

ROLE OF THE WORKING CLASS AND ORGANISED LABOUR IN ADVANCING THE NATIONAL DEMOCRATIC REVOLUTION

SETTING THE SCENE

1. South Africa's transition to democracy since 1994 had major social, economic and political ramifications. Firstly, the integration of the South African economy into the global market resulted in increased unemployment as companies adjusted to global competition by adopting capital intensive technologies to remain competitive. This in turn led to increased informalisation of work and economic activities. Whilst the country saw a successful political transition, this success has tended to exist alongside persistent poverty, unemployment and even increased income inequality. It is against this background that regulatory reform generally, and labour market regulatory reform in particular was initiated.
2. Broadly speaking, South Africa adopted a redistributive approach to labour market reform during its transformation to democracy since 1994. This approach was a result of the notion of equality contained in the constitution. Prior to 1994, workers in South Africa were exploited through various forms, including labour which was mainly cheap with regards to blacks, the migrant labour system, pass and influx control systems, the job reservation, poverty wages and generally oppressive laws. The adoption of the democratic Constitution, Act 108 of 1996, and specifically Chapter 2 – the Bill of Rights, changed all these past evils. Whilst the legacy of the past remains with us up to the present and will continue to haunt us into the foreseeable future, the Constitution however sought to guarantee the rights of all citizens, including workers, and accorded a set of rights which cannot be tempered with albeit through a set of Constitutional amendments. Constitutionally, general rights afforded to citizens equally apply to workers too – such as the rights to equality, privacy, dignity and life. But some sections in the Bill of Rights are especially useful to workers. Chapter 2, Section 23, the most relevant one here, is

entitled “Labour relations” and reads:

- “Everyone has the right to fair labour practices.
 - Every worker has the right to form and join a trade union; to participate in the activities and programmes of a trade union; and to strike.
 - Every employer has the right to form and join an employers’ organisation; and to participate in the activities and programmes of an employers’ organisation.
 - Every trade union and every employers’ organisation has the right to determine its own administration, programmes and activities; to organise; and to form and join a federation.
 - Every trade union, employers’ organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
 - National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1)”.
3. There are a number of guarantees for workers explicitly stated in the Bill of Rights. These include that:
 - Workers have the right to fair labour practices,
 - Workers have a right to form and join trade unions, and
 - Workers have a right to participate in union activities and strikes.
 4. Equally, employers also enjoy a set of guarantees also explicitly stated in the Bill of Rights. These include that:
 - Employers have the right to form and join employers’ organisations and to take part in their activities, and
 - Employers have the right to organise,

form federations and engage in collective bargaining.

5. Having granted these guarantees and rights to both workers and employers, the Constitution also gives a further critical right to workers, without expressly balancing it out on the employer side – this is the right to strike. Whilst the right to strike is written into the Constitution, on the other hand, the right of employers to lock out their workers is not expressly included. Therefore constitutionally, workers have the right to strike whilst employers do not have the right to lock workers out.
6. However, the Labour Relations Act grants employers this right – to lock workers out – in certain situations.
7. Since 1994, the South African economy and the labour market in particular has gone through a number of challenges. These challenges include the external shocks with the advent of globalisation and the internal shocks with regard to the need to transform the labour market to reflect the post-apartheid South Africa, and the need to create jobs and eradicate poverty. Have these challenges resulted in a labour market that has balanced the need for flexibility with the need to protect vulnerable workers?; have they transformed the racial and gender profile of the labour market from that which was inherited in 1994?; and are we creating jobs and eradicating poverty?
8. These are but a few of the pertinent questions underlying the analysis provided in this input for the ANC's Policy committee in the build-up to the ANC Policy Conference in July 2007.
9. However, before dealing specifically with these challenges, it would be important to first re-connect with the core mandate of the ANC as an organisation on these matters.
10. At the 42nd Annual Conference of the ANC – preceding the adoption of the Freedom Charter in 1955 – amongst others delegates resolved to:-
 - a) Make available **skilled training and employment opportunities** for Africans.
 - b) Compel them (business and government) to **pay living wages** to African employees.
11. Some of these resolutions found renewed emphasis when the Freedom Charter was adopted and resolved that "There shall be **Work and Security!**". The Freedom Charter went on to say that;
"All who work shall be **free to form trade unions**, to elect their officers and to **make wage agreements** with their employers;
The state shall recognise the **right and**

duty of all to work, and to **draw full unemployment benefits**;

Men and women of all races shall **receive equal pay for equal work**;

There shall be a **forty-hour working week**, a national minimum wage, **paid annual leave**, and **sick leave for all workers**, and **maternity leave on full pay for all working mothers**;

Miners, domestic workers, farm workers and civil servants shall have the same rights as all others who work;

Child labour, compound labour, the tot system and contract labour shall be abolished."

12. In the same year of the adoption of the Freedom Charter, at the ANC national conference of December 1955, the then Acting Secretary-General – O R Tambo, in presenting the report of the ANC's National Executive Committee, described the Freedom Charter as "the sum total of our aspirations, but more: it is the **road to the new life**. It is the uniting creed of all the people struggling for democracy and for their rights; **the mirror of the future South Africa**".
13. In the recent February 2007 Strategy and Tactics document of the ANC, the main emphases in the work of the ANC government in the coming decade on accelerated and shared growth can be summarised into the following key interventions:
 - Building "an **integrated and growing economy** from which all South Africans can benefit".
 - Striving "for macro-economic balances that support sustainable growth and development. ... as requirements that ensure higher rates of **growth, labour-absorption and poverty-reduction**".
 - Putting in place "an industrial strategy and a corresponding programme which continually identifies and **addresses constraints to investment**. This will help build an economy that is characterised by high levels of manufacturing activity, modern services, expanding trade, cutting edge technology and a vibrant small business and co-operative sector.
 - Ensuring that "**benefits of growth are shared by all**, there will be focus on **creating decent jobs** and ensuring an improving quality of life for workers. Government will implement programmes to **eliminate economic dualism and exclusion**. These include skills development, specific attention to industries that lend themselves to involvement by marginalized communities, access to micro-credit and small business assistance, land reform, public works projects

and promotion of sustainable livelihoods at community and household levels.

14. It can therefore be confidently argued that the ANC has always been consistent on the priorities guiding its mandate, always seeking to eradicate poverty by creating secure work opportunities for all and a better life for the people of South Africa. Are these mandates being realised over 13 years of democracy with regard to the transformation of labour market?

THE SOUTH AFRICAN LABOUR MARKET TODAY – WORKPLACE, UNIONS, SMALL BUSINESS

Trends in the key Labour market indicators

15. Since 1994, the economy has been growing

at levels unprecedented before, at an average 4%+ between 1994 and 2006. Equally encouraging, this growing economy has also been creating jobs at an average of 2.6% per annum, but not enough to significantly reduce the rate of unemployment in the country. For a given output, for example, the employment/output ratio has fallen by 28% from 1994 to 2001. In other words, formal economy businesses in South Africa were creating job opportunities at about 30% fewer people for a given amount of goods and services they produced.

16. Based on the latest Labour Force Survey results, it is estimated that the South African economy has **created 544 000 jobs** from March 2005 (11.9 million) to March 2006 (12.5 million). During the same period, we

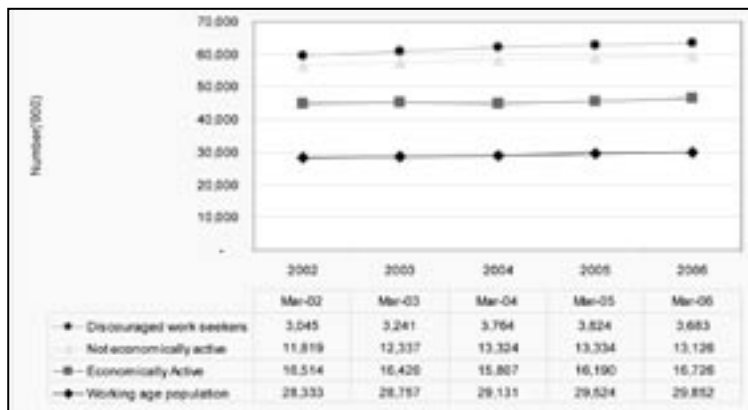


Figure 1

Total Working-age, Economically and Not Economically Active Population and Discouraged work seekers (15-65 years) from March 2002 to March 2006 ('000)

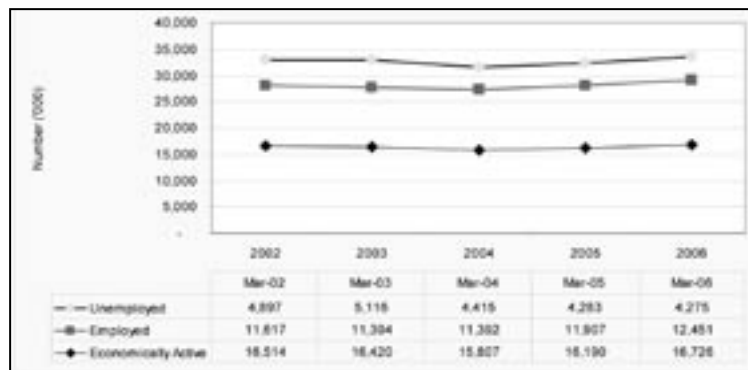


Figure 2

Total Employment, Unemployment and Economically Active population (15-65 years) from March 2002 to March 2006

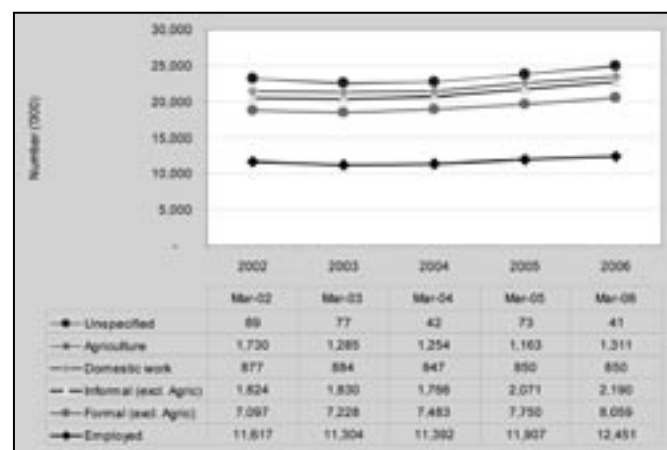


Figure 3

Employed (Formal & Informal), Agriculture (commercial & subsistence and Domestic work from March 2002 to March 2006 ('000)

have seen an increase in the total number of economically active population (15-65 years) from 16.2 million in March 2005 to 16.7 million in March 2006, about **536 000** increase. This is the result of the stability and effectiveness of the ANC policies in the country which started improving the confidence levels of people to re-enter the labour force.

17. By industries, the LFS results show that most industries contributed to the increase of employment levels between March 2005 and March 2006 with the exception of Mining, Utilities, Transport and Community services that experienced employment declines in the same period.
18. On the other hand, the official unemployment rate relatively declined by just 0.9% between March 2005 (26.5%) and March 2006 (25.6%). In terms of number, the statistics show a decline in the number of unemployed people from 4 283 000 in March 2005 to 4 275 000 in March 2006. *Figures 1, 2, and 3* on the preceding page, illustrate the findings in a more detailed form.
19. The breakdown of these figures tells an interesting story. First, we are seeing real employment growth in the domestic worker sector since the promulgation of the sectoral determination giving these workers “the same rights as all others who work”. The agricultural sector on the other hand, which is mainly seasonal, seems to be experiencing fluctuating employment levels – however also rising significantly in the last year.
20. So, the simple story is, we are growing the economy at unprecedented levels, similarly creating hundreds of thousands of jobs – but not making much of a difference at the end of the day!!! Why is this so?
21. The first answer to this question relates to jobs lost and new entrants. Using the same figures from the latest Labour Force Survey, we see that Community, social and personal services lost 52 000 jobs over a period of 12 months, followed by Transport industry which lost 38 000 jobs and Mining and quarrying losing 27 000 jobs between March 2005 and March 2006. This gives us a total of 117 000 jobs lost over a period of 12 months in these three sectors out of 544 000 jobs created in all sectors. The difference is again simple, a net gain of 427 000 jobs. When linking this gain of 427 000 jobs created, having deducted the 117 000 jobs lost, and adding the 536 000 number of economically active population, the difference dramatically shifts from an earlier indicated gain of 8000 jobs to a deficit of 109 000 jobs. All of this in just twelve months. Are we busy filling a leaking bucket or is the bucket just too

big for the amount of water we are pouring in?

22. There are two ways of looking at this question, which leads us to the second proposition. The initial manner of responding to this question would seem cynical in the absence of supporting data. Of the 536 000 economically active population, only 187 000 can be properly accounted for in terms of graduates emerging from the schooling, college, and university systems and other fields. This means that about 349 000 economically active people are anyone’s guess as to where they come from, except for the shift in the number of discouraged workers between March 2005 and 2006. A number of propositions arise in this regard. The one set of proposition needs to explore how many of these 349 000 economically active people are illegal immigrants, some of whom with legal South African identity documents received illegally?; and how many of them are rural women who have previously been marginalised and now joining the active economy of the country?. The second set of proposition needs to explore how predictable these trends are. Are we still going to be seeing an increase in the number of new entrants into the future?; at what magnitude will such entrants be and with what kinds of educational backgrounds?. Understanding these trends into the future will enable the ANC, and the extent to which the developmental state, is able to plan ahead and intervene accordingly.
23. Recent research has found that changing policies and attitudes and improved economic performance have impacted on the labour market dynamics for women. For example, the increased feminisation of the South African labour force since the mid-1990s, the result of increased labour force participation rates across all race groups, has been well documented (see for example Casale, 2004; Casale & Posel, 2002). Similarly, employment amongst women has increased more rapidly, in both absolute and relative terms, than that of men over the past decade. Despite the country’s improved economic growth performance, insufficient jobs were created to absorb the additional entrants to the labour market. As a result, women are overrepresented amongst the unemployed, with more than half unemployed according to the both the narrow and expanded definitions of unemployment. It has also been suggested that women continue to be disadvantaged relative to men within the labour market, the former being overrepresented in low-income, less secure employment. When looking at broad unemployment

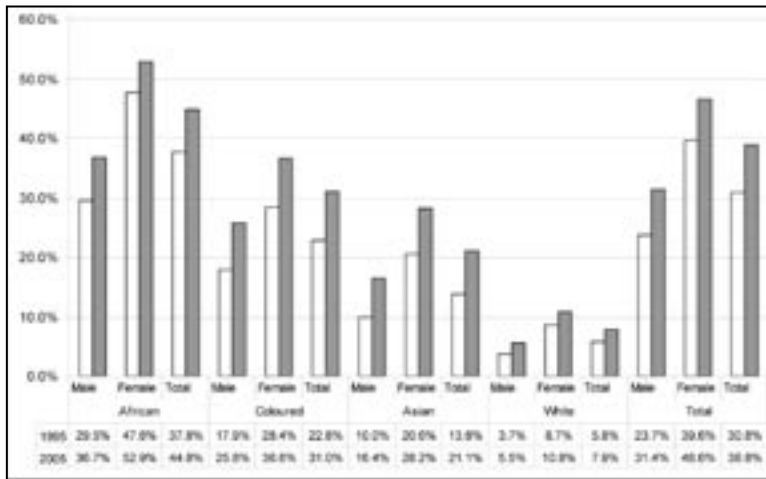


Figure 4
Broad Unemployment Rates by Race and Gender

Source: OHS 1995, LFS 2005:2 (Statistics SA); own calculations

rates by race and gender over the last ten years, *Figure 4* tells us that African females remain the highest unemployed across all other race/gender groups.

24. Today however, we know (again based on LFS data) that gender discrimination in employment remains evident in that males are largely represented in the workplace than females across all population groups and in both formal and informal sectors of the economy. The statistics also indicate that male labour absorption rate in March 2006 was 7.6% higher than the average national rate of 41.7%. For female, it was 7.1% below the average national rate. Equally, even though female unemployment rate decreased from March 2005 (31.4%) to March 2006 (30.3%), the labour force participation amongst women has also increased in the same period. This means that more women are now searching for jobs.
25. Secondly, and now talking to the size of the bucket – too big? What would be the required target growth rates for the ANC to overcome these challenges?; and which sectors would be key in this regard? The Development Policy Research Unit at the University of Cape Town, argues that “employment would have to increase by almost two thirds to absorb new labour force participants”, compared to the current growth of one third.
26. In relation to the second part of this question – sector focus – an international and local panel of experts convened to assist South Africa on a ‘growth diagnostic’ makes a number of very compelling arguments. These experts argue that South Africa must enhance its *export oriented capacity to generate growth*. The growth of the Asian economies such as Malaysia, they argue, is export based. This is the one area South Africa has been the weakest on as most of our growth is reliant on consumer demand

which is more import enhancing. The recent growth spurt of the South African economy over the past few years has been driven by two dynamics that are not sustainable in the long-term. These are increased household consumption and the high global demand for commodities. The domestic consumption boom is driven by relatively low interest rates, low inflation and a broadening black middle class. However, this is sustainable only when strongly underpinned by growing productive capacity in the economy. Commodity prices are inherently volatile, making the South African economy vulnerable to external shocks. The demand for commodities has also driven the value of the South African currency higher, making it difficult for export sectors to grow. Similarly, primary sectors such as mining and agriculture have not been growing and are unlikely to do so in the near future. There are projections that in the case of mining, in twenty years time most would have dried up or gone too deep for any significant benefits to be realised.

27. Secondly, the best way for South Africa to enhance its export capability is through *manufacturing*. It is argued that there are three main reasons why South Africa, in attempting to achieve higher growth rates across the economy, needs to focus on its manufacturing sector. First, throughout history, countries trying to improve their economic and social standing have sought to move to higher value-added activities. As these require more capital, technology and skills, only a small group of countries has been able to engage in these activities. Consequently, these countries have commanded a market premium, which in turn, has provided them with higher returns for their resources.
28. The primary shift in the Industrial Revolution was from agriculture to manufacturing and many developing countries are still strug-

gling to achieve this. Others, which have made the first transition, have moved on from simpler manufacturing operations to more complex operations and to high technology services, like software. South Africa also needs to make this next transition. Equally, manufactured goods are highly tradable in most countries, which is an important feature for the economic and social development process. International trade drives higher growth rates than would be the case if domestic demand were the only driver of growth. The East Asian tigers used precisely this mechanism to achieve high growth rates at a time when domestic demand was growing at only modest rates. Lastly, manufacturing supplements and complements other sectors of the economy. South Africa's traditional industries have been resource based, particularly in minerals. Today most minerals are exported in ore or primary metal forms, the main exception to this being fabricated steel structures. This prevents South Africa from reaping the full benefit of its very rich resource base. Manufacturing can add value to these exports by converting ores to primary metals and primary metals to higher value added manufactured products. Manufacturing will also complement the service sector. High value manufacturing will generate demand for the provision of technology intensive services. On the other hand, failure to upgrade resource based industries will make South Africa vulnerable to the global trend of deteriorating terms of trade for commodity producers which have been evident over the last few decades. Thus manufacturing can be seen as an important catalyst for upgrading the entire economy.

29. Exports for growth and jobs, through manufacturing, should therefore become the key message for South Africa. It is argued that enhancing our export capability will have a number of spin-offs for the country. First, export growing economies are better able to create jobs for low skilled workers. This is one of the challenges South Africa needs to overcome, aptly captured by the President as the first and second economy divide. Our economy at the moment is creating jobs at the intermediate and high skills levels. However, these jobs largely remain vacant because of the absence of adequately trained and experienced personnel to occupy them. Consequently, although total employment in South Africa has grown by an average 2.6 per cent per annum in the last ten years, there are important caveats to this growth pattern. Firstly, there are important sectoral variations to the overall trend. It is principally the tertiary sector that

has been responsible for the attainment of three per cent GDP growth over the period. Hence, while the primary sector grew at an average annual rate of 1.5 per cent and the secondary sector at 2.6 per cent, the tertiary sector as a whole grew at a rate of 3.9 per cent per annum over the ten-year period. As a result, the tertiary sector accounted for 76 per cent of total output expansion between 1995 and 2005. The results reflect the intensification of the changing structure of the economy - away from primary towards tertiary or services-based output (Bhorat and Oosthuizen, 2006:11). Equally, growth in employment in the tertiary services sector has created the bulk of new jobs in post-apartheid South Africa. Together, the tertiary sectors added approximately 2.5 million jobs over the period, representing an average annual rate of growth of 4.5 per cent. This growth in tertiary employment however, has been driven by two sectors, namely Financial & Business Services and Internal Trade (Bhorat and Oosthuizen, 2006: 12). Mining witnessed a secular decline in employment across all skills levels, and employment of low-skilled workers in Agriculture declined by close to 50 per cent. Part of the solution in this regard, linked to current debates on scarce and critical skills, is to train and place people accordingly. This however will still not entirely solve our unemployment problem - it is only part of the solution. Our economy also needs to start creating jobs at low skill levels and exports are the key route in this regard.

30. Consequently, exports for growth constitute the main binding constraint for South Africa. How do we then unlock this constraint?
31. The international and local panel of experts goes further to identify six key areas that would unlock our export growth potential as a country. The first is the need for a competitive and stable exchange rate. It is generally accepted that the current exchange rate of about R7 to the dollar is the correct level. The challenge however remains that of keeping the exchange rate stable.
32. Secondly South Africa needs to have an efficient logistic system. Rail transport, our ports, and road transportation infrastructure, telecommunications and electricity costs, information communication, and many other logistics issues become critical in this regard.
33. Thirdly, we need to have in place a competitive market for new entrants and inputs. In this regard our industrial competition policy has to be in place and function efficiently, and our trade policies have to enhance exports and not imports - as it seems to currently be the case in many sectors.

34. The key question to ask on trade is whether the trade reforms embarked upon by the democratic state have induced productivity growth or constrained it. The general picture that has emerged for South Africa is that these reforms have had no impact on either job losses or job creation – thus their impact on growth has generally been indifferent. However, a sectoral outlook produces a varied response. For instance, in the manufacturing sector – which has been critical to the growth of the Asian tigers, these reforms have generally allowed for an increase in import penetration in South Africa – the key example being imports from China. This has had a concomitant negative effect on domestic growth in this sector – impacting negatively on jobs and poverty eradication. On the other hand, the agricultural sector has experienced very positive spin-offs from trade liberalisation. Trends in trade of agricultural products both in imports and exports have increased four-fold since these reforms were introduced.
35. Fourthly, a supportive industrial policy to promote the country's self-discovery is critical. The growth of the Asian economies has not been a co-incidence. It was planned ahead from the beginning – with everything hanging on one baseline anchor – which is the country's industrial policy. South Africa has just completed its National Industrial Policy Framework (NIPF), which has major implications for all our other interventions. This includes our skills development policies, trade policies, macro-economic policies and so forth. With our Industrial Policy Framework being finalised, all these other legs will have to fall into line. The NIPF places manufacturing at the centre of the country's economic development, given its ability to stimulate economic activity, catalyse employment throughout the economy, and drive economic growth through increased value-addition. South Africa has developed an established and diversified manufacturing base that has demonstrated resilience and the potential to compete in a global economy. It possesses pockets of technological leadership, related to key Apartheid era advances in, for example, mining, chemicals, agriculture, energy, defence and aerospace. South Africa also has a wide range of natural resources that can form the basis of a more labour intensive and value-adding industrial trajectory. This includes major deposits of a wide range of minerals, the continued ability to produce relatively cheap electricity, a wide range of agricultural possibilities, large land mass and substantial bio-diversity (DTI, 2006: 23). A related issue relates to the need for the South African Reserve Bank to explore what the international and local panel of experts calls a “modified inflation targeting framework”, which would promote a competitive and stable exchange rates whilst similarly establishing some form of equilibrium in the labour market. This has been a long standing debate in South Africa, and there is a general concern on the extent to which SARB might have been a bit “overzealous” in targeting inflation. Similarly, not only has our exchange rate had to be stable and predictable to encourage investments, but it must also be somehow pecked at levels which would encourage exports. If the rand is too high, i.e. costs less to buy the US dollar, then it would make imported goods cheaper to buy which would simply encourage more imports and kill South Africa's manufacturing capacity. The reverse is also true, if the rand costs more to buy the US dollar it will make imported goods expensive and encourage local manufacturing which would encourage exports and create jobs in a short term to long term.
36. The implications of these shifts in industrial policy focus are also critical for skills development and the overall Sector Education and Training Authority landscape, where similar debates would need to take place. The new forms of industrial clustering, such as grouping the natural resource-based sectors (materials) or service sectors together, or strengthening downstream beneficiation (organising stronger value chains) – may suggest a new way forward for SETAs so that they more effectively align with the new industrial requirements of our modernising economy. The NIPF argues for the combining of sectors into five related clusters. These include:
- **Natural resource-based sectors** – involving sectors such as steel, chemicals, aluminium, paper and pulp, bio-fuels. There are significant import parity pricing problems between these sectors and downstream sectors, which restrict growth and competitiveness. In addition, new large projects in these sectors generally require government facilitation.
 - **Downstream beneficiation of natural resources** – involving sectors such as metal fabrication, machinery and equipment, plastics, jewellery, oil and gas. The promotion of downstream beneficiation will result in increased value-added. Downstream industries have relatively high labour intensity.
 - **Advanced manufacturing sectors** – involving sectors such as Automotive and components, aerospace, energy, rail and

marine. The predominance of medium to high-technology products in global trade signifies that more efforts should be directed to value-addition and improving efficiencies along manufacturing value chains. New advanced manufacturing processes and technologies need to be promoted in order to improve the technological composition of the export basket and to increase SA's share of global trade.

- **Labour-intensive sectors** – involving sectors such as Clothing and textiles, food and beverages, furniture, crafts. Some of these sectors are in distress from external competition and cheap imports. Others, such as furniture and leather, exhibit good prospects for future growth. Both need appropriate sectoral support strategies that promote growth and jobs.
- **Services** – involving sectors such as BPO, tourism, film and television, ICT. Services constitute over 60 per cent of GDP and employment and are therefore a crucial sector. There are some service sub-sectors that have labour-intensive growth potential and that generate substantial value addition.

37. The clustering of these five sectors is largely because a number of sectors have common characteristics in terms of the challenges they face and the types of support they require. In addition, clusters could be formed around supply chains that require further development. Clustering also allows the state to economise on the administrative resources needed to deal with these sectors, if they are grouped together in related categories. In considering the implications of these industrial policy initiatives for the for skills development, it is worth recalling the SETA policy debates of the late 1990s. These debates were focused on the question of how to proceed in the formation of SETAs in the then absence of a guiding industrial policy framework. Consequently, the basis on which the social partners were to ultimately cluster SETAs became flawed from the beginning, and was ultimately unable to enhance the developmental interventions of the democratic state. In an influential discussion document of 1998 published by the Department of Labour and entitled *Skills Development Strategy: Demarcation of Sector Education and Training Authorities* (DoL, 1998), it was initially suggested that SETAs could be formed on the basis of four differing industrial criteria:

- Similar production or service delivery processes (eg, continuous production,

assembly production or jobbing manufacture);

- Similar materials used in production;
- Value chain clustering; or
- Ownership (DoL, 1998: 22-27).

38. On the basis of this criterion, the organisational basis for forming SETAs would have been to group together those industries with similar production processes. This is the same reasoning that has now shaped the industrial policy sectoral clusters as suggested in the NIPF. How sustainable therefore, would it be to keep the current SETA landscape of 23 SETAs in place. It would consequently only be logical to reduce the SETA landscape from the current 23 SETAs to five institutional forms based on the five sectoral clusters suggested in the NIPF. This shift would not only deal with the obvious skills/industrial policy alignment and scarce and critical skills issues consistently identified as binding constraints in ASGI-SA and the international panel of experts, it would also help resolve a number of institutional constraints that the SETA framework has experienced. The plethora of institutions increasingly spiralling out of strategic control in South Africa has begun to feature as a source of concern. There are simply too many training institutions in the country all engaged in separate and uncoordinated skills interventions. In total, excluding schools and universities (which also form part of this chain of command), there are almost eighty public training institute of some form or another. These include the 23 SETAs and the 50 FET Colleges with more than 150 sites spread all over the country. This institutional proliferation has simply created all types of unwarranted institutional dilemmas, including cooperate governance problems, maladministration and fraud, and a generally insignificant impact on skills development. Consequently, scarce and critical skills have simply remained scarce and critical in the past ten years. The state has also struggled to keep these institutions in check - they are simply too many to closely monitor. In the case of SETAs in particular, it has also become increasingly clear that the social pact agreed to between government, business, and labour was either too premature or simply not feasible. Similar to the state, both these social partners also simply do not have sufficient capacity to can keep close control over the affairs of these institutions. A focussed, more targeted and streamlined approach – significantly reducing the current SETA landscape to align with the NIPF sectoral clusters – would consequently be a very compelling reasoning in this regard.

Related to the need to re-look at the SETA landscape, is the need for a dynamic skills acquisition policy which would have to relate to the sectoral outlook proposed in the industrial strategy on the one hand - which talks to growth areas, and similarly respond to scarce and critical skills challenges on the other hand which might be cutting across sectors.

39. Fifthly, the need for a predictable and unburdened regulatory framework is necessary for South Africa to create jobs and eradicate poverty. The South African labour market has repeatedly been sighted as the main culprit in this regard. The argument, put simplistically, is that South Africa's labour market is too rigid to an extent of stifling small business development, job creation, and ultimately limiting government efforts to eradicate poverty. A number of arguments have been put in support of this assertion, i.e. hiring and firing too complex and costly, wages too high due to overly strong union presence, etc.
40. The National General Council of the ANC in 2005, adopted resolutions on the labour market to the effect that:
 1. **The Freedom Charter affirms that "There Shall be Work and Security!"** Since 1994, the legislative and regulatory environment of the labour market has been radically transformed, and in the process many of the Charter's demands have been realised. The labour market framework now in place builds stability, and reduces tension, conflict and strikes. It has allowed for massive social transformation without significant disruptions to production, which must be regarded as a major achievement of the democratic order.
 2. In this context, whatever recommendations we make on the question of labour market reform should be informed by deeper understanding of labour markets that takes account of a broad range of inputs.
 3. **Further research is required to quantify the effects of labour market regulation for job creation**, particularly in the second economy. This **research must answer questions about the efficiency of institutions and labour market outcomes, in order to identify the broader inefficiencies in the labour market and their impact on labour absorption and job creation.**
 4. In the context of answers to these questions, **labour market reform should be considered as one part of a broader developmental vision**, which links industrial policy, macroeconomic policy and social policy to our objectives of halving unemployment by 2014.
41. Subsequent to the National General Council of the ANC in 2005, a number of research projects have been taken on the labour market, which warrant some re-connection. The aforementioned local and international panel of experts were among those that conducted research on the labour market. Overall, their findings on the labour market point to the fact that the causes of economic growth hindrances and the rise in unemployment lie elsewhere other than the labour market. They base this finding on a number of factors. One of the areas critically examined is the cost of labour. They find that "real wages have not risen in since 1994", and that the only role, if any, that the strong labour movement (unions) has played in South Africa is to "prevent real wages from falling". Statistically, the authors point out that in fact, between 1995 and 2005, real wages of the South African labour force have decreased by 10%. Secondly, the authors found that whilst informal employment grew in the last decade, it has not done so at sufficient levels. Thirdly, which is the more interesting finding which has not come out before; the authors surprisingly found out that the labour market has seen exceptionally high levels of mobility at an individual level in the last years. What their research shows, which has not come out so clearly before (again using LFS stats), is that our analysis of employment and unemployment trends in South Africa has been in blocks – i.e., the one block of unemployed and the other block of employed and variations within each block. This has been helpful in understanding the big picture but not very much so in terms of informing our policy interventions. Now the authors are telling us that:
 - 9.6% of unemployed adults between the ages of 16-64 find employment after six months (both formal and informal)
 - Discouraged work seekers frequently (which mean that they are not one static block!!!) transition into searching for work. Even more interesting is that about 14% of discouraged workers transition from being discouraged and not even looking for work to being employed six months later. This now explains why in the latest LFS that, having created about half a million jobs in the last year alone, the economy still saw no difference in the overall unemployment percentage – simply because the number of new entrants outstripped the number of jobs created, and that these new entrants are

not only coming from the education system, but that 14% of them come from former discouraged workers, let alone the unemployed not previously discouraged. Other informative transitions include the fact that discouraged workers are more likely to transition into informal rather than formal sector jobs – which is not surprising; but also that 12% of informal sector workers transition into formal sector jobs within six months – a critical ladder in terms of bridging the first and second economy divides and promoting decent work.

42. The authors then recommend three possible policy interventions on the labour market. Of these three, one is simply problematic – which is that we must explore a separate regulatory relief for young workers. This is another form of a dual labour market which the 2005 National General Council of the ANC already rejected when it pronounced that **labour market reform should be considered as one part of a broader developmental vision**. However, the main problem with this proposal is its constitutionality.

As indicated earlier, the constitution clearly indicates that “Everyone has the right to fair labour practices”. To which extent therefore would a labour market segregating one set of workers from the other be able to withstand constitutional challenges? Secondly, as will be further elaborated later in this paper, our labour market is already dual / segmented / segregated - though this has come about more as an unintended consequence than being a result of policy. On a daily basis, each workplace increasingly contains those workers who are permanent and those who are part-time; there are those whose contract is with the employers they are working for, and those having a contract through a temporary employment agency; there are those who are casual, and those who are full time – all doing the same job in the same premises. Whilst these trends cannot be reversed, they however exist, are increasing, and therefore a solution would need to be found to manage them.

43. The other two proposals are worth exploring. One of the two proposals talks to the possibility of introducing wage subsidies for first

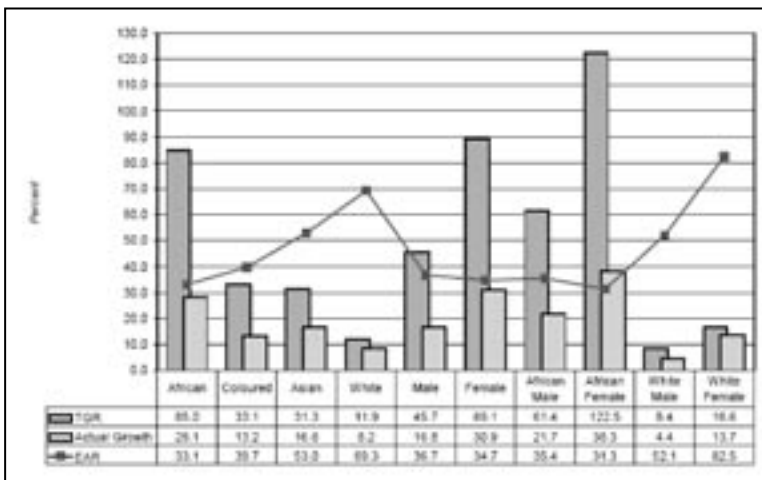


Figure 5
Target (TGR) and actual employment growth, 1995-2004

Source: DPRU 2006

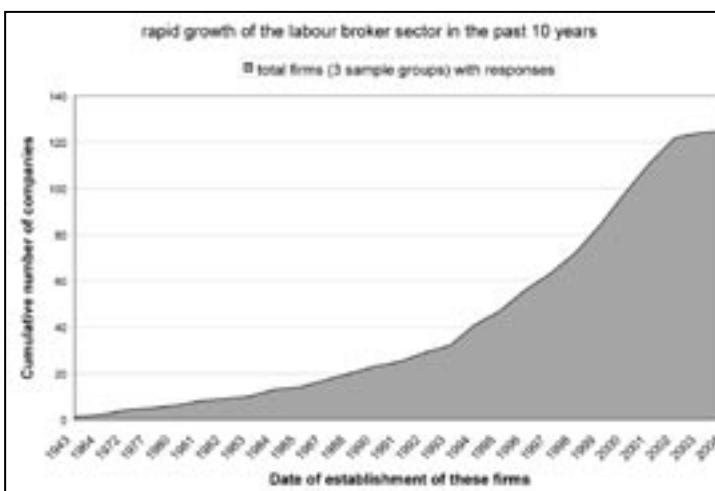


Figure 6
Rapid growth of the labour broker sector in the past 10 years

jobs. This is a matter also alluded to by the President in his State of the Nation Address of 2007. Different countries have introduced different variations of these subsidies. For instance, in Denmark, when employees apply and are granted various forms of leave by their companies such as study leave, maternity leave, sabbatical leave, sick leave – which can range from a week to years – employers are encouraged to hire replacement employees from outside the company (the unemployed), with a subsidised wage by the unemployment insurance fund for the replacement employee. In this instance, the fund has been used in relation to the system of job rotation (Madsen, 1999). An evaluation of the Danish system has shown that “more than one third of the unemployed stay employed by the company after the return of the employees they replaced” (Schmidt and Sch^hmann, 1999).

44. The third proposal from the authors talks to the need to “subsidize search costs”. This is a critically important matter for the organisation to explore – alternatively referred to as an employment services system or active labour market policies. Anecdotally, a work seeker who leaves in Mamelodi, ±15

from the Tshwane City Centre, on average spends about R20 on a return trip to and from the city. This averages to about R100 per week, and totals about R400 per month. The reality of the matter is that there is no black work seeker in South Africa who can afford to spend such an amount of money simply looking for work – Stats SA calls these people discouraged work seekers and does not include them in the narrow definition of the unemployed (we now know from the panel data that 14% of these so-called discouraged workers who are not counted as unemployed nonetheless find employment within six months). There are many cases of workers who attempt to walk these distances per day to compensate for the unaffordable costs. A well functioning employment services system should compensate for this by providing a one-stop service where people are located – the need to travel to the city to look for work would simply be eliminated. What is even sadder about the ramifications of the high search costs is what the panel of experts indicates in their findings, which is that: “Job search is more effective for Whites and Indians than it is for Africans and Coloureds”. This finding goes

Figure 7
Permanent and atypical employment, September 2005

Sector	Permanent	Atypical
Agriculture	64%	36%
Mining	94%	6%
Manufacturing	76%	24%
Electricity	100%	0%
Construction	37%	63%
Wholesale and retail trade	72%	28%
Transport	68%	32%
Finance	83%	17%
Community	85%	15%

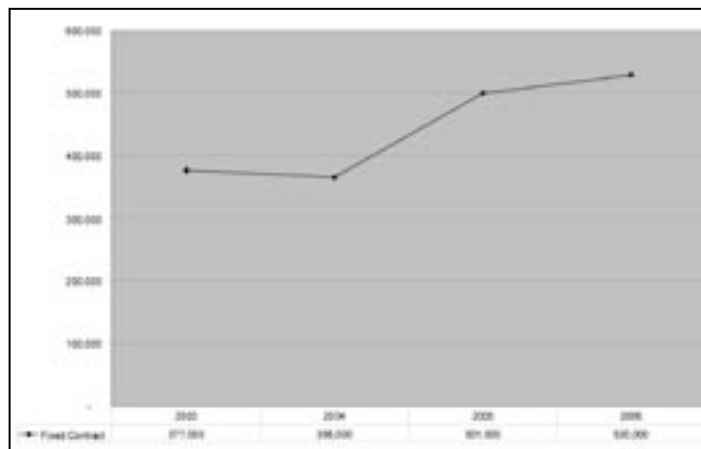


Figure 8
Workers with fixed contracts (2003–2006)

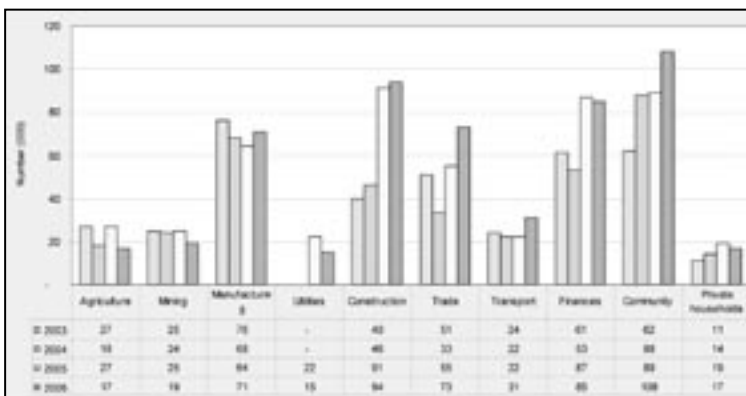


Figure 9
Workers with fixed contracts by main industry (2003–2006)

to the heart of *Figure 5* below, which shows that white males and females are the closest to reaching their employment target growth rates compared to Africans, particularly female Africans who perform the worst (DPRU, 2006).

46. Further research on the impact of our labour market interventions on job creation and poverty eradication points to equally interesting findings which go against the grain of popular belief on labour market rigidities. Research conducted by H Bhorat and H Chendale, looking at labour market trends from the late 1990s to 2006 indicates that in the late 1990s:
 - “South Africa’s measures of labour legislation compare quite favourably with those found in the rest of the world,
 - In almost all of the individual regulatory sub-indices, South Africa yields a level of regulation that is lower than both the mean for upper middle income countries, and for the sample of countries as a whole.
47. The findings continue to point out that with regards to “the legislative regime governing part-time work, contractual employment and so on – South Africa yields an extremely low measure of labour regulation”. This not only talks to the levels of flexibility in our labour

market regime which research now tells us have shown ‘an extremely low measure of labour regulation’, but it equally explains what in 2003 research identified as an “exponential rise in atypical forms of employment”. Whilst in 2003, as shown in *Figure 6*, the only telling factor was the rise in the number of temporary employment services, latest data from Stats SA is more telling – see *Figures 7 to 12*.

48. What figures 7 to 12 tell is that, in less than five years, the number of workers finding themselves in atypical forms of employment, which the International Labour organisation refers to as becoming increasingly typical than atypical, has increased by nearly a million workers – 832 000 to be exact.
49. By industry, this form of employment is well observed in Trade and Private households industries. Internationally, it needs to be acknowledged that atypical forms of employment have grown and in a number of countries even surpassed permanent employment as traditionally known. However, in the advanced industrialised countries of the North, enjoying high employment levels with an advanced educated workforce and similarly declining welfare states, atypical forms of employment is readily embraced.

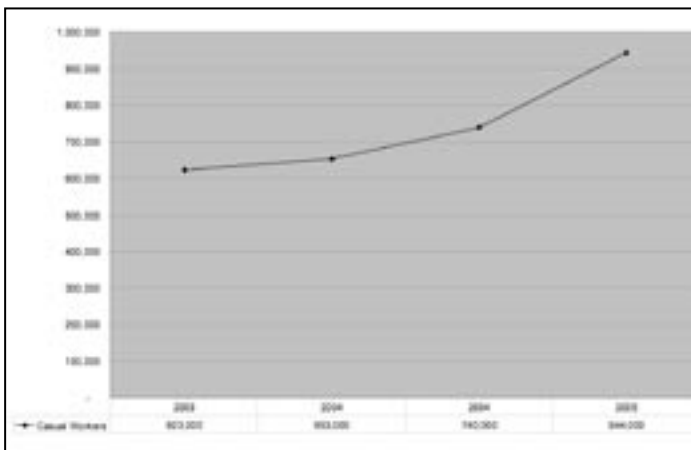


Figure 10
Casual workers (2003–2006)

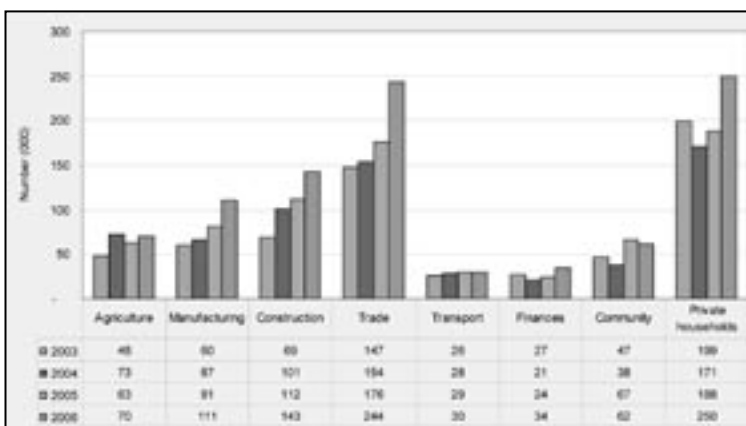


Figure 11
Number of casual workers by main industry (2003–2006)

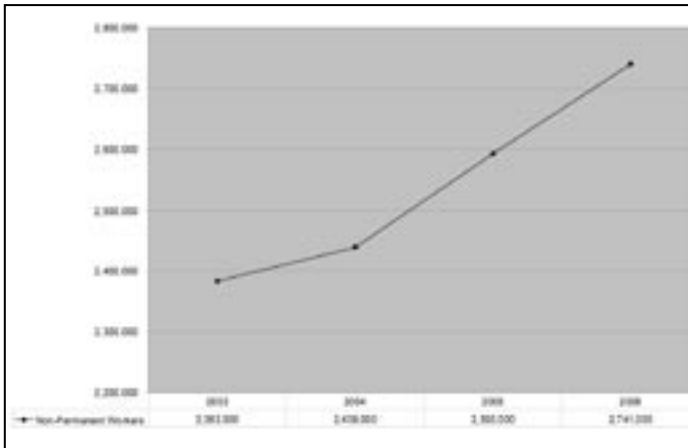


Figure 12
Non-permanent workers (2003–2006)

To the contrary, in the developing countries of the South similar to our country with limited social security coverage, high levels of unemployment and a workforce with low skills and marginal economies – atypical forms of employment easily become a haven for abuse, exploitation, ridicule, and all forms of degradation our new democracy is seeking to erase. Research on atypical forms of employment indicates that “labour standards are being eroded in some or all the respects”. These include:

- On **wages** – “the wages of temporary workers employed by a TES are inevitably lower. For as paper 3 points out, there would be no economic rationale for utilizing a TES unless the wages it paid the workers it procures were lower than the client’s. By the same token lowering labour costs is probably the primary rationale for other forms of externalization (although not the only one). All indications are that the differential in wages between workers in standard employment and externalised employment is considerable”.
- On **conditions of work** – “In theory part time and temporary workers are protected by the BCEA. However, as pointed out in paper 3, certain provisions are not readily applicable to workers in part-time or temporary positions, or are not applied in practice. The situation is undoubtedly worse in the case for temporary workers placed by a TES, who sometimes enter written contracts that explicitly disregard the provisions of the BCEA.
- On **health and safety** – “Again, part-time and temporary workers are in theory protected by the relevant legislation to the same extent as other workers. However temporary workers placed by a TES have to work under conditions determined by the client. Although the TES may be liable as a third party in

terms of occupational health and safety legislation, it is unclear how effective this provision is in practice, and it seems highly probable that the utilization of TESs encourages a lowering of safety standards. The same would apply to the utilization of contractors, in a situation where employment is externalized.

- On **skills development** – “Skills development levies should be deducted in respect of non-standard employees. Similarly, such employees ought to be entitled to benefit from skills development programmes. However there are obvious practical difficulties to their doing so. Moreover there is little incentive to the employer to train temporary workers, other than those engaged for significant periods of time. There may however be an incentive to train part-time employees.
- On **social security and protection** – “membership of a pension or provident fund, or medical benefit fund – ...there is evidence that employers have externalized precisely in order to eliminate or reduce their financial obligations towards such funds. Undoubtedly workers placed by a TES or employed by a contractor are less likely to be members of such funds. Even where they are required to be, as in the case of the MEIBC, there is evidence that TESs do not register all the workers they place. ... unemployment insurance – ...although contributions to the unemployment insurance are obligatory, in practice non-standard workers are less likely to be registered with the fund, particularly those in externalised employment”.

50. The report concludes by arguing that, “as a consequence of the erosion of labour standards described above, there is segmentation in the workplace and in the labour market. This segmentation takes two forms.

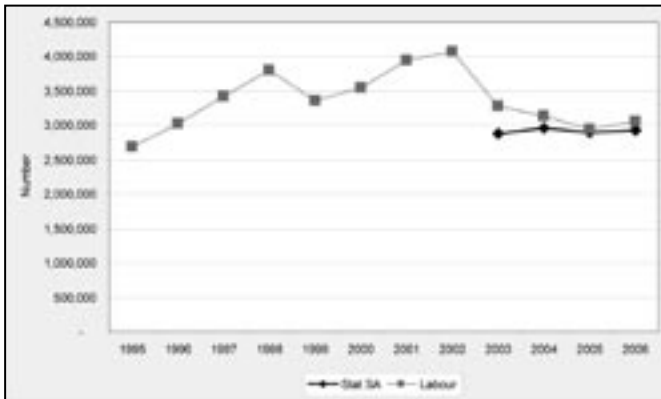
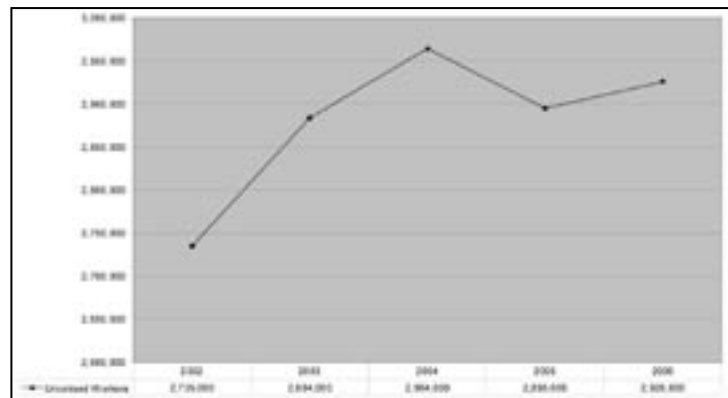


Figure 13
Trends in the number of registered organisations since 1995 to 2006

Figure 14
Numbers of workers with Union membership (2002–2006)



Firstly, there is segmentation amongst the employed in an enterprise, between workers in standard employment and workers in casualised forms of employment, (namely part-time workers and temporary workers, except those placed by a broker). Secondly, there is segmentation between those employed by an enterprise and those working for it, comprising temporary workers placed by TES, and others employed by contractors providing goods and services.

All who work shall be free to form trade unions – structure of trade unions

51. The trends elaborated on in the first sections of this paper – mainly globalisation and its impact on forms of work, un/employment trends, and atypical forms of employment – have had major implications for the structure of trade unions and how they should or could respond.
52. Firstly, there are signs of stratification within unions in terms of internal democracy and participation. According to the SWOP *Taking Democracy Seriously* Survey (2004) there are dramatic differences between permanent and temporary workers with regard to attendance of trade union meetings, with temporary workers far more likely to be inactive in unions. Generally, the survey found out that 50% of workers in temporary employment never attend union meetings when com-

pared with 26% of permanent workers who do not attend meetings. Consequently, union membership numbers are not only stagnant at best in the face of rising employment (as the graphs below show), but also amongst unionised workers, half of those in temporary employment seem not to actively participate in their union activities.

54. Secondly, and this are findings from a separate PhD study conducted in communities with high rates of unemployment, there is high disillusionment with unions amongst unemployed workers. Retrenched workers interviewed for this study felt that they were not protected or defended by the union during the retrenchment process, and that unions had not done enough to raise their plight since their retrenchment. This raises the issue of the social plan, built-in as one of the key consultative areas workplace forums envisaged by Chapter Five of the Labour Relations Act should have been dealing with.
55. Thirdly, related to the second point above, the uptake on the establishment of workplace forums, supposed to be triggered by trade unions, has simply been dismal to say the least and non-existent at best. A research project undertaken by SWOP in 1999 but whose findings remains as relevant today as they were eight years ago found out that reasons workplace forums have simply failed to take off in workplaces included:

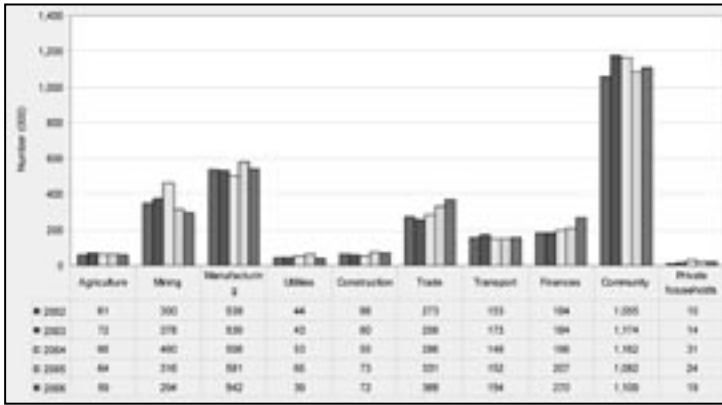


Figure 15
Number of workers with union membership by main industry (2002–2006)

Figure 16
Non unionised workers
2002–2006)

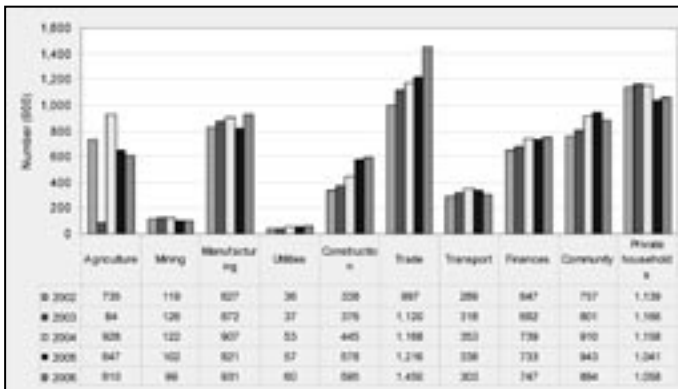
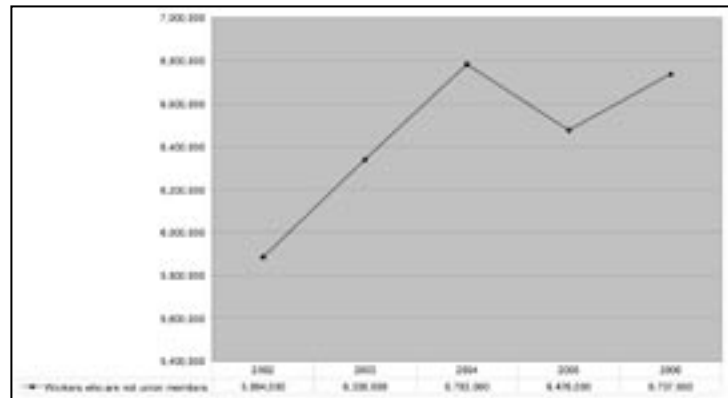


Figure 17
Non unionised workers by industry
2002–2006)

- 50% of cases were the result of opposition from the trade unions. Trade unions generally felt that workplace forums would undermine their support base,
 - The failure of applicants to meet the CCMA criteria which requires applicants to have 100 or more workers in their employ and also that only trade unions could trigger the establishment of workplace forum,
 - Management opposition to the establishment of the workplace forum in that a number of large employers believed the bargaining chamber to be sufficient
56. As a consequence, on the one hand there is a clear gap in relation to worker participation and engagement in the workplace partly as a result of non-unionisation or non-participation in union activities. On the other hand

there is a legislative provision – the workplace forum – with clear areas for consultation between workers and employers that is simply not being used by both employers and workers. It therefore does not make sense to keep this legislative provision in the labour law whilst clearly not helping – in its current form – towards worker participation in the workplace.

57. Fourthly, there is a need to look at ways of organising and advancing the interests of more vulnerable workers that are not in stable employment: “The traditional COSATU model of shop floor representation, accountability and recall will be less meaningful to those who frequently switch jobs... This highlights the need for structures of representation specifically geared towards those in insecure employment and that transcend

Table 1 Mean hours worked by type of work, 2000 and 2005

	2000	2005	Change	
			Hours	Percent
Permanent	47.5	48.7	1.2 *	2.6
Fixed period contract	49.7	49.1	-0.6	-1.2
Temporary	48.6	49.5	0.9	1.9
Casual	45.7	48.6	2.8	6.2
Seasonal	45.8	47.3	1.5	3.3

Source: Own calculations, LFS 2000(2) and LFS 2005(12) (Statistics South Africa).

Notes: Asterisks (*) denote statistically significant changes at the 95 percent level of confidence.

individual workplaces". The NALEDI Workers Survey found that "half of African workers have not joined a union because none has tried to recruit them or there is no union in their workplace. This points to the fact that the main obstacle to recruitment is failure to make contact with workers outside of organised workplaces."

58. It has also been argued that increasing forms of atypical work are not only eroding the hard won rights of workers as envisaged in the Freedom Charter, they are also impacting negatively on the capacity of the union movement to organise and make an impact in the work place. Comparatively, the statistics recorded by the Department of Labour and Statistics South Africa show similar trends in terms of the number of registered union membership from 2003-2006. *Figure 13* illustrates the trends.
59. The number of registered trade unions has been showing a steady decline since 2002, before picking up marginally in 2006. On union membership, latest LFS data is non-committal here, while clearly showing that union membership is not on the rise, declining slightly since 2004 – *Figure 14*. *Figure 16* on the other hand shows an increase in the number of workers that are not unionised. Rough figures show that of the 12.5 million workers in 2006, about three million of them are unionised, with nearly seven million not unionised. Again, Trade and Private households industries show relatively high number of workers that are not unionised.
60. Lastly, the cumulative effect of all this impacts negatively on the system of centralised collective bargaining and its institutional formation – the Bargaining Councils. Research conducted by S Godfrey and J Theron on bargaining councils and the effect on SMMEs tells us that the coverage of the BCEA and sectoral determinations is much more significant than that of bargaining councils, while the extension of agreements covers a very small proportion of the labour market. The enforcement capacity of both

the bargaining councils and the Department of Labour is limited, which likely translates into relatively high levels of non-compliance. The exemption systems of councils appear to be functioning well. The number of exemptions is increasing and the number of appeals against refusals is low. Most exemption applications come from small firms and many more exemptions come from non-party firms than party firms. Furthermore, many councils appear to be sensitive to the problems faced by small firms, with blanket exemptions being used by some to accommodate small and new firms. An ILO report on *The Changing Patterns in the World of Work* released in 2006, however provides very interesting comparisons with industrialised countries on the coverage of collective agreements in developed economies. The ILO report indicates that, "The decline in union participation rates – and to a certain extent employers' organizations – has had some effect on the coverage and content of collective bargaining and other institutions of social dialogue.

61. However, in many countries far more workers benefit from collective agreements than are actually members of unions or employees of firms that are members of employer organizations. For example, in EU Member States, about 78 per cent of employees in the old 15 – and 35 per cent in the new ten – Member States were covered by collective agreements in 2001. These figures are high by comparison with other countries because of the continued strength of industry bargaining and the use of voluntary or legal procedures to make agreements binding on all employers in the sectors concerned. In 2000, the average for the industrial countries of the OECD was 35 per cent in 2000, down from 45 per cent in 1980. Information on the coverage of collective bargaining in developing countries is scant. The practice is less common than in industrial countries and limited mainly to the public sector and larger enterprises". As a consequence, first, very few workers are covered by collective bar-

gaining agreements. Secondly, even among those that are covered by these agreements, this tends to be more on paper than in reality in that bargaining councils simply lack the capacity to enforce their own agreements. Over and above this, most collective bargaining agreements seeking extension tend to be on the threshold between 40 and 49% representation. Although the law allows the Minister of Labour to use his discretion in extending agreements to non-parties, however using this discretion under circumstances in which parties to the agreement are far below 50%+1 would fly against the majority principle embodied in all trade union agreement and opens the state to unnecessary challenge in the constitutional court and criticisms. This challenge gets even worse in cases where the same collective agreements do not seem sensitive to the needs of small business. The implications of this trend are critical for the movement. Serious consideration would need to be given to creating mechanisms that would support bargaining councils and ensure that workers in vulnerable and unorganised sectors such as the security industry are properly organised.

There shall be a forty-hour working week

62. Average working hours in a week have also either remained stagnant or increased in South Africa in the last five years, going against the grain of the legislative intentions to reduce working hours and create jobs. An investigation into the working hour week has shown that (see *Table 1*):
- “there has been relatively little movement in the average number of hours usually worked between 2000 and 2005 by formal sector, non-agricultural workers”,
 - “Overall, there has been an increase in the number of hours worked of approximately 1.5 hours, from 47.6 hours in 2000 to 49.1 hours in 2005”,
 - “Females worked nearly two hours longer in 2005, largely due to an increase of 1.7 hours experienced by African females”, and therefore.
 - “It is clear that the number of hours worked in a ‘usual’ week, as reported by workers, has not declined in line with government’s desire to move to a 40 hour work-week. In fact, if anything, workers are working longer hours now than in 2000”.
63. What is also interesting from the data is that union membership did not significantly impact on the number of hours worked in a week.

There shall be work and Security – achieving regulated flexibility

64. In concluding their analysis for the late 1990s, Bhorat and Cheadle point out that “the aggregate labour rigidity and aggregate protection indices for South Africa remain fairly low in international terms”, and therefore, “South Africa cannot in any categorical way be said to have an overly regulated or protected labour market”.
65. The authors then continue look at the state of the labour market in 2006. The following findings emerge from the recent 2006 data analysis:
 “...it is very clear that in terms of hiring and firing costs, South Africa remains both fairly flexible and relatively unprotected”, and that “the legislative provisions for retrenching a worker yield a labour market that, according to 2006 data, that is fairly flexible in terms of firing costs”, and consequently South Africa shows an, “overall level of hiring and firing costs that is low by world and upper middle income country standards”.
66. However, when digging deeper into the issue of flexibility, the authors find that “any notion of lack of flexibility within the South African labour market – lies specifically within the areas of hiring and firing provisions”. This relates to areas affecting fixed term contracts, clauses governing dismissals, and unfair labour practices. The authors argue that these issues are “at the heart of the labour market flexibility debate in South Africa”. It is clear that, of the amendments introduced by the 2002 LRA Amendment Act, considerable use is made of the con-arb process while on the other hand virtually no use is made of the pre-dismissal arbitration. There are varying reasons for the non-use of the pre-dismissal clause, which include the connotation that the concept itself carries – pre-dismissal. Workers are therefore reluctant to consent to the pre-dismissal process as they generally see it merely as a formality towards their already pre-determined dismissal. Equally limiting the use of pre-dismissal clause has been the lack of communication and encouraging guidelines on its benefits and risks for both employers and workers. However, one of the interventions currently being explored, linked to social partner debates on the labour market, is the utilisation of the con-arb and pre-dismissal processes by employers as per the 2002 LRA amendments. Firstly, the need for more CCMA commissioners to be appointed to be available at no cost to employers/employees for facilitating these processes within workplaces was raised. This intervention would go some way in resolving disputes before they escalate and

become over-proceduralised and over-judicialised. Other important aspects of this intervention will include advocacy – for workplaces to be made aware of this option and the services government is prepared to render in easing burdens for business and workers. The other aspect of quick regulatory change could entail reworking the very concept of pre-dismissal, because it would seem – based on anecdotal evidence – that the lack of uptake on this option is also due to the impression the concept itself creates among workers – that it is simply a formality towards dismissal.

67. In concluding their overall analysis of the labour market, based on recent 2006 data, the authors argue that, “regulation as it stands in its 2002 amended form, does not in the main, lead to a reduction in employment, as most firms indicated they would not reduce employment”, furthermore that, “we may have strong evidence that the broad labour regulatory structure put in place in the mid-1990s and amended in 2002, may not have caused a contraction in employment”.
68. Further research on the impact of our labour market interventions on job creation and poverty eradication points to equally interesting findings which go against the grain of popular belief on our labour market rigidities. H Bhorat and H Cheadle, looking at labour market trends from the late 1990s to 2006 indicate that in the late 1990s:
- Looking at the impact our labour laws have on small business development, a study conducted by the Gauteng Enterprise Propeller (GEP), an agency established by the Gauteng Provincial Government (GPG) to provide non-financial support; financial support; and co-ordinate stakeholders for the establishment, growth and sustainability of Small Medium and Micro Entrepreneurs (SMME’s) in the province found that there are various factors contributing to the failure of small businesses in the province. These factors are:
 - ▼ Poor Management of Financial Activities – 34%
 - ▼ Lack of Management Competence – 16%
 - ▼ Inflation & Economic Conditions – 12%
 - ▼ Poor Bookkeeping & Records – 12%
 - ▼ Sales & Marketing Problems – 11%
 - ▼ Staffing Problems – 9%
 - ▼ Labour Problems – 6%
69. Further evidence from Bhorat and Cheadle, as highlighted earlier, suggests that an international comparison shows that our policies

are not rigid. This is important in the sense that investment, which is one of the main determinants of economic growth and development, is influenced by a country’s regulatory framework. If research points out that our labour regulatory framework is in line with international trends, if not better (in terms of regulation), then it is clear that lack of growth cannot only be narrowly located in the labour market.

69. The above evidence shows that labour regulations cannot be viewed in isolation from the broader regulatory framework governing various aspects of business regulation. It is clear from the findings of the GEP study that labour regulations ranks the lowest in terms of constraints inhibiting business growth. Similar studies by the World Bank have also found this to be the case.

Debating the future – social partner views

70. The recent engagement by the Minister of Labour with key social partners participating at NEDLAC has produced a document that appears to be taking this labour market debate forward. This engagement in its various phases has produced what can be called the emergence of a common approach and understanding on what the problems in our policies may be and how they need to be addressed.
71. Social partner discussions during the course of 2006 with the Minister of Labour were firstly intended to solicit a common understanding of what the issues affecting the labour market are, but secondly to begin exploring in a general manner areas for possible agreement and intervention. From the discussions, the following areas of **common understanding** seemed to be emerging:
- There was agreement that our understanding of the context within which our labour market functions is informed by the South African Constitution, ILO conventions that South Africa has ratified, and our historical, political, and socio economic reality.
 - There was general recognition that the fundamentals of our legislative framework are sound and that the weaknesses experienced are more operational than policy oriented. Consequently, no major labour market policy overhaul would be envisaged.
 - That there is a need to strengthen the implementation, enforcement and monitoring mechanisms. Firstly, some of the emergent unintended consequences are a result of poor implementation of policies, some are a result of not all social partners pulling their weight, whilst oth-

ers are a result of over-utilisation of the implementation agencies created such as the increase in the case load of the CCMA. However, there remains a large pool of workers and employers functioning outside the labour market regulatory environment in place. The Department of Labour's inspection and enforcement mechanisms to bring this parallel labour market into the system remain very poor and weak. This is one of the aspects that has led H Cheadle to argue in his paper that, "... unfair labour practice has become a charter of rights for middle and senior management while the most vulnerable workers are left without protection. Rather than intensifying regulation, labour law reform should be setting its sights on the extension of protection". There is therefore a need for extension of protection to the most vulnerable sectors of the working population who are currently occupying the periphery of our formal labour market.

- Equally, the changing nature of work has presented our labour market with new challenges where we are experiencing the gradual erosion of full time employment and an increase in part-time and temporary work. H Cheadle further argues that, "The growth of atypical labour has been so steep that some have questioned whether these forms of labour should continue to be called atypical. While some of this growth is attributable to the knowledge economy, the real growth is due to the externalisation, casualisation and informalisation of labour. These employees fall outside the regulatory net of traditional labour law".
- That there can only be one labour market in South Africa, under which the entire labour market sector must function. Therefore the exclusion of small business from BCEA provisions is not constitutionally feasible. However, there must be scope and room for variations and accommodation of the various dynamics within the labour market that warrant more focused interventions - cementing the concept of regulated flexibility. One critical area requiring such focused intervention is around SMME development.
- There was also general recognition that, however unintended or perceptual, dispute resolution procedures seem complicated, long, over judicialised and over proceduralised.

72. To further elaborate on the issues raised during the Roundtable discussion, the Minister of Labour convened a follow-up Constitu-

ency meeting. In this meeting, another area of common understanding that emerged was that issues of economic growth, small business development, and job creation, cannot be limited to the labour market policy alone. All other key tenets, which include our macro economic policy environment and our trade policies, have to work in harmony to ensure that small businesses grow and jobs are created. The critical outcome of the Constituency Meeting in this regard was that all constituencies agreed that similarly, as we debate labour market issues, we would need to concurrently look at trade and macro economic issues as part of the broader debate.

73. Further areas of debate among social partners included:

- **Dispute resolution:** on the one hand, especially from labour, there was a call for the amendment of the LRA to ensure that advocates and attorneys are excluded from representing parties in individual dismissal cases. On the other hand, there was emphasis that there was a need to accredit the private dispute resolution agencies. This would assist in reducing the workload of the CCMA.
- **Dismissal on operational requirement:** on the one hand, there is a call for a right to strike over retrenchments in enterprises employing fewer than 50 workers to be amended in section 189A of the LRA. On the other hand, especially from business, there was an assertion that the right to embark on protected strike in relation to dismissals for operational requirements in terms of section 189A of the LRA has a negative impact on business and the ability of employers to create jobs. On the basis of this assertion, there is a call for small businesses to be excluded from these provisions and for section 189 and 189A to be combined and simplified.
- **Industrial/strike action:** Labour is calling for the removal of limits on workers to strike in solidarity strikes and the essential services. On the other hand, business proposes that the linkage between the primary and secondary strikes should be narrowed so as to afford only protection to those secondary strikes where the secondary employer loses its neutrality vis-à-vis the primary employer by taking over orders and production from the primary employer.
- **Atypical work:** on the one hand, there is a call for improved regulation of labour brokers to ensure that they treat workers fairly, and more generally, prevent employers from dodging their responsibilities to workers through outsourcing and labour broking. Business on the other hand, calls for the development of a Code of Conduct that

prescribes the conduct of TES vis-à-vis their employees and their clients.

- **Employment Equity:** there is a call for employment equity to address the wage gap and for the alignment of EE and Skills Development Act (SDA).
74. There were other proposals which were unique to each constituency. For example, community constituency called for support mechanism for SMMEs and the informal economy. They also called for the extension of regulation to informal economy. Labour called that we need to work toward a 40-hour week as agreed when the BCEA was promulgated. They also called for sick leave to be extended to workers with AIDS or with terminal illnesses. Lastly, they called for the review of entitlement to UIF in instances where workers resign. Business called for section 77 of the LRA to be revisited due to the changed circumstances and the urgent need to create jobs.

CONCLUDING REMARKS

75. In conclusion, three critical points are necessary to close with:
- Firstly, we all need to appreciate that the **labour market is a complex** terrain, whose nature and form cuts across the entirety of the economy. The manner in which we therefore handle issues affecting the labour market will inadvertently impact on all other key areas of the economy. At some stage, we will need to ‘hurry slowly’, walking circumspectly, and similarly ensuring that the steps we take do not undo the gains we have generated in the last decade.
 - Secondly, and as consequence, in the big scheme of critical challenges facing the movement, **legislative change is unnecessary.**
 - However, issues around our **strategies and tactics** towards achieving what our legislation requires of us to achieve, the **speed** with which we are moving, and the **institutional forms and governance ramifications** on our developmental trajectory are more critical to examine now than ever before.