

# NEDLAC Community Constituency Position Paper

## Impact of Labour Market Policy on the informal economy

### Analysis and Recommendations

*26 June 2006*

#### 1. Introduction

This meeting is a follow up of the Ministerial Roundtable that arrived at significant conclusions and consensus on a wide range of issues. The most important agreement being that whilst the fundamentals of the legislative framework are sound, there remains a large pool of workers and employers outside the labour market regulatory environment.

Research shows that the post-apartheid process of global integration has divided the labour market into three distinct zones. Firstly, there is the core, referring to those sectors of the economy that are becoming increasingly globalised, which is occupied by skilled permanent workers who enjoy relatively high wages, benefits, good working conditions and job security. Secondly, there is the non-core zone, referring to the informalised sectors because of global competition, occupied by semi-skilled and non skilled workers in precarious jobs, such as casualisation, sub-contracting and temporary work, who earn low wages, enjoy no benefits, work under poor conditions and have little or no job security. Finally, there is the periphery, referring to those who work in the informal economy, such as hawkers, spaza and shebeen operators, taxi operators, and the unemployed.

The fragmentation of the labour market has been exacerbated by the lack of an inclusive legislative framework, which has led to the benefits of post-apartheid democratic worker rights such as workplace participation, skills development and employment equity programmes, economic incorporation through wages and other benefits, and so on, being skewed towards those in the core zone. This has created new lines of social inclusion and exclusion in post-apartheid South African society (Webster & Buhlungu, 2006:251). The erosion of permanent or core jobs, the growth of insecure and low wage non-core jobs together with the expansion of the peripheral zone, has generated a widespread increase in poverty.

***Given this context, the Community Constituency argue for a single and inclusive labour market system consisting of a single regulatory framework incorporating the entire labour market with the extension of protective measures to all workers in both formal and informal employment.***

In the following section, we shall provide a snapshot analysis of key labour market trends in the informal economy, which represents a significant proportion of the labour force. The next

section will assess government's support programmes for SMME development, explore the policy approach of the DoL and DTI to the SMME sector, and analyse the participation of SMMEs in Bargaining Councils. The latter section will explore the relationship between employment and wages, and the impact of labour market policy on job creation. Finally, we make suggestions for extending regulations to the informal economy.

## **Section A: Labour Market trends in the informal economy**

### ***1. Numbers and Percentages of workers in the informal economy***

**Table 1. South Africa: Population 15+ by employment status and sector**

	2000	2001	2002	2003	2004	2005
Formal agriculture	686,219	678,910	826,343	845,182	639,194	591,772
Formal other	6,865,361	6,927,409	7,075,966	7,512,036	7,739,645	8,075,451
Domestic work	1,215,165	1,070,362	1,053,834	1,204,010	1,085,946	1,080,341
Informal agriculture	1,083,211	412,193	576,781	394,515	474,304	381,087
Informal other	1,802,050	1,797,722	1,590,343	1,779,371	1,800,332	2,340,984
Don't know	110,516	119,032	60,288	39,875	52,488	35,457
Unspecified employed	206,752	28,562	29,123	17,254	19,606	42,422
Unemployed	4,088,846	4,541,111	4,846,492	4,578,243	4,143,553	4,501,277
Not economically active	12,657,110	13,591,432	13,740,966	15,747,509	15,392,429	14,751,856
Total	28,714,426	29,166,734	29,800,137	32,117,995	31,347,498	31,800,646

Source: LFS, September 2005[1]

**Table 2. South Africa: Distribution of employed by sector and percentage**

	2000	2001	2002	2003	2004	2005
Formal agriculture	6	6	7	7	5	5
Formal other	57	63	63	64	66	64
Informal other	15	16	14	15	15	19
Informal agriculture	9	4	5	3	4	3
Domestic	10	10	9	10	9	9
Total	100	100	100	100	100	100

Source: LFS, own calculations

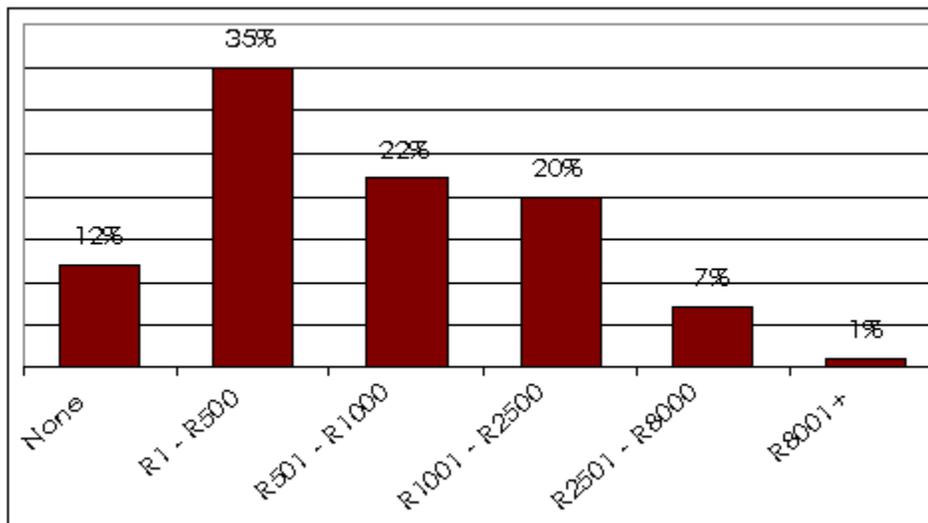
Data garnered from the September 2005 LFS shows that there are significant numbers of South Africans who are not working in formal jobs. In absolute terms 4 million informal economy workers are recorded at national level in 2000 and 3.8 million in 2005 for the informal economy broadly defined i.e. including those working in informal enterprises, domestic work and informal agriculture. This constituted 34% and 31% of the labour force in 2000 and 2005 respectively.

With regards to employment in informal enterprises, 2.3 million workers reported employment in informal enterprises by 2005 (Skinner, 2005). Further there is a very large group of people who are unemployed.

## **2. Income trends of informal economy workers**

According to the September 2005 LFS, sixty nine percent of respondents reported earning R1000 and below, suggesting as is the case internationally that there is a close correlation between being poor and working in the informal economy.

Figure 1: **Monthly income for individuals in informal enterprises, September 2005**



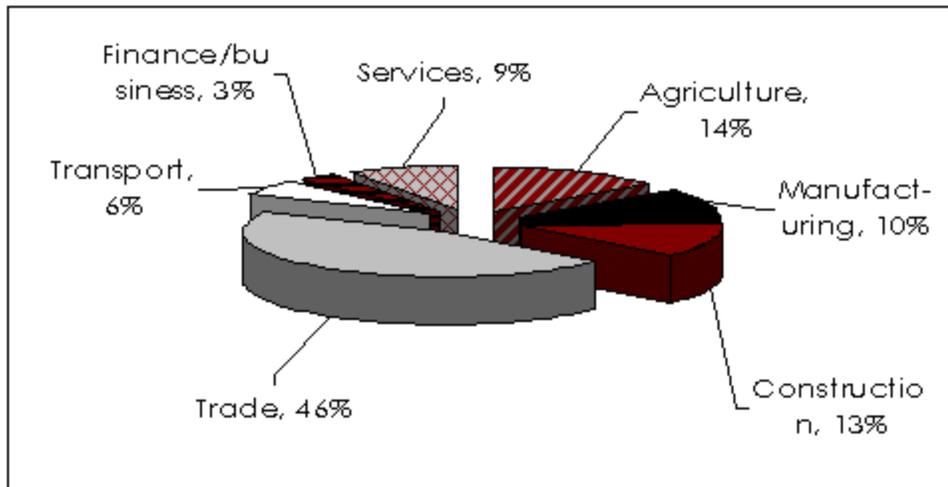
Source: LFS September 2005

## **3. Informal economy contribution to GDP**

Although individual incomes in the informal economy are often low, cumulatively this activity contributes significantly to gross domestic product (GDP). Budlender, Buwembo, Chobokoane, and Shabalala (2002) estimated that the informal enterprises contributed between 8 and 10% to South Africa's GDP. In a recent study Lighelm (2006) calculates that country wide total expenditure in the informal economy stood at R51.7 billion in 2004. He goes onto point out, this compares well with two largest chain store groups with turnover figures of R32 billion and R27 billion respectively. He notes that R16.7 billion was spent on food and R15.9 billion on transport (mainly taxis). This suggests that the contention that the 'second economy' contributes little to economic growth is inaccurate.

## **4. Distribution of informal economy workers by industry**

Figure2: **Informal enterprises by industry, September 2005**



Source: LFS September 2005

The above evidence reflects the spread of workers across informal economy industries, and thus debunks the notion that informal economy activities are ‘structurally disconnected’ from the formal economy.

Case material evidence indicates that there are multiple forward and backward linkages between the formal and informal activities. Consider, for example, that most informal workers are involved in retail selling basic consumption goods such as fruit and vegetable that is sourced from formal markets. Witt’s (2000) work on informal fruit and vegetable distribution demonstrates multiple formal informal linkages. Ince’s (2003) and Godfrey *et al*’s (2005) work on informal clothing manufacturing in Durban and Cape Town respectively shows extensive forward and backward linkages to formal clothing manufacturing and retailing. Not only do manufacturers source their inputs in the formal economy but the garments often end up in formal retail stores. Khosa (1994, 1991) has documented over time how closely the taxi industry is linked into the formal motor, insurance and petrol industries. Even the most marginal of those working informally are linked into the formal economy. Consider for example waste collectors. Over 3000 waste collectors supply the 117 waste buy back centres that the multi-million rand paper company Mondi has established in the country. These centres now accounting for almost 20% of Mondi’s total recovered paper purchases. (*The Star* 29/05/05).

A significant proportion of South African Breweries’, the South African division of the second largest beer group in the world, products in the domestic market’s final retail point are these unlicensed taverns or shebeens. It is estimated that 74% of liquor retailers are unlicensed (*Business Day* 07/07/05). It is thus clear that many of South Africa’s biggest companies rely on informal worker to supply inputs or retail their goods. As argued by (Devey, Valodia and Skinner, 2006) it is these linkages which in policy terms are often the most interesting places to be concentrating on. They show that significant numbers of workers move between employment in the formal economy and the informal economy, and vice-versa.

***Hence, informal economy activities should not be seen as a separate sector, but as part of the***

***entire economy which has a formal and informal end. Addressing the informal economy thus requires a sectoral or industry by industry approach.***

Finally, as is the case internationally, there is also substantial evidence of a growing informalisation of previously formal jobs. Budlender *et al* (2001:14) analysis using Stats SA data show that over 45% of workers employed in the formal sector displays one or more characteristics of informality – do not have a written contract, a permanent position or paid leave. As early as the mid 1990's the International Labour Organisation's report on the South African labour market demonstrated that labour flexibility has been growing. This is particularly acute in certain sectors. For example Kenny's (2005) work on formal retail stores finds that on average only 35% of employees have permanent contracts and this figure excludes the subcontracting of non-core activities like cleaning and security. Clarke (2000) found that 70% of workers in one of South Africa's largest formal retail outlets Woolworths were casual.

## **Section B: The state of the SMME Sector**

### **1. Definition**

The government's 1995 White Paper (WP) on SMME's was one of the first policy documents of the new government. The WP distinguishes four categories of SMMEs; medium enterprises (assets of about R5 million), small enterprises (employ between 5 and 50), micro-enterprises (involving owner, some family members and one or two employees) and survivalist enterprises (activities by people unable to find a job).

### **2. Constraints to SMME Development**

There are two large surveys that been specifically designed to assess constraints to growth in the informal economy. The first was conducted in the Greater Johannesburg Metropolitan Area in 1999 and the second in the Durban or eThekweni Municipal area in 2002 (see Chandra and Rajaratnam, 2001 and Skinner 2005, respectively). In both cases over 500 informal enterprise owners were interviewed. In May-June 2003 a Micro-enterprise Investment Climate survey was conducted in which 240 firms were interviewed in Tshwane; Erkurhuleni and Stellenbosch. There are a number of constraints to improving incomes in the informal economy.

In reviewing the findings from these surveys seven core constraints can be identified:

- Access to financial services – credit and savings
- Access to training – business skills, technical training and adult basic education and training
- Industry or sector specific constraints
- Access to infrastructure and basic services – housing, water, electricity, rubbish removal
- Access to business related infrastructure – manufacturing space, close to others involved in similar activities, trading and storage space
- Regulations – particularly how public space is regulated but also issues like liquor licensing

- Collective among those working informally.

*The above evidence debunks the notion that regulations are the most critical constraint to SMME development, and instead points to the need for a comprehensive package of support measures to develop the SMME sector.*

### **3. Government support programmes for the SMME sector and the informal economy**

The Department of Trade and Industry (DTI) is charged with the responsibility of developing and implementing policy for the small, medium and micro-enterprise sector (SMME), of which the informal economy is considered a part. The Department of Labour is responsible for labour laws, and skills training. The following section provides a snapshot analysis of the approach of these two departments and posits priority policy interventions to enhance SMME development.

Arising from the above definition of the SMME sector, the 1995 WP recommends different support strategies for each of categories. Whilst outlining concrete proposals for the small, medium and micro categories, the paper is mute on support strategies for the survivalist category.

**3.1 DTI Policy:** Rogerson's (2004:9) assessment of government's support programmes for SMME's argues that, 'during the period 1994-2003 DTI funding allocations for SMMEs have inevitably favoured and been biased heavily towards support for established small and medium enterprises (often white owned) rather than emerging micro-enterprises and the informal economy'. Rogerson concludes 'current national support programmes offer little in the way of support for survivalist enterprise, women entrepreneurs and rural SMMEs'(2004:7). Since Rogerson's assessment the DTI's small business support structures have been amalgamated into the Small Enterprise Development Agency and the DTI has revamped its approach to small businesses.

#### **Priority interventions:**

- **Credit** – Greater emphasis needs to be placed on delivering smaller loans – less than R10000. DTI works through intermediaries. The activities of these intermediaries need to be reviewed so that coverage can be expanded also find new partners that have a track record in the delivery of credit facilities to the informal economy need to be found.
- **Business Support Services** - There is a network of LBSC's often well placed to service those in the informal economy. Some are, many aren't. (No one interviewed in the Johannesburg or Durban Surveys had walked through the door of a LBSC!). There needs to be a concerted effort to extend these support structures. This should be informed by an understanding of what the specific needs of those working informally are and may entail establishing mobile units that could service more far flung parts of the country. The current system often extends incentives to existing service providers. The informal economy requires a more proactive stance.
- **Sector Analyses Leading to Programme Interventions:** Given the diversity of activities, interventions required to support those working in the informal economy even in the same activity (e.g. trading) are often very different. The DTI should conduct detailed analyses with a view to identifying key interventions to help segments of the

informal economy grow and increase the incomes of individual workers. This should inform programme interventions.

- **Business infrastructure:** Those working informally are calling for trader infrastructure – shelters, storage space, toilets - and other informal operator's small scale manufacturing space. The DTI should establish a fund to build and manage these facilities.
- **Regulation:** There is evidence that in certain parts of the country some informal activities – like trading are over regulated. Others like Shebeens that have particular social implications are under-regulated. Although regulation of some of these activities are often the under the jurisdiction of provincial economic development departments, the DTI should be playing a more proactive guidance and oversight role.

**3.2 DoL Policy:** As Liimatainen (2002:4) in her review of the international literature on training and skills acquisition in the informal economy, commissioned by the ILO, states 'the development of relevant skills and knowledge is a major instrument for improved productivity, better working conditions and the promotion of decent work in the informal economy'. This is one among a suite of interventions those working informally require to secure their livelihoods – access to savings and credit, business mentorship, sector development, social protection, as well as appropriate local government planning and regulatory interventions among others.

The 1997 Department of Labour Green Paper on Skills Development argued that what they at the time called Sector Education and Training Organisations should have 'a self employment focus' and 'should promote learning in small and micro enterprises in their sector' (DoL, 1997:7.2.3.1). It was argued that there was insufficient organisation within the informal business community to justify a separate structure. This was identified as one of the key uses for funds allocated to the National Skills Fund. This approach to skills development is in line with international approaches to the informal economy recently outlined in the 2002 ILO conference on the informal economy. As noted in the conclusions 'the workers and enterprises in question do not fall within any one sector of economic activity, but cut across many sectors' (2002:1). Sectoral training bodies are more likely to be aware of the specifics of industry dynamics and better placed to conduct technical training. Further, research done on how those in the informal economy are organised confirms the Green Paper's concern about lack of organisation among those in the informal economy.

The focus on small business is reiterated in the National Skills Development Strategy (NSDS), with one of the five objectives of the NSDS being 'to stimulate and support skills development in small business'. McGrath (2005:10) reflecting on the NSDS from the perspective of very small and micro enterprises or VSMEs states 'while acknowledging the fact that many VSMEs are survivalist, it (the NSDS) did not fall into the trap of seeing them as being just a social protection issue, or wishing them out of existence'. He quotes (2005:10) the strategy:

'Many small businesses in our country are 'informal' and fall outside of the regulatory and taxation arrangements. In practice, many are trapped at the low value-adding end of the production spectrum. The challenge is to assist these enterprises to climb the value chain and this will require skills.'

This reflects a sophisticated understanding of the informal economy that is in line with

international trends. However, as argued by McGrath (2005:7), the operationalisation of the policy vision has been little short of disastrous. Those working in the informal economy have fall between the gap of the two groups - SMMEs and the unemployed. Informal workers operate in firms smaller than most SMMEs and training for the unemployed is inappropriate both in terms of mode of delivery and course content. Where SETA structures have extended their support to those working in the informal economy this has tended to be piecemeal and the coverage has been small in relation to the numbers of informal workers.

#### **Priority interventions:**

- Pressure be placed on SETA's to target this group specifically, not as one component of their SMME strategy.
- Research be commission to document the specific training needs of those working informally in the sectors SETA's service.
- Develop NQF Unit Standards appropriate to the above identified needs.
- Given the added expenses of servicing those in the informal economy, arrangements should be made to pay a premium to service providers who target and successfully train this group.

### **3.3 The participation of SMMEs in Bargaining Councils**

The question as to whether SMMEs should be treated differently in terms of the application of the Labour Relations Act remains a bone of contention. The longer the issue remains unresolved, the fewer the chances of 'decent work' agenda being accomplished.

#### **Strict Monitoring Mechanism on who is an employer**

More and more employers in small business continue to use the loopholes in the act while disguising themselves as independent contractors. Hence an efficient mechanism needs to be put in place to identify genuine independent contractors. The onus should be on the employer to lead evidence as to whether the aggrieved person was an employee or not. In an event the employer can't furnish evidence, it should automatically qualify that the aggrieved is an employee. The mere fact that our laws places the burden on the aggrieved party to also present evidence that he/she was an employee is grossly unfair.

#### **Turnover**

Some SMMEs annual income far exceeds those of small businesses whilst the terms and conditions of employees have not yet improve. Profits made by employers should be used as a yardstick of determining benefits to be offered to employees.

#### **Capacity Building**

The Department of labour should strictly look at innovative strategies of empowering the depleted Bargaining Councils. Research clearly indicates that the bargaining councils are

overloaded with cases.

### **Compliance with Collective Agreements**

The fundamental principle should be on a multi pronged strategy of striking a balance between employers and employees interest. Such approach requires all parties to conduct themselves with honesty, integrity and overall respect labour laws.

### **Reducing the rate of non-compliance**

For too long the Department of Labour has done less in uprooting the culture of non-compliance with the Bargaining Councils Agreements.

### **The Section C: Labour laws and job creation**

#### **4. The relationship between employment and wages**

The overriding priority of sustainable development and livelihoods is to combat poverty and the central causes of poverty amongst the poor are unemployment, underemployment and low earnings. These three proximate causes undermine people's ability to meet their basic needs and thus enjoy a decent living standard and economic security.

One of the key debates about employment in South Africa is the relationship between wages and employment, with the argument often made that the high levels of unemployment in South Africa are a result of rapid increases in wages, particularly of unskilled Black workers (see Fallon and Lucas, 1998; Lewis, 2001)

This diagnosis of the South African unemployment problem is not borne out by research.

The reality is that recent increases in wages have been largely skewed towards corporate executives. According to Southall (2006), during 2003/04, South Africa's top executives received pay increases averaging well in excess of 15%, more than double the rate of inflation, widening further the gap between their income and that of skilled and semi-skilled workers.

Data garnered from Stats South Africa (2004) depicts a highly skewed racial pattern of waged-income with almost half (47%) of Black workers earning an income below R1000 per month. At the higher cut-off, R2500, almost three quarters (74%) of Black workers are classified as low-waged workers. (Stats S.A. 2004)

First, and related to low-wages, the increasing informalisation of work has resulted in a segment of the workforce being unable to access the formal institutions that govern the labour market and they do not have access to retirement provisions and medical insurance, which form part of the remuneration package for employees in formal employment. Low quality jobs of which atypical jobs such as 'casualisation and temporary work' are the most common forms, are characterised by low wages, lack of training and promotion opportunities, exposure to excessive occupational health and safety risks, lack of job security and lack of worker representation and collective

bargaining at the workplace, and exclusion from the protection of labour legislation.

Hence, being employed for purposes of statistical status does not necessarily mean having full or adequate employment. Central to the growth / employment debate is the need to interrogate our country's employment strategy which is inexorably linked to the achievement of a sustainable growth and development path that creates permanent and quality jobs.

Secondly, wages for many South Africans do not adequately support human development. Low money and social wages undermine labour productivity in numerous ways. For example, low incomes undermine access to quality education, health with manifold consequences for labour productivity: absenteeism, low morale, etc. To the contrary, higher wages promote job stability, low turnover rates, efficient skill acquisition, positive employee morale, and worker loyalty, all of which lead to greater labour productivity.

From a labour market perspective there is clearly a need for research aimed at better understanding the impacts of labour legislation on the low-waged sector and on the informal economy. This should focus not only on the possible negative impacts of labour legislation on employment, but also on better understanding the reach of the legislation and on the possibility of extending the protective ambit of the legislation to informal workers, whose employment is particularly vulnerable. What, for example, are the possibilities for extending social protection, such as unemployment insurance, to the informal economy?

## **5. The impact of labour market policy on job creation**

### **5.1. Skills Policy**

The South African skills development system is historically and continues to be skewed towards skilled and high skilled labour and inimical to the absorption of low skilled labour. Since South Africa is a developing country, with a large proportion of its people unemployed and possessing very low levels of skills, the privileging of high skills is inappropriate as the sole focus of human resources development. Skills development in South Africa must be aligned to the broader economic and political imperatives of reducing unemployment and poverty, while fostering growth and international competitiveness.

The narrow focus on rapid growth in skilled labour for economic growth in line with IMF prophecy is closely associated with a liberal perspective and stands in a symbiotic relation with a free market economy and thus free market-led economic growth. This orientation seems to obscure the broader developmental role of the skills development system in a developing economy.

From a policy perspective, greater emphasis is needed on structural changes in production and ownership and policies that will support relatively labour-intensive activities for both local and international demand. An increase in exports should be focused on labour-intensive industries, and not merely minerals and chemicals. Politically, the state needs to adopt protective measures to protect labour-intensive industries against the pernicious effects of the trade liberalisation

programme.

With regards to skills policy, the challenge is thus to develop a wide range of intermediate craft and artisanal skills for mass production manufacturing in labour-intensive industries to co-exist alongside high skills production techniques. Evidence shows that the artisanal class was not racially inclusive during the period of apartheid industrialisation as whites were moving out of industry into higher paying jobs. This partly contributed to a concentration of production in large plants with relatively little subcontracting, thereby preventing small firms from developing the skills required to supply the market.

Meanwhile, as already mentioned, evidence commissioned by the ILO in 2002 on the skills and training acquisition of the informal economy shows that the development of relevant skills and knowledge is a major instrument for improved productivity, better working conditions and the promotion of decent work in the informal economy.

***Hence, what is required is an integrated and multi-pronged skills development strategy that simultaneously supports the expansion of high skills capacity for high tech production, reinvigorate the supply of intermediate skills for mass production manufacturing, and provide basic skills and training for the disproportionate numbers of low skilled workers and unemployed operating in the informal economy.***

## **5.2 Social Protection**

The concept of “Social Protection” forms a cornerstone of the International Labour Organisation’s framework of “Decent Work” as formulated by the 2002 General Conference of the ILO. Social Protection is a broader concept than the notion of “social security”, and includes access to assets, capabilities/ services (health, education, energy and water) which assist in asset development, access to income replacement and active labour market policies to address labour market failures through employment creation and skills development. Social protection relates to those needs that people have to ensure that they are integrated and productive members of their communities and of society in general.

A comprehensive social protection system is critical to address the socio-economic needs of vulnerable workers and their communities, in particular women, young first-time jobseekers, older retrenched workers, and those living with or affected by HIV/AIDS.

We believe that the starting point for discussions on social protection must begin with the revisiting of the recommendations of the Ministerially appointed Committee of Inquiry into a Comprehensive System of Social Security for South Africa (the Taylor Committee) regarding comprehensive social protection needs to be reintroduced into NEDLAC. These policies cover both the extension of social assistance for all those unable to provide for themselves through the introduction of a universal basic income grant, as well as the development of policies to enable those people who are not in the formal economy to provide for themselves when they have sufficient surplus, through a national savings and contributory pension scheme which could also be developed to also offer people security for business ventures.

In addition, consultation should be held with organisations of informal workers, and cognisance should be taken of international best practices in this field, to identify both what the most pressing needs of vulnerable non-core and periphery workers are and how as a nation we can develop policies to deliver these.

Empirically based research shows that social protection can be developmental: in South African policy discourse we need to move away from dismissing social protection as being welfarist and inducing dependency and instead afford it a legitimate pillar in the constitution of our developmental state.

As the community constituency, we must however object to the apparent trade off that is being suggested between a relaxation of labour legislation protection and social protection. Social protection aims to protect vulnerable workers against risks arising from their vulnerable conditions: to use it to justify greater vulnerability for people is fundamentally perverse.

## 6. Suggestions for extending regulations to the informal economy

We propose that government be guided by the ***Conclusions concerning decent work and the informal economy*** adopted at the 90<sup>th</sup> session of the International Labour Conference of the ILO in June 2002[2] in extending regulation to workers in the informal economy.

*“The promotion of decent work for all workers ..... requires a broad strategy: realising fundamental principles and rights at work; creating greater and better employment and income opportunities; extending social protection; and promoting social dialogue. These dimensions of decent work reinforce each other and comprise an integrated poverty reduction strategy.”*  
(Clause 2)

*“To promote decent work, it is necessary to eliminate the negative aspects of informality while at the same time ensuring that opportunities for livelihood and entrepreneurship are not destroyed, and promoting the protection and incorporation of workers and economic units in the informal economy into the mainstream economy.”* (Clause 13)

The Conclusions provide guidelines to governments on how to go about this in Clauses 21 – 30. Accordingly we make the following recommendations:

### Labour legislation

Labour legislation needs to take into account the *“realities of modern organisation of work”* (Clause 16). According to Clause 4, ***“workers in the informal economy include both wage workers and own-account workers. Most own-account workers are as insecure and vulnerable as wage workers and move from one situation to the other. Because they lack***

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2[2] [www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/pr-25res.pdf](http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/pr-25res.pdf)

*protection, rights and representation, these workers often remain trapped in poverty.”*

This means that our labour legislation needs to focus separately on the situation of vulnerable wage workers and own account workers in the informal economy, in order to address the realities on the ground with a greater degree of precision.

1. Wage workers

A new ILO ***Recommendation concerning the employment relationship*** has just been adopted at the 95<sup>th</sup> session of the International Labour Conference on 15 June 2006. This ILO Recommendation provides guidelines for the protection of workers in an employment relationship in situations of disguised employment, ambiguous employment and to some extent triangular employment relationships. Since informal workers are often found in sectors and occupations where these types of employment relationships prevail, our labour legislation could become more applicable and enforceable for most informal wage workers by introducing a package of labour law and policy reforms in accordance with the new ILO Recommendation concerning the employment relationship.

2. Own account workers

This category of workers presents a conceptual challenge to legislators because of the absence of an employment relationship in their case. Our government has tried to tackle this problem by introducing a “deeming” provision into our legislation – in terms of which certain classes of workers could be “deemed” to be employees. While this may be a way of getting some limited relief for certain workers who have managed to get the Minister to deem them to be employees (which is itself may be complicated and cumbersome) it fails to squarely face the situation of the masses of genuine own account workers working in our economy, who may be economically dependent on some economic actor – but not on an employer. New ground needs to be broken regarding the protection and legal rights of own account workers – whose status as workers was officially recognised by the ILO for the first time in the abovementioned Conclusions of 2002.

We propose the following approach to start making headway in how to most appropriately extend labour legislation and regulation to own account workers:

- reform our labour legislation (in line with recent reforms to the labour legislation in Ghana) to use the term “worker/s” throughout rather than the term “employee/s”, so that the general rights and protections in the labour legislation should apply to own account workers and wage workers in the informal economy as well as the more traditional categories of formal employees;
- commission a study into the dynamics and relationships of economic dependence of own account workers on other economic actors (other than employers) such as suppliers, public authorities, buyers of products or services, etc. – for the development of a conceptual framework for legal definitions which make a precise distinction between own account workers and small entrepreneurs, in line with the

existing realities on the ground, without effectively excluding own account workers from labour legislation as is currently the case.

## **Other laws and policies for decent job creation for informal workers in this integrated framework**

A major achievement of the 2002 Conclusions on decent work and the informal economy was that it enabled the international debate to move away from a polarised 20-year-old impasse between the employers' project to "grow the informal economy" and the workers' project to "formalise the informal economy" – to a consensual framework focusing on the situation of workers who find themselves working in informality, rather than the "size" of the informal economy and whether it could be made to increase or decrease. Clause 27 of the Conclusions encourages the adoption of a policy and legal environment which ***"increases the benefits of legal registration, facilitating access to commercial buyers, more favourable credit terms, legal protection, contract enforcement, access to technology, subsidies, foreign exchange and local and international markets"*** in order to ***"discourage businesses in the formal economy from shifting into the informal economy"***, to help ***"new businesses to start and smaller businesses to enter the formal economy and to create new jobs, without lowering labour standards (which) also increases state revenues."***

In line with this framework, we would propose the following practical measures:

- establish a simple one-stop registration system for all informal workers to register and get ID cards identifying them as a worker in a simply-defined trade (e.g. street vendor, market vendor, waste collector, minibus taxi conductor, etc.) which could provide the administrative basis for benefits such as social security schemes, social insurance schemes, etc. which would be an incentive for compliance;
- develop an appropriate taxation system (based on the principle of progressive taxation) suitable to the particular conditions of wage workers and own-account workers in the informal economy. Employers in the informal economy (including intermediaries, in accordance with the principle of joint and several liability) would also need to be taxed in line with their particular reality. A study of functioning tax systems in some of the market-places in West Africa would provide good ideas for simple and effective methods of tax-collection in the informal economy;
- the extension of trade policies to remove unnecessary obstacles faced by informal cross-border traders could increase the access of informal workers to foreign markets, and reduce their dependence on intermediaries whose trade in large volumes of certain products (relying on availability of many vulnerable informal workers willing to sell anything which is supplied to them) produces distortionary effects on sectors of our economy (such as the trade in foreign donated second-hand clothing);
- commission a national review of municipal bylaws which impact directly on the work and livelihoods of workers in the informal economy, such as street trade bylaws, and produce legal guidelines to bring such bylaws in compliance with the

ILO's 2002 Conclusions and the country's Decent Work Programme;

- financial and non-financial support measures for informal workers – already dealt with in previous sections – are an obvious way, if accurately targeted, for informal workers to formalise and regularise their work situation. This should include legal services and skills training.

## **Policies and programmes**

Clause 25 states: ***“Policies and programmes should focus on bringing marginalized workers and economic units into the economic and social mainstream, thereby reducing their vulnerability and exclusion. This means that programmes addressing the informal economy, such as provision of education, training, microfinance, etc., should be designed and implemented with the main objective of bringing workers or economic units in the informal economy into the mainstream, so that they are covered by the legal and institutional framework. Statistical and other research should be focused and designed to give effective support to these policies and programmes.”***

In line with this guideline, we recommend that the government specifically prioritise decent work in the informal economy in its Decent Work country programme. By so doing, South Africa will be able to qualify as a partner country for the programme of the ILO's In-Focus Initiative on the Informal Economy which is currently identifying country applications on how to take forward the 2002 Resolution on Decent Work and the Informal Economy. This would bring along with it the benefits of the ILO's most up-to-date technical assistance.

## **Social security**

This has already been dealt with above. Clause 28 of the Conclusions on decent work and the informal economy states that ***“the conclusions concerning social security adopted by the 89<sup>th</sup> Session of the International Labour Conference in 2001 should be supported and implemented. .... Policies and initiatives on the extension of coverage should be taken within the context of an integrated national social strategy.”***

## **Representation**

Clauses 31 to 34 of the Conclusions on decent work and the informal economy focus on the importance of extending representation, both of employers and workers, throughout the informal economy. These clauses provide extensive guidelines for employers' and workers' organisations, including trade unions, on how to do this. The Community Constituency has extensive information on efforts by trade unions and other informal workers' organisations who have been increasingly joining a growing movement to organise workers in the informal economy, particularly in Africa, Asia and Latin America, since the 1970s (in the case of the pioneers in India and Ghana) but gaining substantial momentum on other countries in these regions in the past five years. We know less about the organisation of employers in the informal economy – but we hope that the employers' organisations are taking care of that.

However, even where workers in the informal economy are becoming organised, they find themselves in a situation, unlike workers in the formal economy, of having no statutory labour market institutions by means of which they can engage the relevant authorities in collective negotiation. They have to set up ad hoc negotiating arrangements, which means that none of their negotiated agreements or contracts are secure – and continuity of any negotiated arrangement is a major problem. Even in an institution like NEDLAC, the Community Constituency (many of whose members are among the most vulnerable workers in the informal economy) is still not properly integrated, with no rights to represent its own interests in three of the four Chambers, including the Labour Market Chamber. Some of us have been through three rounds of discussions in NEDLAC about admitting the Community Constituency into the Finance, Labour Market and Trade and Industry Chambers since the mid-1990s – only to reach some technical obstacle each time which stops the process in its tracks once again after months of fruitless discussions.

The following measures are proposed:

1. Commission a NEDLAC Task Team to investigate, on the basis of international experience and ad hoc experiences of collective bargaining in the informal economy, appropriate statutory labour market institutional arrangements for workers in the informal economy to exercise their rights to representation. This Task Team should comprise representatives of the NEDLAC Labour Market Chamber and members of the Community Constituency, and the Terms of Reference should be developed in consultation with the Community Constituency;
2. Change the NEDLAC constitution to allow the participation of the Community Constituency in all NEDLAC chambers – with immediate effect.

**Summary: extending regulations to the informal economy**

	<b>Recommendations</b>
<b>Labour legislation</b>	<u>Wage workers</u> : package of labour law and policy reforms in accordance with the new ILO Recommendation concerning the <b>employment relationship</b>
	<u>Own account workers</u> :  1. reform the labour legislation to use the term “worker/s” throughout rather than the term “employee/s”  2. commission a study into the dynamics and relationships of economic dependence of own account workers on economic actors other than employers (to help formulate appropriate legal definition)

<b>Other laws and policies</b>	Simple one-stop registration system for informal workers to register and get ID cards
	Taxation system (based on the principle of progressive taxation) suitable to the situation of workers in the informal economy
	Extension of trade policies to remove unnecessary obstacles faced by informal cross-border traders
	National review of municipal bylaws which impact directly on the work and livelihoods of workers in the informal economy (such as street trade bylaws)
	Financial and non-financial business support measures (including legal services and skills training)
<b>Policies and programmes</b>	Prioritise <b>decent work in the informal economy</b> in the South African Decent Work country programme
<b>Social security</b>	Revisit the recommendations of the Ministerially appointed Committee of Inquiry into a Comprehensive System of Social Security for South Africa (the Taylor Committee) regarding comprehensive social protection and reintroduce into NEDLAC
<b>Representation</b>	Commission a NEDLAC Task Team to investigate appropriate statutory labour market institutional arrangements for workers in the informal economy to exercise their rights to representation
	Change the NEDLAC constitution to allow the participation of the Community Constituency in all NEDLAC chambers

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