²⁸⁹ At 12.

²⁹⁰ At 13.

(b) Addressing the challenges faced by the SMMEs is another strategy the government is taking in order to address poverty.²⁹¹ According to the DWCP the policy framework includes the Integrated Strategy on the Promotion of Entrepreneurship and Small Enterprises which seeks to improve the coordination and promotion of small business and the National Youth Enterprise Strategy aimed at ensuring that entrepreneurial skills, and experience among young women and men are nurtured and enhanced.²⁹² Improving the operation of cooperative enterprises has also been identified as key to job creation and poverty reduction.²⁹³

(c) Addressing HIV/Aids in the workplace

The government has also put in place a comprehensive policy and legislative framework to respond to the HIV/AIDS epidemic and the challenges that it presents.²⁹⁴ Various former interventions such as the Department of Labour's Code of Good practice on the Management of HIV/Aids in the workplace are still relevant although there is also a need for sector specific interventions.²⁹⁵

(d) Dispute resolution institutions: CCMA, Bargaining Councils, Labour Courts

Some of the challenges faced by dispute resolution systems is the high referral rate resulting in a back log of cases. The DWCP observes that Bargaining Councils accredited by the CCMA can perform this dispute resolution role as well in order to reduce the burden on the CCMA, often lack adequate resources to operate.²⁹⁶

(e) Amendment to current Labour Legislation (Labour Amendment Bills)

The Minister of Labour issued three Bills in December 2010. The Labour Relations Amendment Bill, the Basic Conditions of Employment Amendment Bill, the Employment Equity Act Amendment Bill and the Employment Services Bill. All three Bills have the achievement of decent work as an objective. According to Benjamin the bills "contain provisions that aim to ensure that vulnerable categories of workers receive adequate protection and are employed in conditions of decent work, by regulating sub-contracting, contract work and outsourcing".²⁹⁷

²⁹¹ At 13.

²⁹² At 13.

²⁹³ At 13.

²⁹⁴ At 13

²⁹⁵ At 14.

²⁹⁶ At 17.

²⁹⁷ Benjamin *Regulatory Impact Assessment of Selected Provisions of the: Labour Relations Amendment Bill, 2010 Basic Conditions of Employment Amendment Bill, 2010 Employment Equity Amendment Bill, 2010 Employment Services Bill, 2010* 12

6.2 Decent Work as a national Development Objective: The New Growth Path

The ILO is of the opinion that the Decent Work Agenda can be directly linked to development.²⁹⁸ According to Majid, decent work as a development objective is about improvements in the lived life of persons inhabiting the world of work and how the improvements start to cause a person to achieve a decent life.²⁹⁹ Thus although ultimately the achievement of decent work involves various policy interventions that are country specific, the measure of development is whether there is ultimately a change in the lives of the people.³⁰⁰

One such policy interventions in South Africa is a new growth path which has been suggested that is premised on addressing socio – economic needs by creating decent work, reducing inequality and ultimately defeating poverty.³⁰¹ The New Growth Path (NGP) aims to create 5 million jobs by 2020 and to bring about a more inclusive labour – absorbing and efficient economy. This is to be achieved through a mix of direct government job creation, social – democratic consensus building and macroeconomic, labour and industrial policies.

The growth path proposes strategies:

- i. To deepen the domestic and regional market by growing employment, increasing incomes and undertaking other measures to improve equity and income distribution, and
- ii. To widen the market for South African goods and services through a stronger focus on exports to the region and other rapidly growing economies.³⁰²

The job drivers identified in the document include:

- Substantial public investment in infrastructure both to create employment directly, in construction, operation and maintenance as well as the production of inputs, and indirectly by improving efficiency across the economy.
- Targeting more labour-absorbing activities across the main economic sectors – the agricultural and mining value chains, manufacturing and services.
- Taking advantage of new opportunities in the knowledge and green economies.
- Leveraging social capital in the social economy and the public services.

²⁹⁸ ILO *Working Out of Poverty* 3.

²⁹⁹ Majid *Economic growth, social policy and decent work* 2

³⁰⁰ At 2

³⁰¹ RSA *New Growth Path: Executive Summary* 1.

³⁰² At 8

- Fostering rural development and regional integration.³⁰³

Although the New Growth Path has been criticised as being another utopian dream, the point is that if its vision and proposals can be realised, many decent jobs will indeed be created.³⁰⁴

6.3 Other suggestions and recommendations

Addressing unemployment in South Africa is an urgent matter as the increasing unemployment results to poverty and hopelessness not forgetting the increase in social evils such as crime. Addressing unemployment is a challenge that South Africa has been unable to deal with despite experiencing positive economic growth.

As highlighted, the concern is not only unemployment in South Africa but also that conditions of work for those who are employed still leave much to be desired. Most of those who work still live in poverty. There need to be aggressive policies that emphasise the creation of decent work from the onset. Some of these policies would include:

(a) Promoting decent work especially for women and the youth

Women and the youth are most affected by unemployment and poverty. There needs to be more comprehensive policies that are specifically geared towards dealing with unemployment among these groups.

Research has shown that although many young people are staying longer in education – this has not sufficed to improve their employment prospects. What is needed therefore is emphasising an education where young people are encouraged to pursue entrepreneurial activities in order to create jobs for themselves. The education system needs to be more focused not on finding formal employment but rather encouraging the youth to utilise their skills and talents to pursue their interests and turn them into a source of livelihood. Factors that cause women to be mostly affected such as cultural norms, family – life balance among others also need to be investigated and addressed.

³⁰³ At 9-10.

³⁰⁴ See Natrass 2011, “The new growth path: Game Changing Vision or Cop – out” and Simkins 2011, “A New Growth Path or a New Frustration”

(b) Managing and modernising labour market regulation

Research shows that atypical employment results partly from a too rigid labour market which makes it hard for employers to hire and fire at will. More reform in labour regulation is needed taking into account that the world of work is changing and has already changed a great deal due to technological advancement and also globalisation. Time Magazine³⁰⁵ did a feature in 2009 on the future of work and observed among other things that: In the new world of work, we will see less 'permanent' employment contracts and even less job security and employer contributed post retirement pensions. Another feature of these new forms of work is that work will no longer be defined by where it is performed. Work will be performed flexitime and can be done anywhere, at home, in transit or even in another country. In this sense, contract employment where people are paid for results rather than for turning up for work will be more prevalent and acceptable as people will be more career focused and loyal to their careers rather than their employers. Because of technological advances, jobs will exist that do not exist now. Labour laws need to be adjusted in order to accommodate these new forms of work, employment contracts and employer – employee relationships. These new forms of work are already been seen more and more in developed countries and are fast becoming a norm in the world of work. Although the debate as to whether Labour Brokers should be outlawed, the argument is that some of these new forms of work will bear features of labour broking and hence instead of outlawing the labour brokers altogether, legislation needs to be modernised to accommodate them so as to ensure workers are not exploited.

(c) Extending the coverage of social protection cannot be emphasised enough.

This has been acknowledged in various policy documents and the recommendations made by the Taylor commission in 2002. There is evidence that shows that much still needs to be done in order to extend coverage. According to the Taylor commission, a comprehensive system of social security is "broader than the traditional concept of social security and incorporates development strategies and programmes designed to ensure collectively at least a minimum acceptable standard of living for all citizens". " It embraces the traditional measures of social insurance, social assistance, can offer social services but goes further to focus on causality through an integrated policy approach including many of the developmental initiatives undertaken by the state".³⁰⁶

³⁰⁵ Godin "The Future of Work" *Time* (14.5.2009)

http://www.time.com/time/specials/packages/article/0,28804,1898024_1898023_1898077,00.html

(accessed 6.12.11)

³⁰⁶ RSA *Taylor Commission Report* 41.

- (d) Giving a fishing rod rather than a fish (Discouraging South Africans from relying on social welfare)

The present system of social grants I argue creates dependency and will not work in the long run. Research shows that the present grant system reaches over 12 million people through five major grants (Old Age Pension, Disability Grant, Child Support Grant, Foster Child Grant and Care Dependency Grant). The problem with the system is that it is not sustainable and there is no grant that can offer long-term permanent relief from financial burden. The suggested BIG (Basic Income Grants) which suggests that all people receive a monthly income will not work either. Research shows that even the means tested method of issuing social grants is also flawed with grants failing to reach those who are most in need of them. The only form of permanent relief from the problem of poverty is decent jobs which the country can begin to achieve through the measures above. There needs to be a change in focus where grants are only given to those who are completely unable to provide for themselves. For the rest who are healthy and able to work, there needs to be initiatives that encourage them to join the labour market at any level. Even for the older persons who are still able to work, extending the retirement age can also reduce the dependency on social grants.

6.4 The Informal Sector

The informal sector is an important part of economic activities in South Africa and a lot of effort needs to be made in improving jobs in the sector to become decent jobs and to ensure that new jobs created are decent jobs. This will involve researching and dealing with the issues that affect businesses in the informal sector such as infrastructure, finances among others. Labour Legislation needs to be made less restrictive so as to ensure that they are suitable for this sector which usually cannot meet some of the basic conditions of employment that are prescribed by present legislation.

Chapter Seven

7.1 Conclusions

As already mentioned, poverty is a multifaceted phenomenon for which there isn't one single solution. Despite the bill of rights and the right to social security, for most South Africans mounting poverty and poverty wages, increasing job insecurity, lack of a decent education, of access to healthcare, housing and other basic needs and ultimately a decent life is all they have ever experienced. Achieving the goal of decent work for all is a big part of the solution to these problems.

From the discussion it is clear that various social – economic challenges continue to impede on the achievement of the Decent Work Agenda in South Africa. The ILO's mantra that decent work is the main route out of poverty and social exclusion remains one of the most viable options of dealing with the socio – economic challenges. Decent work plays an important role in helping to achieve sustainable growth, full employment and poverty reduction. The promotion of the Decent Work Agenda in South Africa should focus on both the informal and formal economy in order to be able to reduce the decent work deficits and also reduce poverty which is deep and wide spread.

Decent work deficits are mostly experienced by workers who are in the informal economy. The ILO has explored widely the link between poverty reduction and decent work for instance in the Director-General's Report to the International Labour Conference 2003 (Working out of Poverty). The achievement of decent work in order to reduce poverty is therefore grounded in the objectives of the ILO to pursue social justice for all. Decent jobs result in decent incomes which in turn improves the quality of life of workers and their dependents.

For decent work to be realised in South Africa there needs to be realisation that this is not a goal to be achieved at once but rather that various policies need to be put into place to facilitate the progressive realisation of decent work. It also needs to be realised that demanding that the government create a certain number of jobs is unreasonable unless the labour market and the economy are growing relative to the number of jobs that need to be created. A key factor that government needs to consider which will go a long way in contributing to the achievement of decent work is the modernisation of labour law to comply with the changing world of work and also making labour laws more flexible so that they are applicable even to informal businesses. The present laws are not flexible and thus cause many employers to circumvent them rather than make an effort to comply and not make any

profit. Less rigid laws will also accommodate new forms of work and improve labour productivity.

In order for decent work to have an impact, it needs to be incorporated more into policy and also in Legislation. This is already taking shape in South Africa and one example here is the proposed Labour Amendment Bills. The standards that the ILO has set in through decent work have become a reference point for many dimensions of work and also a major influence in policy development. The government has reiterated its commitment to the achievement of Decent Work. Most important however is the creation of employment. Government policy needs to be more realistic in its policies as in the achievement of decent work, various aspects need to take place simultaneously and therefore policies need to be well thought so that they are sustainable and long-term rather than focused on providing temporary relief which is what measures such as the government's Public Works Programmes are. There should be a goal to create decent jobs from the onset rather than creating jobs and then trying to upgrade them to decent jobs later. What will work more effectively is incorporating the decent work concept in all policy areas so as to ensure that jobs created are decent jobs.

There also needs to be a focus on International Labour Standards and the ratification of key conventions that have not been ratified. Equally important is the enforcement of the Conventions that have already been ratified, as the study has shown, sometimes the realization of standards already set is out of reach. For instance, there are still many children involved in child labour despite South Africa having ratified the relevant convention (C182 Worst Forms of Child Labour Convention, 1999).

Finally, although achievement of decent work relies to a large extent on government policy, decent work is not an endeavour the government can achieve alone. The different social partners and South Africans in general have a role to play in the achievement of decent work. Employers have a major role to play in the implementation of the principles of decent work by adhering to labour legislation and international standards. While trade unions rather than 'demand' decent work from the government need to also play an active role in the attainment of decent work. Historically trade unions in South Africa spearheaded the workers struggle and can still continue to do so by participating in national development planning and promoting improved working conditions to achieve decent work especially by improving representation for vulnerable workers in the informal economy. These roles have been emphasised in most work that focuses on how to achieve decent work.

With regard to unemployment, there needs to be more policies that facilitate the creation of jobs so as to reduce poverty among those outside the labour market especially the most vulnerable groups – women and young people. South Africans also need to be more aggressive also in taking ownership of their lives and deal with the obstacles that hinder them from obtaining decent work. For instance if lack of enough training is a factor hindering one from finding work, one should seek opportunities to upgrade the level of skills so as to stand a better chance. An entrepreneurial culture should also be encouraged and taught even in the school system. Measures are also needed to periodically evaluate government policy to see if they are working as there is evidence that previous policy measures have failed to make significant impact. The Decent Work Country Programme, The New Growth Path, the proposed Labour Amendment Bills and other similar initiatives that emphasise the attainment of Decent Work should be effectively implemented, monitored and re-evaluated if need be to ensure that they indeed serve to reduce decent work deficits, reduce poverty and overall improve working conditions for workers.

BIBLIOGRAPHY

BOOKS

Basson, A; Christianson, M; Garbers, C; Le Roux, P; Mischke, C; Strydom, EML *Essential Labour Law* 4th ed (2005) Labour Law Publications.

Du Toit, D; Bosch, D; Murphy, D; Woolfrey, D; Godfrey, S; Cooper, C; Giles, G; Bosch, C; Rossouw J *Labour Relations Law: A Comprehensive Guide* 5th ed (2006) LexisNexis Durban.

Ghai, D (ed) *Decent Work Objectives and Strategies* (2006) ILO Geneva.

Ishikawa, J *Key Features of National Social Dialogue: a Social Dialogue Resource Book* (2003) ILO Geneva.

Orwell, G *Animal Farm* 1945 2

Accessed online at

http://books.google.co.za/books?id=RJcBeywz9uMC&printsec=frontcover&dq=animal+farm+george+orwell&hl=en&ei=wQXnToK1GY-XhQeP9IzrCg&sa=X&oi=book_result&ct=book-thumbnail&redir_esc=y#v=onepage&q=animal%20farm%20george%20orwell&f=false on 6/10/11

ILLS *Pedagogical Materials on Decent Work* 2006 85

JOURNALS

Egger, M "Towards a Policy Framework for Decent Work" 2002 ILR 162 166

Natrass, N "The new growth path: Game changing vision or cop-out?" 2011 107 3/4 SAJS 1

Kulke, U "The present and future of ILO Standards in realising the right to Social Security" 2007 60 *International Social Security Review* 119 126

O'Brien, R; Pursey, S Prugl; E, Langille, B; Smith A & Horton C "A South African View of the ILO's Effectiveness" 2 *Global Social Policy* 2002 5 16

Cichon, M and Hagemejer, K "Changing The Development Policy Paradigm: Investing in a Social Security Floor for All" 2007 *International Social Security Review* 169 183.

Webster “‘There shall be work and security’: utopian thinking or a necessary condition for development and social cohesion?” 2010 72/73 *Transformation: Critical Perspectives on Southern Africa* 225 230

Samson, M “When public works programmes create ‘second economy’ conditions” 2007 37 *Africanus* 244 245.

ILO POLICIES AND REPORTS

Constitution of the International Labour Organisation of 1919
<http://www.ilo.org/ilolex/english/constq.htm> (accessed 16.7.10)

ILO *An ILO code of practice on HIV/AIDS and the World of Work* (2001) 1
http://www.ilo.org/public/libdoc/ilo/2001/101B09_133_engl.pdf (accessed 13.10.11)

ILO *A New Era of Social Justice* (100TH Session of the International Labour Conference (2011))
http://www.ilo.org/wcmsp5/groups/public/---ed_norm/-relconf/documents/meetingdocument/wcms_155656.pdf (accessed on 8.10.11)

<http://www.ilo.org/public/english/support/lib/century/sources/sources1944.htm> (accessed 7.7.10)

ILO *Decent Work* (87TH Session of the International Labour Conference (1999)) 3-4.
<http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm> (accessed on 19.10.11)

ILO *Decent Work and the Informal Economy* (90TH Session of the International Labour Conference (2002)) 3.
Available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-vi.pdf> (accessed on 19.10.11)

ILO *Decent Work in Agenda in Africa: 2007 - 2015* (Report by the Director-General for Eleventh African Regional Meeting Addis Ababa (2007)) 7

ILO *Declaration on Social Justice for a Fair Globalization* (97TH Session of the International Labour Conference (2008))10

http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_099766.pdf (accessed 17.10.11)

ILO *Declaration on Fundamental Principles and Rights at Work* (86TH Session of International Labour Conference (1998))

http://www.ilocarib.org.tt/projects/cariblex/pdfs/ILO_Declaration_Work.pdf (accessed on 16.07.11)

ILO *Gender Equality at the heart of Decent Work* (98TH Session of International Labour Conference (2009)) 3.

http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_105119.pdf (accessed 20.10.11).

ILO *Global Employment Trends* (2010) 9

International Labour Organisation '*Reducing the Decent Work Deficit: A Global Challenge*' Report by the Director-General for the International Labour Office, 89TH Session (2001) 5
Available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc89/rep-i-a.htm> (accessed 13.10.11)

ILO *Working Out of Poverty* (91ST Session of the International Labour Conference (2003)) 7.
www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-i-a.pdf (accessed on 8.10.11)

ILO *Social Security: A New Consensus* 8

ILO "Resolution and Conclusions concerning social security (89TH Session of the International Labour Conference (2001))" in *Social Security: A New Consensus* (2001) 1

Rogers, G "Decent work as a goal for the global economy" International Labour Organisation 7

http://www.world-governance.org/IMG/pdf_Rodgers_-_Decent_Work_as_a_Goal-2.pdf
(accessed 10.10.11)

REPORTS

Altman, M *What are the policy implications of the 'informal sector' becoming the 'informal economy'* (2007) Concept paper prepared for IZA/WB Conference on Employment & Development Germany, June 8 & 9 12.

http://www.hsrc.ac.za/research/output/outputDocuments/4742_Altman_Whatarethepolicyimplications.pdf (accessed 16.10.11).

Benjamin, P *Informal Workers and Labour Rights in South Africa* Paper presented at a conference on *The Regulatory Environment and its Impact on the Nature and Level of Economic Growth and Development in South Africa* in 2008 3-5

http://www.dpru.uct.ac.za/Conference2008/Conference2008_Papers/Paul_Benjamin_INFORMAL%20WORK%20AND%20LABOUR%20RIGHTS%20IN%20SOUTH%20AFRICA.pdf

Benjamin, P *Labour Market Regulation: International and South African Perspectives 2005* Employment & Economic Policy Research Programme Human Sciences Research Council

Benjamin, P *Regulatory Impact Assessment of Selected Provisions of the: Labour Relations Amendment Bill, 2010 Basic Conditions of Employment Amendment Bill, 2010 Employment Equity Amendment Bill, 2010 Employment Services Bill, 2010* 2010 12

BUSA Submission to the Parliamentary Portfolio Committee on 26 August 2009 2 (copy requested from BUSA)

Chen, M *Rethinking the Informal Economy: Linkages with the Formal Economy and the Formal Regulatory Environment* DESA Working Paper No. 46 2007 3-4.

Available at http://www.un.org/esa/desa/papers/2007/wp46_2007.pdf (accessed 22.10.11)

Anker, R; Chernyshev, I; Egger, P; Mehran F & Ritter J *Measuring Decent Work with Statistical Indicators* (2003) Working Paper No. 2 Policy Integration Department Statistical Development and Analysis Group ILO Available at http://www.ilo.org/wcmsp5/groups/public/-/dgreports/-/integration/documents/publication/wcms_079089.pdf (accessed 17.06.11)

COSATU Submission to the Parliamentary Portfolio Committee on 26 August 2009. <http://www.cosatu.org.za/show.php?ID=2237> (accessed on 14.07.11)

COSATU *Towards a COSATU Living Wage Conference: A NALEDI Research Report* June 2011 9 http://www.cosatu.org.za/docs/reports/2011/naledi_research_paper.pdf (accessed 23.10.11)

Development Policy Research Unit Policy Brief Series *The State of Collective Bargaining in South Africa: An Empirical and Conceptual Study of Collective Bargaining* 2008

ITUC *Decent Work, Decent Life for Women: Trade Unions Taking The Lead for Economic and Social Justice & Equality* Discussion Guide 1st Women's Conference 19-12/10/09 39

Leibbrandt, M Woolard, I; Finn A & Argent, M *Trends in South African Income Distribution and Poverty since the Fall of Apartheid* Social, Employment and Migration Working Papers No. 101 (2010). Available at http://www.oecd-ilibrary.org/social-issues-migration-health/trends-in-south-african-income-distribution-and-poverty-since-the-fall-of-apartheid_5kmms0t7p1ms-en (accessed 6.6.11)

Majid, N *Economic Growth, Social Policy and Decent Work* ILO Employment Paper 2001/19 1
http://www.ilo.org/wcmsp5/groups/public/@ed_emp/documents/publication/wcms_142345.pdf (accessed 18.07.11)

OECD *Economic Surveys: South Africa* 2010 93
http://www.treasury.gov.za/comm_media/press/2010/2010071901.pdf (accessed 12.07.11)

OECD *Promoting Pro Poor Growth: Employment and Social Protection* 2009 17-18
<http://www.oecd.org/dataoecd/63/8/43514582.pdf> (accessed on 10.10.11)

RSA 11TH Annual Report of the Commission for Employment Equity 2010-2011 5.
Available at <http://www.info.gov.za/view/DownloadFileAction?id=148340> (accessed 11.10.11)

RSA *Decent Work County Programme* 2010

RSA Department of Labour *Proposed Amendment Bills* 17.12.2010

RSA Government *The New Growth Path* 2011
<http://www.info.gov.za/view/DownloadFileAction?id=135748> (accessed on 6.6.11)

RSA *Transforming the Present protecting the future* Consolidated Report of of the Taylor Committee into a social security system for South Africa (2002) 39.

RSA *National HIV Survey* (2008)
<http://www.avert.org/safricastats.htm> (accessed 12.10.11)

RSA Quarterly Labour Force Survey (2008) 7.

<http://www.statssa.gov.za/publications/P02111/P021112008.pdf> (accessed on 20.10.11).

Statistics South Africa Key Indicators 2ND Quarter 2011 Available at <http://www.statssa.gov.za/keyindicators/keyindicators.asp> (accessed 18.10.11)

Triegaardt, J *Transformation of social security in South Africa: Accomplishments and challenges for partnerships in development* 2007 2 Available at <http://www.dbsa.org/Research/Documents/Accomplishments%20and%20challenges%20for%20partnerships%20in%20development%20in%20the%20transformation%20of%20social%20security%20in%20South%20Africa.pdf>

Use of International Law by Domestic Courts: Compendium of Court Decisions, ILO 2006.11-16 Available at http://training.itsilo.it/ils/ils_judges/training_materials/english/ENG_Legal%20Research_Final_July2006.pdf (accessed on 10.06.11)

Webster, E; Benya, A; Dilata, X; Joynt, K; Ngoepe, K & Tsoeu, M *Making Visible the Invisible: Confronting South Africa's Decent Work Deficit* 2008 Policy research report prepared for the Department of Labour by the Sociology of Work Unit, University of the Witwatersrand, Johannesburg

Wills, G *South Africa's Informal Economy: A Statistical Profile* WIEGO Urban Policies Research Report 2009 No. 7 20 http://www.inclusivecities.org/research/RR7_Wills.PDF (accessed on 23.10.11)

Women on Farms Project & Centre for Rural Legal Studies *Going for Broke A Case Study of Labour Brokerage on Fruit Farms in Grabouw* (2009) 5.

World Bank World Development Report 2000/2001 *Attacking Poverty* (2000) 1- 2 <http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/overview.pdf> (accessed on 10.10.11)

UNAIDS Report on The Global AIDS epidemic 2010 Annexes 16

http://www.unaids.org/documents/20101123_GlobalReport_Annexes1_em.pdf (accessed 10.10.11)

United States Department of Labor Bureau for International Labor Affairs *Findings on the Worst Forms of Child Labor* (2011) 692.

<http://www.dol.gov/ilab/programs/ocft/PDF/2010TDA.pdf> (accessed 22.10.11).

ELECTRONIC RESOURCES

African National Congress Manifesto 2009 5

Available at <http://www.anc.org.za/list.php?t=Manifesto>

Brand J “Decent Work has a solid basis in law but lacks application”

<http://www.businessday.co.za/articles/Content.aspx?id=142112> 9.5.2011 (accessed on 10.5.2011)

<http://www.oxforddictionaries.com>

Expanded Works Programmes

<http://www.epwp.gov.za/index.asp?c=Welcome>

ILO Website

<http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>

Sizwe samaYende, Child Labour Uncovered in South Africa – African Eye News Service

http://www.afrol.com/News2001/sa026_childlabour_raid.htm (accessed 20.10.11)

SPEECHES

Oliphant, M Labour Minister’s Address to the Annual Labour Policy Conference held in Pretoria, on Monday (Jan 24 2011). Speech Available at <http://www.labour.gov.za/media-desk/speeches/2011/speech-by-the-minister-of-labour-mildred-nelisiwe-oliphant-at-the-annual-labour-policy-conference>

Somavia, J ILO Director – General’s Address on World Day for Social Justice 2011 “Time for a new era of social justice based on decent work” Available at

http://www.ilo.org/global/about-the-ilo/press-and-media-centre/statements-and-speeches/WCMS_151708/lang--en/index.htm (accessed 8.10.2011)

Somavia, J Address by the Secretary-General of the International Labour Conference 1 June 1999 “Decent Work” Available at

<http://www.ilo.org/public/english/standards/relm/ilc/ilc87/a-somavi.htm> (accessed 10.10.2011)

Vavi, Z Cosatu General - Secretary message of solidarity to the SACP at the rally to celebrate the SACP 90th anniversary on 13.06.11

Available at <http://www.cosatu.org.za/show.php?ID=5253> (accessed on 19.10.11)

Webster, E “The current global crisis – what are the fundamental questions?” Public Lecture Presented at NMMU on 5.5.2009 Available at

<http://www.nmmu.ac.za/documents/lectures/Edward%20Webster%20Public%20Lecture.pdf>

Zuma, J President of the Republic of South Africa “State of the Nation Address” on 3.6.2009

Available at <http://www.info.gov.za/speeches/2009/09060310551001.htm> (accessed 8.10.11)

Zuma President of the Republic of South Africa “State of the Nation Address” on 11.2.2010

Available at

<http://www.info.gov.za/speeches/2010/10021119051001.htm> (accessed 8.10.11).

TABLE OF STATUTES

Basic Condition of South Africa Act 75 of 1997

Employment Equity Act 55 of 1998

Labour Relations Act 28 of 1965

Labour Relations Act 66 of 1995

(Source: ILOLEX - 1. 11. 2011)

Appendix

Convention	Ratification date	Status
C2 Unemployment Convention, 1919	20:02:1924	ratified
C19 Equality of Treatment (Accident Compensation) Convention, 1925	30:03:1926	ratified
C26 Minimum Wage-Fixing Machinery Convention, 1928	28:12:1932	ratified
C27 Marking of Weight (Packages Transported by Vessels) Convention, 1929	21:02:1933	ratified Conditional ratification
C29 Forced Labour Convention, 1930	05:03:1997	ratified
C42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	26:02:1952	ratified
C45 Underground Work (Women) Convention, 1935	25:06:1936	ratified
C63 Convention concerning Statistics of Wages and Hours of Work, 1938	08:08:1939	ratified
C80 Final Articles Revision Convention, 1946	19:06:1947	ratified
C87 Freedom of Association and Protection of the Right to Organise Convention, 1948	19:02:1996	ratified
C89 Night Work (Women) Convention (Revised), 1948	02:03:1950	ratified
C98 Right to Organise and Collective Bargaining Convention, 1949	19:02:1996	ratified
C100 Equal Remuneration Convention, 1951	30:03:2000	ratified
C105 Abolition of Forced Labour Convention, 1957	05:03:1997	ratified

C111 Discrimination (Employment and Occupation) Convention, 1958	05:03:1997	ratified
C116 Final Articles Revision Convention, 1961	09:08:1963	ratified
C138 Minimum Age Convention, 1973	30:03:2000	ratified
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	18:02:2003	ratified
C155 Occupational Safety and Health Convention, 1981	18:02:2003	ratified
C176 Safety and Health in Mines Convention, 1995	09:06:2000	ratified
C182 Worst Forms of Child Labour Convention, 1999	07:06:2000	ratified