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THE LABOR SECTOR AND U.S. FOREIGN ASSISTANCE GOALS

SOUTH AFRICA LABOR SECTOR ASSESSMENT

FEBRUARY 2010

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DISCLAIMER

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government

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ACRONYMS

ANC	African National Congress
ASGISA	Accelerated Shared Growth Initiative of South Africa
BCEA	Basic Conditions of Employment Act
BUSA	Business Unity South Africa
CCMA	Commission for Conciliation, Mediation, and Arbitration
CLS	Core Labor Standard
CoLSA	Country Labor Sector Assessment
COSATU	Congress of South African Trade Unions
DRL	Bureau of Democracy, Human Rights, and Labor (United States)
DTI	Department of Trade and Industry
ECC	Employment Conditions Commission
EEA	Employment Equity Act
EPWP	Expanded Public Works Program
FAF	Foreign Assistance Framework
FAWU	Food and Agricultural Workers' Union
FEDUSA	Federation of Unions of South Africa
GEAR	Growth, Employment, and Redistribution Strategy
ILAB	International Labor Affairs Bureau (United States Department of State)
ILO	International Labor Organization
LaSSO	Labor Sector Strategic Outlines
LRA	Labor Relations Act
MLC	Millennium Labor Council
MQA	Mining Qualifications Authority
NACTU	National Council of Trade Unions
NALEDI	National Labor and Economic Development Institute
NEDLAC	National Economic Development and Labor Council
NGO	Nongovernmental Organization
NUM	National Union of Mineworkers
NUMSA	National Union of Mineworkers of South Africa

PSKD	Partnership for Skills Development
RDP	Reconstruction and Development Program
SACCAWU	South African Commercial, Catering and Allied Workers' Union
SACP	South African Communist Party
SADC	Southern African Development Community
SADSAWU	South African Domestic Service and Allied Workers Union
SANCO	South African National Civics Organization
SETA	Sectoral Education Training Authority
SME	Small and Medium Enterprise
SWEAT	Sex Worker Education and Advocacy Taskforce
USAID	United States Agency for International Development
USG	United States Government

EXECUTIVE SUMMARY

South Africa's Labor Sector

The Republic of South Africa, with its ethnic and cultural diversity, its strong commitments to democratic functioning, and its current and emerging role in regional and global contexts, is a critical partner for the United States in southern Africa. The challenges of poverty and inequality persist in South Africa, 15 years after the attainment of democracy. U.S. foreign assistance to South Africa currently focuses on several issues related to goal of reducing the vast disparity of resources, education, and economic opportunity. The labor sector is implicated at all levels of this work. In part, this is because programming in any of these areas must negotiate intense national debate related to unemployment, labor market policy, and access to justice for vulnerable workers. In addition, labor organizations play an extremely important role in national debate, influencing public opinion as well as policy through multiple channels.

Legal Framework

The South African legal framework for labor protection is very progressive for a developing country. South Africa has entrenched the right to fair labor practices in the Bill of Rights, a rare feature in any country's constitution. South Africa has also ratified all of the International Labor Organization's core conventions, and its labor legislation conforms to and gives effect to these norms. The Labor Relations Act not only facilitates, but promotes and encourages collective bargaining as a means of determining terms and conditions of employment and ensuring industrial peace and stability. In addition, the Basic Conditions of Employment Act is important for setting a minimum floor for all workers to prevent abuse and exploitation by employers. Also, the Employment Equity Act—with its prohibition of discrimination and requirements for employers to take affirmative action measures—is a critical legislative tool to bring about equality in the workplace.

Several experts interviewed by the team that prepared this report indicated gaps at various levels, however. Some pointed out that, since the entire framework of law had been negotiated by big government, big business and big labor, it did not shape policy addressing critical labor market issues such as SMEs and apprenticeship/ traineeship programs. Many are dissatisfied with the approach to collective bargaining adopted by the Labor Relations Act. While the promotion and facilitation of collective bargaining is listed as one of the main purposes of the legislation, the LRA actually removed a judicially imposed duty to bargain by significantly narrowing what may be considered an unfair labor practice. A number of voices are urging that the legal framework, as it stands, inadequately protects a range of atypical workers. In some cases, nongovernmental organizations, rather than unions have taken the lead on highlighting weaknesses.

Government Institutions

The South Africa Department of Labor administers the bulk of legislation related to labor issues and is responsible, through its labor inspectorate, for enforcement. The department also has much of the responsibility for developing strategies for reducing unemployment, poverty, and inequality through policies and programs developed in consultation with social partners. One of the weaknesses of the Department of Labor is its limited enforcement capacity. The department also currently supervises the Commission for Employment Equity and the National Skills Authority. Other relevant government departments include the Department of Public Works, the Department of Social Development, the Department of Higher Education and Training, and the Department of Economic Development.

Most labor disputes in South Africa must be addressed through a process of conciliation, arbitration, or con-arbitration instead of, or prior to, an approach to the Labor Court. South Africa maintains a separate court system to deal with the interpretation and application of labor legislation. The major concern about the operation of the court—including from judges themselves—is speed and access.

A notable feature of labor regulation in South Africa is the presence of a tripartite social dialogue institution, the National Economic Development and Labor Council (NEDLAC), which came into existence as a consequence of the National Economic Development and Labor Council Act. NEDLAC's functions are to promote the goals of economic growth, to seek to reach consensus and conclude agreements on matters of social growth policy, to consider all proposed labor legislation before it is submitted to government, and to consider all significant changes to social and economic policy before implementation.

The labor sector assessment has found that the Government in South Africa has established innovative institutions and mechanisms to address challenges in its labor market. However, a number of weaknesses have been identified, and a key challenge is the lack of adequate financial and human resources to ensure the implementation and enforcement of legislation and the full operation of institutions. This was particularly the case with the labor inspectorate and NEDLAC, and to some extent, the Labor Court.

Labor Sector Organizations

South Africa's trade union movement has sought to defend and protect the rights of its members in the following ways:

- Represent labor in bargaining councils and other non-statutory bargaining fora;
- Represent labor in workplace consultations with employers in matters such as workplace restructuring and training;
- Represent labor in high-level fora such as NEDLAC;
- Lobby and advise government on proposed legislation and policies that affect workers;
- Educate workers about their rights and disseminate industry-related information to workers;
- Represent workers in disciplinary hearings;
- Litigate on behalf of members in the Labor Court and higher courts; and
- Conduct and commission research on challenges faced by workers and the union movement.

Despite its many successes and achievements, the South African labor movement faces a number of challenges. One is that trade unions have been unable to cope with changes in the nature and organization of work, such as firm restructuring resulting in massive retrenchments and the greater use of temporary and casual labor and outsourcing. It would also be important to note trade unions' failure to adapt to the changing demographics of the workforce and to effectively organize women, young workers, atypical workers, service sector workers, and migrant workers that together comprise a substantial proportion of the workforce.

Other active labor sector organizations include employers' organizations and civil society organizations. The South African labor system does not place significant obstacles in the way of the formation or functioning of employers' organizations. There is no legal requirement that employers' organizations register with the Department of Labor, although they are encouraged to do so. A challenge identified for prominent employer organizations is that they are largely dominated by big business and are not representative of the needs and interests of small business at the policy-making level. Over the years, civil

society organizations have played an important role in addressing issues that directly and indirectly affect workers, the poor, and the marginalized in South Africa, including unemployment, access to social security, labor migration, service delivery, and access to socio-economic rights. They have done so through research, dissemination of valuable information, awareness raising campaigns, participation in public debates, and submissions on existing and proposed legislation and policies. Civil society organizations have thus played a critical part in filling the gaps through their work among workers that have been neglected by trade unions, which include child workers, sex workers, and migrant workers. Despite its contribution to protecting the rights of vulnerable workers, civil society has been marginalized in NEDLAC, where it is only represented in one chamber. To some extent, this deficiency has been corrected through collaboration with the trade union movement.

In sum, trade unions and civil society organizations have played a key role in representing and championing the interests of workers in South Africa. Trade unions have voiced and defended the rights of workers in various fora, including the workplace, the Commission for Conciliation, Mediation, and Arbitration, the Labor Courts, and higher level structures such as NEDLAC. However, trade unions have largely concentrated power at the top level and failed to consult with and report to middle and floor level union officials in negotiation and policy roles. Union officials responsible for high level negotiations in fora such as NEDLAC also lack the technical and policy analysis skills to articulate the needs and interests of workers and argue for approaches that are beneficial to workers.

Labor Market

Unemployment in South Africa has a strong racial dimension, as the overwhelming majority of the low-skilled unemployed are black. This is a legacy of the apartheid regime that created a discriminatory system wherein white children received education superior to that of black children. Secondly, economic analysis has demonstrated that the unemployment crisis is partly attributable to a “skills mismatch” in South Africa. Growth in the labor-intensive primary sector (agriculture and mining) and manufacturing activity has declined, while the skills- and capital-intensive sectors have witnessed exponential growth. These structural shifts in the economy have led to lower demand for unskilled and low-skilled labor and increased demand for semi-skilled and highly skilled workers. This skills mismatch in the labor market has fuelled high unemployment among the unskilled and low wages among those unskilled workers who are fortunate enough to find employment.

Access to the labor market thus presents a formidable challenge, particularly for a substantial portion of the unemployed that is largely comprised of black unskilled workers. This is particularly troubling given the high number of vacancies for jobs requiring workers with medium and higher levels of skills and expertise. While the Expanded Public Works Program (the government’s public works program) has contributed to the creation of some employment opportunities, these are of limited duration, and it is doubtful whether the program has made much progress toward bridging the critical skills gap. Arguably, addressing the challenges presented by migrant labor will entail a consideration of South Africa’s skills shortage and the potential contribution of migrant workers in this regard.

Role of the Labor Sector in Overarching Development Themes

Although South Africa has come a long way in terms of societal transformation, much still needs to be done to address the high levels of poverty and inequality that are endemic in the country. Measures to address these challenges must be directed toward increasing the level, quality, and security of employment. This will require the strengthening and (where necessary) improvement of policies and structures that play a role in advancing and protecting workers’ interests.

This labor sector assessment clearly indicates that there could be significant synergies between development themes *within* the broad category of democratic governance, with labor sector organizations mobilizing and propelling the connections. For example, rule of law programming that empowers workers

through rights awareness processes and better implementation of judgments would in turn promote better governance by giving voice to a new set of actors with an interest in monitoring institutions. Such processes would also deepen and strengthen social dialogue, which is critical (especially in the South African context) for governance and consensus-building objectives. Similarly, within economic growth contexts—again, speaking generally—there are many potential synergies: investing in workers at the level of education and training would clearly lead to gains at the level of private sector competitiveness, for example. However, the most interesting tensions, and potentially productive synergies, present themselves *across* democratic governance/ economic growth objectives. In the South African context, support for private sector competitiveness and macroeconomic policy formulation that is heavily focused on small and medium enterprise (SME) development could potentially have the impact of eroding trade union strength and trade union rights in those sectors, undermining key human rights and democracy objectives.

The South African context is perhaps predisposed to fostering programmatic synergies between democratic governance and economic growth objectives, given the country's experiences of apartheid, and in light of the kinds of transformation required to achieve equality and justice for all. The South African constitution closely interlinks political freedom with economic justice, urging the creation of a society in which people are socially empowered to exercise their rights. It is apparent that support for South Africa's already very strong social dialogue process—contributing to building the capacity of trade union negotiators in the process, or expanding the participants to include advocates for vulnerable workers, for example—would promote rule of law goals while ensuring sounder macroeconomic foundations that truly represent the interests of a wide swath of society.

Strategic Considerations for USG

Based on a review of USAID/South Africa's Strategy Statement (FY 2007–2012) and meetings with USAID mission staff in Pretoria, we articulate the primary areas of programming as follows: 1) democracy and human rights, focused on women and justice; 2) good governance programming to address local governments, particularly in the context of anti-corruption measures and local economic development; 3) workforce development, focused on the resources and capacity of vocational colleges; and 4) private sector competitiveness, with particular attention to SMEs and their access to financing in sectors such as mining, auto parts, and agriculture.

In turn, USAID/South Africa democracy and governance or economic growth programming that is attentive to the identified labor sector strengths and weaknesses could help promote the protection of workers' rights and better implementation of core labor standards. In particular, we would focus on several specific issues, which are elaborated at greater length in the Results Framework (Appendix A):

1. There is a need to build trade union capacity to organize and represent vulnerable and atypical workers, and less organized sectors such as domestic services, private security and agriculture.
2. In order to ensure that social dialogue processes such as NEDLAC yield outcomes that benefit all tiers of society, trade unions must be assisted in building internal competence and relationships to outside technical experts, so that they are adequately represented in high-level negotiations involving key policy issues, especially economics.
3. Support is required to expand and strengthen institutions providing swift, inexpensive, and accessible resolution of labor disputes, particularly to vulnerable workers, as well as institutions monitoring and enforcing minimum labor standards.
4. Sustained tripartite collaboration will be necessary in order to create a broad-based and relevant skills development process that is responsive both to the aspirations of young workers and the needs of the labor market.

1.0 INTRODUCTION

1.1 WHY LABOR AND THE LABOR SECTOR?

The term “labor” means different things to different observers. It may refer to people who work or the human activity that produces goods and services in an economy. As a grouping of people, the term generally refers to worker organizations that represent workers’ interests collectively and individually and have workers as their members. “Labor” may act to achieve specific short-term goals, such as ending addressing workplace conditions, or large-scale, long-term goals, such as bringing about social and political change. Thus, depending on one’s vantage, the term may refer to specific industrial relationships between employers and unions or it may be interpreted more broadly to refer to all those who strive to earn a living, whether formally or informally employed, self-employed, unemployed, or out of the workforce. At the broadest level, the term can simply mean all workers.

This paper, and the larger project it introduces, deals with all of these definitions and issues through a focus on the “labor sector” and the role it plays in development. The labor sector is the arena in which youth as well as adult men and women prepare for and participate in the world of work. ***A focus on the labor sector matters because of its impact on people’s abilities to find decent work, realize sustainable livelihoods, and raise themselves and their families out of poverty.***

The world of work is understood here in its broadest context, encompassing people engaged in agriculture, industry, and service sectors, whether formally employed, and thus protected under the law, or informally engaged in making a living. People work on- and off-farm, in rural and urban areas, in their own countries or abroad. They may toil in legal or illegal activities. They may be working voluntarily or, in the case of trafficked persons, against their will. Given the uneven access to power, economic resources, and political decision-making that frequently characterizes the position of workers and compromises their ability, individually and collectively, to access their rights, free and democratic labor unions can provide workers with a crucial voice in their places of work, in the industries in which they play a role, and in national decision-making as well.

As addressed in this paper, therefore, the “labor sector” is defined as the aggregate of labor rights, regulations, actors, and institutions that shape labor relations¹ and the functioning of labor markets, both formal and informal.

The U.S. government’s (USG) current and primary foreign affairs goal is to “help build and sustain democratic, well-governed states that respond to the needs of their people, reduce widespread poverty, and conduct themselves responsibly in the international system” (U.S. Department of State 2007).² This project focuses explicitly on labor and the labor sector because full consideration of diplomacy and development issues in the labor sector can be critical to building well-governed, democratic states able to respond to their citizen’s needs. The 2000 Report of the Advisory Committee on Labor Diplomacy to the Secretary of State and the President declared that “[p]romoting core worker rights is central to the basic purpose of U.S. foreign policy, which is to create a more secure, prosperous and democratic world....” (State 2000).

¹ Labor relations may be viewed generally as the relationship between workers and employers or more specifically “as a system for striking a balance between the employment relationship goals of efficiency, equity, and voice, and between the rights of labor and management” (Budd 2008, vii).

² The Obama Administration is finalizing its strategic reviews of foreign policy, including development. The results of the Presidential Study Directive on Global Development and the State Department’s Quadrennial Diplomacy and Development Review are expected to be released in September 2010.

The sources of authority related to the goals and roles of the labor sector in U.S. development and foreign policy may be found in U.S. framework legislation, such as the Foreign Assistance Act (as amended), targeted U.S. legislation such as the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II Act), unilateral trade preferences and bi- or multilateral trade agreements with labor provisions, and USG policy as determined by the President's Administration and long-standing USG principles and objectives.³

Just as a focus on the labor sector can help achieve foreign assistance goals, neglecting to address this sector has implications as well. For example, failure to address labor sector issues and correct asymmetrical access to resources may increase a country's vulnerability to social and political dislocations that can adversely affect democracy, stability, and/or economic growth. A country that cannot offer the prospect of employment to its labor force may leave itself open to the destabilizing pressures that can arise from unemployed and disaffected adults and youth. A country that cannot assure working conditions compliant with international standards or cannot provide stable labor relations may make itself less attractive to foreign investment. And a country that does not provide appropriate knowledge and skills to its workforce through education and training may risk weak productivity and thus threaten its competitiveness on the global market. These factors in turn can also exacerbate a downward economic spiral. In such a scenario, investment may be discouraged, making it harder for local businesses to connect to international management techniques, modern technologies, and new markets. Formal sector growth can be stymied. People may look outside the legitimate sectors of the economy for new livelihood opportunities. The net result of these factors may be an increased reliance of the citizenry on public social entitlement programs, such as social security and health programs. This in turn places huge burdens on the public treasury, straining the government's ability to provide for the basic needs of its people. At the same time, the downward spiral may affect prospects for democratic growth as well. Labor force participants whose rights are not protected by the country's laws and institutions and who do not have an effective voice in advocating for legislative action or influencing government policy may lose faith in their governments, which in turn may lead to political and societal conflict.

A focus on the interests of labor, as represented by trade unions and other labor sector organizations, and business, as represented by employer or business associations, by developing country policymakers and the development organizations that work with them is therefore essential to address people's rights and their needs to earn a decent living in support of themselves and their families. It is also important to the development of accountable political systems that respond to citizens' concerns and interests, democratic multi-party systems that are interest-based, rather than based on personalities and patronage, and more vibrant civil societies. As people believe that their rights are respected, their voices are heard, and their access to education and livelihoods is improved, their commitment to their communities and nations is strengthened. Addressing these issues also builds human capacity in crucial areas such as negotiation and leadership accountability, which in turn contributes to the peaceful resolution of differences and disputes in labor and industrial relations and can provide critical incentives for more transparent governance.

The USG supports international labor sector programming in pursuit of development and diplomacy objectives, primarily through the U.S. Agency for International Development (USAID), the U.S. Department of State's Bureau of Democracy, Human Rights, and Labor (DRL), and the U.S. Department of Labor's (USDOL) International Labor Affairs Bureau (ILAB).⁴ USG programming has aimed at:

- Affirming, and supporting the enforcement of, international labor rights;

³ See also, for example, testimony provided by USG officials to Congress (e.g., Posner 2010, Polaski 2010, Reichle 2010).

⁴ Drawn from mission statements found on websites for the State Department's Director of U.S. Foreign Assistance and its Office of International Labor and Corporate Social Responsibility and the Department of Labor's ILAB.

- Combating child labor, forced labor, and human trafficking;
- Strengthening the capacity of institutions, governmental and extra-governmental, to administer effective programs in support of the labor sector;
- Promoting freedom of association, including the role of organized labor, building the capacity of free and independent labor unions around the globe to advocate effectively on behalf of their members for their rights and decent conditions of work;
- Engaging with civil society organizations to advocate regarding issues of concern to labor;
- Working with the private sector to protect human rights, including labor rights;
- Creating an international economic system that shares the benefits of increased economic growth and security with all workers; and
- Promoting economic growth with an enabling environment that encourages job formation, strengthens industrial relations between employers and unions, and addresses the needs of the workforce alongside the needs of employers to improve the competitiveness of firms, industries, and sectors, encourage growth, raise productivity, and stimulate wages and employment.

The USG's use of labor diplomacy has helped ensure more coordinated support between development and foreign policy goals. For example, the USTR has negotiated increasingly detailed labor provisions into trade agreements and, at times, the governments of developing countries respond with requests for technical assistance to better meet these obligations. The U.S. Department of State and the Department of Labor both provide technical assistance and act in the realm of labor diplomacy. Discussions on whether and what kinds of assistance the USG may provide to a country may be concurrent with a review of its compliance with labor rights provisions in trade agreements or beneficiary criteria for unilateral trade preference programs. This extension of assistance often has greater foreign policy implications in post-conflict and politically and economically unstable countries. Labor diplomacy may bring together developed and developing countries, as happened in April 2010 when USDOL hosted the first-ever meeting of labor and employment ministers from the world's 20 largest economies.⁵ The Department of State's Special Representative for International Labor Affairs also plays an important role in labor diplomacy.

1.2 OVERVIEW OF GLOBAL LABOR SECTOR ANALYTIC INITIATIVE

In 2007, the U.S. Agency for International Development's Bureau for Democracy, Conflict, and Humanitarian Assistance (DCHA), in cooperation with the U.S. Department of State's Bureau of Democracy, Human Rights, and Labor (DRL), were tasked with establishing how programs in the labor sector can best contribute to foreign assistance objectives. The aims of this paper are: 1) to present an innovative conceptual framework that unites democracy and governance and economic perspectives on the labor sector, 2) to explore how addressing issues in the labor sector (as defined above) can help achieve USG strategic goals in international development and foreign policy, and 3) to explore how addressing labor sector goals helps countries to achieve their overarching development objectives.

Viewing the labor sector as an integrated system brings several additional benefits. A systems analysis underscores how a properly functioning labor sector is important to the development of a liberal democracy and favorable to market-driven economic growth, consistent with human rights and labor rights. Moreover, it is suggested that using that lens to identify programming options may actually be a *more effective strategy* for achieving those goals than focusing exclusively on a single, stove-piped component. Working with labor

⁵ Described in detail at http://www.dol.gov/ilab/media/events/G20_MinistersMeeting/.

unions and business and employers associations, communicating social and political messages through such labor organizations, and strategizing economic growth by focusing on employment levels and conditions may provide valuable traction to achieve long-term development goals. In addition, working with labor unions may allow closer proximity to the poor, broader coverage, and more comprehensive and equitable program outreach.

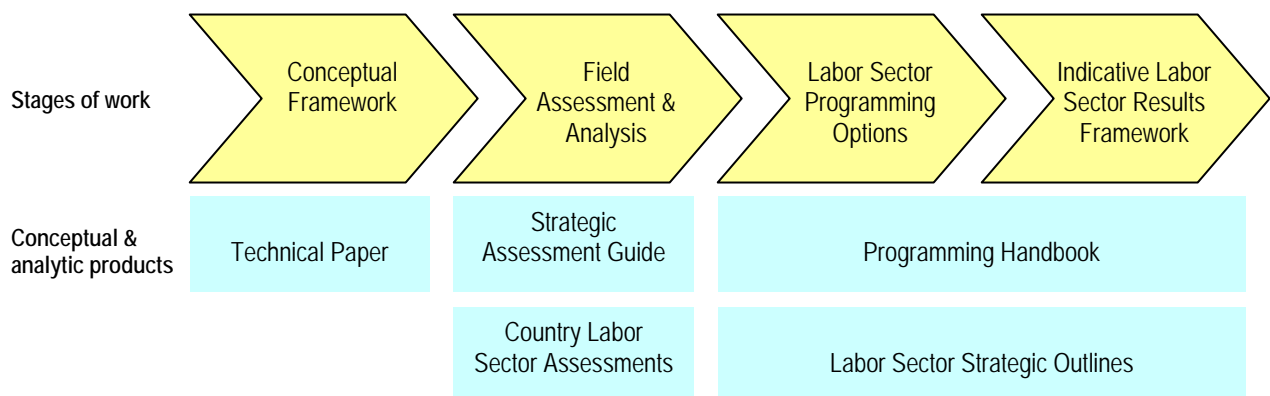
Labor diplomacy and development programs are implemented by USG agencies, international organizations, and implementing partners. Other programs managed by these three sets of actors may also affect the labor sector. To date, USG labor sector programs have generally addressed objectives in four main areas: labor rights, labor markets, and the roles of labor sector government institutions and civil society organizations in promoting foreign assistance goals. The USG has promoted labor rights as a key set of rights on their own and as a means of lending support to the advancement of all human rights.

The Global Labor Sector Analytic Initiative addresses the following questions:

- What is a “labor sector”?
- Who are the key actors in a labor sector, and what are the relationships among them?
- In what various ways are labor sectors structured around the globe and how do they behave?
- What performance standards would one expect to see in a “well-functioning” labor sector?
- How does the labor sector’s performance affect political, economic, and social development?
- How can various kinds of labor sector programs contribute not only to improved labor sector performance, but also broader diplomacy and development goals of the United States government (USG)?
- What results does labor sector programming seek to achieve and what data should we collect to evaluate progress toward such achievement?

The stages of work and corresponding conceptual and analytic products of the Initiative are depicted in the figure below.

Figure 1: Global Labor Sector Analytic Initiative



This **Technical Paper** suggests that:

- 1) the labor sector – that is, the legal foundation, government, social partners⁶ and civil society, and labor markets, understood individually, overlapping, and intersecting with each other, as depicted below in

⁶ The term “social partners” refers to both workers’ organizations and employers’ organizations, both of which cooperate with governments in social dialogues.

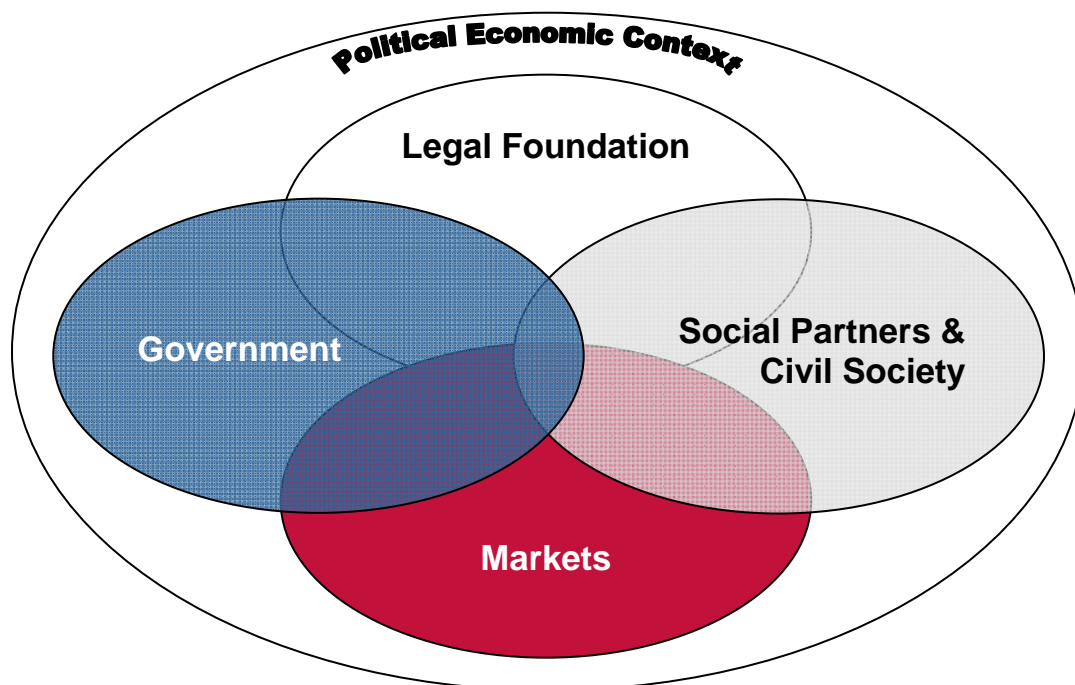
Figure 2 – is a *multidimensional system* that requires multiple and integrated interventions to achieve diplomacy and development goals;

- 2) using this systemic approach offers *multiple utility*, as a means both to promote labor rights and trade unions and other labor sector organizations for their own sake and to increase the effectiveness of programs that seek to achieve a diverse set of USG foreign assistance goals;
- 3) labor sector issues are of *integral importance* to achieving progress in major foreign policy objectives, including respect for the rule of law (ROL) and human rights, promotion of democracy, and economic growth and prosperity; and
- 4) broad *political economy considerations* are an essential context for understanding how to address stability, rule of law, participation, livelihood, and social protection concerns.

In addition to this Technical Paper, the suite of labor sector analytic products includes:

- A **strategic assessment guide** detailing how to approach the organization and implementation of continuing labor sector assessments in the field (Salinger and Wheeler 2009b). This how-to manual:
 - provides a checklist of information that the assessment team seeks to collect in the field,
 - outlines how to carry out an integrated labor sector analysis to identify strengths and weaknesses of a country’s current labor sector,
 - ties these considerations to the achievement of broad development goals in the country, and
 - recommends strategic considerations for achieving U.S. foreign assistance objectives for that country.

Figure 2: Four Components of a Well-Functioning Labor Sector



- A **labor sector programming handbook** with suggestions for labor sector program design or ways to include labor considerations in broader democracy or economic growth programming and a proposed structure for the accompanying results framework used by USAID to monitor programs.
- A pilot **labor sector assessment** testing the conceptual framework, conducted in Cambodia (Lerner, Salinger, and Wheeler 2008).
- **Country labor sector assessments** (CoLSAs), carried out in four of the five regions in which USAID programs are active:
 - Asia and Near East: Bangladesh (Kolben and Penh 2009)
 - Europe and Eurasia: Ukraine (Fick et al. 2009a)
 - Latin America and the Caribbean: Honduras (Cornell et al. 2009)
 - Sub-Saharan Africa: Nigeria (Thomas et al. 2009)
- **Labor sector strategic outlines** (LaSSOs), representing a more rapid and resource-efficient approach to field assessment and preparation of a template for a labor sector Results Framework, have been conducted in the following countries:
 - Georgia (Fick et al. 2009b)
 - Mexico (Bensusan and Burgess 2009)
 - South Africa (Kalula and Sukthankar 2010)

Findings from this body of work have been presented at a series of public Labor Forums for discussion with USG partners, including representatives from the USG's National Endowment for Democracy collaborating institutions, international organizations that support labor sector programs, non-

governmental organizations and research institutions that work in the labor sector, and development consulting firms that implement labor sector programs.

1.3 ORGANIZATION OF THE SOUTH AFRICAN LABOR SECTOR STRATEGIC OUTLINE

The labor sector strategic outline for South Africa is the eighth such country assessment. The field research was conducted from March 1 through 10, 2010, with meetings and interviews in Johannesburg, Pretoria, Cape Town, and Limpopo Province (within a 120 km radius of the city of Polokwane). The team met with:

- Staff at the USAID mission and from the U.S. Embassy;
- Trade union federations (Congress of South African Trade Unions [COSATU], Federation of Unions of South Africa [FEDUSA], National Council of Trade Unions [NACTU]) at national and provincial levels, office bearers and members of local unions (National Union of Mineworkers [NUM], National Union of Mineworkers South Africa [NUMSA], South African Commercial, Catering and Allied Workers' Union [SACCAWU], CWU, South African Domestic Service and Allied Workers Union [SADSAWU], Food and Agricultural Workers' Union [FAWU]), and trade union staff (researchers, gender coordinators, HIV/AIDS strategy coordinators);
- Government officials from the Department of Labor and the Department of Higher Education and Training;
- Statutory bodies (NEDLAC, Public Services Bargaining Council, and Essential Services Committee);
- Judiciary (Labor Court and the Labor Appeal Court);
- Public and private dispute resolution bodies (Commission for Conciliation, Mediation, and Arbitration [CCMA], Tokiso);
- Civil society groups addressing trade union rights (Solidarity Center, National Labor and Economic Development Institute [NALEDI]) farm workers (Nkuzi, Association for Fairness in Trade), migrant workers (Scalabrini Centre), and sex workers (Sex Worker Education and Advocacy Taskforce [SWEAT]);
- Academics in the area of labor economics, sociology of work, agriculture, and law; and
- Others, including the International Labor Organization (ILO), Chamber of Mines, and the U.S.-South Africa Partnership for Workforce Development.

It should be noted that our meetings with employers' organizations and other donors were limited. Nevertheless, our information was supplemented through review of extensive secondary materials, as reflected in Appendix C.

On the basis of initial desk research, we identified a context-specific set of questions for closer analysis. With respect to *Rights*, we chose to focus on current debates related to labor law reform and the enforcement of current labor legislation, highlighting both areas where stakeholders broadly agree, and points of sharp disagreement. In terms of *Organizations*, we sought to address questions of trade union capacity, particularly in the areas of organizing, collective bargaining, and shop floor leadership, and analyzed the prevailing atmosphere for social dialogue. Underlying both areas of concern was the issue of whether trade unions and social dialogue mechanisms had the capacity to address the interests of vulnerable groups, such as agricultural workers and migrant workers. Turning to *Government Institutions*, we hoped to assess the role and functioning of ministries addressing labor rights and workforce

development, and to identify the strengths and weaknesses of inspectorates, statutory bodies, dispute resolution mechanisms, and the judiciary. Our approach to *Markets* was to attempt to lay out the spectrum of stakeholder perspectives on labor market policy, especially related to unemployment and job creation, flexibilization, learnerships, labor brokers, and SMEs.

Overall, our emphasis has been on foregrounding the opinions of relevant stakeholders, rather than our own positions. It is our belief that, in the context of South Africa, it is frequently more important to understand what is at stake, than to make recommendations that obscure these underlying debates.

2.0 SOUTH AFRICA: SETTING THE CONTEXT

The Republic of South Africa, with its ethnic and cultural diversity, its strong commitments to democratic functioning, and its current and emerging role in regional and global contexts, is a critical partner for the United States in southern Africa. It anchors a region that contains countries with much smaller and more fragile economies, more tenuous political institutions, and more ethnic and racial strife, and so it is very significant in light of U.S. interests in promoting stability and peace in this part of the world. Thus, the question of whether South Africa succeeds in overcoming the legacy of apartheid and developing into the truly equal society it aspires to be, is a matter of great concern for the USG.

US foreign assistance to South Africa currently focuses on several issues related to goal of reducing the vast disparity of resources, education, and economic opportunity between black and white South Africans. Current support addresses, for example, programs to promote greater access to vocational training institutions, the development of the SME sector, and capacity building for local institutions, particularly in rural areas.

The labor sector is implicated at all levels of this work. In part, this is because programming in any of these areas must negotiate intense national debate related to unemployment, labor market policy, and access to justice for vulnerable workers. In addition, labor organizations play an extremely important role in national debate, influencing public opinion as well as policy through multiple channels. The section below describes this context in greater detail.

2.1 PRINCIPAL DEVELOPMENT CHALLENGES FACING THE COUNTRY'S LABOR SECTOR

The challenges of poverty and inequality persist in South Africa, 15 years after the attainment of democracy. Although South Africa is formally categorized as an upper middle income country, it is a very unequal society, characterized by high levels of poverty and unemployment.⁷ Poverty is not confined to those who are unemployed; as described below, South Africa has large numbers of the working poor, with inadequate social protection. The great majority of poor South Africans are black, one of “the direct results of the apartheid system and the grossly skewed nature of the business of industrial development that accompanied it.”⁸ According to USAID’s most recent Strategy Statement for South Africa, “[c]lose to 50 percent of black South Africans live at or below the poverty line in comparison to only 2 percent of white South Africans, and income per capita for white South Africans is nearly six times that of black South Africans.”⁹

Some analysts have argued that inequalities have actually deepened post-apartheid.¹⁰ Although the transition to democracy has opened up more opportunities for black South Africans, many have been

⁷ Borat, H. and Cheadle, H. *Labour Reform in South Africa: Measuring Regulation and a Synthesis of Policy Suggestions*, (Cape Town: Development Policy Research Unit, 2007), p.2.

⁸ Taylor Committee. *Report No. 8 Poverty, Social Assistance and the Basic Income Grant* (2002), p. 275.

⁹ USAID Strategy Statement for South Africa, FY 2007-2012, 27 April 2006, p.2.

¹⁰ Seekings, J., Liebbrant, M., and Natrass, N. *Income Inequality after Apartheid*, Centre for Social Science Research Working Paper No. 75 (Cape Town, CSSR, 2004), p. 1.

excluded due to the lack of human and social capital needed to rise out of poverty.¹¹ It is also significant that inequality between the new black elite and the poor is increasing rapidly.

On the economic front, unemployment is generally regarded as the most potent crisis facing the South African economy, and creating jobs for the estimated 4.4 million people currently without employment remains the country's central socioeconomic challenge.¹² The unemployment rate (based on the official definition) has consistently been above 20 percent, with the latest statistics available showing that it is at 24.3 percent.¹³

2.2 HISTORY OF THE COUNTRY'S LABOR MOVEMENT AND POLITICAL ECONOMIC OVERVIEW

2.2.1 Historical Origins of the Trade Union Movement¹⁴

The history of South Africa's labor movement is inextricably tied to the country's history during colonization, segregation, and apartheid.¹⁵ The South African labor system during these periods was premised on the exploitation of cheap black labor.

Detailed accounts of labor resistance in South Africa date back to the beginning of the twentieth century, when white miners (1907), black miners (1913 and 1920), and Indian workers (1911 and 1913) went on strike over issues of pay, living conditions, and working hours. The most significant incident during this period was the 1922 Rand Revolt by white mine workers who were protesting against mine owners' plans to reduce their wages and replace some of them with black workers, whom they could pay lower wages. This strike by about 25,000 white workers lasted eight weeks and prompted the government to enact the Industrial Conciliation Act in 1924.

The Act provided for the registration of employers' organizations and white, Indian, and black trade unions. While black trade unions were not illegal, they were not allowed to register under the Act, and were therefore denied organizational rights in the workplace. The Act and subsequent labor laws aimed, in part, to protect white workers while also preventing them from uniting with black workers against capital and government.

Many trade unions and union federations were organized along racial lines. Most white trade unions relied on the government's racial policies to protect their members' interests and remained entirely separate, but there were organizations that attempted to establish solidarity among non-white workers across the government's racial categories, such as the Industrial and Commercial Workers' Union of South Africa formed in 1920, and the Council for Non-European Trade Unions, established in 1941. Among the handful of organizations that tried to create solidarity among black and white workers, the most notable are non-racial unions such the Food and Canning Workers Union and the Textile Workers

¹¹ Seekings, Liebbrant, and Natrass. *Income Inequality after Apartheid*, p. 1.

¹² Labour market Bulletin p 17 www.labour.gov.za [accessed 06/02/10]

¹³ Statistics South Africa, *Quarterly Labour Force Survey, Fourth Quarter*, available at <http://www.statssa.gov.za/>

¹⁴ This section is drawn from Du Toit et al. *Labour Relations Law: A Comprehensive Guide*, Fourth Edition (Durban: Butterworths LexisNexis, 2003), and a series of articles by Luli Callinocos, "South African Labour History"; "Organise or Starve: South African Congress of Trade Unions"; "Labour History Timeline"; and "Industrial and Commercial Union," published on the South African History Organisation web site (accessed at http://www.sahistory.org.za/pages/governanceprojects/labour-history/01_mayday.htm on 02/04/2010).

¹⁵ Terrblanche, S. *History of Inequality in South Africa: 1652-2002* (Scottsville: University of Natal Press, 2002), p. 14.

Industrial Union, and the Communist Party of South Africa (renamed the South African Communist Party [SACP] in 1953).

The labor movement grew and evolved through the twentieth century, with many unions and federations forming, amalgamating, and dissolving. Two organizations formed during this period played a pivotal role in the struggle against apartheid and remain important parts of South Africa’s political economy today. One is the South African Communist Party, mentioned above, and the other is COSATU, formed in 1985. These two organizations, together with the African National Congress (ANC), formed an electoral alliance for the first democratic elections in the country. The Tripartite Alliance continues to exist, with COSATU and the SACP having some influence over the ANC’s socio-economic policies, as discussed below.¹⁶

2.2.2 The Current State of the Labor Movement

Trade union strength. Recent research on industrial relations in South Africa shows relative stability in union membership between 2000 and 2007. In 2000, there were about 464 unions, with 3.5 million members, a peak of over 4 million members in 504 unions in 2003, and gradual decline to 261 unions with 3.2 million members in 2007.¹⁷ However, the recent global economic recession has led to a sharper decline, with a loss of up to 400,000 union members according to some trade union leaders interviewed by the research team.

Year	Unions	Membership	Employers’ Organizations
2000	464	3,552,113	252
2001	485	3,939,075	265
2002	504	4,069,000	270
2003	365	3,277,685	238
2004	341	3,175,910	225
2006	335	3,049,860	213
2007	261	3,220,245	201

Source: Budlender (2009)

The majority of these unions and their members are concentrated in the three main trade union federations: COSATU, NACTU, and FEDUSA.

COSATU, established in 1985, started with about 400,000 members. By 2006, it had 21 affiliates with a total membership of about 1.8 million.¹⁸ Affiliates of COSATU represent workers in a wide range of sectors, including food and agriculture, clothing and textiles, communications, transport, health, mining and metalwork, chemical and printing, public services, and national defense. Although the majority of workers represented by COSATU affiliates are black and male, the federation has pledged to fight against all working class exploitation, towards a non-racist, non-sexist, more democratic South Africa.¹⁹

¹⁶ See discussion about political parties below.

¹⁷ Budlender, D. *Industrial Relations and Collective Bargaining: Trends and Developments in South Africa* (Geneva: International Labour Office, 2009), p. 13.

¹⁸ Ludwig, C. *Trade Unions and Financial Inclusion: the Case of South Africa* (Geneva, International Labour Organisation, 2008), Social Finance Working Paper No. 51, p. 4.

¹⁹ COSATU web site www.cosatu.org.za/show.php?include=docs/intropages/2009/webcont0709.html

FEDUSA, which was established in 1997, is the second largest trade union federation in South Africa. In 2006, it had 26 member unions representing about 500,000 workers, or 17.6 percent of the workforce.²⁰ Some of these affiliates are general unions, while others are in specific sectors such as health, insurance and banking, leather manufacturing, motor industry, and education.²¹ Many of these are historically white unions representing mainly semi-skilled and skilled workers.²² In recent years, however, these unions have begun to absorb emerging black professionals and skilled workers.

NACTU is the third largest federation and represents about 400,000 workers in 17 unions. It was formed in 1986 as a result of a merger between the Congress of Unions of South Africa and the Azanian Confederation of Trade Unions. Its affiliates represent workers in a diverse range of sectors and industries including construction, hospitality and catering, transport, furniture, banking and insurance, and education.²³

Table 2 below depicts the breakdown of South Africa's formal sector employees by industry and union membership.

TABLE 2: FORMAL SECTOR EMPLOYEES BY INDUSTRY AND UNION MEMBERSHIP IN SOUTH AFRICA		
Main Industry	Distribution	Percentage Unionized
Agriculture, hunting, etc.	8%	11%
Mining and quarrying	5%	76%
Manufacturing	16%	38%
Electricity, gas, etc.	1%	36%
Construction	7%	12%
Wholesale and retail trade	20%	24%
Transport, storage, etc.	5%	36%
Financial intermediation	13%	27%
Community, social and personal services	24%	58%
TOTAL	100%	36%

Source: Budlender (2009).

The above table shows that mining and quarrying and community, personal, and social services are the most heavily unionized areas of the formal sector. The lowest levels of unionization prevail in construction and agriculture.

The current role of trade unions. Trade unions and federations are actively involved in defending and protecting the rights of the workers in South Africa, in multiple contexts. Unions have generally advocated industry-level bargaining (through bargaining councils) as the most effective means of standardizing conditions of work. In January 2010, there were 47 national and regional bargaining councils registered with the Department of Labor, covering workers in a diverse range of sectors.²⁴ Some of these bargaining councils have successfully applied to the Labor Minister to have their collective agreements extended to employees and employers who are not parties. Under the Labor Relations Act, the

²⁰ Budlender, p. 5.

²¹ FEDUSA web site, www.fedusa.org.za, accessed on 04/02/2010.

²² Vavi, Z. "20 years of heroic struggle for a better life for all." Speech given by the Secretary General of COSATU on 5 September 2005, accessed at <http://www.cosatu.org.za/show.php?include=docs/sp/2005/sp1127.html> on 02/04/2010.

²³ NACTU website, www.nactu.org.za, accessed on 04/02/2010.

²⁴ "Bargaining Councils," Department of Labor website at <http://www.labour.gov.za/downloads/documents/useful-documents/labour-relations/2010%20%20%20Bargaining%20Councils.doc/view?searchterm=bargaining%20councils>, accessed on 04/02/2010.

minister may extend the collective agreement if the bargaining council is able to demonstrate that the members supporting the application for extension are “sufficiently representative” of both employers and workers in the relevant industry or geographical area. The minister has typically required that members in favor of the application represent at least 50 percent of both employers and employees, as a threshold.

In addition, some collective bargaining takes place outside statutory bargaining councils, through voluntary national bargaining fora, notably in the mining, civil engineering, and automobile sectors.²⁵ Voluntary bargaining also takes place at the regional level in the case of the construction industry, and at the enterprise and plant levels, in retail and food manufacturing.²⁶

Trade unions are also involved in disseminating information on workers’ rights issues in public fora, as well as representing workers in grievance procedures in the workplace, during bargaining council dispute resolution processes, and at the CCMA. Trade unions have also litigated on behalf of members in court, with respect to unfair dismissals, transfers of business undertakings, freedom of association violations, employment discrimination complaints, retrenchments, etc. In many cases, unions have appealed and defended these decisions to higher courts, with the intention of vindicating the rights of workers involved, and/or setting precedents favorable to workers.

Trade unions have frequently taken strike action over terms and conditions of employment, or in protest of employer or government policies negatively impacting workers. The ILO reports that there were 761 strikes and lockouts in at least eight different industry sectors from the years 1999 through 2008 (see Table 3). While strikes are generally peaceful and executed with attention to public welfare, the team learned during the field research of exceptions, such as a long and violent strike by security guards in 2006, with complaints of police brutality as well as looting by strikers, or the frequent teachers’ strikes that have at times led to students having to repeat an entire year of study.

Sector	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
A	107	80	83	47	62	49	102	99	75	57
B	8	15	6	1	5	5	6	5	3	2
C	14	11	7	5	8	9	16	7	17	7
D	30	16	22	9	14	13	27	9	16	10
E	2	3	1	1	3	1	2	1	1	0
F	3	3	5	3	2	0	2	2	3	2
G	12	6	2	11	8	4	11	7	4	4
H	9	6	14	4	12	4	14	15	9	7
I	1	3	0	0	1	2	3	5	3	5
J	29	17	26	13	9	11	21	48	19	20

Key:

- A Total number of strikes per year
- B Mining and quarrying
- C Manufacturing
- D Electricity, gas, and water supply
- E Construction
- F Wholesale and retail trade, repair of motor vehicles, motorcycles, and personal, household goods
- G Transport, storage, and communications
- H Financial intermediation
- I Community, social, and personal service activities

²⁵ Godfrey, S., Theron, J., and Visser, M. *The State of Collective Bargaining in South Africa: An Empirical and Conceptual Study of Collective Bargaining* (Cape Town: Development Policy and Research Unit, 2008), Executive Summary.

²⁶ Ibid.

TABLE 3: STRIKES AND LOCKOUTS IN SOUTH AFRICA, 1999–2008

Sector	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
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J Other

Source: ILO International Labour Statistics, <http://laborsta.ilo.org/STP/quest>.

Trade unions also play a central part in policy making; formally, this is in large part through their participation in NEDLAC. NEDLAC is a forum for social dialogue in which labor, business, and government (and, to some extent, a community constituency) must meet to reach agreement on labor-related legislation before it is submitted to government, as well as on social and economic policy prior to its implementation.²⁷

In addition, however, the power of trade unions to affect policy related to the labor sphere derives—at least in the case of COSATU affiliates—from the relationship to political parties. (NACTU and FEDUSA both assert that they are politically independent, though both are believed to have ties to certain minority political parties that, in any case, have very limited power themselves.) It is well-known that the ANC has always relied heavily on the support of the SACP and, to a greater degree, COSATU, to campaign and garner worker support for it during elections. Most members of the SACP and COSATU are members of the ANC, and ANC membership is a prerequisite for advancement in the ranks of these two organizations. Many leaders of COSATU and the SACP have been appointed in important government positions since the transition to democracy.

However, COSATU’s current relationship with the ANC is a tense and complex one, as discussed at greater length below. In this context, there is substantial debate about whether the Tripartite Alliance between the ANC, COSATU, and the SACP has outlived its purpose and whether COSATU should continue to play a role in the political arena. Many have argued that COSATU should focus on workplace issues and leave political matters to political parties. However, COSATU believes that it must “retain its militant posture of combining political and workplace issues. In that vein, it must aim to shape the trajectory of democracy in favor of the working class at both the societal and workplace levels.”²⁸ It is unlikely that COSATU will relinquish its position as “ruling party insider” that enables it to have “active and ongoing engagement with the government.”²⁹ Surveys have demonstrated that the majority of COSATU’s rank and file is supportive of the Alliance.³⁰ Moreover, the Tripartite Alliance partners recently reaffirmed its importance and relevance and “the need for unity in action in the joint program of social transformation.”³¹ This suggests that COSATU will continue to occupy an important place in South Africa’s political landscape for the foreseeable future.

2.2.3 Labor, the State, and the Social Contract

The steady rise in unemployment can be ascribed in part to expanded participation in the labor market, with new entrants being, for the most part, unskilled, rural, and black youth and older women. This factor is especially important when taken in conjunction with the changing structure of the South African

²⁷ NEDLAC Act 28 of 1956

²⁸ Vavi, Z. “Tracing the Footsteps of COSATU: Achievements and Challenges Address at COSATU’s 21st Anniversary, 7 December 2006, COSATU website, <http://www.cosatu.org.za/show.php?include=docs/sp/2006/sp1207.html> accessed on 02/04/2010.

²⁹ Ranchod, K. *State-Civil Society Relations in South Africa: Some Lessons from Engagement*, (Johannesburg: Centre for Policy Studies, 2007), p. 14.

³⁰ Habib, A. “South Africa: Conceptualising a politics of human-oriented development,” 34(1) *Social Dynamics* (2008), p. 46-61, 52.

³¹ President Jacob Zuma’s Speech at the COSATU Congress, 21 September 2009, http://www.iol.co.za/index.php?set_id=1&click_id=594&art_id=nw20090921131306933C274939&page_number1, accessed on 02/04/2010.

economy, from one highly dependent on mining and agriculture to one where less labor-intensive economic sectors such as finance, trade, and retail are more central. Labor market participation is still low; as this rises, unemployment must be expected to rise even further.

The current social protection framework cannot address the magnitude of the problem, given limited resources. The government has two social security programs: social grants, and the Unemployment Insurance Fund. There are currently seven sub-categories in the former program that provide for the aged, disabled, children under the age of nine, war veterans, foster care providers, and those caring for disabled children. The seventh sub-program is a “grant in aid” that provides supplementary benefits for recipients of old age, disability, or war veteran grants who are unable to care for themselves.³² All grants are subject to means tests. The Unemployment Insurance Fund is administered by the Department of Labor and provides short-term relief to workers who become unemployed, or are temporarily unable to work because of an illness, or due to birth or adoption of a child. The benefits are also extended to dependants of deceased workers.³³ The Fund is sustained by contributions made by employers and employees.³⁴

COSATU staunchly defends its members’ entitlements to unemployment-related protections, but at the same time has taken the view that social security entitlements should be de-linked from formal sector employment. Not only is it the case, according to COSATU, that social security schemes cover no more than two-thirds of the formal sector, but the vast majority of those in informal employment, as well as a vast majority of the unemployed, receive no protection. Moreover, the organization notes that the level of benefits is generally considered inadequate.³⁵ COSATU believes that, since millions of people in South Africa have no regular source of income as a result of structural long-term unemployment, urgent attention needs to be given to creating a Basic Income Grant, to address the needs of those not covered by unemployment insurance or other forms of social security. COSATU proposes that everybody receive the benefit as an entitlement, but that the money be reclaimed from higher income earners such that only low-income groups would in fact benefit. This option would have the advantage of reducing corruption, since access to the benefit would not depend on an official. Furthermore, such a system would be simple to administer and cost-effective.³⁶

While neither COSATU officials nor policy advisors to the trade union movement raised the issue of the Basic Income Grant in conversations with the team, there was broad consensus that some sort of change is desperately needed. However, it is not immediately apparent if or how such reforms will take place. While officials at the Department of Labor expressed the opinion that a comprehensive social security scheme would be developed in the near future (through participation in conversations with the Department of Social Development and the Department of Finance in an effort to align priorities, mechanisms of implementation, and funding of the scheme). However, others met by the assessment team felt there is little common ground between the position papers developed by the latter two departments on the topic, and that the government’s inability to arrive at a common position on social protection was the major stumbling block.

While both NACTU and FEDUSA agree that unemployment and poverty are the critical issues confronting South Africa, FEDUSA’s analysis of the underlying causes, and the steps that must be taken,

³² Section 4, Social Security Act 13 of 2004.

³³ Section 12 (1), Unemployment Insurance Fund Act 63 of 2001.

³⁴ Section 4 (2), Unemployment Insurance act 63 of 2001.

³⁵ COSATU website, <http://www.cosatu.org.za/show.php?include=docs/policy/2000/ssaudit.htm&ID=2167&cat=Policy>, accessed 02/02/2010.

³⁶ COSATU website.

differs substantially from COSATU's. FEDUSA officials suggested that current protections for labor are too burdensome for employers, and inhibit job creation.

2.2.4 Distilling the Political Economy of the Labor Sector and Labor Reform

The ANC's first election manifesto, framed prior to the 1994 election, laid out a plan for a Reconstruction and Development Program (RDP) that would address the injustices of apartheid and build a new democratic South Africa. The RDP's introduction described it as "[a]n integrated programme, based on the people that provides peace and security for all and builds the nation, links reconstruction and development, and deepens democracy."³⁷ The RDP reflected the ANC's commitment to its partners in the Alliance (SACP and COSATU) that workers' rights would be placed at the center of the project of building the economy:

- Labor was identified as a key player in the country's transformation.³⁸
- The hard-won rights that labor had secured during the struggle against apartheid would be protected and extended.³⁹
- Living wage policies were held to be crucial for the achievement of equitable economic growth.⁴⁰
- The promotion of collective bargaining, minimum wage regulation, education and training, technological development, service, and social security provision would be prioritized.⁴¹

The ANC chose a corporatist labor relations model in which business, government, and labor would discuss socio-economic policy. It also adopted an active, albeit enabling role, in institution building and maintenance, and the protection of trade unions and employers' associations and their agreements.⁴²

Arguably, the turning point was the introduction of the Growth, Employment, and Redistribution Strategy (GEAR) strategy in 1996. Its opening statement reiterated the long-term vision for South Africa, with economic growth, redistribution, access to social services, and security for all.⁴³ However, it also noted the economy's increasingly global orientation, and articulated the imperative to remain competitive through enhanced productivity, improved dynamic efficiency, and skill enhancement.⁴⁴

GEAR suggested that greater labor market flexibility was an essential component of any integrated strategy to meet these labor market challenges.⁴⁵ This entailed introducing "a structured flexibility" into the collective bargaining system.⁴⁶ Wage determination would have to be more sensitive to capital

³⁷ African National Congress, *The Reconstruction and Development Programme: A Policy Framework* (1994) accessed from <http://www.anc.org.za/rdp/index.html> on 01/01/2010, para 1.3.8.

³⁸ Ibid, para 1.4.14.

³⁹ Ibid, para 4.8.1.

⁴⁰ Ibid, para 4.8.5.

⁴¹ Ibid, para 4.8.5.

⁴² Donnelley, E. and Dunn, S. "Policy Directions for transforming states: Labour relations and reform and the new South Africa," *South African Journal of Labour Relations* Vol. 31(1) 2007, p. 6-24, p. 14.

⁴³ *Growth, Employment and Redistribution Strategy: A Macroeconomic Strategy (GEAR)* (Pretoria: Department of Finance, 1996), p. 1.

⁴⁴ Ibid, p. 19.

⁴⁵ Ibid, p. 17.

⁴⁶ Ibid, p. 5.

intensity, skills, regional circumstances, and firm size.⁴⁷ GEAR also proposed the reduction of non-wage costs, and the establishment of a social agreement to facilitate wage moderation.⁴⁸ It was hoped that such measures would enable the government to promote collective bargaining and simultaneously strike an appropriate balance between productivity enhancement and job creation.⁴⁹

The drafting of the strategy had been spearheaded by the Department of Finance, with support from academics, officials from the Department of Trade and Industry (DTI) and officials from the South African Reserve Bank, the Development Bank of Southern Africa, and the World Bank. Only one representative of the Ministry of Labor was part of the technical team. The formulation process had bypassed corporatist structures and was imposed by the South African Cabinet with minimal consultation of the social partners.⁵⁰ In addition, although it claimed to be in keeping with RDP goals, its substantive proposals constituted a radical shift. To many, this suggested that COSATU's influence on the ANC was waning, and that this would be the beginning of a deterioration of ANC-COSATU relations.⁵¹

Alliance relations continued to be tense over the next ten years, with COSATU and the SACP alleging that the ANC sidelined it from important policy making. COSATU embarked on a series of public stayaways against various aspects of government policy, with the number of person days lost due to protest action almost doubling from 650,000 in 1997 to 1.25 million in 2001.⁵² Tensions were exacerbated by the fact that the next president of the ANC and of South Africa, Thabo Mbeki, was viewed in these circles as being largely unsympathetic to a socialist agenda. During that period, COSATU also lamented the increasing hegemony of middle-class and elite individuals in the ANC national leadership structures, signaling the demise of working-class leadership within the party.⁵³

Matters came to a head when the ANC removed Thabo Mbeki from his position as its president and replaced him with Jacob Zuma at the ANC Congress in 2007. COSATU and the SACP played an important role in orchestrating this coup, which ensured that Zuma would be appointed president of South Africa when the ANC won the 2009 general elections. This was considered a victory for the labor movement, and some have interpreted President Zuma's appointment of cabinet ministers from among leaders and sympathizers of COSATU and the SACP to indicate that the Alliance partners had regained greater control of the ANC. However, there are no indications at present that the government under Zuma will make a radical departure from prevailing socioeconomic policies in response to COSATU and SACP demands.

At the same time, there are a number of points that should be highlighted, in terms of potential shifts in emphasis introduced by Zuma. In terms of the priorities outlined within the Accelerated Shared Growth Initiative of South Africa (ASGISA), introduced in 2006⁵⁴ to identify and address certain key constraints

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ *GEAR*, p. 19.

⁵⁰ Habib, A. "Reflections on Building a Sustainable Social Pact: Business, Labour and the State under Jacob Zuma," unpublished paper (University of Johannesburg, 2009), p. 7.

⁵¹ Ibid, p. 8.

⁵² Ibid, p. 8. These stayaways took place in terms of section 77 of the LRA, which allows members of trade unions and union federations to embark on protest action to defend the socio-economic interests of workers without fear of dismissal, provided certain conditions are met. Unions and federations have protested against issues such as job losses, high unemployment, crime, and poverty, as well as policies such as privatization and interest rates.

⁵³ "Political Resolutions to the 9th National Congress", para. 1.2, accessed from the COSATU website, at http://www.cosatu.org.za/show.php?include=docs/resolutions/2006/resolutions.htm_on_02/04/2010

⁵⁴ The discussion on ASGISA is drawn from a summary of the initiative, accessed from the South African Government website, at <http://www.info.gov.za/asgisa/asgisa.htm>, accessed on 02/04/2010.

to equitable economic growth, it would appear that at least two of its focus areas will continue to be emphasized, though the approach will be substantially different:

1. *The shortage of suitably skilled labor.* The newly-created Department of Higher Education and Training has been given the task of Human Resource Development. The department is expected to supervise a dramatic expansion of vocational education programs for new entrants to the labor market, as well as the “upskilling” of current workers, in close cooperation with the business community.
2. *The regulatory environment and the burden on small and medium businesses.* Responsibility for shaping policy in the SME arena has been given to the newly-created Department of Economic Development. Minister of Economic Development Ebrahim Patel was a high-level trade unionist who had led the South African Clothing and Textile Workers Union. Patel has consistently opposed proposals for relaxing labor legislation for SMEs.

3.0 SOUTH AFRICA'S LABOR SECTOR

Our analysis of the key elements of the labor sector in South Africa—legal frameworks, government institutions, organizations, and labor markets—is laid out below; in particular, we focus on gaps and weaknesses identified in interviews as well as secondary sources. Of course, the distinctness of these categories is bound to be artificial, and we would like to make a brief comment on that score. There is a deliberate overlap in our approach to the first two components (legal frameworks and government institutions) that reflects current debates in South Africa on whether the priority of the moment is legal reform or better enforcement of existing laws. The assessment team's meetings reflected a range of positions on the issue. For example, there were several strong comments that governance is the main concern, and that monitoring, evaluation, and implementation in the labor arena are weak. In this context, there was some criticism expressed of the emphasis, at the level of unions and NGOs, on new legislation and amendments of existing legislation.

3.1 LEGAL FRAMEWORK

3.1.1 International Legal Framework

International labor standards play an important role in the regulation of labor rights and the development of labor jurisprudence in South Africa.⁵⁵ Section 232 of the constitution accords customary international law the status of law in South Africa (except where it is inconsistent with the constitution or an act of Parliament) and makes it obligatory on the courts to “prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.”⁵⁶ Furthermore, section 39 (1) places importance (among other factors) on the consideration of international law in interpreting the Bill of Rights contained in the constitution.

South Africa has ratified all of the ILO's core conventions related to freedom of association and collective bargaining (C.87 and 98), forced labor (C.29 and 105), child labor (C.138 and 184), and employment discrimination (C.100 and 111). Jurisprudence of the Constitutional Court and the Supreme Court of Appeals has repeatedly affirmed that South Africa has legal obligations arising out of its membership in the ILO, and its ratification of ILO conventions.⁵⁷ The Labor Relations Act also recognizes, in sections 1 and 3, South Africa's international obligations under the ILO to dispense its responsibilities relating to “advancing economic development, social justice, labor peace, and democratization of the workplace.”⁵⁸

3.1.2 Domestic Framework

Overview. There is a constitutional imperative to recognize and protect employment relationships in South Africa, articulated at length in section 23, which deals with labor relations relating to employers,

⁵⁵ Van Niekerk, A. (ed.), Christainson, M.A., McGregor, M., Smit, N., and Van Eck, B.P.S. *Law @ Work* (Durban: LexisNexis Butterworths, 2008), p. 26.

⁵⁶ Constitution of the Republic of South Africa, Section 223.

⁵⁷ See e.g., *S v Makwanyane 1995 3 SA 391 CC, NUMSA & Others v Bader Bop (Pty) Ltd and another 2003 2 BLLR 103 CC, Minister of Defence & Others v SA National Defence Force Union and Others, 2006 27 ILJ 2276 SCA.*

⁵⁸ Van Niekerk, A. et al, p. 28 and 29.

workers, and their representative organizations. The constitution also affirms the freedom of association,⁵⁹ and the right of all citizens to choose their trade, occupation, and profession freely.⁶⁰

Dealing more specifically with labor issues than the constitution are the Labor Relations Act (LRA) of 1995, the Basic Conditions of Employment Act (BCEA) of 1997, and the Employment Equity Act (EEA) of 1998. Other noteworthy pieces of legislation include the Unemployment Insurance Act of 2001, the Compensation for Occupational Disease Act 130 of 1993, the Occupational Safety and Health Act 85 of 1993, and the Mine Health and Safety Act 29 of 1996.

- The LRA, which is the principal labor statute in the country, regulates collective labor rights (related to organizing, strikes, and bargaining structures, for example), but also protects individual employees against a range of unfair labor practices. Further, the LRA establishes dispute resolution agencies: the Commission for Conciliation, Mediation and Arbitration and the Labor Courts.
- The BCEA sets out the minimum statutory requirements in employer/employee relationships, addressing issues such as hours of work, leave, and termination of employment. It also provides for narrowly defined means by which these requirements may be amended, at the level of individual, collective or sectoral agreements, or ministerial determinations.
- The EEA addresses unfair discrimination in employment, prohibiting in particular any direct or indirect discrimination on grounds of race, gender, pregnancy, marital status, family responsibility, ethnic or social origin, color, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, and birth. It also provides a framework for implementing affirmative action, through strategies including preferential hiring policies, and reasonable accommodations for workers from designated categories.

Strengths and weaknesses in the framework, and proposals for reform. The South African legal framework for labor protection is very progressive for a developing country. South Africa has entrenched the right to fair labor practices in the Bill of Rights, a rare feature in any constitution. South Africa has also ratified all of the ILO's core conventions and its labor legislation conforms to and gives effect to these norms. The Labor Relations Act not only facilitates, but promotes and encourages collective bargaining as a means of determining terms and conditions of employment and ensuring industrial peace and stability. In addition, the Basic Conditions of Employment Act is important for setting a minimum floor for all workers to prevent abuse and exploitation by employers. Also, the Employment Equity Act—with its prohibition of discrimination and requirements for employers to take affirmative action measures—is a critical legislative tool to bring about equality in the workplace.

Several of those interviewed by the team indicated gaps at various levels, however. Several commentators pointed out that, since the entire framework of law had been negotiated by big government, big business, and big labor, it did not shape policy addressing critical labor market issues such as SMEs and apprenticeship/ traineeship programs.

Many are dissatisfied with the approach to collective bargaining adopted by the LRA. While the promotion and facilitation of collective bargaining is listed as one of the main purposes of the legislation,⁶¹ the LRA actually removed a judicially imposed duty to bargain, by significantly narrowing what may be considered an unfair labor practice.⁶² South African courts have addressed the question of

⁵⁹ Constitution of the Republic of South Africa, Section 18.

⁶⁰ Constitution of the Republic of South Africa, Section 22.

⁶¹ Opening schedule, LRA.

⁶² Godfrey S., Theron J., and Visser M., *The State of Collective Bargaining in South Africa: An Empirical Study of Collective Bargaining*. DPRU Working Paper 07/130 (Cape Town: University of Cape Town, 2007).

whether the constitutional provision in section 23(5) regarding the right to engage in collective bargaining is actually met within the LRA framework.⁶³ While the courts relied on international standards, ILO Convention 98 and the interpretation given by the ILO supervisory bodies in determining the extent of the right to collective bargaining, they nevertheless concluded that a legal duty to engage in collective bargaining would be very hard to administer, regardless of how the duty was interpreted.⁶⁴ However, bargaining is in fact widespread at the plant and sectoral level, as well as in bargaining councils, as noted above, and some experts believe that the strong organizational rights provided for in the current LRA framework will produce and sustain powerful, effective unions that are thus able to demand and secure good faith bargaining.⁶⁵

There are a number of voices in South Africa arguing that the legal framework, as it stands, inadequately protects a range of atypical workers. It is clear, from a review of the legislation, that legislation does not actually ensure that the labor rights extended to “everyone” in the constitution in section 23(1) and (2) are actually available to informal sector workers seeking to form and join trade unions, participate in a strike, etc. Statutory rights related to skills development, unemployment and maternity benefits, compensation for work related injuries, health and safety in the workplace, and unfair dismissal are also not extended to the informal sector.⁶⁶

In some cases, NGOs rather than unions have taken the lead on highlighting weaknesses. The Nkuzi Development Association and the Scalabrini Centre both pointed to general legislative failures to protect migrants, both documented and undocumented. Nkuzi, in particular, emphasized that there was very little that could be done at the level of courts to protect migrant workers, since the Refugee Act does not apply. In spite of several very heartening judgments interpreting labor legislation piecemeal in ways that protect migrant workers, there was agreement that basic reforms will be needed, which articulate specifically that all provisions, ranging from minimum wage guarantees to protections from unfair dismissal, apply to workers regardless of citizenship and status. One expert confirmed the view that the best way to protect South African agricultural workers, for instance, would be to give migrant workers (including undocumented ones) the right to file disputes and give them immunity in the process regardless of legal status.

According to SWEAT, criminal law operates as a barrier to sex workers accessing labor rights. Under the Sexual Offences Act 23 of 1957, which is currently awaiting amendment, those who “commit acts of indecency” for reward can be prosecuted. It is SWEAT’s position that South Africa must decriminalize sex work and introduce legislation that guarantees human rights of sex workers and protections for them to organize.⁶⁷ Sex workers at SWEAT also pointed out to the team that decriminalization would bring sex work out of the shadows and shed light on exploitative labor practices, including child and forced labor, that should be targeted separately by labor inspectors and the police.

Finally, much of the labor movement in South Africa has been a strong advocate for a legislative ban on temporary employment agencies. (Proposals for a ban are supported by COSATU and NACTU, but opposed by FEDUSA.) Opponents of an outright ban tend to agree that temporary employment agencies, termed “labor brokers” in the South African context, are indeed a problem. In many sectors, labor brokers

⁶³ *Sandu v Minister of Defence and others; Minister of Defence and others V SA National Defence Union and others*, (2006) 11 BLLR 1043(SCA) SANDU.

⁶⁴ Van Niekerk, A. et al, *Law @ Work*, p. 344.

⁶⁵ Godfrey S., Theron J., and Visser M. *The State of Collective Bargaining in South Africa: An Empirical study of Collective Bargaining*. DPRU Working Paper 07/130 (Cape Town: University of Cape Town, 2007).

⁶⁶ Benjamin, P. “Informal Work and Labour Rights in South Africa,” DPRU, School of Economics, University of Cape Town, 2008.

⁶⁷ SWEAT. “Sex Work: Decriminalization of the Industry,” presented to COSATU Congress 2009, accessed at <http://www.cosatu.org.za/docs/subs/2009/prostitution.pdf> on 08/02/2010.

run databases of employers and undercut wage agreements by going to those employers one by one with offers of cheaper labor. However, according to one expert, if labor brokers were banned, the move would take 500,000 to 600,000 people out of work in one blow. (This claim is disputed by COSATU, among others, who asserts that banning labor brokers would force companies to hire permanent workers.) Opponents of a ban typically advocated for better implementation of existing laws related to minimum wages and other basic conditions of employment.

Officials at the Department of Labor and several unions pointed out that, in addition to violations of wage and hour provisions, labor brokers presented an obstacle to organizing that cannot be easily addressed by better implementation of existing laws. The CWU, organizing in mobile telephony, pointed out that in many cases there were five or six labor brokers operating within a single cell phone company, creating deliberate uncertainty as to who was the actual employer. Furthermore, as COSATU officials at the Western Cape level said, the current framework of “joint and several” liability does not apply to terminations, where the labor broker is considered the sole employer. So, when workers are fired by clients for union activity and relocated to a different workplace by the labor broker, very little can be done.

There are some attempts to finesse the situation, including the labor research group NALEDI; who proposed a distinction between professionals and non-professionals, where labor brokers would be permitted to engage with the former, but not the latter. Sikhula Sonkhe, a group of women farm workers, has suggested that the role of temporary labor provision be handed over to labor organizations themselves, creating, for example, “union hiring halls” for seasonal agricultural workers.

A prominent lawyer and academic who is collaborating on new legislation for labor brokers found it important to note that any legislative ban or restriction, as currently contemplated, would not do away with the system of placement, but rather, with the idea of the agency as the employer. He believes that it would be workable, given the concerns set forth by stakeholders, to identify and define types of work that are genuinely temporary, and permit the operation of labor brokers, as currently understood, in these areas. For work that falls outside this definition, he supports the idea of a ban.

3.2 GOVERNMENT INSTITUTIONS

3.2.1 Government Ministries

The Department of Labor. The Department of Labor administers the bulk of legislation related to labor issues, and is responsible, through its labor inspectorate, for enforcement. The department also has much of the responsibility for developing strategies to reduce unemployment, poverty, and inequality through policies and programs developed in consultation with social partners. These include areas such as improved economic efficiency and productivity, skills development and employment creation, labor relations, equality in employment, and poverty alleviation.⁶⁸ It should be noted that the newly created Departments of Economic Development and Higher Education and Training, have taken over, or will take over, primary responsibility for some of these areas of focus.

One of the Department of Labor’s weaknesses is its limited enforcement capacity.⁶⁹ In 2000, 685 inspectors spread across the ten provincial offices were responsible for enforcing minimum employment conditions, as well as the provisions of the Occupational Health and Safety Act⁷⁰ and the EEA.⁷¹ Despite active

⁶⁸ Department of Labor website, <http://www.labour.gov.za/about-us>.

⁶⁹ Du Toit, D. et al, *Labour Relations Law: A Comprehensive Guide* (Durban: LexisNexis Butterworth) 2006, p. 57.

⁷⁰ Occupational Health and Safety Act 85 of 1993.

⁷¹ Cheadle, H. and Clarke, M. *International Labour Office National Studies on Workers Protection: South Africa*. Report Submitted to ILO (2000).

recruitment by the Department of Labor, and the upgrading of inspectors' skills with substantial assistance from the ILO, the Department of Labor still faces substantial enforcement capacity problems, by its own admission. There are currently nine provincial offices, 125 "labor centers," and 20 mobile units, but the number of inspectors will never be enough to meet the need, and other strategies need to be explored. As one official noted, it is generally the case that the less organized the sector, the lower the levels of compliance with law. (Private security, domestic work, and agricultural work were identified as cases in point.) Thus, the director suggested that the department should reach out more aggressively to trade unions, to determine the assistance needed in order to be better equipped to organize. However, others take the position that obstacles to organization must not deflect attention from the lack of political will that prevents the inspectorate from operating appropriately. For example, Nkuzi pointed out that a protocol agreement signed by the Department of Labor requires that farmers be given notice of impending inspections—making these effectively meaningless, particularly in the context of undocumented migrant workers or children who can be easily hidden or dismissed given enough warning. SADSAWU also noted that this problem—negotiating access to private property—entirely undermined inspections related to domestic workers.

A key concern is the extent to which critical department officials are poached by large companies, thus affecting the Department of Labor capacity; this concern was expressed by several union leaders as well as others.

BOX 1: Meeting Farm Workers in Limpopo Province

The assessment team attended a meeting organized by FAWU, an organizations seeking to unionize farm workers at an agribusiness in Limpopo Province. Employer noncompliance with basic provisions was in stark evidence; examination of pay slips indicated that workers were paid a month's wages for a pay period of between five and six weeks. The farmer was also illegally deducting wages for unspecified "services." When workers complained about their pay to management, they were confronted with intimidation and escalation; the team was shown a legal letter that issued an ultimatum and stated that any collective action, strikem or go-slow (none of which had been threatened) would be deemed "unprocedural and unprotected" under the LRA.

Workers alleged that the Department of Labor office in the provincial capital of Polokwane was unresponsive to their complaints, and stated that the inspectors were clearly corrupt, proven by the fact that they never interviewed workers or inspected the premises during visits, only visiting the manager's office. To the extent that the Department of Labor relies on unions to address gaps in inspectorate capacity, it should be noted that the workers' complaints of corruption also extended to their union; according to several accounts, FAWU representatives would arrive at disciplinary hearings in a car with the employer and the employer's lawyer, remain silent throughout the proceedings, and leave in the same car. Pay slips of workers who were not members of the union showed that dues were being deducted, suggesting some amount of collusion between the union and management.

Statutory Bodies overseen by the Department of Labor. In addition to those listed below, the Department of Labor also currently supervises the Commission for Employment Equity and the National Skills Authority. Given the particular focus areas of our research, the analysis is restricted to the following.

Bargaining Councils, as noted above, are statutory bodies registered with the Department of Labor under the LRA. They may be established at either the initiative of employer or employee organizations, to manage negotiations on terms and conditions of employment for an entire industry, either at the national level or within a limited geographic area. The body also enforces the agreement, once registered with the Department of Labor, and manages dispute resolution, typically by outsourcing this responsibility to a private firm. As described above, Bargaining Council agreements may be extended to non-parties by the Minister of Labor.

As indicated by a senior staffer at our meeting at the Chamber of Mines, Bargaining Councils offer advantages to employers and not just employees. One particularly important consideration is that

unprofitable enterprises are entitled to seek an exemption from the terms of Bargaining Council agreements, through an independent tribunal, and are more likely to receive it there than if the employer was requesting it directly from the union. However, the Bargaining Council framework will have to be adapted at a structural level to make it consistently fairer for smaller enterprises.

Other gaps identified in the operation of Bargaining Councils included the need to improve extension powers, so that determinations related to coverage of non-parties are faster and more transparent.

The *Employment Conditions Commission (ECC)* sets sectoral determinations for those outside the Bargaining Council framework and stipulate terms and conditions (including wage levels).⁷² The ECC has issued sectoral determinations for domestic workers, farm workers, taxi drivers, and retail employees, among others. Sectoral Determination 7 applies to all domestic workers (including independent contractors and those employed by agencies), except domestic workers who work on farms or are addressed by another sectoral determination, or those covered by a bargaining council agreement.⁷³

Meetings attended by the assessment team indicated some number of gaps and unintended consequences in the operation of the sectoral determination system. For example, Nkuzi indicated that the sectoral determination for agricultural workers had brought about a substantial degree of casualization. At a meeting organized by the Western Cape office of COSATU, a FAWU official pointed out that sectoral determinations do little to bring vulnerable workers into the broader labor movement, and suggested, with respect to agricultural workers, that the Department of Labor try instead to facilitate commodity-specific, geographic-based Bargaining Councils. SADSAWU noted problems related to implementation, stating that few of the domestic workers laid off in the context of the recession have received unemployment insurance benefits. SADSAWU estimates that one in 20 domestic workers in the Western Cape have been registered by employers, and given the problems with labor inspectorate access, it is difficult to enforce the requirement. Furthermore, it is hard for domestic workers themselves to confirm with the Department of Labor whether they have been registered or not, since the information will not be given over the telephone, and requires a full day of waiting in line at the office.

Other Relevant Government Departments. The question of relevance is an extremely subjective one, of course. Below, we note a small handful of the departments whose work is closely related to that of the Department of Labor. In the interests of space, we have left out many whose importance to the labor sector is clear, such as DTI.

The *Department of Public Works* oversees the Extended Public Works Program, which uses public sector expenditure to create temporary work opportunities for the unemployed.⁷⁴ The program also combines employment creation with the provision of training and skills development, with the aim of increasing the ability of beneficiaries to find alternative employment once they leave. The *Department of Social Development* administers the social grants programs described above. The two new departments should also be mentioned here, since the *Department of Higher Education and Training* has taken over the bulk of the Department of Labor's responsibilities with respect to skills development (as well as responsibilities for the vocational colleges, which used to lie with the Department of Education). The recent Strategic Plan issued by the *Department of Economic Development* places strong emphasis on the need to create green jobs and expand decent work.⁷⁵ One commentator noted that coordination between

⁷² Section 51 (1) of the Basic Conditions of Employment Act 75 of 1997.

⁷³ "Basic Guide to Minimum Wage (Domestic Workers)," Department of Labor website, <http://www.labour.gov.za/legislation/acts/basic-guides/basic-guide-to-minimum-wages-domestic-workers>, accessed on 05/02/2010.

⁷⁴ Extended Public Works Program website, <http://www.epwp.gov.za/>, accessed on 05/02/10.

⁷⁵ Minister of Economic Development, Medium Term Strategic Plan 2010/11–2012/13, issued March 5, 2010, available at <http://www.info.gov.za/view/DownloadFileAction?id=118188>.

the two new departments and the Department of Labor will be critical. There is a perception in some circles that the former were created by taking power and responsibility away from the latter, which has already proven to be a barrier to cooperation.

Nkuzi and the Scalabrini Centre both noted the general lack of coordination between the Department of Labor and the Department of Home Affairs, coordination that is essential if there is to be a coherent and comprehensive policy with respect to migrant workers and their protection. However, officials at the Department of Labor insisted that they will be working closely with Home Affairs on immigration policy review, and that they have already worked together with respect to work permits. (Note that South Africa has negotiated several bilateral agreements that address migrant work, with countries including Lesotho, Mozambique, and most recently, Zimbabwe. A recent Human Rights Watch report has criticized the South Africa-Zimbabwe agreement's lack of attention to workers' rights issues.⁷⁶)

3.2.2 Institutions for the Resolution of Workplace Disputes

The Commission for Conciliation, Mediation, and Arbitration. Most labor disputes in South Africa must be addressed through a process of conciliation, arbitration, or con-arbitration, instead of, or prior to, an approach to the Labor Court. While there are private firms, as mentioned above (the team met with one, Tokiso), these processes are for the most part administered by the CCMA, the statutory dispute resolution body established under the LRA.⁷⁷ It is an autonomous statutory entity with its own governance structure. The CCMA is modeled on similar institutions from around the world, one of the best-known being the Advisory, Conciliation, and Arbitration Service in the UK that was established in 1975. South Africa's CCMA, established in 1995, has in turn served as a model for other African countries such as Lesotho and Swaziland, which established similar institutions (the Directorate for Dispute Prevention and Resolution, and the Conciliation, Mediation and Arbitration Commission, respectively) in 2000.

The CCMA presides over labor matters relating to dismissal, wages and working conditions, workplace changes, and discrimination that may arise in employment relationships.⁷⁸ The process for bringing matters before the CCMA was designed to be simple and non-bureaucratic. Unions or employers' organizations, as well as individual employers or employees, may bring matters before the CCMA, without the consent of the other party or parties involved.

The jurisdiction of the CCMA does not extend to the following matters:

- Those involving an independent contractor;
- Where a bargaining council or statutory council exists for that sector;
- Where a private agreement exists for resolving disputes (in the case of private arbitration); or
- Where the case under consideration does not deal with an issue in the LRA or EEA.⁷⁹

Every year sees a steady increase in the number of referrals brought before the CCMA. In 2009, these totaled 140,366 (an average of 555 referrals every working day).⁸⁰ According to the CCMA's own data, 101,759 of the total number of disputes were conciliations (including pre-conciliation, con-arbitration, and conciliations). About 99.8 percent of these cases were heard within the statutory 30-working-day

⁷⁶ Human Rights Watch, *Keep Your Head Down: Unprotected Migrants in South Africa*. February 27, 2007.

⁷⁷ Available at the CCMA website, www.ccma.org, accessed on 02/02/2010.

⁷⁸ Available at the CCMA website, www.ccma.org, accessed on 02/02/2010.

⁷⁹ Available at the CCMA website, www.ccma.org, accessed on 02/02/2010.

⁸⁰ CCMA Annual Report 2008/2009, www.ccma.org, accessed on 02/02/2010.

period.⁸¹ 40,229 arbitrations were heard, and 99 percent of the awards were rendered within the statutory 14-day period.⁸² Furthermore, 62 percent of all disputes referred to the CCMA were settled at conciliation.⁸³ Since the inception of the CCMA, there has been a national settlement rate of 70 percent, according to its own data.⁸⁴

However, some of those who shared their opinions with the team have a harsher analysis of the settlement rate. For example, about 98 percent of the disputes referred to the CCMA concern dismissals, and about half of these settle, in part because employers routinely appeal CCMA awards to the Labor Courts, which can take between three to five years to arrive at resolution. Since remedies for unfair dismissal are capped at 12 months' wages, there is very little incentive for workers to pursue claims to their conclusion. Per figures from 2008, of the claims that are not settled but that proceeded through arbitration, workers won about 40 percent (approximately 15,000), and yet only 1500 were actually reinstated. Enforcement of awards against recalcitrant employers is almost impossible, and there are no prosecutions for failure to comply.

Part of the problem is that the enabling legislation for the CCMA had not contemplated such routine appeals of its awards. The body was intended to be "rough and ready and quick," according to a Labor Court judge, with limited right of review for the parties. In spite of a 2007 decision of the Constitutional Court determining that the standard for review of CCMA awards should be extremely deferential, accepting for review only such awards where the commissioner's decision could *not* have been reached by a "reasonable decision-maker,"⁸⁵ applications for review continue to be a very high percentage of the Labor Court's work.

All of those who addressed the issue of protracted appeals of CCMA awards were united in their opinion that a mechanism was necessary to force employers to move very quickly on review, and to provide penalties for frivolous appeals.

Labor Courts. South Africa maintains a separate court system to deal with the interpretation and application of labor legislation. The Labor Courts have exclusive jurisdiction over these matters, and concurrent jurisdiction with the High Court and the Supreme Court of Appeal. Parties to a dispute can appeal the decision of the Labor Court to the Labor Appeal Court. From there, further appeals must be to the highest court, the Constitutional Court.⁸⁶ As noted above, the bulk of the Labor Court's work is supervisory, involving review of CCMA awards.

Speed and access are the major concerns expressed in regard to the court's operation—including from judges themselves. It was noted, for example, that there are only four Labor Courts in South Africa, in each of the biggest cities. This shuts out many small employers and individual employees from the forum, and emphasizes the need for circuit courts that would be able to reach smaller towns and rural areas. Another problem cited is that the lack of resources keeps out other critical cases, as very few equality-related cases come before the court, even though these should be the court of first instance for this issue. Equal pay claims require a great deal of sophisticated research, and hence the expenditure of resources that are not available to most workers or unions.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ *Sidumo and Congress of South African Trade Unions vs Rustenburg Platinum Mines Ltd., Commission for Conciliation, Mediation and Arbitration and Moropa NO*, Case CCT 85/06, Medium Neutral Citation: [2007] ZACC 22, 5 October 2007.

⁸⁶ Labour Relations Act Section 173 (1).

The court's actual jurisprudence related to vulnerable workers appeared inconsistent to some of the labor organizations that met with the assessment team. Unions applauded a recent decision that addressed the issue of whether undocumented migrants could be considered "employees," as defined by the LRA s.213; the court resolved in favor of such workers.⁸⁷ The Labor Court determined that undocumented migrant workers were covered by the LRA's provisions related to unfair dismissal under s.185(a), in spite of the fact that Section 38(1) of the Immigration Act prohibits their employment in the first place. The court relied on the principle that immigration law could not be cited by self-serving employers to avoid complying with labor legislation.

However, SWEAT criticized the court's decision in another case involving a claim of unfair dismissal in the context of work considered illegal. In that case, while the Labor Court agreed, in line with the reasoning above, that a sex worker could be considered an employee under LRA s.213 even though her contract of employment was unenforceable, it diverged on the issue of whether she should be entitled to protection from unfair dismissal under LRA s.185(a) given the illegal nature of her work. The court cited the Sexual Offences Act 23 of 1957 in justification of the principle that granting the worker a remedy against unfair dismissal would run counter to the common law principle that courts "ought not to sanction or encourage illegal activity."⁸⁸ SWEAT subsequently communicated that the Labor Appeal Court set aside this ruling, on 26 May 2010, and determined that the CCMA did in fact have jurisdiction, given the capacious nature of protections against unfair labor practices in s.23 of the Constitution and LRA. However, the Labor Appeal Court maintained that, given the criminalization of sex work in South Africa, while sex workers might be entitled to form and join unions, they would not be entitled to exercise organizational rights including that of collective bargaining, since this would constitute "the furtherance of a crime."⁸⁹

3.2.3 The National Economic Development and Labor Council (NEDLAC)

A notable feature of labor regulation in South Africa is the presence of a tripartite social dialogue institution—NEDLAC—which came into existence as a consequence of the National Economic Development and Labor Council Act.⁹⁰ NEDLAC's functions are to promote the goals of economic growth, to seek to reach consensus and conclude agreements on matters of social growth policy, to consider all proposed labor legislation before it is submitted to government, and to consider all significant changes to social and economic policy before implementation.⁹¹

Structurally, NEDLAC consists of four chambers:

1. Public finance and monetary policy
2. Trade and industry
3. Labor markets
4. Development.

Each of these convenes trade unions (including the General Secretaries of all three federations), employers, and representatives of the state (including the Ministers of Labor, Finance, Public Works, DTI) to negotiate the shape of labor law and policy. Significantly, NEDLAC also has a role (albeit a

⁸⁷ *Discovery Health v CCMA & Others* (Johannesburg Labour Court, Case JR2877/06 – unreported), CLL Vol. 17, April 2008.

⁸⁸ *Kylie v CCMA* (2008) 29 ILJ 2234 (LC).

⁸⁹ *Kylie v CCMA* (2010) Case number CA 10/08

⁹⁰ National Economic Development and Labour Council Act (NEDLAC) 38 of 1994.

⁹¹ NEDLAC Act 28 of 1956.

limited one) for civil society, creating a “tripartite plus” institution. Some of NEDLAC’s major labor sector agreements successfully negotiated over the years include the Labor Relations Act, the BCEA, the EEA, and the Skills Development Act. In addition NEDLAC has played a significant role in the development of trade policy and job creation initiatives.⁹²

However, NEDLAC also confronts a number of challenges. Inadequate funding of its operations is one constraint to the fulfillment of its mission.⁹³ The limited allocation of resources has led many to believe that the government does not take NEDLAC’s role seriously. Labor federations have also complained that in many cases the government bypasses NEDLAC when formulating important socioeconomic policies, charging that decisions are made in the Presidency without sufficient consultation of NEDLAC partners. An example of this was the introduction of the macroeconomic policy—the GEAR Strategy—in 1996.

In 2000, business and labor developed the Millennium Labor Council (MLC) with the aim of developing a shared analysis of the unemployment crisis and to consider potential solutions to be pursued with government and NEDLAC. The Millennium Agreement, which establishes the MLC, states that it is associated with NEDLAC but operates with full policy autonomy.⁹⁴ The MLC consists of 18 members each from the business and labor constituencies, engaging in unminuted debates on timely issues such as energy crisis, unemployment, and social protection. It is believed that organized business enthusiastically welcomed the MLC’s establishment not only to reinforce what it regards as the traditional mode of social dialogue with labor, but also to counter the “misguided ascendancy” of an “unrepresentative” community constituency in NEDLAC. (According to NEDLAC sources, “elements of the community constituency have been assertive to a point where organized business and organized labor feel uncomfortable with their participation.”⁹⁵) In addition, it was reported that government also welcomed the MLC, recognizing that once business and labor at the highest levels reach an agreement, it is likely to yield results.

Weaknesses in NEDLAC include frequently stalled negotiations and the fact that high-level leaders no longer attend, but instead send technocrats. These representatives tend to not be good negotiators and are not skilled at getting to agreement. In addition, some government departments attempt to avoid the NEDLAC process; however, some argue that President Zuma had remedied this by making it clear that he would not deal with anything that had not been through the NEDLAC process.

Another controversy relates to the limited role played by civil society organizations in NEDLAC. The “community constituency” is only represented in the Development Chamber, and is excluded from the other three. It is, however, fully represented in the formal oversight structures. Thus, it has a limited role to play in deliberations on policy formulation in the NEDLAC forum. Several organizations make up the community constituency, including the Women’s National Coalition, the South African National Civics Organization (SANCO), the South African Youth Council, the South African Federal Council on Disability, the National Co-operatives Association of South Africa, and the Financial Sector Campaign Coalition.

The community constituency in NEDLAC has consistently objected to its confinement to the development chamber. COSATU has also supported calls for expansion of the community constituency’s role, arguing that it is affected by the deliberations of the other three chambers and should therefore have

⁹² Van Niekerk et al, *Law@work*, p. 14.

⁹³ Kalula, E. “NEDLAC and Social Dialogue in South Africa: Participatory Labour Market Governance in Comparative Perspective,” p. 7.

⁹⁴ “Millennium Agreement,” Millennium Labor Council website, accessed at <http://www.mlc.org.za/default.asp> on 02/04/2010.

⁹⁵ Kalula, E. “NEDLAC and Social Dialogue in South Africa: Participatory Labour Market Governance in Comparative Perspective,” p. 7-8.

a say in them.⁹⁶ Civic organizations argue that they have a “substantial interest” in the issues that include basic conditions of employment, equity, and conventions of the ILO in the Labor Market Chamber.⁹⁷ One organization within the community constituency, SANCO, has gone as far as to claim equal status with government, business, and labor.⁹⁸

Despite the community constituency’s formal exclusion from the other three chambers of NEDLAC, it has participated in debates there through its informal links with the labor constituency.⁹⁹

The role of the community constituency in NEDLAC is further complicated by the fact the organizations composing it are arguably not representative of the diversity of areas and diversity of groups making up South African civil society.¹⁰⁰ There have been calls to expand the coalitions who participate, in order to address SMEs, informal sector workers, the unemployed, and migrants, for example, but these have not progressed very far. Given the “amorphous nature of the community constituency in comparison to organized business and organized labor,”¹⁰¹ and the difficulty that most civil society organizations would experience in demonstrating their democratic mandate and accountability to their constituencies, there is little appetite for expanding a presence that many already experience as problematic.¹⁰²

3.2.4 Sectoral Education and Training Authorities (SETAs)

In its efforts to tackle the challenge of high unemployment, government introduced a program to develop the skills of the unemployed through learnerships and apprenticeships managed by Sectoral Education Training Authorities (SETAs). The Skills Development Act¹⁰³ provides for the establishment of these SETAs. The Minister of Labor established 23 authorities, each of which represents an industry sector, and these are tasked with identifying, designing, promoting, and registering learnerships for that sector.

The SETAs were intended to develop learnerships that would provide a small income to participants who would simultaneously acquire skills that would improve their employment prospects upon completion of the program. Unfortunately, some have performed very poorly, and there have been numerous revelations of mismanagement and corruption at others.¹⁰⁴

The team tried to meet with the SETAs in the agriculture, auto, and mining sectors, but was unable to do so. Nevertheless, the assessment team sought input from relevant stakeholders; the general opinion among unions was that the SETAs had become an unfathomable bureaucracy, sitting on pots of money with workers getting nothing. A more sustained analysis emerged through conversations with the union and business association for the mining sector, NUM, and the Chamber of Mines. The predominant sentiment was that the Mining Qualifications Authority (MQA), the SETA for the mining sector, barely consulted

⁹⁶ “Political Resolutions to the 9th National Congress,” COSATU website, <http://www.cosatu.org.za/show.php?include=docs/resolutions/2006/resolutions.htm>, accessed on 02/04/2010.

⁹⁷ Houston, G., Liebenberg, I., and Dichaba, W. “Interest group participation in the National Economic Development and Labour Council,” in Houston, G. (ed.) *Public Participation in Democratic Governance in South Africa* (Pretoria, Human Sciences Research Council, 2001), p. 17-83, p. 44.

⁹⁸ Ibid; 44th National Congress”, para. 3.9, COSATU website, <http://www.cosatu.org.za/show.php?include=docs/resolutions/2006/resolutions.htm> on 02/04/2010

⁹⁹ Ibid, p. 44-5.

¹⁰⁰ Ibid, p. 49-50.

¹⁰¹ Kalula, E. “NEDLAC and social dialogue in South Africa: Participatory Labour Market Governance in Comparative Perspective,” p. 7-8.

¹⁰² Ibid.

¹⁰³ Skills Development Act 97 of 1998.

¹⁰⁴ Du Toit, op. cit., p. 42.

social partners and thus engaged in extensive duplication of resources. For example, the MQA was implementing the Department of Labor’s “training layoff scheme” for the sector, focusing on getting retrenched mineworkers into re-skilling programs,¹⁰⁵ but neither of the two NUM staff members present at the assessment team’s meeting had even heard of the program. Furthermore, they noted that NUM had long ago set up its own institution to address retraining and alternative employment for retrenched mineworkers—the Mineworkers Development Agency, funded through contributions from employers. The Chamber of Mines echoed the duplication of resources critique, noting that even for new entrants to the mining sector, there was an institution already in place—the Colliers Training College.

3.2.5 Strengths and Weaknesses of Government Institutions, and Proposals for Reform

The above discussion demonstrates government’s efforts to establish innovative institutions and mechanisms to address challenges in South Africa’s labor market. An example is the Employment Conditions Commission that targets workers in sectors that are poorly organized and are therefore vulnerable, including domestic workers, taxi industry workers and farm workers. Sectoral Determinations are issued by the ECC after thorough investigations into the circumstances of, and challenges faced by, the relevant workers. Another strength of the system is the CCMA, which has offices in all nine provinces and is accessible in terms of cost and procedure. It has a relatively high settlement rate, with over 60 percent of disputes settled at the conciliation stage. In principle, NEDLAC represents a commendable effort to institutionalize social dialogue between the social partners to ensure their participation in decision- and policy-making.

However, a number of weaknesses have been identified, with a key challenge being the lack of adequate financial and human resources to ensure the implementation and enforcement of legislation and the full operation of institutions. This was particularly the case in relation to the labor inspectorate and NEDLAC, and to some extent, the Labor Court. The Labor Court is also unnecessarily inundated with CCMA reviews, making it difficult for it to develop critical jurisprudence on matters where it is a court of first instance, such as employment equity matters. Another problem is mismanagement and corruption, in the case of the SETAs. We would also highlight the frequent failure of institutions to take advantage of opportunities to build strategic partnerships and build synergies with each other. These include the labor inspectorate’s failure to build partnerships with trade unions and business associations, and the failure of at least one SETA to build on existing training initiatives in the sector concerned.

Recommendations to meet these challenges would include:

- Increase the financial resources of the labor inspectorate to enable the recruitment of more inspectors and to provide them with adequate training;
- Improve communication and information-sharing between government departments to prevent the duplication of resources, and to identify areas for co-operation;
- Develop strategies for collaborations between trade unions and local labor inspectors to rapidly detect and respond to the violation of rights of organized and unorganized workers;
- Foster collaborations between workers’ organizations and legal services NGOs to improve access to dispute resolution mechanisms for unorganized workers;
- Shape measures to prevent employers from instituting frivolous and unnecessary reviews of CCMA proceedings in the Labor Court; and

¹⁰⁵ Training Layoff Scheme for the Mining and Minerals Sector, October 7 2009, available at <http://www.mqa.co.za/siteimgs/112%20-%20Training%20Layoffs%205%20October%202009.pdf>.

- Establish circuit courts outside the Labor Court’s current jurisdiction to ensure that workers in small towns and rural areas have access to the Court.

3.3 LABOR SECTOR ORGANIZATIONS

3.3.1 Trade Unions

As discussed above, the trade union movement has sought to defend and protect the rights of its members in the following ways:

- Represent labor in bargaining councils and other non-statutory bargaining fora;
- Represent labor in workplace consultations with employers in matters such as workplace restructuring and training;
- Represent labor in high-level fora such as NEDLAC;
- Lobby and advise government on proposed legislation and policies that affect workers;
- Educate workers about their rights and disseminate industry-related information to workers;
- Represent workers in disciplinary hearings and CCMA proceedings;
- Litigate on behalf of members in the Labor Court and higher courts; and
- Conduct and commission research on challenges faced by workers and the union movement.

Despite its many successes and achievements, the South African labor movement faces a number of challenges. Trade unions have been unable to cope with changes in the nature and organization of work, such as firm restructuring, resulting in massive retrenchments and the greater use of temporary and casual labor and outsourcing.¹⁰⁶ In addition, small businesses have proliferated and are employing an increasing segment of the workforce, and small businesses are notoriously hard to organize. These changes are a challenge to unions that have successfully organized standard employees working in large private companies, government parastatals, and the public sector. While the individual trade unions and union federations such as COSATU have identified new strategies to organize these potential members, implementation is proving to be difficult.¹⁰⁷ This has led to perceptions that the union movement represents the interests of an elite group of workers with long-term, secure employment and is incapable of representing the interests of vulnerable and marginalized workers who work on an informal basis.

While unions tend to have extremely progressive positions on supporting migrant workers, or the need to organize vulnerable workers, sustained action on these issues rarely follows. There are exceptions, of course—in meeting with the team, the NUM representative noted that since one of its founders was a migrant from Lesotho and there has always been a high percentage of migrants in the mining industry, the union’s representation of migrant workers (documented and undocumented) in collective bargaining contexts as well as litigation, has been a matter of course. COSATU’s research organization, NALEDI, has received funds from the ILO to coordinate a five-country study of migrant labor, looking at South Africa, Lesotho, Mozambique, Swaziland, and Zimbabwe in an effort to develop a better understanding of

¹⁰⁶ Braude, W. “South Africa: Bringing informal workers into the regulated sphere: overcoming Apartheid’s Legacy,” in Avigran, T., Bivens, J., and Gammage, S. *Good Jobs, Bad Jobs, No Jobs: Labour Markets and Informal Work in Egypt, El Salvador, India, Russia, and South Africa* (Washington D.C.: Economic Policy Institute, 2005), p. 369-482; Bamu, P.H. and Godfrey, S. “An Analysis of Collective Bargaining Arrangements in the Construction Industry” (unpublished research report, Labour and Enterprise Policy Research Group, Cape Town) 2009; Wood, G. “South African Trade Unions in a Time of Adjustment,” accessed at <http://www.historycooperative.org/journals/ilt/47/01contri.html> on 02/04/2010.

¹⁰⁷ Braude, p. 444-5.

sectors, numbers, and conditions; this research could undergird organization by COSATU affiliates not only in South Africa, but in support of sister unions across borders.

Unions in South Africa have long recognized the imperative to organize at a regional level. For example, the South African Clothing and Textile Workers' Union lost over 60,000 garment and textile jobs from KwaZulu Natal to Lesotho during the 1990s, and the union had briefly aspired to represent the interests of those workers as well, by refashioning itself as the *Southern* African Clothing and Textile Workers Union. It had, however, failed to do so. Potential sites of collaboration across borders were pointed out with respect to South African transportation companies, which rarely take the same precautions in their operations outside South Africa. In addition, since laws do not vary dramatically within the region but worker education levels and union capacities are very different indeed, South African unions have something concrete to offer, in the form of capacity-building, as they engage across borders. However, it was also noted that unions in neighboring countries are quick to remind COSATU affiliates that they must find a way to engage regionally without taking over the region, and that South African unions must not function as neo-imperialists.

Farm workers have also presented a challenge to trade unions in the areas of shaping and executing organizing strategy. This is tied to the history of the Food and Agricultural Workers' Union, which was originally formed as a trade union to represent workers in the food processing and beverage sector. At the time when the union expanded its membership to include farm workers, there were doubts as to whether it had the capacity to ensure equal attention to those workers. In hindsight, these misgivings have been justified, as FAWU's efforts remain more concentrated on food processing workers than on farm workers.¹⁰⁸ This may be attributable to the differences in the way work is organized in the two sectors (for example, the greater geographical dispersion and contingent status of farm workers in comparison to food processing workers, who are concentrated on a few plants and whose work is not seasonal). The problem of farm worker organization also lies in the general reluctance of some unions to organize sectors that bring wages and conditions of work downwards, such as domestic work and agriculture.

Here too, the ILO is mobilizing funds to engage Naledi's research capacities, to identify what it would require to organize the sector. Several of those met by the assessment team reported that vulnerable workers often encounter weak and corrupt unions, primarily for the reason that wages (and therefore dues) tend to be low in sectors that employ vulnerable workers, leading to low salaries for union staff. Certainly, the FAWU members the team met with in Limpopo Province made credible allegations of corruption against individual union officials. Workers asserted that, in addition to taking money from employers, union officials would expect kickbacks from workers as well, for anything that they asked.

At its 2009 Congress, COSATU was presented with a draft resolution by the Police and Prisons Civil Rights Union (POPCRU) that called for the decriminalization of sex work and supported the organizing of sex workers. While the resolution was promoted by unions including NUM, NUMSA, SACCAWU, and the Democratic Nurses' Organization of South Africa (Denosa), there was strong opposition from the teachers' union, SADTU, and the CWU. Several unionists believe that the resolution will pass at the next Congress, leading at least to development by COSATU and its affiliates of a principled position on the labor rights of sex workers, if not an actual strategy for organizing them and integrating them into the labor movement.

Another challenge to union organization and recruitment is employer resistance. Reports of overt hostility include claims that employers have told workers that they will not tolerate trade unions and have threatened to dismiss workers known to be union members. In South Africa, where unemployment is very high, such threats are taken seriously by workers. More subtle cases involve what union representatives

¹⁰⁸ Personal communication with Dawie Bosch, an expert working in the sector, and Jan Theron, former Secretary General of the FAWU and a researcher in the agricultural sector.

call “dirty tricks” by employers to undermine union efforts to establish organizational rights that are necessary to infiltrate the workplace.¹⁰⁹ These include challenges to trade union definitions of the workplace, or to the composition of the bargaining unit for which organizational rights are sought.¹¹⁰

Furthermore, trade unions face the challenge of recruiting and retaining skilled and effective organizers, negotiators, leaders, and policy analysts. COSATU and its affiliates have experienced a “brain drain” post-1994, as some of their best leaders have been drawn into positions in business and government. It has been argued that this trend is attributable to the changed political climate and affirmative action imperatives.¹¹¹ In any case, the impact has been felt in spaces such as NEDLAC and Bargaining Councils, where labor was not only falling behind due to lack of technical expertise for effective negotiation, but had also failed in its duty to push pro-worker interpretations of the legislation and agreements arrived at in those negotiation spaces. For example, the EEA was intended to be a strategic instrument for labor to drive transformation in the workplace, but labor was simply not in charge in terms of interpretation and enforcement, and employers were flouting it with impunity.

Ensuring that positions adopted by the trade union movement accurately represent the voice of workers has also been a struggle. While all three trade union federations and their affiliates assert their commitment to democratic control by the workers, and NACTU goes as far as to claim that union officials are merely paid employees of unions and should not have voting rights or control in decision-making,¹¹² this does not appear to reflect reality. While certain decisions (relating to the election of leaders, ratification of contracts or authorization of strike action) are made by rank and file members, much of the power to shape policy is concentrated in the leadership structures, with limited consultation of the membership.

COSATU acknowledged at its 2006 Congress that in many cases it had failed to consult its affiliates when matters related to their sectors were discussed.¹¹³ It noted the lack of a communications strategy to keep affiliates abreast of developments in NEDLAC and Parliament, and to seek their views on issues raised there.¹¹⁴ On that occasion, COSATU resolved to formulate a communications strategy to overcome this problem. The detail and effectiveness of this strategy remain to be seen.

The reputation of the trade union movement has also been tarnished by challenges to the integrity of some of its leadership. There are allegations of corruption by high-ranking officials, many of whom live an extravagant lifestyle,¹¹⁵ in stark contrast to lower-ranking officials and the working masses. This has fueled perceptions of the increased remoteness of the national leadership from the struggles workers face.¹¹⁶

¹⁰⁹ Bamu, P.H. and Godfrey, S. “An Analysis of Collective Bargaining Arrangements in the Construction Industry” (unpublished research report, Labour and Enterprise Policy Research Group, Cape Town, 2009).

¹¹⁰ Ibid.

¹¹¹ Wood, G. “South African Trade Unions in a Time of Adjustment,” <http://www.historycooperative.org/journals/lt/47/01contri.html> accessed on 02/04/2010.

¹¹² The NACTU website, <http://www.nactu.org.za/> accessed on 02/04/2010.

¹¹³ “Political Resolutions to the 9th National Congress.” para. 3.11, COSATU website, <http://www.cosatu.org.za/show.php?include=docs/resolutions/2006/resolutions.htm> on 02/04/2010.

¹¹⁴ Ibid.

¹¹⁵ Wood, G. “South African Trade Unions in a Time of Adjustment,” <http://www.historycooperative.org/journals/lt/47/01contri.html> accessed on 02/04/2010.

¹¹⁶ Ibid.

Finally, addressing gender imbalances in the trade union movement remains a significant challenge. Women increasingly became part of the trade union movement during the apartheid years, and by 1995, trade union statistics showed high levels of union participation rates among non-white female workers.¹¹⁷ Since then, levels of female participation in trade unions have increased to some degree.¹¹⁸ It was difficult to obtain information regarding the ratio of male to female members of trade unions, but it is clear that the gender composition of unions largely reflects the demographics of the particular sector(s) within which it organizes. COSATU reports that women comprise about 37 percent of the membership of all of its affiliates.¹¹⁹

What is apparent is that although women are the majority in some trade unions, men continue to hold an overwhelming majority of leadership positions in prominent trade unions and federations. Very little progress has been made toward bringing women into leadership positions at higher levels. This has been attributed by COSATU to gender role stereotypes and the fact that union meetings and activities are usually arranged at times that are unsuitable for women who have family responsibilities, for example during evenings after work.¹²⁰

Although federations like COSATU and their affiliates have “women structures” or “gender committees,” these seem to be mere appendages to central structures where strategic decisions are made and are not given enough resources and power to make necessary decisions and to implement them to bring about meaningful change.¹²¹ The relegation of such matters to peripheral structures implies an intention to treat gender matters (usually referred to as “women issues”) as separate, rather than mainstreaming them to inform policies and decision-making in all structures and at all levels. In most cases, matters affecting women workers such as pay disparities, sexual harassment and violence against women, parental rights and benefits, and child care are not perceived to be high on trade unions’ agendas. The focus on the class struggle on “bread and butter” issues that affect workers in general seems to have marginalized the debates about matters affecting women.¹²²

It must be noted that some trade unions are adopting more progressive approaches to addressing gender in the workplace. One example is SACCAWU, which has a majority of female members.¹²³ It is part of an international collaborative program known as Gender at Work that aims to advance gender equality in organizations. SACCAWU has made sustained efforts to transform trade union leadership, which has been largely male dominated. It has worked to train women leaders to perform their union functions effectively. The union has held workshops to tackle gender-related issues and has tried to make practical changes to the lives of female members, for instance through providing safe and reliable transport and child care for members when they attend meetings and for female workers who work extended or late shifts.

3.3.2 Employers’ Organizations

The South African labor system does not place significant obstacles in the way of the formation or functioning of employers’ organizations. There is no legal requirement that employers’ organizations

¹¹⁷ Central Statistics Service, *Living in South Africa: Selected Findings the October Household Survey* (Pretoria: Central Statistics Service, 1995), p. 23.

¹¹⁸ Lehlola, P. “Women and men in South Africa: Five years on,” (Pretoria: Statistics South Africa, 2002), p. 52.

¹¹⁹ “COSATU Draft Gender Policy” (2008), <http://www.cosatu.org.za/docs/policy/2008/gend.pdf> accessed on 03/27/2008.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ “SACCAWU,” Gender at Work website, <http://www.genderatwork.org/saccawu> accessed on 04/01/2010.

register with the Department of Labor, although they are encouraged to do so. A strong inducement to register is that only the registered employers' organizations may form bargaining councils and statutory councils that can conclude binding collective agreements, under the LRA.¹²⁴ Some labor experts have suggested that the relative ease of registration with the Department of Labor has helped to "strengthen the foundations of collective bargaining."¹²⁵

Employers' organizations provide a range of services and benefits to their members. A brief look at the websites of a few organizations¹²⁶ revealed that they provide, among other things:

- Quality standards for members, and quality assurance/dispute resolution for consumers;
- Information on trends in the industry both for members and the general public;
- Information and support on regulatory compliance with industry regulations and broader matters such as black economic empowerment;
- Lobbying government on legislative proposals affecting the industry;
- Negotiating with trade unions and participating in bargaining councils and other bargaining arrangements;
- Technical and business development support; and
- Advice on contracts with clients and with employees.

The LRA defines employers' organizations as "any number of employers associated together for the purpose of, whether by itself or with other purposes, of regulating relations between employers and employees or trade unions."¹²⁷ This implies that while an employers' organization may serve commercial interests of its members, it must also focus on the collective interests of employers with respect to employment relations.

There were 252 registered employers' organizations in 2000, a number which peaked at 270 in 2002 and has since steadily declined.¹²⁸ In January 2010, the Department of Labor reported that there were 164 registered employers' organizations.¹²⁹ There is no clear explanation for the decline in registered employers' organizations during this period.

¹²⁴ Du Toit, D. et al. *Labour Relations Law: A Comprehensive Guide*, Fourth Edition (Durban: Butterworths LexisNexis, 2003), p. 167.

¹²⁵ Ibid.

¹²⁶ Retail Motor Industry Organisation website, <http://www.rmi.org.za/> accessed on 02/04/2010; South African Reinforced Concrete Engineers' Association website, <http://www.sarcea.co.za/membership.htm>; Electrical Contractors' Association of South Africa website, www.ecasa.co.za accessed on 02/04/2010; Jewellery Council of South Africa website, www.jewellery.org.za accessed on 02/04/2010; South African Federation of Civil Engineering Contractors website, www.safcec.org.za accessed on 02/04/2010; Master Builders' South Africa website, www.mbsa.org.za accessed on 02/04/2010; South African Refrigeration and Air Conditioning Contractors' Association website, www.saracca.co.za accessed on 02/04/2010; Steel and Engineering Industry Federation of South Africa website, www.seifsa.co.za accessed on 02/04/2010; Locksmiths' Association of South Africa website, <http://www.lasa.co.za/pages/1> accessed on 02/04/2010; and South African Intruder Detection Services Association website, www.saidsa.co.za accessed on 02/04/2010.

¹²⁷ Labor Relations Act Section 213.

¹²⁸ Budlender, p 13.

¹²⁹ "Employer Organisations 2010" Department of Labor website, <http://www.labour.gov.za/downloads/documents/useful-documents/labour-relations/2010%20%20REGISTERED%20EMPLOYERS%20ORGANISATIONS.doc/view?searchterm=employer%20organisations> accessed on 02/05/2010.

There are a wide variety of employer organizations, from general associations inviting membership across sectors and industries, to associations covering one or more specific industry or sector. The former focus more narrowly on employment relations and include organizations such as the Confederation of Employers of South Africa, the Full Range Employers' Organization, and the Federated Employers' Association of South Africa. Specialist organizations usually provide trade/business-related support with respect to employment relations, and represent employers in building, civil engineering, furniture manufacture, clothing manufacture, agriculture, wine production, catering, diamond cutting, and tanning, among other industries.

Employers' organizations operate on national, regional, and local levels. In many cases, the coverage of employers' organizations overlaps, as there tends to be more than one in most sectors, industries, and geographical areas. Some organizations represent small- to medium-sized employers, in recognition of their special needs, which may be overlooked by bodies that represent larger employers. Employers associations also interact with each other, through loose affiliations or federations. The former usually allow for collaboration and resource- or information-sharing while allowing individual organizations relative autonomy. The latter usually operate as umbrella bodies that have overarching control over their affiliates.

Business Unity South Africa (BUSA) is the apex organization representing business in South Africa. It was established in October 2003 as a result of a merger between Business South Africa and the Black Business Council.¹³⁰ BUSA's membership comprises 49 employers' organizations. Most of these are umbrella organizations that encompass several smaller employer organizations. While the majority of BUSA's member organizations represent the interests of all employers in their sectors or industries, some were specially established to represent the interest of previously disadvantaged groups such as black people and women. Among the most prominent members of BUSA are the Chamber of Mines, the Afrikanse Handelinstut, and the South African Chamber of Commerce and Industry.

BUSA was established to transcend the past divisions in business and form a unified voice to represent business. BUSA's mission is "to ensure that organized business plays a constructive role, within the context of the country's economic growth, development and transformation goals, in achieving an environment in which businesses of all sizes and all sectors can thrive, expand, and be competitive both nationally and internationally."¹³¹ BUSA does so by representing its constituency on economic and high-level issues at the national and international levels. Most notably, BUSA is the sole business representative in NEDLAC and the ILO.

It is difficult to neatly characterize relations between business and labor, as there are several nuances depending on the level and perspective from which they are viewed. At the starkest level, the fact remains that businesses in South Africa were historically almost exclusively white-owned, and 80-85 percent are still white-owned, either nationally or internationally. Historically, labor was predominantly black, and that remains true today.

In general, business and labor have been opposed on several socioeconomic policy issues, particularly the degree of flexibility of labor legislation. Business leaders have long argued that South African's labor legislation—particularly that relating to dismissals and retrenchment—are too inflexible to allow employers to respond promptly to market changes and are therefore inimical to economic growth. Labor has countered that these rules are necessary to protect workers, and have argued for the strengthening and

¹³⁰ "BUSA – One Voice for Business," Business Unity South Africa website, <http://www.busa.org.za/index.html> accessed on 02/04/2010.

¹³¹ "Our Purpose," Business Unity South Africa website, <http://www.busa.org.za/index.html> accessed on 02/04/2010.

extension of legislation to protect vulnerable workers to prevent their exploitation.¹³² These conflicts are exacerbated by labor sentiments that big business wields a lot of influence over economic policy formulation.¹³³

At a different level, however, the oppositional relationship between business and labor is overstated, including on the issue of flexibilization, as detailed later. It is reported, for example, that high-level business leaders and high-level labor leaders actually have a highly cordial working relationship, and social dialogue at this level tends to be smooth and productive.

Similarly, it would be a mistake to assume that business always forms a united front against labor on socioeconomic policy issues. This is impossible given the diversity of interests represented in organized business, which cut across different sectors, industries, markets, and demographic groups.¹³⁴ Despite its objective of unifying organized business in South Africa, BUSA has failed to mediate the political and racial tensions between its members. The Chamber of Mines, for example, pointed to particular problems in the ways in which black and white businesses were brought together, noting that black BUSA members include some who are professional individuals who have come in to the business world through Employment Equity or Black Economic Empowerment channels, and are thus not businesses or employers in the classic sense, making it difficult to shape a common platform. Furthermore, government figures are also present within BUSA: the current chair of the Black Management Forum, a BUSA member, is also the Director-General of the Department of Labor.

3.3.3 Civil Society Organizations

South Africa has a rich and diverse profile of civil society organizations. Many of these trace their history back to the pre-1990 era and played some role in the struggle against apartheid. Following the transition to democracy, civil society organizations have “normalize[d] their activities by pursuing citizens’ aggregated interests through seeking to place them on government’s agenda.”¹³⁵

Civil society organizations are active in a range of sectors, including arts and culture, environmental affairs, education, faith-based work, human rights, land and rural development, disability, health, agriculture, media and communications, urban development, women, youth, and economic justice. Civil society organizations (or NGOs, as they are popularly known in South Africa) operate as product and service providers and often perform lobbying and advocacy roles. Many are development oriented and aim to serve the most vulnerable members of society, including women, children, the poor, people living with disabilities, and those living with HIV and AIDS.

The South African NGO Coalition is the largest umbrella body of NGOs and community-based organizations in South Africa and the Southern African region and has branches in all South African provinces. It was formed in 1995 to promote and coordinate NGO cooperation, to contribute to policy formulation, and to “ensure that the rich traditions of civil society, forged in resistance to apartheid, continue to serve the people of South Africa.”¹³⁶

¹³² “Political Resolutions to the 9th National Congress,” para. 3.9, website, <http://www.cosatu.org.za/show.php?include=docs/resolutions/2006/resolutions.htm> accessed on 02/04/2010.

¹³³ “Political Resolutions to the 9th National Congress,” para. 1.1, COSATU website, <http://www.cosatu.org.za/show.php?include=docs/resolutions/2006/resolutions.htm> on 02/04/2010.

¹³⁴ Houston, G., Liebenberg, I., and Dichaba, W. “Interest Group Participation in the National Economic Development and Labour Council,” in Houston, G. (ed.) *Public Participation in Democratic Governance in South Africa* (Pretoria, Human Sciences Research Council, 2001), p. 17-83, p. 52-3.

¹³⁵ Ranchod, K. *State-Civil Society Relations in South Africa: Some Lessons from Engagement*, (Johannesburg: Centre for Policy Studies, 2007), p. 3-4.

¹³⁶ “SANGOCO relauches in time for World AIDS Day,” <http://www.ngopulse.org/pressrelease/sangoco-re-launches-time-world-aids-day> accessed on 02/04/2010.

Over the years, civil society organizations have played an important role in addressing issues that directly and indirectly affect workers, the poor, and the marginalized in South Africa, including unemployment, access to social security, labor migration, service delivery, and access to socio-economic rights. They have done so through research, dissemination of valuable information, awareness raising campaigns, participation in public debates, and submissions on existing and proposed legislation and policies.

It is also clear that civil society organizations in South Africa have taken on a number of issues in the labor sector that have been largely neglected by the labor movement. Some of these would include the enduring problem of child labor, concerns of migrant workers, and the rights of sex workers. It may even be argued that some civil society organizations have been more attentive to defending the interests of women workers than trade unions have been.

3.3.4 Strengths and Weaknesses of Labor Sector Organizations and Proposals for Reform

Trade unions and civil society organizations have played a key role in representing and championing the interests of workers in South Africa. Trade unions have voiced and defended the rights of workers in various fora, including the workplace, the CCMA, the Labor Courts, and higher level structures such as NEDLAC. However, trade unions have largely concentrated power at the top level and failed to consult with and report to middle and floor level union officials in negotiation and policy roles. Union officials responsible for high level negotiations in fora such as NEDLAC also lack the knowledge of the technical and policy analysis skills to articulate the needs and interests of workers and argue for approaches that are beneficial to workers.

It would also be important to note trade unions' failure to adapt to the changing demographics of the workforce and to effectively organize women, young workers, atypical workers, service sector workers, and migrant workers that together comprise a substantial proportion of the workforce.

In this regard, civil society organizations have played a critical part in filling the gaps through their work among workers that have been neglected by trade unions, which include child workers, sex workers, and migrant workers. Despite its contribution to protecting the rights of vulnerable workers, civil society has been marginalized in NEDLAC, where it is only represented in one chamber. To some extent, this deficiency has been corrected through collaboration with the trade union movement.

Employer organizations have not experienced difficulties in their formation and operation, as the South African legal system does not impose undue burdens upon them. A challenge identified with respect to prominent employer organizations is that they are largely dominated by big business and are not representative of the needs and interests of small business at the policy-making level. Business organizations such as BUSA have also been plagued with racial and political tensions that make the achievement of unity and solidarity unattainable.

Key recommendations for labor sector organizations are:

- Trade unions must identify and commit substantial resources for the organization of vulnerable workers;
- Trade union will and capacity in the areas of research and policy, shop floor leadership, and training of organizers and negotiators must be strengthened;
- Gender relations in the trade union movement must be transformed; gender considerations must be taken into account in all activities and decision-making, and more women must be brought into leadership positions and structures;
- Trade unions must collaborate with NGOs operating in the labor sector, particularly those that assist vulnerable workers such as sex workers and child workers; and

- At the policy level, it would be important to reexamine the possibility of civil society participation in other chambers of NEDLAC, especially the labor market chamber.

3.4 LABOR MARKETS

Given the pervasive issue of massive unemployment in South Africa, and its centrality in debates on labor market issues at the present time, the focus of our analysis in this section is on the active labor market policies that have been proposed or adopted to address the problem, and their strengths and weaknesses in the opinion of a broad array of stakeholders. In addressing this topic, we foreground the sometimes bitter debates on flexibilization and SMEs, and touch on a labor market issue that might otherwise go unaddressed in the focus on tackling unemployment, which is labor migration.

3.4.1 Skills Development and Youth Employment

The strong focus on skills development as a means of tackling unemployment appears to emerge from two connected analyses, as laid out below.

Unemployment in South Africa has a strong racial dimension as the overwhelming majority of the low-skilled unemployed are black. This is a legacy of the apartheid regime, which created a discriminatory system that provided white children with superior education and black children with inferior education. The Bantu educational system was specifically designed to prevent blacks from attaining the level of education required to develop entrepreneurial, artisan, and professional skills. On completing school, these children entered a labor market that was highly segmented, largely excluding them from high-skill and high-income occupations. Black entrepreneurship was “further stifled by exclusionary legislation, insufficient availability of credit, lack of market access, and higher input costs.”¹³⁷

Secondly, economic analysis has demonstrated that the unemployment crisis is partly attributable to a “skills mismatch” in South Africa. Growth in labor intensive primary sector (agriculture and mining) and manufacturing activity has declined, while the skills- and capital-intensive sectors have witnessed exponential growth.¹³⁸ These structural shifts in the economy have led to lower demand for unskilled and low-skilled labor and increased demand for semi-skilled and highly skilled workers.¹³⁹ This “skills mismatch” in the labor market has fuelled high unemployment among the unskilled, and low wages among those unskilled workers who are fortunate enough to find employment.¹⁴⁰ Employers say that they typically have a 30 percent vacancy rate, and experience a constant poaching of skilled employees. The Chamber of Mines concurred, noting that the building of the Gautrain, for example, required the “poaching” of mineworkers with tunneling expertise for the project.

While the topic of skills development should properly be disaggregated on the basis of the three major categories of clients for such programs in the South African context—new entrants to the labor market, those currently employed but seeking upskilling, and those retrenched and seeking retraining—we are focusing here only on the first, given constraints of space. The Training Layoff Scheme, designed for workers facing retrenchment, was referenced earlier in this document. At a general level, several commentators, including NACTU and COSATU, pointed out the need for government to engage unions

¹³⁷ Altman. *Low Wage Work in South Africa* (2006), p. 16. Seekings, J., Liebbrant, M., and Natrass, N. *Income Inequality after Apartheid*, p. 30.

¹³⁸ Van der Berg, et al, p. 11. Altman, p. 13.

¹³⁹ Du Toit, A. *Chronic and Structural Poverty in South Africa: Challenges for Action and Research* (Cape Town: Project for Land and Agrarian Studies), p. 14.

¹⁴⁰ Van der Berg et al, p. 10. Seekings Poverty and Inequality after Apartheid p. 19; Altman, p. 9. Du Toit, A. *Chronic and Structural Poverty in South Africa*, p. 14.

in undertaking a “skills audit,” matching available skills and opportunities, and to evaluate the success of skills development programs as a whole.

The Department of Higher Education and Training emphasized that an expansion of vocational colleges was a central element of government policy to tackle youth unemployment. According to government data, almost three-quarters of the unemployed are people between the ages of 15 and 34, and disaggregation by gender indicates that young black women are the worst affected.¹⁴¹ The two primary approaches to address the issue are skills development, through expansion and improvement of vocational colleges and a proposal for wage subsidies to encourage employers to take on young workers. These approaches were promoted by President Zuma in his State of the Nation address,¹⁴² and by Minister of Finance Pravin Gordhan in a recent budget speech.¹⁴³

The project of expanding vocational colleges is uncontroversial. As indicated by the Department of Higher Education and Training during a meeting with the team, there are currently far fewer spots than are required: only 450,000, compared to 800,000 in universities. Students receive an 80 percent subsidy of fees, as well as a bursary for living expenses, and the government has pledged to continue to support the program.

The primary weakness of the vocational college system is not an issue of political will or resources—two of the consistent problems we have identified thus far in terms of government institution support for the labor sector—but rather, of human resources and, more specifically, the capacity of teachers and principals. The other critical issue that will have to be addressed is expanding employer buy-in, both at the level of curricula to try to ensure that vocational training actually addresses the skills needs of the labor market, and to secure placements for students in experiential learning programs. Successful learnerships have already been developed in the auto industry, the hospitality sector, and tourism, and there are already strong indications that almost all graduates in these areas are employed.

However, according to one expert, the labor market would not absorb everyone, and thus students would have to be prepared psychologically as well as in terms of skills for entrepreneurial activity. While there is some possibility that a sustained focus on entrepreneurship, at the level of vocational colleges, could become mired in controversy related to whether self-employment should be understood as a labor market failure or an opportunity, this was not raised during any of the team’s meetings.

Wage subsidies to promote youth employment are, however, substantially more controversial, since the proposal plays out in the shadow of debates related to flexibilization of labor markets. As currently contemplated, the wage subsidy would be paired with greater ease of termination of employment, to further encourage employers to take a chance on youth with no job experience. There is certainly opposition within the government itself: officials from the Department of Labor pointed out that the constitution prohibits discrimination on the grounds of age. While much of the labor movement has also strongly opposed the idea of a two-tier labor market, there are exceptions and nuances that are frequently ignored. For example, NALEDI leadership noted that the issue of youth employment has been unnecessarily conflated in the highly-charged debates with the closely related but distinct issue of learnerships/ apprenticeships. Hence, reduced labor protections should be permissible in the case of genuinely transitional jobs for youth, which could be formalized as short, fixed-term appointments. However, this proposal—which could substantially expand opportunities for experiential learning—is probably not viable at the moment, since it has been caught up in the larger controversy over

¹⁴¹ Statistics South Africa, Quarterly Labour Force Survey, 4th Quarter 2009, released 9 February 2010. Available at <http://www.statssa.gov.za/publications/P0211/P02114thQuarter2009.pdf>.

¹⁴² State of the Nation Address By His Excellency J.G. Zuma, President of the Republic of South Africa, at the Joint Sitting of Parliament, Cape Town. 11 February 2010. Available at <http://www.info.gov.za/speeches/2010/10021119051001.htm>.

¹⁴³ Gordhan, P. Budget Speech, 17 February 2010. Available at http://www.info.gov.za/speeches/budget/budget_2010.pdf.

flexibilization. FEDUSA supports the wage subsidy measure, on the grounds that increasing the productivity and competitiveness of South African workers is critical, though the federation also noted that legislation would need to address the possibility that employers might not create new jobs under the scheme, but would simply fire older, more highly-paid employees and replace them with young workers on apprenticeships.

3.4.2 Public Works Programs

Debate over the government's Expanded Public Works Program (EPWP) must be understood in the context of intense struggles over privatization, and debates over the current status of the National Framework Agreement of 1996 on the restructuring of state-owned enterprises, an agreement that, at the time, recognized "the legitimacy of the state playing a role in productive sectors of the economy."¹⁴⁴

The EPWP creates temporary work opportunities for the unemployed, using public sector expenditure.¹⁴⁵ Employment is provided in combination with training, education, or skills development, with the aim of increasing the ability of people to earn an income once they leave the program. The EPWP was initially based on the idea of cooperation with various government departments to identify projects in need of human resources.¹⁴⁶ An example of such cooperation involved EPWP participants being employed on projects to improve local environments, under a Department of Agriculture program.¹⁴⁷

The most frequently-articulated critique of the EPWP is that intensive infrastructure construction is not sustainable. There are exceptions, however: NALEDI pointed to about 200,000 EPWP jobs (providing home-based care and early childhood development services) that are more or less permanent. Furthermore, the government is currently seeking tenders, and one civil society organization, Nkuzi, is hoping to use the opportunity to create 300 sustainable jobs that will provide ongoing support to black farmers and farm workers in Limpopo Province.

3.4.3 Flexibilization in Context

There is some reason to believe that the issue of flexibilization is largely settled, in terms of mainstream social dialogue processes such as NEDLAC, or mainstream multi-stakeholder reference groups such as the Employment Promotion Project, a U.K. Department for International Development-funded initiative to promote job creation. At these levels, there appears to be general consensus that the labor market is not, in fact, too rigid. There are some dissident voices within the labor movement, including FEDUSA, who suggest that current protections are too generous, but these represent the minority. At the level of employers' groups, the Chamber of Mines told the team that flexibilization was not on the agenda; in their opinion, the problem with the legal framework is that laws are constantly changing, making it difficult to keep up and stay compliant, and the position of most employers with respect to labor regulation was to demand greater predictability and certainty.

A legal academic has suggested that employers' initial perceptions of rigidity related to dismissals were likely to be related to early experiences at the CCMA, where commissioners interpreted the law in erroneous or erratic ways. As the commissioners' understanding of the law has improved, and determinations have become more predictable, the perceived rigidities have also vanished.¹⁴⁸

¹⁴⁴ NEDLAC website, <http://www.nedlac.org.za/reports/agreements--reports/archived/miscellaneous-nationalframeworkagreement.aspx>, accessed on 3/24/10.

¹⁴⁵ EPWP website, <http://www.epwp.gov.za/>, accessed on 05/02/10.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Benjamin, P. "Bend debate around labour flexibility back to the facts," June 29 2009, Business Day. Copy on file, also available at <http://www.businessday.co.za/articles/Content.aspx?id=74361>.

However, as noted above, some commentators suggested that these policy debates and negotiations all take place in the context of conversations between big government, big business, and big labor, and should not be read as having settled the issue with respect to vocational jobs, or SME policy. COSATU is as strongly opposed to a two-tier system relaxing labor regulation for SMEs as it is to one that weakens protections for young workers. However, FEDUSA, with the bulk of its private-sector members in vocational trades, is in favor of flexibilization to promote greater youth employment in the vocational system, as noted above. With respect to SMEs, there appears to be little difference of opinion within the labor movement. At least one expert acknowledged that trade unions have little interest in seeing the further expansion of a sector that has already proven extremely difficult to organize, and that all too easily escapes the notice of government labor law enforcement mechanisms. The Department of Labor has also opposed flexibilization for SMEs, reiterating its position that the legislation must apply to all working people wherever they are. Officials also pointed out that the issue of a two-tier system had been discussed and rejected by social partners at the level of NEDLAC, when the provisions of the Basic Conditions of Employment Act were being negotiated, and suggested that it would be unwise to reopen the topic.

3.4.4 Cross-Border Labor Migration

South Africa is the most developed and prosperous economy in the sub-region and has become the primary destination for labor migrants, both documented and undocumented.¹⁴⁹ However, a focus on current levels of migration (which have increased, at least in part, as a result of instability in Zimbabwe and the impact of the global economic recession) threatens to obscure the fact that South Africa has been a migrant-receiving country for decades. The majority of migrants, then and now, are from neighboring countries within the Southern African region (Zimbabwe, Malawi, Zambia, Namibia, Lesotho, and Swaziland) and beyond (the Democratic Republic of Congo, Cameroon, and the Ivory Coast).

The 2006 Census recorded 958,186 foreign-born people in South Africa, a figure representing 2.4 percent of the country's population at the time.¹⁵⁰ Of these, 22 percent were born in Europe (largely the result of immigration during the apartheid era). Of the rest, 687,678 (or 67 percent) were born in neighboring Southern African Development Community (SADC) countries. Only 41,817 (or 4 percent) reported being born in the rest of Africa and 40,889 (or 4 percent) in Asia.

Labor migration must be understood not only from the perspective of migrants seeking better economic opportunities or fleeing instability, but from the perspective of South Africa's need for skilled labor, an issue that risks being obscured. For example, high levels of professionals from Swaziland are employed in South Africa, and research indicates that at least 70 percent of artisans in the construction industry are migrants.

3.4.5 Strengths and Weaknesses and Recommendations for Reform

The above discussion illustrates the difficulty of ensuring more transparent, open, and equitable labor markets in South Africa. Access to the labor market presents a formidable challenge, particularly for a substantial portion of the unemployed, largely comprised of black unskilled workers. This is particularly troubling given the high number of vacancies for jobs requiring workers with medium and higher levels of skills and expertise. While the EPWP has contributed to the creation of some employment opportunities, these are of limited duration and it is doubtful whether the program has made much progress toward bridging the critical skills gap. Arguably, addressing the challenges presented by migrant labor will entail a consideration of South Africa's skills shortage and the potential contribution of migrant workers in this regard.

¹⁴⁹ Kalula, E., Ordor, A., and Fenwick, C. *Labour Law Reforms that Support Decent Work: The Case of Southern Africa*. Issue paper, p. 9. No.28, International Labour Organisation, 2008.

¹⁵⁰ Labour Migration and South Africa: Towards a Fairer Deal for Migrants in the South Africa Economy, *Labour Market Review* 2007, p. 7., Department of Labour website, www.labour.gov.za, accessed on 08/02/2010.

Some recommendations towards addressing these challenges include:

- Develop mechanisms and strategies to better identify the needs of employers and build strong linkages between skills development programs for labor market entrants and industry. This would ensure that skills development programs are designed to be relevant to the needs of employers.
- Collect and disseminate data on graduates and their skills, the availability of jobs, and other information to ensure a matching of potential candidates and employers.
- Promote employer buy-in for skills development through a diverse range of means, including, for example, proposals by trade unions in collective bargaining fora.

4.0 THE ROLE OF THE LABOR SECTOR IN OVERARCHING DEVELOPMENT THEMES

As Joseph Stiglitz has noted, the majority of the world’s population relies on work or employment as a source of income, and employment is also an important aspect of an individual’s sense of self and dignity.¹⁵¹ In this context, as he notes, if development is appropriately understood as the transformation of society and the improvement of living standards, and not merely the accumulation of capital and reduction of distortions in the economy, then improving the welfare and security of workers becomes not only a means, but an end in itself.¹⁵²

Although South Africa has come a long way in terms of societal transformation, much still needs to be done to address the high levels of poverty and inequality that are endemic in the country. Measures to address these challenges must be directed toward increasing the level, quality, and security of employment. This will require the strengthening and (where necessary) improvement of policies and structures that play a role in advancing and protecting workers’ interests. Measures need to be taken to ensure that the rights and entitlements provided to workers in legislation and policies become a reality in the lives of ordinary working people. This can only be possible if workers know their rights and have realistic access to dispute resolution mechanisms and processes that enable them to enforce their rights.

In the South African context, where labor movements play such a dominant role in social and political dialogue, and where policy related to labor issues such as unemployment and labor legislation is a matter of daily public debate, it is difficult not to engage with the relevance of the labor sector. Media, political figures, and the labor movement also routinely highlight a “labor perspective” on issues ranging from the HIV/AIDS crisis to monetary policy. Making the links between labor issues and development priorities in South Africa is therefore easier than it might be in other countries.

4.1 GOVERNING JUSTLY AND DEMOCRATICALLY

4.1.1 Rule of Law and Human Rights

Respect for the rule of law is indispensable to the promotion of democracy and good governance in any country. This is particularly the case in South Africa, whose constitution is considered supreme in its articulation of the foundational values of its democracy.¹⁵³ These principles are important in a country that has made decisive break with “the past which is disgracefully racist, authoritarian, insular, and

¹⁵¹ Stiglitz, J. “Employment, social justice and societal well-being,” *International Labour Review*, Vol. 141 (2002), No. 1-2, 9, at 9, 20-21.

¹⁵² Ibid.

¹⁵³ Section 1 of the Constitution of the Republic of South Africa Act 108 of 1996.

repressive” and is working toward fulfilling its commitment to a “democratic, universalistic, caring, and aspirationally egalitarian ethos.”¹⁵⁴

In order to achieve equality and social justice, the Bill of Rights goes farther than placing negative restraints on state interference with individual freedom, and entrenches a series of socio-economic rights that impose positive obligations on the state to fight poverty and promote social welfare.¹⁵⁵

Promoting the rule of law and human rights in labor matters is an important element of South Africa’s vision of a constitutional democracy as outlined above. Promoting the rule of law involves attention to human and civil rights, including labor rights, and access to justice through sound institutions that fairly, transparently, and consistently apply established rules and procedures.¹⁵⁶ The following are considerations that must be taken into account in order to advance the rule of law and human rights in South Africa’s labor sector.

- Rights are meaningless if their intended beneficiaries are unaware of their existence and how to enforce them. Many workers in South Africa suffer at the hands of their employers due to ignorance of the rights and remedies available to them. Substantial resources and efforts therefore need to be channeled towards educating workers. This should not be left to trade unions, but should be part of a process driven by government and broader civil society.
- A process of identifying connections between the labor sector and human rights issues in South Africa might begin with understanding the role played by labor movements in anti-apartheid struggles. Trade unions in South Africa remain today, for the most part, a potent moral voice with a lot of weight in shaping public discourse, on issues both within and outside the country. The rights to freedom of association and participation in union activities must continue to be protected in order to ensure the current and future role of trade unions in cementing South Africa’s democracy.
- It would also be important to build and strengthen the capacity of institutions such as trade unions and the labor inspectorate to improve the implementation and enforcement of labor legislation. Such institutions should not work in isolation from each other, and collaborative and synergy-building projects between these institutions should be explored.
- In order to promote meaningful protections of workers’ rights, measures should be taken to ensure that awards granted by the CCMA are enforceable.
- Access to the Labor Court should be expanded beyond the current situation where only four courts exist in the biggest cities, excluding smaller employers and individual workers from other parts of the country. This would involve, for example, establishing circuit courts to service smaller towns and rural communities.
- Measures to support the promotion and strengthening of the collective bargaining system are also important, as they provide a means through which binding agreements are reached, which establish the parties’ rights and duties and rules for dispute resolution. In the long term, collective bargaining creates certainty and stability in relations between labor and business.

¹⁵⁴ *State v Makwanyane*, 1995 (6)BCLR 665 (CC) para 262.

¹⁵⁵ These include the rights to housing, health care, food, water, social security, and education in sections 26-29 of the constitution; and Klare, K. “Legal Culture and Transformative Constitutionalism,” 14 *South African Journal of Human Rights* 146, 1998, p. 154.

¹⁵⁶ Lerner, M., Salinger, L., and Wheeler, J. *The Role of Labor-Related Issues in the Foreign Assistance Framework: Cambodia Labor Assessment*, (USAID, 2008), p. 43-4.

- It would also be important to understand the relationship between labor and human rights at the regional level, considering, for example, labor migration to South Africa in the context of repression, and not just economic hardship, in neighboring countries. Also, a more complete understanding of human rights *violations* of migrant workers—such as the attacks on Zimbabweans in South Africa—also requires a consideration of unemployment and scarcity of resources, rather than merely of xenophobia.

4.1.2 Good Governance

- It is important to understand the role that COSATU has played in monitoring, drawing attention to, and influencing the ANC government’s decision-making, through participation in the Tripartite Alliance and otherwise.
- NEDLAC, a model for comprehensive social dialogue as the mechanism for managing review and oversight of policy related to labor and economic development, is also relevant from the perspective of governance considerations.

4.1.3 Political Competition and Consensus-Building

- Here again, social dialogue and negotiation mechanisms in which labor organizations participate (NEDLAC, Bargaining Councils, etc.) should be a part of any analysis of processes of building consensus. Sustained and consistent social dialogue between the social partners is important as it enables them to share information, build consensus and, in the long term, constructive relationships. Establishing peace between these political actors is an essential element of establishing lasting political and economic stability in any country. A closer examination of social dialogue also leads to the important realization that neither trade unions nor employers’ associations are monolithic in their positions, or starkly opposed. Even on fraught issues such as flexibilization, debates reveal a great deal of nuance and a spectrum of positions, with an acknowledgement of overlapping interests even where the parties might prefer different outcomes.

4.2 ECONOMIC GROWTH

4.2.1 Macroeconomic Foundations

The debates about macroeconomic policy highlight the tension between the ideal of South Africa as a “democratic developmental state” that is charged with reducing poverty and inequality, and South Africa’s drive to maintain its position in a global economy where neoliberal principles are dominant.

South Africa’s macroeconomic policies have remained largely stable for more than a decade, embracing principles of fiscal discipline and inflation targeting. Labor organizations’ critiques of monetary and fiscal policy could be one entry point to taking labor into account when evaluating the impact of macroeconomic policy; COSATU, for example, has argued that the policy of inflation targeting has not only contributed to continuing high unemployment rates and deindustrialization, but has also shifted the limited resources available to institutions from job creation to price controls. FEDUSA has agreed with this assessment.

At a procedural level, NEDLAC, which has a chamber devoted to the tripartite negotiation of public finance and monetary policy, should be examined in terms of its success in taking labor organizations’ opinions into account when shaping macroeconomic policy. Supporting proposals for broadening the groups represented within NEDLAC’s community constituency, to bring in the voices of the unemployed, vulnerable workers, etc. would also promote the consideration of a broader set of interests in the shaping of policy.

4.2.2 Trade and Investment

- There has been significant debate in South Africa on the labor impacts of trade and investment policies, as well as the impact of labor regulation on the climate for investment. Issues to look at in greater detail would include job losses in the garment sector and white goods manufacturing following trade liberalization; the implications of protectionist calls from unions to Buy South African; and labor-centered analyses of the successes and failures of particular trade and investment regimes in leading to broad-based development.

4.2.3 Agriculture and Rural Development

- Most development-centered analyses of agricultural and rural issues in South Africa have foregrounded struggles related to land redistribution and restitution, and the efforts of black farmers to shape economically viable concerns on this land. While these issues are certainly important, they should not further obscure farm workers.

4.2.4 Private Sector Competitiveness

- Labor sector priorities to consider, while shaping proposals for the promotion of private sector competitiveness, might include factoring in the importance of good industrial relations to minimize disruptions of work, and supporting quality worker education and training, in order to ensure that a skilled workforce is available for emerging industries and new ventures.
- It would also be important to understand how a project targeting private sector competitiveness should locate itself, with respect to other labor market interventions underway. How would it situate itself with respect to debates related to privatization, SMEs, flexibilization, and enhanced public works programs? It would be critical to understand what is at stake for labor organizations, in these debates, since their cooperation would be important for the long-term success of such an intervention.

4.3 INVESTING IN PEOPLE

- In a context where 30–40 percent of the workforce is HIV-positive, it is obvious that any intervention related to HIV/AIDS should also adopt a labor perspective. But this should be also true of other health-related projects. For example, projects might want to factor in a role for employers, or take advantage of existing workplace occupational health and safety mechanisms for the dissemination of information or services. Interventions related to maternal health should assess provisions for parental leave and workplace accommodations for pregnant women.
- Workforce development projects should take into account a full spectrum of considerations related to labor, including the possibility of substantial out-migration/“brain drain” of graduates. Curricula should include modules educating new entrants to the labor market on labor relations and rights at work.

4.4 OBSERVED TENSIONS AND SYNERGIES BETWEEN/AMONG DEVELOPMENT THEMES

Addressing this issue at a general level, it is obvious that there could be significant synergies between development themes *within* the broad category of democratic governance, with labor sector organizations mobilizing and propelling the connections. For example, Rule of Law programming that empowers workers through rights awareness processes and better implementation of judgments would in turn promote better governance, by giving voice to a new set of actors with an interest in monitoring institutions. Such processes would also deepen and strengthen social dialogue, which is critical (especially in the South African context) for governance and consensus-building objectives.

Similarly, within economic growth contexts—again, speaking generally—there are many potential synergies: investing in workers, at the level of education and training, would clearly lead to gains at the level of private sector competitiveness, for example. There is also the potential for tension, which could be crudely summarized as the tension between growth and distribution objectives. This reflects, in part, the conflict inherent in South Africa’s dual vision of itself, as a country committed to reducing inequality by addressing unemployment and the exploitation of low-wage workers, but also intent of being globally competitive and integrated in international systems of trade and investment.

However, the most interesting tensions, and potentially productive synergies, present themselves *across* democratic governance/economic growth objectives. In the South African context, it seems clear that support for private sector competitiveness and macroeconomic policy formulation that is heavily focused on SME development could have the impact of eroding trade union strength and trade union rights in those sectors, undermining key human rights and democracy objectives. However, programming could try to promote, along with SMEs, the simultaneous development of specific mechanisms ensuring associational rights in the sector. Consultation with unions would help ensure that these mechanisms are responsive to the difficulty experienced by unions in organizing SMEs thus far.

The South African context is perhaps predisposed to fostering programmatic synergies between democratic governance and economic growth objectives, given the country’s experiences of apartheid, and the understanding of what kinds of transformation the country will require, in order to achieve equality and justice for all. The South African constitution closely interlinks political freedom with economic justice, urging the creation of a society in which people are socially empowered to exercise their rights.¹⁵⁷ It is apparent that support for South Africa’s already very strong social dialogue process—contributing to building the capacity of trade union negotiators in the process, for example, or expanding the participants to include advocates for vulnerable workers—would promote Rule of Law goals, while ensuring sounder macroeconomic foundations, which truly represent the interests of a wide swath of society.

¹⁵⁷ Klare, K. “Legal Culture and Transformative Constitutionalism,” 14 *South African Journal of Human Rights*, 146, 1998, p. 153.

5.0 STRATEGIC CONSIDERATIONS

5.1 FOREIGN ASSISTANCE CONTEXT AND CURRENT USG PROGRAMS

Current programs being supported by the USG in the labor sector include the following:

- The American Center for International Labor Solidarity (“Solidarity Center”), supported by NED and USAID. The Solidarity Center has worked with its trade union partners in South Africa on a range of issues, including training programs for shop stewards and worker-organizers, the development of new collective bargaining strategies, and cross-border organizing. The areas of focus represent, according to Solidarity Center, weaknesses and needs identified along with union partners.
 - Solidarity Center supported the efforts of CWU, a union that came out of public sector telephone services, in its efforts to develop strategies for organizing young workers in multinational cell phone companies, and helped them understand and counter the approach of human resources professionals trained in US-style union-busting
 - SACCAWU’s efforts to organize in game parks and the retail sector required the shaping of a different organizing approach. SACCAWU, with the help of Solidarity Center, has focused on internal organizing through worker committees inside the enterprise who will then recruit new members. In the retail sector, they also developed an approach to organizing casual workers and bargaining on their behalf, winning them the same level of benefits, but pro-rated to the number of hours worked.
 - Solidarity Center supported NUMSA in applying for and using a PEPFAR grant, shaping an HIV/AIDS program that involved, in part, training negotiators to cost the interventions that they sought from management, and training them to raise these demands in collective bargaining contexts.
 - A number of trade unions are working with Solidarity Center to promote a culture of collective bargaining at the enterprise level, enhancing rank and file engagement in the process. The approach has included the encouragement of collective bargaining even where there are low levels of membership, and there have been some successes, on issues such as paid parental leave.
 - Solidarity Center has assisted the Gender Committees of COSATU and NACTU in developing strategies for organizing women workers, training women organizers, and getting women negotiators into bargaining councils.
- The US-South Africa PSKD, supported by USAID, focuses on capacity-building at 12 of vocational colleges described above, in three of the most poverty-stricken provinces (Mpumalanga, Limpopo, and the Northern Cape). The project’s work includes addressing the need for better student services to reduce drop-out rates, and placement services to help new graduates

Based on a review of USAID/South Africa’s Strategy Statement (FY 2007–2012), consideration of the above programs and meetings with USAID mission staff in Pretoria, we would articulate the primary areas of programming as follows: 1) democracy and human rights, focused on women and justice; 2) good governance programming addressing local governments, particularly in the context of anti-corruption measures and local economic development; 3) workforce development, focusing on the

resources and capacity of vocational colleges; and 4) private sector competitiveness, with particular attention to SMEs and their access to financing, in sectors including mining, auto parts, and agriculture.

Our findings have a potential bearing on each of these areas. With respect to programming related to women experiencing gender-based violence, we would note the importance of extending services to the workplace, with particular attention to vulnerable workers in non-traditional workplaces—domestic workers, women agricultural workers, and street-based and brothel-based sex workers—who are more exposed to sexual harassment and sexual assault.

Local government initiatives could draw on simple tripartite mechanisms to promote greater accountability and reduce corruption. Such mechanisms could also help ensure that the gains of local economic development projects are accompanied by appropriate protections for workers, and are equitably shared.

We have already discussed the workforce development program supported by USAID/South Africa at some length, but would just reiterate the potential benefits of locating such work with strong links to labor sector organizations—especially employers’ organizations in the sector—to maximize the possibility of developing structural links to prospects for relevant experiential learning, and input into curricula.

With respect to programming addressing private sector competitiveness, focused particularly on SME development and competitiveness, we will also reiterate points made above: that building in attention to industrial relations and social dialogue, and engaging with all stakeholders (not just government) to locate the project with respect to ongoing policy debates on privatization, selective flexibilization, and the potential for two-tier labor markets, would help ensure the long-term viability of the program.

5.2 STRATEGIC RECOMMENDATIONS

In turn, USAID/South Africa programming in the areas of democracy and governance, or economic growth, that is attentive to the identified labor sector strengths and weaknesses, could help promote the protection of workers’ rights, and better implementation of core labor standards. In particular, we would focus on several specific issues, which are elaborated at greater length in the Results Framework (Appendix A):

1. There is a need to build trade union capacity to organize and represent vulnerable and atypical workers, and less organized sectors such as domestic services, private security, and agriculture.
2. In order to ensure that social dialogue processes such as NEDLAC yield outcomes that benefit all tiers of society, trade unions must be assisted in building internal competency, and relationships to outside technical experts, so that they are adequately represented in high-level negotiations involving key policy issues.
3. Support is required to expand and strengthen institutions providing swift, inexpensive, and accessible resolution of labor disputes, particularly to vulnerable workers, as well as institutions monitoring and enforcing minimum labor standards.
4. Sustained tripartite collaboration will be necessary in order to create a broad-based and relevant skills development process that is responsive both to the aspirations of young workers and the needs of the labor market.

APPENDIX A: RESULTS FRAMEWORK

FIGURE A-1. CROSS-CUTTING RESULTS FRAMEWORK FOR THE LABOR SECTOR IN SOUTH AFRICA

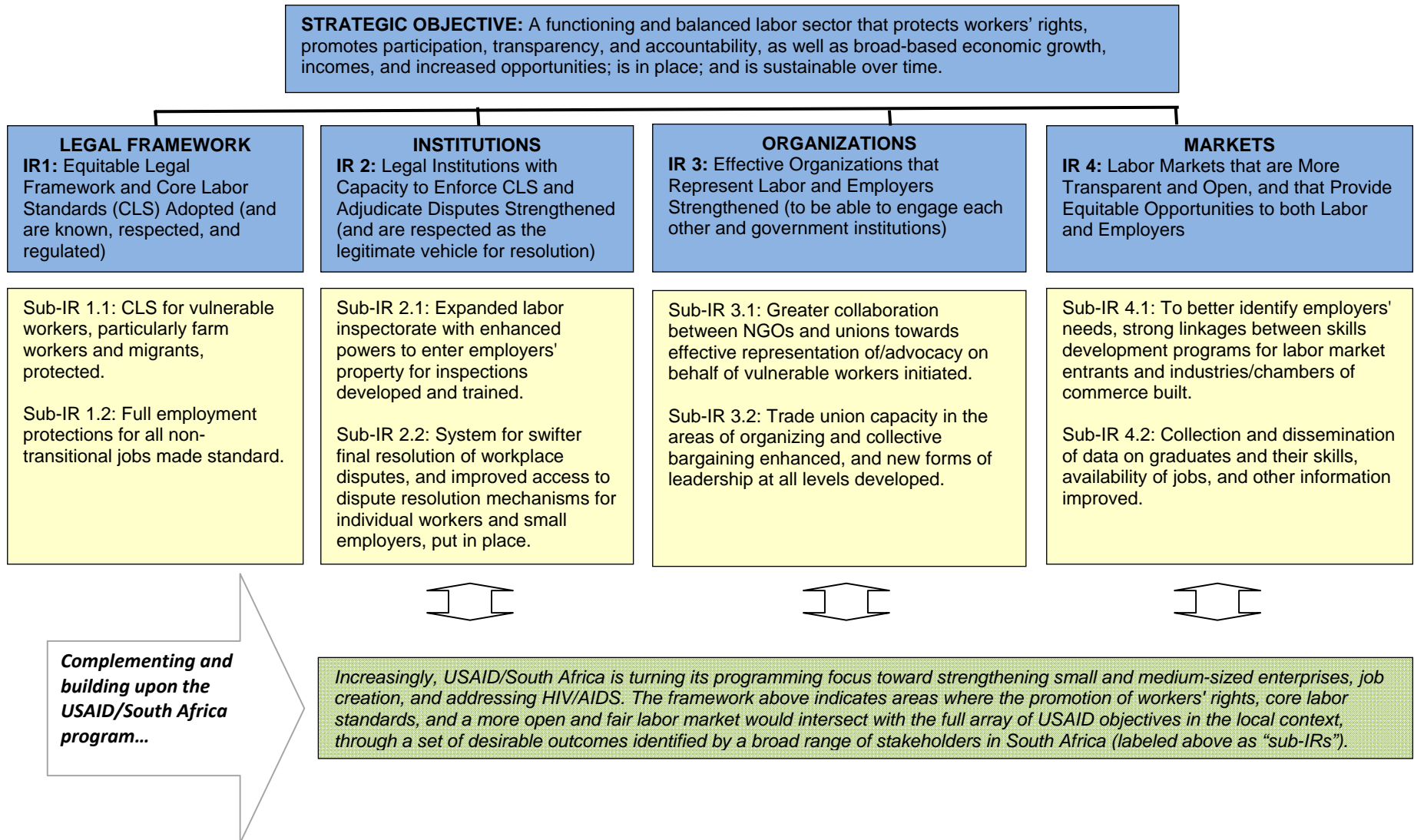
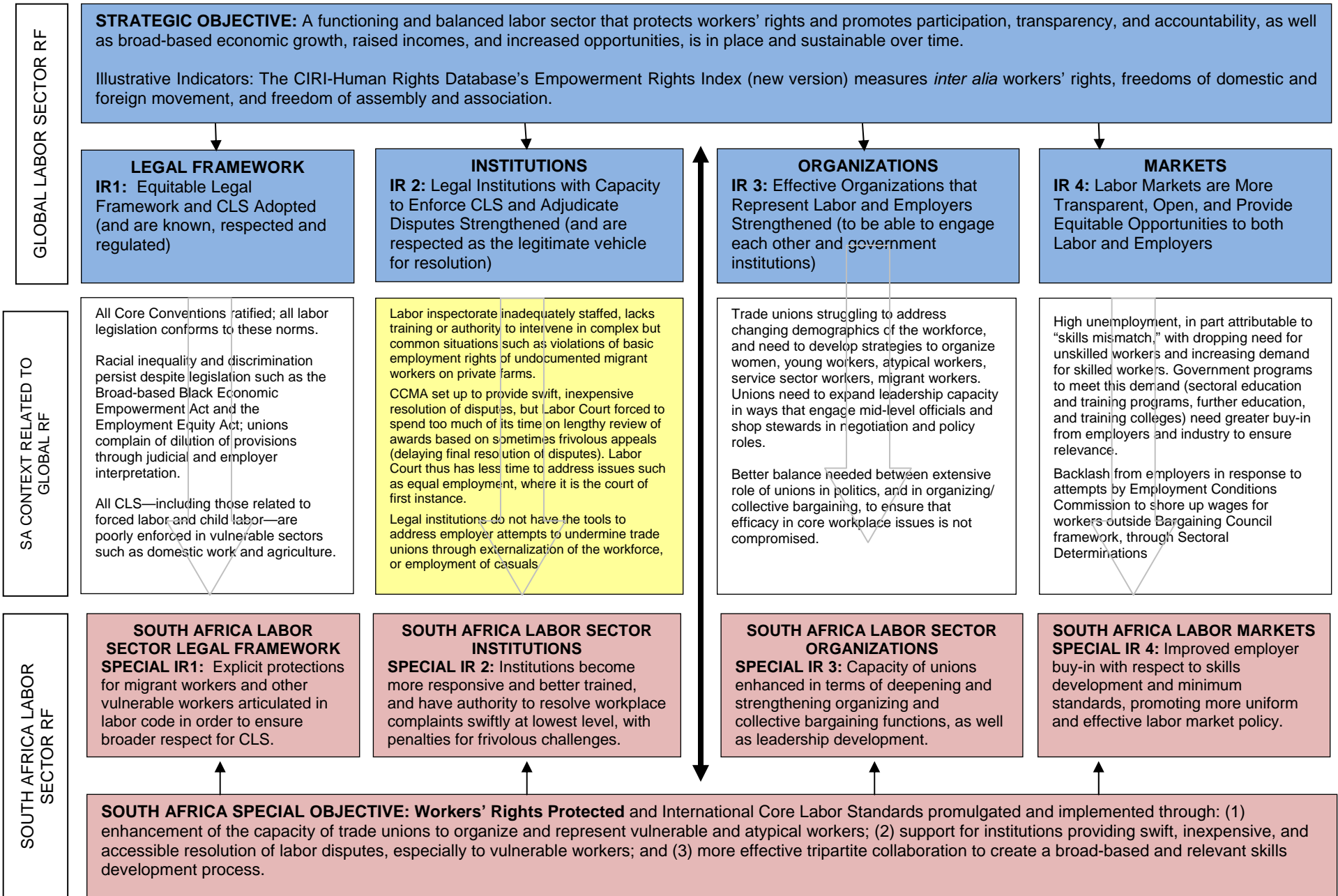
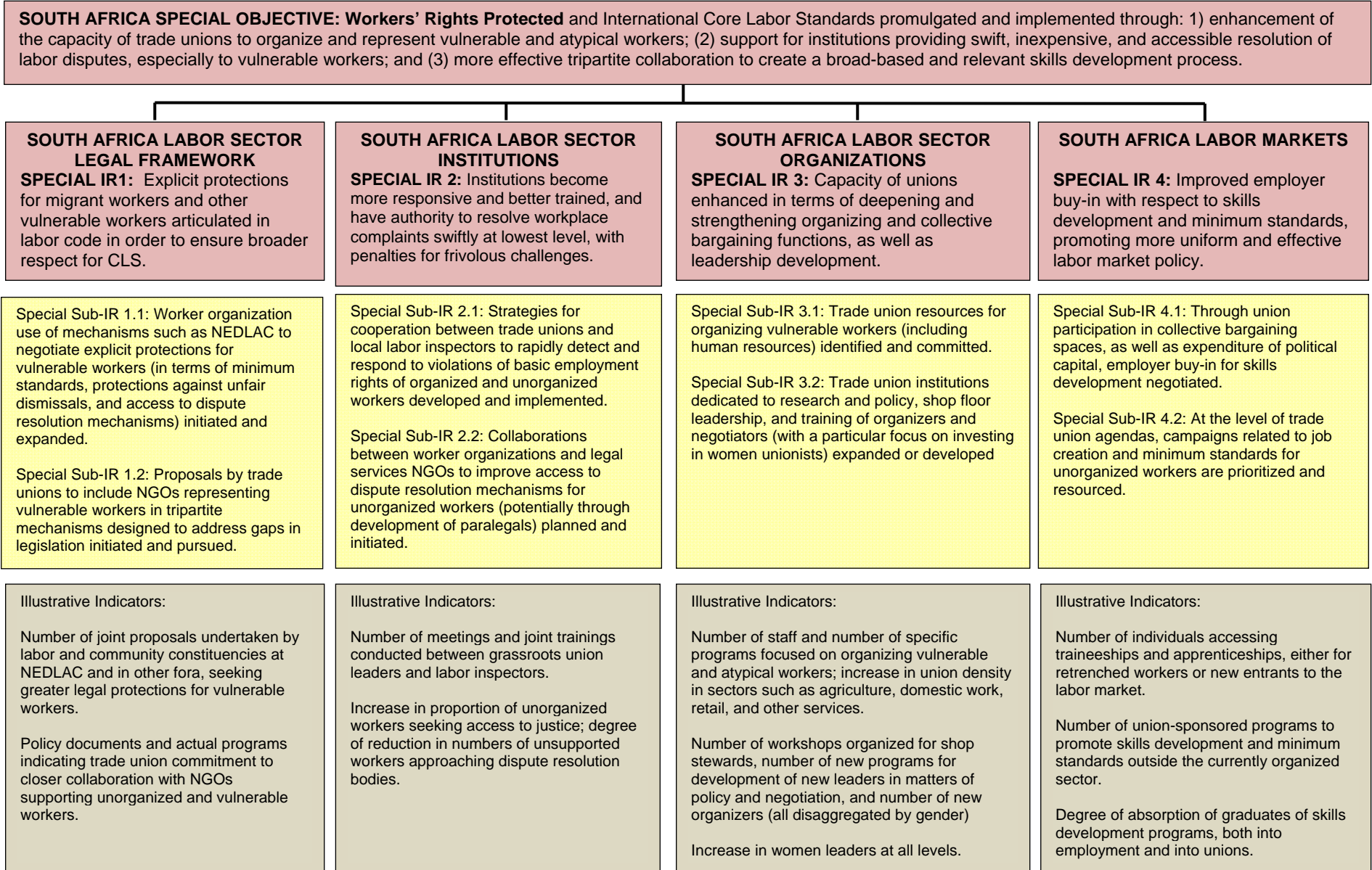


FIGURE A-2. TRANSITIONING FROM THE GLOBAL RESULTS FRAMEWORK TO A SOUTH AFRICA LABOR SECTOR RESULTS FRAMEWORK



**FIGURE A-3. PROPOSED RESULTS FRAMEWORK FOR STRENGTHENING THE SOUTH AFRICA LABOR SECTOR
(THROUGH WORKER ORGANIZATIONS)**



APPENDIX B: LIST OF MEETINGS

American Center for International Labor Solidarity Office in Johannesburg, Christopher Johnson (Executive Director), Mike Gwamanda (Senior Program Officer for Trade Union Strengthening), Kuki Ndlovu (Program Officer for HIV-AIDS), Brian Shezi (Program Director HIV-AIDS), Bheki Gwala (organizer in partnership with CWU)

Association of Fairness in Trade, Mandy Moussouris, Project Manager-Fairtrade at the Environmental Monitoring Group

Dawie Bosch, Legal expert, agricultural and child labour

Chamber of Mines, Frans Barker, Senior Executive

COSATU Western Cape, Tony Ehrenreich, Regional Secretary

CWU

Department of Higher Education and Training, Thembisa Futshane, Director of Youth Development Programmes

Department of Labour, Les Kettledas (Deputy Director-General) and Tembinkosi Mkalipi (Senior Executive Manager of Labour Relations)

Essential Services Committee, Afzal Mosam, Chairperson

FEDUSA, Dennis George (General Secretary), Koos Bezuidenhout (Deputy President), Leon, Jacques

International Labour Organisation, Vic van Vuuren, Director of the ILO Office for South Africa, Botswana, Lesotho, Namibia and Swaziland

FAWU, approximately 40 members employed at a large agribusiness in Limpopo Province

Labour Court, Bashir Waglay (Deputy Judge President), Andre van Niekirk (Judge)

NACTU, Manene Samerla (General Secretary), Thandiwe Msibi (consultant), Brenda Modise (Gender Coordinator)

NALEDI, Rudi Dicks, Executive Director

NEDLAC, Herbert Mkhize, Executive Director

Nkuzi, Eddie Barnet (Executive Director) Phillip (lawyer)

NUM, Lesego Sekano (International Relations), Habofanoe Thomas Ketsise (collective bargaining coordinator)

NUMSA, Cedric Gina, President

PKSD, Modise Manota, Chief of Party

Public Sector Co-ordinating Bargaining Council, Shamira Huluman, General Secretary

SACCAWU, Lisema Lekhooana (International Relations), Louise Thipe (First Deputy President) Angie (Second Deputy President), Mike Sikene (Education Coordinator)

SADSAWU, Auntie Norah Juries (Deputy General Secretary) and focus group of current and former domestic workers

Sandra Kruger, independent consultant on fair trade, Western Cape

Scalabrini Centre, Miranda Madikane (Executive Director), Simona Gallo (consultant)

Solm-Delta Vineyards, Mark Solm (part owner)

SWEAT, Vivienne Lalu, (Policy Coordinator) and sex worker focus group

TOKISO, Charles Nupen, mediator and arbitrator

University of Cape Town, Johann Maree (Professor of Sociology and collective bargaining expert), Ingrid Woolard (Member of ECC and labour economist), Paul Benjamin

(Professor of Law and labour legislation expert)

USAID Mission

US Embassy Labor/Policy Office, Robert Ewing and Funeka Mkumla

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