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1 Introduction

The fundamental goal of the International Labour Organisation (ILO) is the achievement of "decent and productive work for both women and men in conditions of freedom, equity, security and human dignity".¹ The concept of decent work "is based on the understanding that work is not only a source of income but more importantly a source of personal dignity, family stability, peace in community, and economic growth that expands opportunities for productive jobs and employment."² In the furtherance of this goal the ILO's Decent Work Agenda³ aims to implement decent work at country level by means of policy and institutional intervention, and Decent Work Country Programmes have been developed, in coordination with ILO members, to identify decent work deficits in member countries and to devise targets and strategies to overcome such deficits. In support of this the South African government has pledged its commitment to the attainment of decent work and sustainable livelihoods for all workers and has undertaken to mainstream decent work imperatives into national development strategies.⁴

The four strategic objectives of decent work as identified by the ILO are: i) the promotion of standards and rights at work, to ensure that workers' constitutionally protected rights to dignity, equality and fair labour practices amongst others are safeguarded by appropriate legal frameworks; (ii) the promotion of employment creation and income opportunities, with the goal being "not just the creation of jobs,

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1 ILO 1999 www.ilo.org.

2 ILO 2010 www.ilo.org.

3 ILO [Date unknown] www.ilo.org.

4 Zuma 2011 www.ilo.org. As early as in 2007 the ANC committed in the Polokwane Declaration to "making the creation of decent work opportunities the primary focus of economic policies".

but the creation of jobs of acceptable quality";⁵ (iii) the provision and improvement of social protection and social security, which is regarded as fundamental to the alleviation of poverty, inequality and the burden of care responsibilities; and (iv) the promotion of social dialogue and tripartism.

While the ideals of decent work extend well beyond the confines of the employment relationship, this article will be limited to an analysis of five statistical indicators, namely: (i) employment opportunities; (ii) adequate earnings and productive work; (iii) stability and security of work; (iv) social protection; and (v) social dialogue and workplace relations; to measure progress made towards the attainment of decent work objectives in South Africa. In so doing the obstacles to the attainment of decent work and the measures required to overcome such obstacles are identified.

2 The nature of the work force in South Africa

The South African work force is subject to both formal and informal employment relationships. According to the Quarterly Labour Survey for the 1st quarter of 2012⁶ there are 13.4 million people currently employed in South Africa, comprising 9.5 million in the formal sector and 2.1 million in the informal sector. In contradiction the Adcorp Employment Index (September 2011) reports that 12.7 million people are currently employed in the formal sector in South Africa, which comprises of 8.9 million workers engaged in typical employment and 3.8 million in atypical employment. The report indicates that 6.2 million people work in the informal sector, which it identified as the fastest-growing sector.⁷ Informal employment, defined by Statistics South Africa as "employment in precarious work situations with no written contract and no benefits",⁸ includes the self-employed in informal enterprises, workers in unregistered enterprises and wage workers in informal jobs, many of

5 ILO 2010 www.ilo.org 5. To attain this objective all forms of employment are to be accompanied by non-discriminatory treatment, safe working conditions, collective bargaining rights and social security.

6 Stats SA 2012 www.statssa.gov.za.

7 Adcorp 2011 www.adcorp.co.za. The credibility of these statistics has been disputed by Stats SA. In turn the statistics generated by Stats SA have been criticised as failing to take into account the "unreported economy" (Sharp 2012 www.politicsweb.co.za).

8 Stats SA 2011 www.statssa.gov.za. The QLFS is a household-based sample survey conducted by Statistics South Africa (Stats SA). It collects data on the labour market activities of individuals between 15 years and 64 years of age, who live in South Africa.

whom fall into what has been referred to as the "survivalist" category of workers.⁹ Whichever are the more accurate statistics remains the subject of intense debate but it is indisputable that the high levels of unemployment, exacerbated by the global recession, have resulted in a disproportionate growth of the informal sector in South Africa.¹⁰

An increased reliance upon outsourcing and sub-contracting arrangements has given rise to the growing "casualisation"¹¹ of the labour market and an unregulated and insecure labour force. "Externalisation",¹² in terms of which workers are supplied to a client by a third party by means of a commercial contract, has had a similarly detrimental impact on the labour market. The Adcorp Employment Index (September 2011) reports that 998 000 employees are currently employed by temporary employment agencies. In terms of this triangular employment relationship the recruitment, dismissal and employment functions normally performed by employers are outsourced to an intermediary, while the "task side" of the relationship is not outsourced.¹³ In many instances the identity of the true employer is obscured and such employees are deprived of legal protection as a result.¹⁴

Gender inequalities continue to undermine decent work objectives, in spite of female labour force participation in South Africa having increased from 38% in 1995 to 48.5% in 2012.¹⁵ Women employees face inequality and disadvantage in the

9 Theron 2008 *ILJ* 8.

10 Increasing informalisation has been attributed in part to the poor educational levels of work seekers, as those with little or no formal education are more likely to find work in poorly remunerated and unskilled informal employment (Bivens and Gammage 2005 www.epi.org). In 2005 an estimated 16% of workers in the formal economy had completed less than a 6th grade education whilst 36% of the workers in the informal economy had less than a 6th grade education. 3.5% of the informal economy workers had either a diploma or a higher degree. This was in contrast to the 22% of the formal economy workers who had an equivalent level of education.

11 Benjamin 2008 *ILJ* 1579 defines casualisation as the displacement of standard employment by temporary or part-time employment.

12 "Externalisation" is described as the process of economic restructuring in terms of which employment is regulated by a commercial contract rather than by a contract of employment (Benjamin 2008 *ILJ* 1579).

13 Theron 2010 *ILJ* 845-846.

14 Theron 2010 *ILJ* 845-846.

15 Stats SA 2012 www.statssa.gov.za.

workplace and face glaring pay differentials,¹⁶ gender stereotyping, discrimination based on maternity and family responsibilities and difficulties in balancing work and family life. Women are mainly concentrated in the feminised professions such as nursing and teaching (this is horizontal occupational segregation) while at the same time remaining in lower job categories than men (while this is vertical occupational segregation) and remain grossly underrepresented in senior positions. The 11th Annual Commission for Employment Equity Report (2010-2011)¹⁷ notes that women constituted a mere 19% of top management, with African females constituting a paltry 3.5%. Of these, women held only 4.4% of CEO/MD positions, 5.3% of chairperson positions, and 15.8% of directorships.¹⁸ In the 2010-2011 reporting cycle women constituted 29% of senior management, with African females constituting 5.6%. Despite this, women constituted 39.9% of professionally qualified employees and 43.7% of skilled employees.¹⁹ The report confirms that African and Coloured females are disproportionately under-represented at all senior levels and are the least promoted. Women employees remain over-represented in lower paid, less secure and unskilled positions, with 16% of women employees being employed in the informal sector, 21% in the elementary sector, and 15% in the domestic sector. The concentration of women in low-paid jobs, with limited access to job security and benefits, has contributed to the increasing "feminisation of poverty".²⁰

An analysis of the employment-to-population ratio for persons aged 15-24 years (the "youth" population) between 2000 and 2009 reveals that the percentage of the youth population employed dropped from 16.2% in 2000 to 14.6% in 2008,²¹ with 71% of the unemployed being under the age of 34.²² The Organisation for Economic

16 Women in paid employment in South Africa earn 77.1% of men's remuneration (Commission for Gender Equality 2010 www.cge.org.za).

17 Department of Labour 2011 www.labour.gov.za.

18 Business Womens Association 2011 www.bwasa.co.za.

19 The report indicates that only 23% of promotions at top management level and 32.6% of promotions at senior management were awarded to women employees. While the public sector has had more success in addressing inequalities in senior positions than private sector employers, glaring inequalities nonetheless remain.

20 Department of Health 2008 www.doh.gov.za.

21 Trading Economics 2011 www.tradingeconomics.com.

22 The *State of the Cities Report* (South African Cities Network 2011 www.sacities.net 27) reveals that only one in eight youth of employable age in South Africa have a job. Ghai "Decent Work" 8 indicates that this trends is typical for most developing countries where high unemployment rates are often concentrated in urban areas and amongst youth.

Development (OECD) Economic Survey for South Africa 2010²³ confirmed that South Africa has "an extreme and persistent low employment problem which interacts with other economic and social problems such as inadequate education, poor health outcomes and crime" and recommended that youth-specific measures be made an integral part of the employment strategy.²⁴

The Quarterly Labour Force Survey (1st quarter: 2012) places South Africa's unemployment rate at 25.2 %, with total unemployment having increased from 23.9% in the previous quarter. Nonetheless 4.5 million people remained unemployed during the surveyed period, with 68,2% of these persons having been unemployed for a period of 1 year or more.²⁵ Women account for 2.3 million of the 4.5 million unemployed persons, with an increase in the proportion of unemployed women, as opposed to men, being noted. Discouraged work seekers²⁶ constitute 2.335 million of the 14.8 million persons in the "not-economically active" population. The global economic crisis that has resulted in limited available credit, trade finance and investments in the real economy, cautious spending leading to lower economic output, decreased employment and a lack of consumer and investor confidence has further served to undermine governmental efforts to combat unemployment.²⁷

3 Measuring decent work in South Africa

3.1 Employment opportunities

In order to overcome the decent work deficit in South Africa, job creation is imperative. The concept of decent work entails the existence of employment opportunities for all who are willing and able to work. The South African Decent Work

23 OECD 2010 www.oecd.org 9.9.

24 OECD 2010 www.oecd.org 9.9. The report recommends expanded job search assistance, an upgrade of public job centres and better linkages with job-seeker databases.

25 Stats SA 2012 www.statssa.gov.za.

26 Defined by Stats SA as "a person who was not employed during the reference period, wanted to work, was available to work/start a business but did not take active steps to find work during the last four weeks, provided that the main reason given for not seeking work was any of the following: no jobs available in the area; unable to find work requiring his/her skills; lost hope of finding any kind of work".

27 ILO 2009b www.ilo.org 3.

Country Programme prioritises "job rich growth, sustainable enterprises including formalization of the informal sector, and skills development".²⁸

An important indicator of decent work is the extent to which a country's population is employed.²⁹ Employment opportunities may be measured using either (a) the employment-to-population ratio, which measures the proportion of the working age population that is employed; or (b) the unemployment rate, which measures the number of unemployed persons as a percentage of the labour force.³⁰ In the first quarter of 2012 the employment-to-population ratio in South Africa was reported to be 40.9%, the labour force participation rate 54.7% and the unemployment rate 25.2%³¹ - a far cry from attaining decent work objectives.

A number of national policies and institutional structures have been established, with the technical and policy support of the ILO, to facilitate job creation. The Expanded Public Works Programme aims to create job opportunities for the unemployed with particular focus on women, youth and other vulnerable groups. The ILO has supported government in the design of the programme and has assisted in its implementation at national and provincial levels. However, research indicates that, in spite of the creation of 500 000 new jobs during phase one of the programme (2004-2009), these jobs were short-term, poorly remunerated and without benefits. A simultaneous loss of 900 000 jobs during this period, attributable to the global recession, undermined any gains made. A target of creating 2 million full-time jobs during phase two of the programme (2010-2014) has been set, yet progress towards the attainment of these goals has been slow.³² Other national job creation initiatives include a national training layoff scheme³³ to minimise job losses arising out of the

28 ILO 2010 www.ilo.org 23.

29 Anker *et al Measuring Decent Work* 13. Ideally, in any society there should be adequate employment opportunities for all those who seek work (Ghai "Decent Work" 7).

30 Anker *et al Measuring Decent Work* 13.

31 Stats SA 2012 www.statssa.gov.za.

32 The programme supports the Ouagadougou Plan of Action, which aims to create employment opportunities in sectors that have the highest employment creation potential (ILO 2007b www.ilo.org 6).

33 The Training Layoff Scheme (launched in 2009) provides skills training and an allowance to employees during a negotiated layoff period. The plan provides short-term relief to employers and employees and aims to improve overall skills levels (ILO 2010 www.dol.gov).

global recession and a National Skills Development Strategy.³⁴ However, governance problems with regard to the management of SETAs have undermined the effectiveness of skills development initiatives and the training layoff scheme remains poorly understood and under-utilised at present.

Government's New Growth Path, premised on a restructuring of the South African economy, sets an ambitious target of creating 5 million new jobs by 2020, through planned infrastructure development and focus on the manufacturing, agricultural, tourism and mining sector and the green economy.³⁵ Nonetheless this job creation programme has been criticised by both business and labour as lacking tangible measures to counter unemployment and as being likely to fail.³⁶

In furtherance of the governmental objective of ensuring that young people have access to "decent work in productive and competitive enterprises"³⁷ the implementation of a youth wage subsidy, which aims to subsidise a portion of the wages of workers aged 18 to 29 years for a period of up to two years, is currently under discussion at NEDLAC. A sum of R5 billion has been allocated to this project in the 2011/12 national budget, with the intention of creating 133,000 new and sustainable jobs over a three-year period.³⁸ This is in keeping with the ILO's youth employment initiatives, which include mainstreaming youth employment into broader policies and programmes and developing targeted interventions for disadvantaged youths.³⁹ This initiative has, however, been vehemently opposed by COSATU as being likely to facilitate the further casualisation of the labour market and to undermine minimum standards.

Despite 2011 having been earmarked as South Africa's "year of job creation"⁴⁰ early indications are that these ideals have not been realised, nor are likely to be. The South Africa Survey 2011 notes that the current rate of job creation will need to

34 A National Jobs Fund was established in 2009 with an initial allocation of R2.4 billion to finance the Training Layoff Scheme.

35 Released by Minister of Economic Development, Ebrahim Patel, in December 2010.

36 COSATU [Date unknown] www.cosatu.org.za.

37 Gordhan 2011 www.treasury.gov.za 5.

38 COSATU 2011 www.cosatu.org.za 14.

39 Somavia 2011a www.ilo.org.

40 Zuma 2011 www.southafrica.info.

increase ten-fold in order to meet government's job creation target of 5 million jobs by 2020.⁴¹ The report indicates that

External economic factors, labour regulation, and policies affecting investor sentiment will all play a role in determining how much employment will increase over the next decade. The Government has control over two of these three influences and it will need decisive action on its part to create the conditions necessary for so many jobs to be created over a relatively short space of time.⁴²

Until job creation can be effectively addressed, decent work objectives are likely to remain solely aspirational.

3.2 Adequate earnings and productive work

An adequate living wage is imperative for the attainment of decent work.⁴³ As pointed out by Anker, "nearly all individuals who work or seek work do so in order to earn an income and ensure the economic well-being of themselves and their households".⁴⁴ In South Africa wages and incomes remain highly unequal between the informal and the formal economy, with poverty and inequality assuming racial, gender and age dimensions.⁴⁵ A study conducted on informal workers in 2003 reported that more than half of informal workers earned less than R500 per month.⁴⁶ According to the study approximately 75% of the informal economy workers earned less than R1000 per month, whilst only 15% of the formal economy workers fell within this range.⁴⁷ The United Nations Development Project National Human Development Report for South Africa⁴⁸ reported that in 1995 the average white household earned four times as much as the average African household and by 2000 was earning 6 times the income of the average African household.⁴⁹

These differentials remain substantially unchanged in current times, with statistics of

41 SAIRR 2012 www.sairr.org.za 2.

42 SAIRR 2012 www.sairr.org.za 2.

43 Anker *et al Measuring Decent Work* 26.

44 Anker *et al Measuring Decent Work* 26.

45 ILO 2010 www.ilo.org 7.

46 Bivens and Gammage 2005 www.epi.org 12.

47 Bivens and Gammage 2005 www.epi.org 12.

48 Human Development Report Office 2000 hdrstats.undp.org 61.

49 Human Development Report Office 2000 hdrstats.undp.org 61.

the monthly earnings of South Africans in 2010 revealing the median monthly earnings of white workers to be R9 500 and Indian/Asian workers R6 000 - substantially higher than the median monthly earnings of their coloured (R2 652) and black African (R2 167) counterparts. Thus black employees in 2010 earned 22% of white employees' earnings, 36.1% of Indian employees' and 81.7% of coloured employees'.⁵⁰ Median monthly earnings for informal sector employees were calculated as R1 600, being 43% of the median monthly earnings of formal sector employees.⁵¹ Research confirms that employees employed by temporary employment services are generally paid considerably less and receive fewer benefits than the client's employees performing the same work.⁵²

In South Africa the gender wage gap is evident in all occupations except domestic work, and women tend to average monthly earnings of R2 340 or approximately 77% of the R3 033 average earnings of their male counterparts.⁵³ These glaring wage differentials persist despite the educational advances of women and are evident at all levels of employment.⁵⁴ A 2003 NALEDI report, considering average earnings in selected occupations⁵⁵ in all industries in the informal sector save for mining and quarrying, confirmed that female earnings were well below the earnings of male workers.⁵⁶ This remains the position in 2010 where the wage gap is evident in all sectors save for domestic work.⁵⁷

There is a direct relationship between low wages and poverty. A study of the average monthly income for households in 1993 established that for the poorest members (20%) of the population 31% of their income comes from sources other than regular employment, with regular employment contributing only 23% of the monthly household income.⁵⁸ Since it is self-evident that low wages have a direct

50 Stats SA 2010 www.statssa.gov.za.

51 Stats SA 2010 www.statssa.gov.za. Median monthly earnings were lowest for those working in private households, being 27% of the median monthly earnings of formal sector employees.

52 Theron 2010 *ILJ* 851.

53 Theron 2010 *ILJ* 851. The wage gap is widest in the case of older employees (44% for employees 45-54 yrs) and entry-level employees (38.6% for employees 16-24yrs).

54 Stats SA 2010 www.statssa.gov.za.

55 Anker *et al Measuring Decent Work* 26.

56 Bivens and Gammage 2005 www.epi.org 12.

57 Stats SA 2010 www.statssa.gov.za.

58 Naidoo 2003 www.ilo.org.

impact on poverty levels, improving wages and conditions of employment is of crucial importance in overcoming decent work deficits.

While minimum wages⁵⁹ have been established for domestic workers, farm workers, forestry workers and the informal taxi and hospitality sectors - thereby extending protection to more than 3 million workers in South Africa - the income disparities that characterise the South African labour market must be dismantled before decent work objectives can be fulfilled.

3.3 Stability and security of work

Job security is regarded as a fundamental component of decent work. Job loss involves not only the loss of income but has far-reaching consequences for the dignity of employees and their family and community stability.⁶⁰ High levels of unemployment in South Africa imply that job loss is likely to endure for a prolonged period of time.⁶¹ The constitutional guarantee of fair labour practices and legislative protection against unfair dismissal, unfair labour practices and unfair discrimination aims to protect the job security of employees in formal and typical employment relationships. Despite this, employees in atypical employment relationships and in informal employment face insecure and unstable working conditions.

Temporary employment services contribute significantly towards externalisation and insecure working conditions.⁶² Section 198(2) of the *Labour Relations Act*⁶³ (LRA) stipulates that the temporary employment service is the employer of the person whose services⁶⁴ have been procured for a client,⁶⁴ and limits the client's liability to joint and several liability with the employer for a contravention of the terms and

59 Benjamin 2008 *ILJ* 1592. These minimum wages are determined by sector-specific standards, which include collective agreements negotiated by bargaining councils and sectoral determinations made by the Minister of Labour.

60 Anker *et al Measuring Decent Work* 38.

61 Anker *et al Measuring Decent Work* 38.

62 Theron points out that in 61% of the cases analysed the arbitrator dismissed the application because the employee was unable to establish the existence of an employment relationship with the party cited. In many of these cases the wrong employer had been cited (Theron J "Intermediary or employer? Labour brokers and the triangular employment relationship" (2005) 26 *ILJ* 635).

63 *Labour Relations Act* 55 of 1998.

64 This working arrangement is endorsed by ILO Recommendation 197 of 2006.

conditions of a collective agreement, arbitration award, sectoral determination or provision of the *Basic Conditions of Employment Act*.⁶⁵ The temporary employment service's employees' terms and conditions of employment are governed by the commercial contract concluded between the temporary employment service and its client and are inevitably reflective of the completely skewed bargaining positions of the contracting parties. It is the client that "determines the parameters of the relationship and is dominant in the relationship".⁶⁶ As the economic rationale for the utilisation of temporary employment services is to circumvent the contractual nexus between the client and the employee that would typically arise in a standard employment relationship and allow the client to bypass the gamut of statutory and contractual obligations, these employees are left in a vulnerable position. This vulnerability is at its most acute upon the dismissal of an employee, as the statutory protection against unfair dismissal is rendered impotent by carefully constructed contractual provisions that usually stipulate that employees of temporary employment service are employed in terms of "limited duration contracts" that are deemed to terminate automatically upon the happening of an uncertain future event.⁶⁷ While the consequence of joint and several liability is that if a temporary employment service fails to pay amounts owing to its employees the clients for whom the employees work are liable to make payment, this remains a default liability as the client is not the employer and cannot be challenged directly in the Council for Conciliation Mediation and Arbitration (CCMA) or the Labour Court.⁶⁸ An employee can proceed against the client only if s/he has obtained judgment or an order against the temporary employment service.⁶⁹

Furthermore, outsourcing and subcontracting arrangements that create ambiguity as to the identity of the employer, the misuse of fixed-term contracts of employment and

65 *Basic Conditions of Employment Act* 75 of 1997. In contradistinction to this provision s 57(1) of the *Employment Equity Act* 55 of 1998 (EEA) provides that for the purposes of Chapter III of the EEA, a person whose services have been procured for, or provided to, a client by a temporary employment service is deemed to be the employee of that client, where that person's employment with the client is of indefinite duration or for a period of three months or longer. The client and employer are held to be jointly and severally liable for an act of discrimination committed by the temporary employment service on the express or implied instruction of the client (s 57(2) of the EEA).

66 Theron 2005 *ILJ* 619.

67 *NUMSA v SA Five Engineering (Pty) Ltd* 2007 28 *ILJ* 1290 (LC).

68 Theron 2010 *ILJ* 848.

69 Theron 2010 *ILJ* 850.

the fraudulent use of cooperatives have served to deprive employees of labour law protection and security of employment, and burden workers, their families and society with the costs associated with unregulated work.⁷⁰

The proposed amendments to the *Labour Relations Act* in the *Labour Relations Amendment Bill 2012*⁷¹ aim to regulate temporary employment services, fixed-term employment contracts and outsourcing arrangements in a bid to ensure decent work for all workers.⁷² While the Amendment Bill remains subject to ratification it is clear that the misuse of temporary employment arrangements and the abuse of fixed-term contracts will no longer be tolerated – a welcome step towards the attainment of decent work objectives.

3.4 Social protection

Adequate social protection,⁷³ fundamental to the attainment of decent work and poverty reduction, is necessary to provide security against a variety of contingencies and vulnerabilities.⁷⁴ While the need for protection from life risks is felt by all persons, the exposure to risks and the type and level of protection available differ substantially among societies.⁷⁵ In most developing countries the focal point of social protection policies is to ensure survival, relieve destitution and mitigate livelihood risks.⁷⁶ The needs of most people in developing countries can be placed into three categories: (a) basic needs of access to adequate nutrition, access to clean water, sanitation and shelter, primary health care, primary education; (b) contingencies such as sickness, accident, the death of the breadwinner, disability, old age and the needs of vulnerable groups (orphaned or abandoned children and widows); and (c) natural disasters and civil conflicts that may result in the destruction of property, livelihoods

70 Theron 2010 *ILJ* 846.

71 *Labour Relations Amendment Bill 2012* (Gen N 281 in GG 35212 of 5 April 2012).

72 *Labour Relations Amendment Bill 2012* 6.

73 Social protection is defined as the protection that society provides against economic and social problems that would otherwise arise due to the reduction or termination of earnings due to maternity, old age and unemployment (ILO 2007a www.ilo.org 172).

74 Such contingencies include ill health, maternity needs, accidents, unemployment, destitution, extreme economic fluctuations, natural disasters and civil conflicts.

75 Anker *et al Measuring Decent Work* 52.

76 Ghai "Decent Work" 10.

and sources of support.⁷⁷ Fundamental to effective social protection is "universal coverage, mandatory participation and adequate regulation".⁷⁸

In South Africa the right to social security and assistance is constitutionally mandated⁷⁹ and in furtherance of this a number of legislative measures have been passed to regulate social insurance and assistance. Despite this there is no comprehensive social security system and the provision of healthcare and retirement benefits is piecemeal and has been largely limited to employees in formal employment. For households affected by HIV/AIDS the lack of social security presents an additional challenge, as the demand for caring services increases at a time when additional income is needed for medical expenses and to compensate for loss of income.⁸⁰

In order to consider the effectiveness of the social protection afforded in South Africa, it is necessary to look at the extent and growth of social expenditure. Research indicates that there has been substantial growth in social spending in South Africa with such spending having increased by more than 50% in the period 2000-2006. This has been attributed largely to an increase in social grant spending by an estimated 127%, with spending *per capita* having increased at a rate of 21% in 1995-2000 and a further 40% in 2000-2006.⁸¹ One of the statistical indicators used to measure social security is public social security expenditure.⁸² Of the state budget of R979.3 billion for the 2011 fiscal year, R577.3 billion was allocated to social services and specifically R189.5 billion to education, R121.9 billion to housing, R112.6 billion to health and R146.9 billion to social protection. This represents an increase of 11.8% from the previous year's expenditure.⁸³ Furthermore the community-based health-care programme, the National Health Insurance, has been created and aims

77 Ghai "Decent Work" 10.

78 Ghai "Decent Work" 10.

79 Section 27 *Constitution of the Republic of South Africa*, 1996.

80 According to results from the National HIV Survey 2008, KwaZulu-Natal, Mpumalanga and Free State have the highest rates of HIV prevalence in the country. For the period 2002-2008, the HIV prevalence rates in these provinces were: KwaZulu-Natal 11.7% increased to 15.8%; Mpumalanga 14.1 % increased to 15.4% and Free State 14.9% decreased to 12.6%. The province of Gauteng was 10.3%, Eastern Cape 9.0%, Western Cape 3.8%, North West 11.3% and Limpopo 8.8% (AVERT 2010 www.avert.org).

81 Van Der Berg 2006 images.businessday.co.za 10.

82 Anker *et al Measuring Decent Work* 52.

83 Gordhan 2011 www.treasury.gov.za.

to ensure the provision of essential quality healthcare to all South Africans, regardless of their socio-economic or employment status.⁸⁴ This scheme, which aims to make major changes to the service delivery structures, administrative and management systems of healthcare, is being touted as likely to have a positive impact on the provision of social security if successfully implemented.⁸⁵

Notwithstanding these developments, and in spite of government's undertaking to prioritise the extension of social protection and security to both formal and informal employees, the social security system as it stands remains "fragmented and does not provide adequate coverage to ensure the protection of the economically active population".⁸⁶

3.5 *Social dialogue*

Effective social dialogue between government, employers and trade unions is required to secure the equitable participation of all employees (formal and informal) in decent and productive work.⁸⁷ The ability of workers to organise freely in order to collectively defend their interests, as guaranteed by the *Constitution* and labour legislation, is vital to equitable workplace relations and effective social dialogue. A significant aspect of decent work is the extent to which workers can express themselves on work-related matters and participate in the regulation of their working conditions.⁸⁸ In South Africa, NEDLAC (which comprises of representatives of government, organised labour and business) provides an effective tripartite framework for the facilitation of the social dialogue process.⁸⁹

An indicator of effective social dialogue is trade union density rate within a particular country. In 2009 COSATU had 1.985 million members, 20 affiliated unions and

84 Khumalo 2012 www.southafrica.info.

85 Khumalo 2012 www.southafrica.info.

86 ILO 2010 www.ilo.org 9.

87 ILO 2009a www.ilo.org 162.

88 Anker *et al Measuring Decent Work* 59.

89 NEDLAC was created with an Act of Parliament in September 1994 and is a representative body whose parties seek agreement through negotiation and discussion. Any NEDLAC agreement is required to be accepted by Parliament before it becomes law. See also Naidoo 2003 www.iol.org 56.

represented 48% of unionised workers and 37% of the membership of public service unions.⁹⁰ However, despite a rapidly expanding informal employment sector,⁹¹ workers in the informal sector remain outside the net of trade unions and continue to be unorganised and vulnerable.⁹² As things stand, the decent work objective of social dialogue and tripartism totally eludes the informal labour market.

The participation of women in leadership positions in employees' organisations is essential in order to place gender inequities and decent work objectives on the collective bargaining agenda, yet remains disproportionately low.⁹³ While COSATU has pledged to increase the representation of women in its leadership positions, its leadership structure remains predominantly male from shop floor to national levels.⁹⁴ Furthermore NEDLAC's annual report for 2008/09 indicates that only three of the eighteen principals of NEDLAC were women, all of whom came from the community constituency.⁹⁵ It is apparent that a more representative leadership structure is imperative for meaningful social dialogue to be attained.

4 Conclusion

In South Africa high levels of unemployment and a weakened economy have given rise to a growing informal sector and a concomitant increase in unacceptable working conditions and exploitation.⁹⁶ Rights at work, embodied in a liberal constitution and labour legislation, have not filtered down to the informal sector, which remains vulnerable and unrepresented. Youth unemployment levels remain of

90 Nonetheless there is evidence of a recent decrease in COSATU membership in the manufacturing sector, attributable to the global economic crisis, which has given rise to significant retrenchments in the retail and vehicle manufacturing sectors (Naidoo 2003 www.ilo.org 55).

91 Naidoo 2003 www.iol.org 54.

92 Buhlungu 2008 www.swopinstitute.org.za. See also Webster 2005 *International Political Science Review* 63.

93 <http://www.cosatu.org.za/docs/shopsteward/2011/oct-nov.pdf>; see also Gender Equality at the Heart of Decent Work http://www.ilo.org/global/publications/magazines-and-journals/world-of-work-magazine/articles/WCMS_105183/lang--en/index.htm .

94 Cf the Shopsteward magazine published at <http://www.cosatu.org.za/docs/shopsteward/2011/oct-nov.pdf> [date of use 27 January 2012].

95 NEDLAC 2009 www.pmg.org.za.

96 In the first quarter of 2011 the number of employed women and men increased by 173 000 and 53 000 respectively (Stats SA 2011a www.statssa.gov.za). The African textile industry with its 90% female workforce has experienced severe job losses due to reduced export opportunities (Somavia 2011b www.ilo.org 6).

grave concern and gender inequalities continue unabated. Job creation initiatives, which are fundamental to the attainment of decent work, have been undermined by the global recession and infrastructural shortcomings, and ambitious governmental targets appear to be unachievable. Social protection programmes are inadequate and do not provide adequate coverage to the majority of the economically active population. Similarly social dialogue processes and organisational structures have failed to accommodate or represent the interests of the informal sector. In his opening address to the 12th ILO African Regional Meeting, President Jacob Zuma acknowledged that decent work and job creation can be achieved only through appropriate development policies, regional and continental economic co-operation, infrastructural development and a well functioning educational system and social services.⁹⁷ Until these needs are addressed it remains unlikely that decent work imperatives will be attained.

The OECD Economic Survey of South Africa 2010 cautioned that an increased focus on decent work could be counter-productive to job creation⁹⁸ and recommended:

- (a) increasing employment rates by implementing reforms to wage determinations; improving school-to-job transition and addressing lacunas in employment protection regulations;
- (b) reforming the regulatory environment by reducing entry barriers and increasing the scope for competition; and⁹⁹
- (c) expanding job-search assistance and upgrading public job centres, including creating better linkages to job-seeker databases; and implementing sectoral minimum wages which are differentiated by age in order to ensure that the youth break into the job market.¹⁰⁰

Minister of Labour Mildred Oliphant echoed these sentiments¹⁰¹ in stating that "we want jobs and we must strive for decent work", with the starting point being the

97 Zuma 2011 www.ilo.org.

98 OECD 2010 www.oecd.org.

99 OECD 2010 www.oecd.org 3.

100 OECD 2010 www.oecd.org 11.

101 Olifant 2011 www.skills-universe.com.

creation of productive work.¹⁰² It would appear that, in the short term, a compromise between more and decent jobs may be necessary.

102 Oliphant stated that the strategic objectives of the department over the next five years included: contributing to employment creation; promoting equity in the labour market; protecting vulnerable workers; strengthening social protection; promoting sound labour relations; strengthening the capacity of labour market institutions, and strengthening the institutional capacity of the department.

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BCEA	Basic Conditions of Employment Act
CCMA	Commission for Conciliation, Mediation and Arbitration
COSATU	Congress of South African Trade Unions
DWCP	Decent Work Country Programmes
EEA	Employment Equity Act
ILJ	Industrial Law Journal
ILO	International Labour Organisation
LRA	Labour Relations Act
NEDLAC	National Economic Development and Labour Council
OECD	Organisation for Economic Development
QLFS	Quarterly Labour Force Survey
SAIRR	South African Institute of Race Relations
SETAs	Skills Education Training Authorities
Stats SA	Statistics South Africa
TES	Temporary Employment Services